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Understanding NIL: The Future of College Sports

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Session CPE Requirements

- You need to attend 50 minutes to receive the full 1 CPE credit.
- There will be 4 knowledge check questions throughout the presentation. You must respond to a minimum of 3 to receive the full 1 CPE credit.

****Both requirements must be met to receive CPE credit****



Ben Cahill, Principal



12 years of public accounting experience
(9 years with CLA)

Focus on professional and collegiate athletes since
2016

CLA works with over 200 current and retired
professional athletes

Accounting degree from St. John's University (MN) and
Masters of Taxation degree from University of Minnesota

Played college golf (NCAA) at St. John's University
(MN)



Liz Cook, Manager



Been with CLA for 9+ years

Focus on Higher Education audits

Performs agreed-upon-procedures for NCAA

Graduated from the University of Arizona



Learning Objectives

Recognize the current challenges institutions are facing regarding NIL

Identify tax and legal issues related to NIL collectives

Determine the tax implications for student-athletes receiving NIL funds



Agenda



Background and legal history on NIL



NIL collectives – what are they and tax classification



Recent NCAA Developments



Student-Athletes – tax filing, reporting requirements and tax planning



Disclaimer

This topic is rapidly developing, and new information is released frequently. Recent legal rulings and other ongoing litigation can impact how schools are currently operating. This presentation was given with our knowledge of the current state of NIL and NCAA bylaws.





Background and Legal History



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Background: What Is NIL?

NIL = Name, Image, and Likeness

Prior to 2021, NCAA rules prohibited student-athletes from profiting on their name, image and likeness

Generally, includes things like endorsements, commercials, appearances, autograph signings, social media posts and advertisements, and other business activities - youth camps

NIL deals are not direct payments from universities (paying student-athletes) but compensation by third parties



NIL Regulations and Policies – Initial Interim (2021)

Guidance to student-athletes, recruits, their families, and member schools regarding NIL activities

Can engage in NIL activities consistent with the law of the state where the school is located

If there is a state without an NIL law, athletes can engage in this type of activity without violating NCAA rules

Individuals can use a professional services provider for NIL activities

Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school



NIL Regulations and Policies – May 2022 Guidance

Defined “boosters”

- An entity that promotes an athletic program by providing benefits to student-athletes or their families
- At the time of guidance, NCAA believed many boosters fell within the definition above

Focus on prospective student-athletes

- Reaffirmed boosters cannot participate in recruiting
- Schools cannot facilitate relationships between boosters and potential student-athletes

Focus on current student-athletes

- NIL deals cannot compensate student-athletes for enrollment decisions, athletic performance or achievement, or membership on a team
- Deal must be based on the “value that each athlete brings to the NIL agreement”



NIL Regulations and Policies – October 2022 Guidance



List of “dos” and “don’ts”



Theme around ability of schools to support student-athletes and NIL deals without sacrificing amateurism or education



Permits schools to hold educational sessions for student-athletes regarding NIL deals

Bans relationships where schools benefit from deals

Schools cannot be compensated for student-athlete NIL deals

NIL Regulations and Policies – June 2023 Guidance

“[I]f a state law permits certain institutional action and NCAA legislation prohibits the same action; institutions must follow NCAA legislation”

Schools may not use NIL deals “to compensate student-athletes for athletics participation or achievement or as an improper inducement”

“Any entity (i.e. a collective) that is closely aligned with an institution is subject to the same NIL scrutiny as the institution and must adhere to NCAA rules and policy”

“A booster or collection of boosters is not permitted to engage in recruiting activities, including recruiting conversations.”

“Institutions may not provide assets (e.g., tickets, suite access, club seating) to a donor as an incentive for providing funds to the NIL entity”

“NIL compensation may not be contingent upon enrollment at a particular school.”



NIL Regulations and Policies – April 2024 Guidance



NCAA adopted rules that permit institutions to provide assistance and services (e.g., identify NIL opportunities, and facilitate deals) for student-athletes pursuing NIL opportunities



Student-athletes will be required to disclose to their universities any information on NIL deals that are \$600 in value or greater



Schools will supply NIL deal data to the NCAA biannually to build a database accessible to student-athletes



Although many states already require NIL disclosures, the NCAA's new rule establishes a national requirement for sharing NIL deal data



It remains impermissible for colleges and universities to compensate student-athletes for use of their NIL or to use NIL as a recruiting inducement

Knowledge Check

What aspect of NIL do you find the most challenging?

- Lack of guidance
- Lack of oversight
- Educating student-athletes
- Constant changes and developments



Current Oversight

Financial statement audit

- Athletics department is included
- Compliance is not within scope of the audit

NCAA agreed upon procedures for D1 institutions annually and D2 institutions every three years

- Focused more on financial data than compliance
- A few elements of compliance included



Future Oversight



NCAA may require a compliance
audit moving forward



Difficulties:

NCAA bylaws are complex and extensive
Not many auditors are trained in these
compliance audits



NIL Collectives



What are NIL Collectives?

Organizations established by boosters and fans of a university's athletic program to develop and fund or otherwise facilitate NIL deals for student-athletes



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Why Are They Formed?

- NCAA prohibits universities from paying athletes directly (currently)
- Typically formed and funded by alumni/boosters/supports of athletics program
- Often the stated purpose is to facilitate NIL deals (“keep up with the Joneses”)
- Idea: Connect Player X with Company Y for endorsement deal
- Public works: support charitable causes and provide community service
- Critics: Collectives have become conduits for “pay for play”
 - Athletes go to highest bidder
 - Increased importance in transfer portal era



What Do They Do?

- Argument: What started as facilitating NIL activities related to legitimate endorsement deals has morphed into incentivizing student-athletes to attend and/or attend universities in exchange for greater “NIL money”
- Fueled by transfer portal (athletes become free agents every year), the money is flowing like never before
- Most initially set up as non-profits: support charitable causes and organizations and provide community service



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NIL Collectives – Tax Status

IRS Chief Counsel published a memo in June 2023 warning that collectives do not meet the requirements for 501(c)(3) status

- Serving a private, not public interest
- Direct benefit to a limited group of individuals (college athletes)

June 2023

In 2024, the IRS continues to disallow 501(c)(3) status to NIL collectives

- Three private letter rulings were released in recent months
- Determined these collectives were to offer a private benefit to student-athletes & denied status
- Do not pass the operational test nor qualitative & quantitative aspects of 501(c)(3)

2024



Knowledge Check

Does your Institution have a 501(c)(3) collective?

- Yes
- No
- We did not get 501(c)(3) status
- I do not work at an institution





Recent NCAA Developments



NCAA \$2.75B Settlement

Class action settlement between student-athletes and big-time sports universities

- NCAA and 'Power Five' athletic conferences
- Represents lost earnings pre NIL era (2016-2023)

Former athletes will split the \$2.75B

- Less attorney fees (~30%)
- Payout over 10 years

Current athletes will have potential to be paid

- Schools will be able to share up to \$21-22M per year

Still needs to be approved by a judge

- Likely not until early 2025



NCAA \$2.75B Settlement



What impact will the payout have?

NCAA will pay 40% and schools will handle the remainder



How does Title IX play into this?

NCAA states each school has discretion on how to spend the money – NIL market value for each individual athlete, or same amount for everyone?



Is \$20M only the starting point?

Potential for further litigation



What role will collectives play now?

Collectives and boosters supported athletes



Other Developments

Employee vs. Independent contractor legislation



June 2024 – House of Representatives introduced the “Protecting Student-Athletes and Economic Freedom Act”

Looks to prohibit college athletes from becoming employees of the school and prevents unionizing



July 2024 US court of appeals affirmed the dismissal of the NCAA’s motion to dismiss *Johnson vs. NCAA*

A case where athletes argue they are employees of their schools and the NCAA

The ruling does not make athletes employees of their schools but is a substantial step in that direction



Knowledge Check

Where do you see the biggest future impact if the NCAA settlement gets approved?

- Budget / athletic finances
 - Title IX implications
 - Future litigation
- Employee vs. independent contractor debate for athletes





Tax Considerations for Student-Athletes



NIL Federal Tax Implications

Students may be filing tax returns for the first time

Schools are limited in the amount of guidance and support they can provide

Even before NIL came into existence, students may have had a tax filing requirement

- Scholarship income may be considered taxable income in certain cases (i.e., room and board)
- International students / special visa eligibility

Need to consider if a dependent of their parents

Impact on eligibility for educational tax credits

NIL income may impact need-based and federal financial aid awards



NIL Federal Tax Implications

Independent contractor,
not employees of the
school (FOR NOW...)

NIL income over \$600 is
generally reported on form
1099-NEC

Cash and noncash income
are taxable (Crypto, NFTs,
gift cards, vehicles)

Schedule C, subject to self-
employment tax

Estimated tax payments
should be made if more
than \$1,000 is expected to
be due

Deductions may be
available to reduce taxable
income

Generally, athletics are
“Specified Service Trade or
Business” (SSTB) for 199A
Qualified Business Income
Deduction purposes



Common Deductions Against NIL Income

Agency fees

Professional fees
(legal, accounting,
consultants)

Advertising and
marketing
expenses

Editors or
publicists

Unreimbursed
travel expenses
(Business mileage)

Equipment and
supplies
(cameras, video
equipment, etc.)

Cell phone,
internet, home
office (business
use)

Note: Deductions like this are NOT available under current tax laws if students are considered employees



Other Considerations

Retirement plans – SEP IRA

Entity formation

- Single member LLC
- Option to incorporate / “S” election
 - Generally, a matter of cost of compliance vs. benefits

Recordkeeping is important

- Consider a separate business bank account to track income and expenses
- Consider an accounting software to track activity if there is enough volume
- Driving mileage logs



State and Local Tax Considerations



State / city the student and his or her family resides

“Domicile” test / 183-day test



State / city the school is located



State / city work is performed in

Ex. Filming commercials, sponsorship events, appearances, and card signings

A change to athletes as employees / pay for play would impact state tax nexus



States and cities have different residency rules and different nonresident tax reporting requirements



State pass-through entity tax consideration

An S corp or multi-member LLC may provide an opportunity to allow a federal deduction for state taxes paid and bypass the \$10,000 limitation on itemized deductions

State LLC reporting requirements?

Knowledge Check

How effective has your Institution been at addressing the
NIL impact?

- a. Very effective
- b. Somewhat effective
- c. We are not making significant progress





Questions?



Thank you!

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