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In this installment of Commerce Crossroads, Wilford argues that despite its sweeping reforms to name, image, and likeness (NIL) and athlete compensation, the Protect College Sports

Act does not address the complex multistate tax rules that disproportionately burden many college athletes with modest NIL earnings, underscoring the need for federal and state tax simplification.

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The (above-board) introduction of name, image, and likeness (NIL) money into college sports has received considerable attention from Congress in recent months. In June, the bipartisan Protect College Sports Act (PCSA),¹ which would replace the current patchwork of state laws on college athletics with a federal framework, advanced out of the Senate Commerce Committee. It was the subject of feverish negotiations to pull the remaining Power Four conferences (the Big Ten and the Southeastern Conference) on board and pass the bill through the full Senate before the August recess.²

The PCSA would regulate college athletes' agents, restrict athletes' ability to transfer schools

multiple times, and prohibit the largest conferences from combining, among other impactful changes. PCSA sponsors have reportedly prepared further amendments in an attempt to garner the support of the Big Ten and SEC, most notably a new \$20 million to \$25 million retention fund that schools could use to compensate athletes in addition to the existing \$21 million revenue-sharing cap.³

But the PCSA is equally notable for not addressing tax simplification or even tax certainty. College athletes are currently being exposed to a multistate tax maze intended for high-profile, highly compensated individuals. Yet most college athletes are anything but: The median NIL deal for a college athlete is about \$40, and the median athlete earns about \$648 in total over the course of their college career.⁴

Five-star quarterbacks with multimillion-dollar endorsement deals may have the resources to hire multistate tax specialists who can accurately file tax returns for athletes, but a typical college athlete is at a severe disadvantage. Congress and the states each have a role to play in simplifying and rationalizing these rules, as well as avoiding unnecessary further complications.

An Abbreviated History of NIL

While the NIL concept has come to be associated nearly exclusively with college sports, it is neither new nor unique to college athletics. Professional athletes, celebrities, and more recently social media influencers have long profited from the use of their recognizable public image. What is relatively new is college athletes' ability to profit from NIL. The full history of how

¹S. 4668 (2026).

²Ben Leonard, "Big Ten, SEC Leaders Back Protect College Sports Act," *Politico*, July 28, 2026.

³Ross Dellenger (@RossDellenger), post on X, July 18, 2026.

⁴NCAA, Division I Name, Image, and Likeness Dashboard (figures from Jan. 1, 2025 through July 31, 2026).

college athletes went from strict amateurism rules to the current state of play could fill a book, but a brief history may still be instructive.

NIL in college athletics dates back to 2021. That year, California's landmark Fair Pay to Play Act⁵ — the first state law prohibiting schools or the NCAA from enforcing any kind of restriction on college athletes' ability to profit from their NIL — took effect (dozens of other states subsequently passed similar legislation). Also that year, the U.S. Supreme Court ruled in *NCAA v. Alston* that caps on education-related benefits violated federal antitrust law.⁶

Sensing the writing on the wall, the NCAA implemented in July 2021 a new policy that allowed student-athletes to be compensated for the use of their NIL.⁷ Still prohibited was “pay to play” or any kind of provision making compensation contingent upon enrollment at a particular university.

If the NCAA's prohibition of “pay to play” comes as a surprise, this is because it has led to deals structured to comply with the letter of the law while still bolstering recruitment to specific schools. Rather than offering NIL deals as contingent incentives to transfer or commit to their preferred school, boosters attempt to ensure that athletes who do play for their school are known to receive the most lucrative NIL deals. There is functionally little difference, but the former type of NIL deal violates NCAA rules while the latter does not.

The last important development to note is the so-called *House* settlement, under which the NCAA resolved multiple active antitrust lawsuits. As part of this deal, the NCAA agreed to pay out \$2.85 billion in damages to student-athletes who participated in college sports between 2016 and 2024, and to establish an independent commission that must review all NIL deals over \$600 and ensure that they reflect fair market value.⁸

Perhaps most importantly, the *House* settlement allows universities to directly pay their athletes up to a cap set at \$20.5 million per school in 2026, with annual adjustments for each of the next nine years. These payments are still structured as compensation for the use of an athlete's NIL but are not subject to the same FMV restrictions as other types of NIL deals.

Types of NIL Compensation

This means that there are currently three main ways in which college athletes are compensated for the use of their NIL:

- **Traditional NIL** represents the expansion of NIL compensation that has existed as long as the concept of marketing — simply extended to college sports. Brands or businesses see an opportunity to leverage an athlete's recognizable public image to promote their products, and compensate an athlete helping them do so. The brand's primary goal is to profit from the use of the athlete's recognizable public image, and it compensates the athlete for the rights to do so.
- **Boosters/NIL collectives** are individuals or groups of boosters whose primary goal is to direct NIL money to student-athletes. They either help connect a school's athletes with marketing opportunities or provide them themselves. While these types of deals remain subject to the aforementioned FMV restrictions, the underlying, primary goal is to benefit a school's athletic program.
- **Direct pay, or revenue-sharing**, is the last and most recent type of compensation available to student-athletes. Each school can pay up to \$20.5 million in 2026 to its student-athlete population directly as compensation for using their NILs for merchandising, broadcast revenue, and so on. Curiously, these payments remain technically subject to the NCAA's anti-pay-to-play rules but terminate if the athlete transfers or leaves on the basis that they are no longer helping the school earn college athletics revenue.

Under federal law, which all but five states (Alabama, Arkansas, Mississippi, New Jersey, and Pennsylvania) use as their taxable income base in

⁵ California S.B. 206 (2019).

⁶ *NCAA v. Alston*, 594 U.S. 69 (2021).

⁷ NCAA, “Interim Name, Image and Likeness Policy Guidance Regarding Third Party Involvement” (May 2022).

⁸ Fourth Amended Stipulation and Settlement Agreement, *In re Collegiate Athlete NIL Litigation*, No. 4:20-CV-03919 (N.D. Cal. May 7, 2025).

some form or another, NIL income can fall into one of four main categories:

- **Self-employment income** is the most common. This is income that requires athletes to engage in some activity to be compensated, such as filming a commercial, appearing at a sponsorship event, or posting about a product on social media.
- **Royalties** are compensation that is earned from the passive use of NIL, such as allowing one's NIL to be used in a college sports video game.
- **Passthrough income** is earned when an athlete forms a limited liability company or other small corporation. This is generally more common for higher-earning athletes.
- **Wages** are generally not the form NIL income takes under current law. A school or other entity could theoretically enter into an employment relationship with a student-athlete, but existing rules against "pay to play" make it difficult.

Areas of Tax Uncertainty for College Athletes

Income Classification Uncertainty

While even the five states that use their own taxable income base still generally adhere to standard income categorizations, confusion could arise around mixed contracts. For instance, take an athlete whose LLC signs a contract for \$100,000. The contract requires him to appear at five promotional events in different states, film a commercial, and allow a new product to be branded with his name and image. One state may determine that active services dominate and treat the entire contract as business income. Another may seek to separate out the royalty component and tax it differently than the business income component. Yet another may agree with the second state on approach but disagree on the ratio of business income to royalty income.

Additionally, even when states agree on income classification, they can take different positions on whether a type of NIL compensation qualifies for a deduction — even if they both offer the same kind of deduction. Once again, this is particularly true for these types of mixed contracts, in which the deductions or exemptions

available may differ based on how a state classifies different parts of the contract.

Congress can help by setting a clearer standard for the tax treatment of these types of deals. In the meantime, states should work through multistate uniformity bodies such as the Multistate Tax Commission to develop a standard framework.

Income Sourcing Complexity

When athletes earn income in multiple states, they are perhaps unknowingly setting themselves up to be the rope in a tug-of-war between states. Each state where an athlete earns income has a claim to tax a portion of it. Also, many student-athletes retain driver's licenses, voter registration, and other key residence-determining elements in the state that they grew up in, which can mean yet another state with a chance to take a bite of the apple.

To begin with, multistate tax compliance has a cost: Even filing an additional return in another state is expensive on basic tax preparation software, and most NIL-earning college athletes would likely require more advanced tax preparation services. College athletes travel frequently and can expose themselves to filing obligations easily. Take, for another example, a college basketball player who has a contract to post on social media about a brand once before each game. Theoretically, he could be subject to tax obligations in each state that he posts in, which would add up to substantial complexity and compliance costs.

Underlying all this is the potential for states to get creative with jock taxes. As currently drafted, most state jock taxes apply only to professional athletes who are employees, and neither designation applies to college athletes. However, states could attempt to amend these laws to try and rope in visiting college athletes — after all, jock taxes came about as a result of a rivalry between the National Basketball Association's Chicago Bulls and Los Angeles Lakers,⁹ and college athletics is nothing if not rivalrous.

Should jock tax assessments on college athletes become common, they would net states

⁹ Andrew Wilford, "Jock Taxes — Juice That Isn't Worth the Squeeze?" National Taxpayers Union Foundation (Aug. 15, 2025).

minimal revenue¹⁰ but create a substantial compliance burden for athletes. Congress should consider expressly prohibiting jock tax assessments on college athletes as part of any college sports/NIL package.

Other Potential Simplification Solutions

Workforce Protections to Independent Contractors

At the state and federal levels, mobile workforce safe harbor legislation protects employees and their employers, but not independent contractors. NIL in college athletics illustrates how this is a somewhat arbitrary distinction.

As things stand, thousands of college athletes have a legal obligation to file tax returns in states based on where they have a two-digit tax liability. Any time a nonresident's tax payment is earning TurboTax or H&R Block more money than the state collecting the tax, it is a good candidate for exclusion under a safe harbor.

States should consider modifying their existing mobile workforce language to apply to independent contractors as well, so long as they meet the same recordkeeping requirements expected of employers. States that have yet to pass any mobile workforce protections, or protections that fail to exempt up to 30 days of in-state work, should do so.

Don't Leave It Up to 18-Year-Olds to Navigate This

The biggest disadvantage that student-athletes face on the tax compliance front is that they are primarily self-employed, whereas professional athletes are employees. Minor league professional athletes face onerous, absurd compliance burdens disproportionate to their earnings, but their salaries are subject to employer withholding. Filing returns in each state they play is costly, but the complexity of computing tax liability for each state is much more of a problem for their employer.

Student-athletes, however, do not benefit from employee withholding. Not only does this lead to greater complexity, it also makes college athletes more likely to fall into the self-employment tax trap of failing to make quarterly estimated payments.

This is a problem more broadly for independent contractors, as businesses are justifiably concerned that entering into a voluntary withholding agreement with an independent contractor may be used as proof by tax authorities that the arrangement is better categorized as an employment contract. At the federal level, the national taxpayer advocate has recommended that Congress state that when businesses and independent contractors enter into voluntary withholding agreements, the IRS may not use those agreements to challenge the worker's classification.¹¹

This could be built upon to require that certain entities with substantial NIL activity — such as NIL collectives and schools — offer elective withholding to all student-athletes. Schools should also be required to offer free tax compliance services to all their athletes.

Conclusion

The advent of NIL in college sports has undoubtedly been a boon to college athletes who are finally able to receive a share of the economic activity they generate. But while with great money comes great liability, less money can still bring great complexity. Eye-popping deals going to top transfer portal targets should not mislead states into thinking that the average college athlete is suddenly inundated with enough cash to justify a feeding frenzy.

Instead, states and Congress should think hard about how they can protect athletes from having to moonlight as tax accountants, particularly those without the resources to pay someone else to do it for them. A push toward uniformity and simplification can accomplish this with minimal impact on states' ability to raise needed revenues. ■

¹⁰ Wilford, "What Are the Tax Implications of NIL and College Athlete Compensation?" National Taxpayers Union Foundation (June 24, 2026).

¹¹ National Taxpayer Advocate, Legislative Recommendation No. 61, "Clarify the Employment Tax Status of Collegiate Student-Athletes," 2022 Purple Book.