



Tackling NIL

Aaron Hershberger – Forvis Mazars

Joel Levenson – University of Central Florida

Agenda

1. NIL History – How Did We Get Here?
2. Tax Considerations for NIL and Revenue Sharing
3. Best Practices – Moving Forward
4. Questions



01

NIL History – How Did We Get Here?



Tackling NIL

NIL History – How Did We Get Here?

The Origins of Name, Image, & Likeness

The history of Name, Image, and Likeness (“NIL”) in college athletics centers on the NCAA’s long-standing ban on athletes profiting from their likenesses, which was challenged through legal cases like Ed O’Bannon v. NCAA, and state-level legislation, such as California’s Fair Pay to Play Act. This culminated in the NCAA adopting an interim NIL policy on July 1, 2021, allowing college athletes to profit from endorsements and business ventures, though rules vary by state and institution.



Tackling NIL

NIL History – How Did We Get Here?

The Origins of Name, Image, & Likeness

Early Restrictions

Since its formation in 1906, the NCAA upheld a strict stance on amateurism, prohibiting student-athletes from earning money from their names, images, or likenesses. Athletes were limited to scholarships and education-related benefits (i.e. cost of attendance allowances (housing, meals, etc.))

Institutional Profit

This allowed NCAA institutions, conferences, and the NCAA itself to profit billions from college sports, often built on the appeal of the student athletes.

Tackling NIL

NIL History – How Did We Get Here?

The Origins of Name, Image, & Likeness

The following is a brief overview of some of the key legal milestones related to NIL.

2009

Former UCLA basketball player Ed O'Bannon sued the NCAA for using his likeness in a video game without his consent or any monetary compensation. Twenty other collegiate athletes joined O'Bannon in a class action suit against the NCAA and their amateurism bylaws, which they alleged violated federal antitrust laws.



2014

Judge Claudia Wilken ruled in favor of O'Bannon, paving the way for student-athletes to be eligible for additional monetary compensation in the form of academic scholarships, tuition, and housing stipends. Up until then, the only compensation student-athletes could receive from their universities was academic scholarships that only covered the cost of tuition.



Tackling NIL

NIL History – How Did We Get Here?

The Origins of Name, Image, & Likeness

2019

California Gov. Gavin Newsom passed the Fair Pay to Play Act into law, which prohibited universities from penalizing their athletes for collecting endorsements starting in September 2021. It was the first legislation of its kind, prompting several other states to adopt similar legislation.

2020

Grant House, a former swimmer for Arizona State University, and Sedona Prince, a former basketball player for University of Oregon, sued the NCAA for NIL damages and to lift restrictions on revenue sharing from broadcast rights.

2021 (June)

The U.S. Supreme Court ruled in NCAA v. Alston, which affirmed that the NCAA's restrictions on non-cash, education-related benefits violated antitrust laws.

Tackling NIL

NIL History – How Did We Get Here?

The Origins of Name, Image, & Likeness

2021 (July)

NCAA adopted an interim policy allowing athletes to engage in NIL activities, with restrictions aimed at preventing pay-for-play schemes. Schools were tasked with monitoring compliance with state and institutional rules, as no national framework was established. The policy opened the door for third-party compensation but left institutions in a complex legal position regarding taxation, reporting, and oversight.

2024 (May)

The NCAA reached a \$2.8 billion settlement for a federal antitrust class action lawsuit (House v. NCAA) that outlines actions for colleges paying student-athletes directly, athletes to earn NIL and spending caps for universities.

2025 (June)

On June 6, 2025, Judge Claudia Wilken of the U.S. District Court for the Northern District of California approved the settlement (House v. NCAA) (“House Settlement”).

Tackling NIL

NIL History – How Did We Get Here?

The Origins of Name, Image, & Likeness

House Settlement Details & Implications

- The \$2.8 billion settlement also includes back payments to Division I athletes who were denied the ability to sign NIL deals since 2016.
- Schools are allowed to directly pay student-athletes a portion of their athletic revenue. Starting with an estimated \$20.5 million annual cap for the 2025–26 academic year (calculated at roughly 22% of average power conference revenue).
- A new regulatory body, the College Sports Commission, will oversee the enforcement program and review NIL deals to ensure they are legitimate and reflect fair market value.
- Student-athletes must report third-party NIL deals with a total value of \$600 or more in the aggregate. The College Sports Commission will utilize NIL Go, an online portal built with assistance from Deloitte, to determine whether third-party NIL deals are made with the purpose of using a student-athlete's NIL for a valid business purpose and do not exceed a reasonable range of compensation.
- The settlement also replaces the elimination of scholarship limits with new roster limits.

Tackling NIL

NIL History – How Did We Get Here?

Role of NIL Collectives & Third Parties

- NIL collectives are donor-funded groups that help funnel deals to athletes, often creating compliance challenges for universities.
- Legal issues arise regarding transparency, recruiting manipulation, and potential violations of tax-exempt status (when collectives claim nonprofit status).
- Institutions must carefully navigate the relationship between collectives and athletes to avoid legal exposure.

Tackling NIL

NIL History – How Did We Get Here?

NIL Collectives & IRS Scrutiny

- In June 2023, the IRS issued a Generic Legal Advice Memorandum (AM 2023-004) concluding that many nonprofit NIL collectives do not qualify for tax-exempt status under Section 501(c)(3) because they primarily serve the private interests of student-athletes, which is more than incidental to any exempt purpose.
- *Operational Test Failure*: To qualify for tax exemption, an organization must operate exclusively for exempt purposes. The IRS found that NIL collectives often fail this test as their activities predominantly benefit private individuals, *i.e.*, student-athletes.
- *Private Benefit Doctrine*: The IRS emphasized that the private benefits provided to student-athletes by these collectives are substantial and not incidental, thereby disqualifying them from tax-exempt status.
- NIL collectives may not qualify for tax-exempt status if they fail to meet the IRS's requirements for charitable purposes.
- Donations to collectives may not be tax-deductible if the collective is not compliant, raising potential legal and tax risks for both donors and institutions.

Tackling NIL

NIL History – How Did We Get Here?

NIL Collectives & IRS Scrutiny

- In Private Letter Ruling 202504020, the IRS denied tax-exempt status to an NIL collective, reinforcing its stance that such organizations must not primarily benefit private interests.
- The IRS has listed tax-exempt NIL collectives as a compliance enforcement priority for fiscal year 2025, indicating increased scrutiny and potential audits for organizations in this space.

02

Tax Considerations for NIL & Revenue Sharing



Tackling NIL

Tax Considerations for NIL & Revenue Sharing

Taxability of NIL & Revenue Sharing Income

Tax Considerations for Colleges & Universities

NIL and Revenue Sharing payments will generate taxable income that must be reported to student-athletes.

- The following items should be considered related to these payments:
 - Has the NIL/Revenue Sharing contract been reviewed for tax considerations?
 - What is the payment structure of the school's NIL/Revenue Sharing Program?
 - Are payments being made to foreign persons?

Tackling NIL

Tax Considerations for NIL & Revenue Sharing

Taxability of NIL & Revenue Sharing Income

Has the NIL/Revenue Sharing contract been reviewed for tax considerations?

- Who is the school contracting with? Student-athlete or entity representing the student athlete?
- Is there any language in the contract indicating an employment relationship?

What is the payment structure of the school's NIL/Revenue Sharing Program?

- Does the school make payments to student-athletes or does the school utilize a third-party, e.g., Teamworks, PayPal, to make payments?
 - If the school is making payments, payments should be reported on Form 1099 (subject to reporting requirements).
- If a third party is making payments, have you reviewed the agreement to understand if the third party will handle the tax reporting?

Are payments being made to foreign persons?

- Schools should ensure they are prepared to meet the withholding and filing requirements (Form 1042-S).
- If a third party is making payments, ensure the agreement is reviewed to understand who is responsible for filing and withholding.

Tackling NIL

Tax Considerations for NIL and Revenue Sharing

Taxability of NIL & Revenue Sharing Income

Tax Considerations for Student-Athletes

Student-athletes are generally considered independent contractors for tax purposes and receive Forms 1099 if their income is \$600 or more from one source.

- File a Schedule C, Profit or Loss from Business, with Form 1040 to report self-employment income and related expenses.
- File a Schedule E, Supplemental Income and Loss, with Form 1040 to report income from royalties and certain other types of income and related expenses.
- Document and track all expenses incurred in generating NIL income.

Tackling NIL

Tax Considerations for NIL & Revenue Sharing

Taxability of NIL & Revenue Sharing Income

Tax Considerations for Student-Athletes

- Student-athletes must understand their tax obligations, which include quarterly estimated payments.
- Student-athletes should keep track of the locations where they perform NIL contract services, because they may owe state tax to a state where they earn income from NIL activities.
- Income or benefits received as a student-athlete must be included in taxable income on the FAFSA (Free Application for Federal Student Aid) application and could impact the amount of financial aid granted. Pell grants are based on other factors but can also be impacted by NIL income.

Tackling NIL

Tax Considerations for NIL & Revenue Sharing

Student Athletes Employment Classification

- Athletes are generally treated as independent contractors for tax purposes, but this classification is up for discussion.
- Federal and state standards, *e.g.*, IRS 20-factor test, ABC test, vary in determining employment status, and organizations should document classification reasoning.
- Shifting athletes to employee status would trigger additional wage, tax withholding, and benefits obligations as well as other legal considerations (minimum wage, state withholdings, international students, visas, etc.).
- The evolving legal landscape may force schools and collectives to reconsider how they classify athletes for tax and employment purposes.

Tackling NIL

Tax Considerations for NIL & Revenue Sharing

Title IX and NIL – Legal Implications for Tax & Employment Law

- Rescission of Title IX Guidance: In 2025, the U.S. Department of Education clarified that Title IX does not require gender equity in NIL compensation, as NIL payments are considered private agreements.
- This decision removes legal obligations for schools to ensure equal NIL opportunities between genders.
- However, disparities in NIL opportunities could still lead to legal challenges, particularly regarding tax treatment and employment classifications for male and female athletes.

03

Best Practices – Moving Forward



Tackling NIL

Best Practices – Moving Forward

Institutional Impacts

- Schools are required to educate athletes on the legal and tax aspects of NIL, including contract law and income reporting.
- Compliance offices have expanded to monitor NIL deals, but institutions risk legal exposure if they improperly broker or facilitate deals.
- Institutions must be cautious about assuming a role in NIL deals to avoid becoming entangled in employment law or tax reporting requirements.
- Review of NIL contract terms are critical to guide tax reporting.
- Be cognizant of any state public record laws.
- Coordination between athletics, legal, finance, and foundation to ensure compliance.

Tackling NIL

Best Practices – Moving Forward

Role of NIL Collectives & Third Parties

- NIL Collectives: Donor-funded groups that help funnel deals to athletes, often creating compliance challenges for universities.
- Legal issues arise regarding transparency, recruiting manipulation, and potential violations of tax-exempt status (when collectives claim nonprofit status).
- Institutions must carefully navigate the relationship between collectives and athletes to avoid legal exposure.

Tackling NIL

Best Practices – Moving Forward

NCAA Rules vs. State NIL Laws – A Growing Divide

- **State Challenges to NCAA Authority:** In January 2024, Tennessee and Virginia sued the NCAA, alleging NIL restrictions violated federal antitrust law. A preliminary injunction and January 2025 settlement ended the NCAA's ban on NIL deals during recruitment.
- **Legislative Pushback:** States like West Virginia are advancing aggressive NIL legislation, proposing school-controlled payments and shielding collectives from NCAA oversight.
- **Federal Legislative Efforts:** Conferences and stakeholders are lobbying Congress for a uniform federal NIL standard and antitrust protections.
- **Implications for Institutions:** The divergence between state laws and NCAA rules creates compliance uncertainty, recruitment complexities, and potential legal conflict.

04

Questions



Contact

Forvis Mazars

Aaron Hershberger

Director

aaron.hershberger@us.forvismazars.com

Joel Levenson

Assistant Vice President for Tax, Payables, and
Procurement

joel.levenson@ucf.edu

The information set forth in this presentation contains the analysis and conclusions of the author(s) based upon his/her/their research and analysis of industry information and legal authorities. Such analysis and conclusions should not be deemed opinions or conclusions by Forvis Mazars or the author(s) as to any individual situation as situations are fact-specific. The reader should perform their own analysis and form their own conclusions regarding any specific situation. Further, the author(s)' conclusions may be revised without notice with or without changes in industry information and legal authorities.

© 2025 Forvis Mazars, LLP. All rights reserved.