

Tax, Ethics, and Other Legal Issues in Student-Athlete NIL Deals

June 21, 2022

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What is NIL?

- Name, Image, and Likeness
- NCAA prohibited student-athletes from profiting from their NIL, until *NCAA v. Alston*
- *NCAA v. Alston*, 141 S. Ct. 2141 (2021)
 - Upheld Ninth Circuit's injunction against the NCAA limiting education-related benefits that member conferences or schools could provide to student-athletes.
 - Found that NCAA restrictions on non-cash education-related benefits violated antitrust laws under the Sherman Act.
 - Did not address restrictions on direct compensation to student-athletes, but opened the door for future cases in this area.

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What's happening at the state level?

- California started NIL discussion.
- Florida NIL law effective July 1, 2021.
- Many states were already considering NIL laws before the final decision was released.
- Approximately 28 states have passed NIL laws, while approximately 10 more have pending legislation.
- Institutions of higher education shall not uphold any rule that prevents student-athletes from participating in intercollegiate athletics because they earn compensation for their NIL.

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What is the NCAA's current position?

- Interim NIL Policy, effective July 1, 2021
 - NCAA Bylaws, including prohibitions on pay-for-play and improper recruiting inducements, remain in effect, but student-athletes may engage in NIL activity.
- Interim NIL Policy Guidance Regarding Third Party Involvement
 - Collectives are considered "boosters" under NCAA rules.
 - Boosters may not engage in recruiting activities, including recruiting conversations, on behalf of a school.

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What is an NIL Collective?

- Legal entities formed by fans and supporters of college sports for the purpose of maximizing NIL opportunities for their preferred school's student-athletes.
- Collectives take a variety of legal forms, with some formed as for-profit and some as tax-exempt entities.
- Independent from the institutions of higher education.

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Model Rules of Professional Conduct

- Rule 1.6: Confidentiality of Information
- Rule 1.13: Organization as Client
 - Rule 1.13(f)
 - Rule 1.13(g)
- Rule 2.1: Advisor
- Rule 4.3: Dealing with Unrepresented Person

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First appeared as part of the conference materials for the
10th Annual Higher Education Taxation Institute session
"Tax, Ethics, and Other Issues in Student-Athlete NIL Deals "