

Collegiate Athletics Reform: On taxing college sports related revenues

Clips Guest Commentary

The writer says entitlements provide the NCAA and its member institutions with a wide variety of tax breaks.

Frank G. Splitt, 12-12-12

Big money associated with college football was the focus of two front-page stories in the Marketplace Section of the December 10, 2012 edition of *The Wall Street Journal*. [1, 2] "College football is a multibillion-dollar, taxpayer-subsidized business. That's a lot of public investment in head trauma," said Patrick Hubry in his essay on long-term brain damage from football. [3]

It's also a lot of investment in an entertainment business that exploits college athletes and warps the academic mission of many colleges and universities via an overemphasis on sports and related academic corruption with a consequent loss of academic integrity, while prompting cheating and the use of performance enhancing drugs that spawn violent athletes. It's all about money....and tax free at that.

The university presidents, conference commissioners, athletic directors and corporate marketers who attend (the annual IMG Intercollegiate Athletics Forum) spend very little time mouthing the usual pieties about how the "student-athlete" comes first. Rather, they gather each year to talk bluntly about making money. —Joe Nocera[4]

University athletics benefit from in what can be likened to a stealth entitlement. Donors can usually write off gifts for athletic facilities and the right-to-purchase tickets. For example, federal tax revenues are lost because more than 1,000 university sports departments are eligible to extort deductible gifts as a condition for ticket sales. According to Andrew Zimbalist, an economist at Smith College: "based on the Bloomberg sampling, it wouldn't be unreasonable to estimate that giving related to season tickets may total \$1 billion a year. [5]

Also, college programs are excused from paying taxes on billions of dollars in revenue from television, advertising, sponsorships, licensing and royalties since stadiums and academic-support centers (a. k. a. eligibility centers) built or renovated using municipal debt benefit from lower costs as buyers of the bonds are exempt from taxes on interest.

Almost all of this tax revenue has been lost because the NCAA cartel has somehow convinced the IRS that it is compliant with its tax-exempt purpose of keeping sports as "an integral part of the educational program and the athlete as an integral part of the student body," that is, its athletes are real students and its sports businesses are an integral part of its academic mission. So too have conference officials. The IRS has challenged the tax breaks but is faced with a formidable problem, to wit: Without transparency, accountability and independent oversight the IRS is literally forced to accept the word of the cartel's representatives.

In 2006, three College Athletics Clips commentaries addressed this problem. [6-8] These commentaries encouraged the comments on the Draft of a Redesigned IRS Form 990 by The Drake Group. [9] The reader's attention is called to the final paragraph of the last section of [8], titled: "A 'QUID PRO QUO' TACTIC." The wording in this paragraph was echoed in Note 21 of the comments, to wit:

Conditioning the continuation of the NCAA's tax-exempt status on their meeting specific reporting requirements such as outlined herein and plugging the tax loopholes that help subsidize the college sports arms race will provide a strong message as to the serious nature of the revised Form 990 and its schedules....Failure to implement and comply with the IRS reporting requirements should put the NCAA and/or individual institutions at risk of losing their tax-exempt status. Once implemented, evidence of a continuation of existing patterns of fraud, continued efforts by universities and colleges to circumvent the intent of these measures, or, retaliation against whistleblowers, should garner severe penalties.

A related e-mail to the Senate Finance Committee's chief tax counsels is appended. For those interested in a more in-depth discussion, see Colombo[10] and the Congressional Budget Office paper[11]

Regrettably, the CBO paper focused on the financial implications that various tax changes might have on collegiate athletics without questioning the justification for its present tax-exempt status. The primary issue in college sports stems not from the exorbitant financial spending of college athletic departments, but rather from the fact that commercialization and professionalization have corrupted the original intent of college athletics and compromised the integrity of our institutions of higher learning.

In the event Congress prefers to avoid dealing with the NCAA cartel's considerable lobbying forces that would again be launched to protect its financial interests from an Unrelated-Business-Income-Tax (UBIT)-based challenge, it could simply employ an excise tax on gross revenues. In fact, University of Chicago Professor Allen Sanderson says consideration should be given to imposing a "sin tax" tax on gross revenues stemming from college football and basketball programs.[12] In an Oct. 9, 2011, comment on Sanderson's article, I said:

Since collegiate football and basketball conferences are serving as uncompensated minor leagues for the NFL and NBA, serious consideration should also be given to the imposition of steep taxes on all NFL and NBA advertising, television broadcasts, logo merchandise sales, and gate receipts.

Absent this taxation-based action to curb the unrelenting growth of the college-sports entertainment industry, it will be left to the antitrust lawsuits against the NCAA driven by Sonny Vaccaro to bring about significant corrective action in collegiate athletics that have been tainted by immense oceans of tax-free money.

POSTSCRIPT

This commentary was prompted by the fiscal-cliff discussions in Washington. It is the latest of numerous commentaries and e-mails concerning college sports that have been sent to government officials beginning in 2004. Two examples of what has been a Sisyphean-like effort to engage these officials in corrective action are the open letters sent to the president and members of his administration. [13]

Most likely, resolution of America's debt problem will require significant revenue via reform of the federal tax code. Untaxed college sports related revenues could then be on the table in what would certainly be an already politically contentious process. However, experience indicates that politicians not only don't want to pick the low hanging fruit represented by these untaxed revenues, but have avoided serious consideration of this revenue source as well—fearing the fruit is a political-poison apple.

The fiscal-cliff discussions are instructive in that the talks illuminate a fundamental flaw in the democratic legislative process: Elected officials are politicians, who almost always take the path of least resistance, rather than statesmen and stateswomen, who would be primarily concerned with the long-term health of America in today's global economy. Here it of interest to note the counterbalance exercised by the judicial branch of the government. The judges hearing the antitrust cases against the NCAA are appointed not elected, offering a much greater probability of favorable outcomes in the sense that the outcomes could impede the presently unrestricted growth of the professionalized college-sports entertainment industry that is fueled by untaxed revenues.

The unmistakable truth is that the taxation of college-sports revenues has a trivial constituency relative to the NCAA cartel and the college conferences that are supported by allies in the media and in the government where politicians of every stripe provide salient examples of pandering to athletes and to their sports-addicted constituents.

So it would seem that with the exception of the Vaccaro-driven antitrust lawsuits,[14] reform-minded individuals and organizations are relegated to nibbling around the edges of a formidably-defended business enterprise that has helped set America's colleges and universities academically adrift in a sea of sports while politicians look the other way.

Additional insights into the taxation issues discussed in the commentary follow:

o Dr. Richard Vedder, Distinguished Professor of Economics at Ohio University in Athens, Ohio, has made a strong pitch to apply the Ohio sales tax to sporting revenues in that state as part of a broader based tax reform in Ohio, thinking it will be at least on the table for serious discussion next year. This initiative will likely be killed when the sports lobby goes to work.

o Although Senator Chuck Grassley ordered the CBO study, there have been scant follow-up communications by his SFC staff.

Dean Zerbe, Grassley's chief tax counsel, and the real champion behind the requested study, was the main contact for The Drake Group (TDG)—circa 2005 through the time he resigned his position in 2008. Over this time period TDG also worked with staffers for Congressman Bill Thomas, the then chair of the House Ways & Means Committee, who, in 2006, sent a sharply worded letter, concerning its tax-exempt status, to Myles Brand, the then NCAA president.

At the outset, it was thought that TDG would be pleased with the study the SFC was initiating at the CBO. Indeed, it was not pleased as evidenced by its comment on the May 2009 CBO paper in its May 27, 2009, Open Letter to the President and His Administration.[13] The “Regrettably” comment with reference to the CBO in the foregoing text was taken from this letter. The weak nature of the CBO paper was most likely a direct consequence of Zerbe's departure from his SFC position.

o To the best of my knowledge, there currently is no member of Congress that is willing and able to give serious consideration to taxing college sports related revenues. Who would want to eat what they believe is a political-poison apple?

FGS, 12-15-12

Frank G. Splitt, a former McCormick Faculty Fellow, McCormick School of Engineering and Applied Science, Northwestern University, is a member of The Drake Group and recipient of its *2006 Robert Maynard Hutchins Award*. A complete listing of links to his essays and commentaries on college sports reform can be found at <http://thedrakegroup.org/splittessays.html>.

ENDNOTES:

1. Bachman, Rachel and Futterman, Matthew, "College Football's Big-Money, Big-Risk Business Model," *The Wall Street Journal*, p. B1, December 10, 2012, <<http://online.wsj.com/article/SB10001424127887324024004578169472607407806.html>>.
2. Vranica, Suzanne, "Gridiron Telecasts Become Magnet for Ad Dollars," <<http://online.wsj.com/article/SB10001424127887323316804578165643744436554.html>>.
3. Hraby, Patrick, "Breaking Up With Football," *Readers Digest*, pp. 134-141, December 2012.
4. Nocera, Joe, "Show Me the Money," *The New York Times*, December 10, 2012, <<http://www.nytimes.com/2012/12/11/opinion/nocera-show-me-the-money.html?emc=eta1>>.
5. Eichelberger, Curtis and Babcock, Charles R. "Football-ticket tax break helps colleges get millions from fans," *The Commercial-News*, October 26, 2012, <<http://commercial-news.com/local/x699468396/Football-ticket-tax-break-helps-colleges-get-millions-from-fans>>.
6. Splitt, Frank G., "The College Sports Tax Scam," *College Athletics Clips*, March 28, 2006, <http://www.thedrakegroup.org/Splitt_Collection_of_Recent_Essays.pdf>
7. _____, "The College Sports Tax Scam Revisited," *College Athletics Clips*, April 24, 2006, <http://thedrakegroup.org/Splitt_Tax_Scam_Revisited.pdf>.
8. _____, "How About a Quid Pro Quo," *College Athletics Clips*, November 2006, <http://thedrakegroup.org/Splitt_How_About_a_Quid_Pro_Quo.pdf>.
9. The Drake Group, "Comments by The Drake Group on the Draft of a Redesigned IRS Form 990,"

September 10, 2007, <http://thedrakegroup.org/Splitt_TDG_IRS_Commentary_091207.pdf>. These comments were prepared at the behest of Dean Zerbe, the Chief Republican Tax Counsel for the SFC when it was chaired by Senator Chuck Grassley.

10. Colombo, John D., "The NCAA, Tax-exemption and College Athletics," *2010 University of Illinois Law Review* 109, <http://illinoislawreview.org/article/the-ncaa-tax-exemption-and-college-athletics/>.

11. Congressional Budget Office, "The Preferences for College Sports," May 2009, <<http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/100xx/doc10055/05-19-collegiatesports.pdf>>.

12. Sanderson, Allen, "Taxes and Touchdowns: Leveling the Playing Field in College Athletics," *Chicago Life*, Oct. 1, 2011, <http://www.chicagolife.net/content/politics/Taxes_and_Touchdowns>.

13. Otto, Kadence and Splitt, Frank G., "The Drake Group's Open Letters to the President and His Administration, March 17, 2009, <<http://thedrakegroup.org/Obama.pdf>>, and May 27, 2009, <<http://thedrakegroup.org/Obama2.pdf>>.

14. Splitt, Frank G. "Collegiate Athletics Reform: The Tainted Glory of College Sports," *College Athletics Clips*, November 11, 2012, <http://thedrakegroup.org/Splitt_Tainted.pdf>.

APPENDIX -- December 4, 2012, E-mail to Senate Finance Committee Chief Tax Counsels,

Subject: How about taxing college sports related revenues?

Mr. Jim Lyons, Chief Majority Tax Counsel
Mr. Mark Prater, Chief Minority Tax Counsel
Senate Finance Committee

Dear Messrs. Lyons and Prater:

FYI and reference purposes, please find appended a comment posted on the Wall Street Journal's Dec. 1-2, headline story, "GOP Takes Aim at Entitlements," http://online.wsj.com/article/SB10001424127887323751104578151322684021276.html?mod=rss_economy].

By way of background, I worked with Senator Grassley's and Congressman Thomas' staff members on the apparently unwarranted basis for the NCAA's tax-exempt status.

A similar letter (also appended) will soon be published in the Chicago area's Daily Herald.

Both pieces have been called to the attention of my Congresswoman Jan Schakowsky.

Best,

Frank G. Splitt
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McCormick School of Engineering and Applied Science
Northwestern University

P. S. -- For additional background, see "The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics." *Montana Professor*, Spring 2007, <http://mtprof.msun.edu/Spr2007/splitt.html>.

Also see "Comments by The Drake Group on the Draft of a Redesigned IRS Form 990," September 12, 2007, http://thedrakegroup.org/Splitt_TDG_IRS_Commentary_091207.pdf. These comments were prepared at the behest of Dean Zerbe, the Chief Republican Tax Counsel for the SFC when it was chaired by Senator Chuck Grassley. He resigned in 2007, shortly after

the Republicans lost control of Senate committees after the 2006 elections, Theresa Pattara served as his replacement.

APPENDIX

Frank Splitt Wrote on December 1, 2012

Tax a Stealth Entitlement!

Senate Minority Leader Mitch McConnell said his ideas for saving money on entitlement programs were examples of the structural changes sought by Republicans."

Two recent TV news segments provided deep insights into the profligate spending and immense revenue streams associated with college sports: "College Teams Play Game of Musical Chairs Switching Conferences for TV Contracts," (Nov. 29, PBS Newshour)[1] and "Has college football become a campus commodity?" (Nov.18, CBS 60 Minutes). [2]

One would hope that these news reports would prompt Mr. McConnell and his congressional colleagues to examine what amounts to a stealth entitlement involving federal tax policies that allow many billions of dollars to go tax free. These are college sports related revenues derived from multibillion-dollar television contracts, merchandise sales, and profits from the sale of images of former athletes, as well as from donor contributions that also provide a tax-exemption for the donor.

This examination would be a long-overdue follow up on the early efforts of Senator Chuck Grassley, past chair of the Senate Finance Committee, and former Congressman Bill Thomas who, when chair of the House Committee on Ways & Means, questioned the justification for the NCAA's tax-exempt status.

Sad to say, the tax-free revenues help drive academic corruption and the related loss of academic integrity at schools sponsoring professionalized college sports entertainment businesses....schools that tend to go academically adrift in a sea of sports.

Sadder still is the fact that it will require great political courage to put this initiative on the table.

Web Links

1. http://www.pbs.org/newshour/bb/sports/july-dec12/sports_11-29.html
2. http://www.cbsnews.com/8301-18560_162-57551556/has-college-football-become-a-campus-commodity/

How about taxing college sports related revenues?

The Dec.3, front-page story, "Fiscal cliff talks stuck on tax hikes," tells how White House and Republican leaders are struggling to avoid a year-end economy-rattling combination of expiring tax cuts and major across-the board spending reductions.

One would hope tax-code and fiscal-crisis-focused government officials would take heed of two recent TV news segments that provided deep insights into the immense revenue streams and profligate spending associated with college sports: "College Teams Play Game of Musical Chairs

Switching Conferences for TV Contracts,” (Nov. 29, *PBS Newshour*) and "Has college football become a campus commodity?" (Nov.18, *CBS 60 Minutes*).

These reports should prompt an immediate revision of federal tax policies that allow many billions of dollars of college sports related revenues to go untaxed. These revenues come from multibillion-dollar television contracts, merchandise sales, and profits from the sale of images of former athletes, as well as from donor contributionscontributions that also provide tax deductions for the donors.

Sad to say, the tax-free revenues help drive academic corruption and the related loss of academic integrity at schools sponsoring professionalized college sports entertainment businesses....schools that tend to go academically adrift in a sea of sports.

Sadder still is the fact that it will require great political courage to put this initiative on the table.

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