

2013

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Recommended Citation

Williams, Dylan P. and Seifried, Chad (2013) "Analyzing the Prospects of the Unrelated Business Income Tax and §501(c)(3) on Division I Athletic Activities," *The Journal of SPORT*: Vol. 2: Iss. 1, Article 3.
Available at: <http://digitalcommons.kent.edu/sport/vol2/iss1/3>

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Analyzing the Prospects of the UBIT

The Journal of SPORT, 2013, 2(1), 21-59

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Analyzing the Prospects of the Unrelated Business Income Tax and §501(c)(3) on Division I Athletic Activities

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Abstract

The National Collegiate Athletic Association (NCAA) member schools are generally exempt from paying any income tax on profits made from athletics each year because their missions primarily focus on charitable goals such as education and sportsmanship. However, recent activity from several schools has begun to blur the lines between a for-profit company and that which justifies a tax-exemption as an educational institution. Some critics argue for-profit and profit-making athletic departments should be taxed using the Unrelated Business Income Tax (UBIT), which examines if certain business activities are related to the purpose of an exempt organization or more in-line with a for-profit company. With this concept in mind, we look to see if some of the latest business activities and ventures implemented by intercollegiate athletic departments are protected or subject to the UBIT.

Intercollegiate athletics have reached an unprecedented level of economic growth that none could have predicted at the beginning of the 20th century when the National Collegiate Athletic Association (NCAA) was first formed. In terms of revenue, the expansion of television, sponsorships, and other contract agreements highlight the growing revenue generation initiative of the NCAA and its member institutions (Berkowitz, 2009; National Collegiate Athletic Association, 2010; Seifried & King, 2012). Take for example the NCAA Division I men's basketball tournament; between 2011 and 2025 the NCAA will obtain \$11 billion from a negotiated deal with the Columbia Broadcasting System, Inc. (CBS) and Turner Sports to broadcast the event over four networks [i.e., CBS, TNT, TBS, and TruTV] (O'Toole, 2010). For the NCAA's Division I Football Bowl Subdivision (FBS) institutions, the Bowl Championship Series (BCS) was negotiated for \$125 million per year for four years starting in 2011 with the Entertainment and Sports Programming Network (ESPN) to televise major college football postseason bowl games such as: a) the Allstate Sugar Bowl; b) Discover Orange Bowl; c) Tostitos Fiesta Bowl; and d) The BCS National Championship game ("ESPN's BCS deal will mark", 2008).

The result of this activity has allowed football programs like the University of Texas and The Pennsylvania State University to generate over \$65 million and \$50 million respectively in revenue for their athletic departments to help them become a profit-making entity (Smith, 2010). In conjunction with these broadcast deals and other sport specific earnings (e.g., ticket sales, parking, concessions, sponsorships, program sales, etc.) the total median revenue for all of the 120 Division I FBS institutions rose in 2010 to \$48.3 million, an increase of 5.7% from 2009, with an institutional high \$143.6 million (Fulks, 2011).

To capitalize on high consumer interest and to prompt even greater demand, universities and athletic departments began to seek out how to expand and possibly create new revenue sources. Some elements that have been considered include the expansion of current broadcast contracts (Solomon, 2008), the creation of conference/institution broadcast networks ("ESPN and University of

Analyzing the Prospects of the UBIT

Texas”, 2011), and the expansion and realignment of conferences. Athletic departments have also sought additional corporate sponsorship opportunities for regular season contests. While the actions from athletic departments and other related parties appear useful to help meet departmental financial obligations, it is possible that these actions and partnerships contradict the educational mission of the institution and athletic departments. This is an important factor to consider due to the athletic department’s status as a non-profit organization.

According to the Internal Revenue Code (IRC) Section (§) 501(c)(3), institutions of higher learning are classified as a non-profit organization for tax purposes. This classification allows universities to be exempt from paying any federal income taxes on income generated within their fiscal year. The Congressional Budget Office (2009) noted that colleges and universities qualify for this preferential treatment because of the educational benefits provided to *all* individuals who choose to enroll in the school. These educational benefits supposedly should create a skillful workforce, increased economic growth, and greater social mobility for all students, not just student-athletes (Haveman & Smeeding, 2006; Hanushek & Woessman, 2009). Athletic departments share the school’s exemption and this creates a very beneficial situation for the NCAA member schools as they can apply capital to expand expenditures on arguably profit-oriented business ventures, projects, and expenses.

Also identified as the arms race, Orszag and Orszag (2005) suggested this phenomenon erupted among colleges to produce new revenue and to accommodate wildly growing expenses which Fulks (2011) showed grew to over 5% of the average institutional budget. This occurrence has come to regularly dominate some athletic department budget decisions and possibly at the expense of the university’s mission and the concept of fair competition with fellow Division I members. The arms race can occur through attempts to build new state-of-the-art facilities, renovating existing structures, or retiring construction debts for their various athletic teams. According to Fulks (2011), facility related items account for roughly 14% of athletic department budgets. The arms race may also include the

payment of incredible salaries to coaches and athletic administrators. Both of these may also be out of line with university missions. The items below provide a brief illustration of this point.

At the Louisiana State University, an \$85 million upgrade to expand Tiger Stadium's south end zone will be completed by 2014 (Kleinpeter, 2012). The renovations will feature new luxury suites and club seating and geared toward generating revenue to the controlled by the athletic department. Other institutions such as The Ohio State University, Florida State University, the University of Alabama, Notre Dame University, and the University of Michigan also completed similar multi-million dollar renovation and/or expansion projects during the 2000s with similar agendas (Williams & Seifried, 2012). Dan Fulks' reports on the revenues and expenses of NCAA intercollegiate athletics also famously show increasing coaching and administrative salaries as the other major component of the arms race. Specifically, Fulks (2011) shows fiscal years 2004-2010 coaching and administrative salaries commanding approximately 33% of the departmental budget. The highest salaries are incurred with "football, men's basketball, women's basketball, and men's ice hockey in that order" (Fulks, 2011, p. 13).

Collectively, facility and salary expenses feed one another without real respect to the academic mission of institutions (Orszag & Orszag, 2005). In the case of Oklahoma State University, few academic components were included to promote the educational priorities of the university when T. Boone Pickens Stadium was renovated for \$285 million. The only resource dedicated to this principle was the OSU Athletics Center, a \$55 million project that also includes additional seating for Boone Pickens Stadium ("OSU Athletics Center", 2011). While there were some educational benefits offered for the student-athletes, the regular student body is unable and prohibited from sharing these resources. Again, these construction activities were designed to substantially add important revenues to their athletic departments and not necessarily to provide revenue to the institution or improve the common academic or physical fitness good for the local or campus community. The incredible rise in coaching salaries is a result of each department

Analyzing the Prospects of the UBIT

competing for the best or more proven coaches who they feel can help them fill their growing venues and luxury seats. Overall, many Division I FBS facilities are more like professional venues and off limits to the public and regular student population. Furthermore, their coaches are hired professionals located at the edge of campus with less and less real connection to the academic goals of the university.

To reduce the likelihood of organizations taking advantage of their tax exempt status, the United States Congress levied a tax to manage non-profit organizations from participating in activities that alienate themselves from their core business. Known as the Unrelated Business Income Tax (UBIT), non-profit entities as defined under §501(c)(3) can pay income taxes on any regularly performed trades or businesses that are drastically different from the organization's mission. The *Volunteers of America* files such a Form 990-T each year to report unrelated business income on profits received from agreements with for-profit businesses. For instance, in their 2010 fiscal year, the Volunteers of America reported \$5,598 pass-thru income from unrelated business income (Department of the Treasury, 2010). Due to a net operating loss, however, the company did not have any tax liability in the 2010 fiscal year. This fact excuses most NCAA Division I FBS institutions from further review of the UBIT, but not the 22 institutions Fulks (2011) reported in 2010 as creating an average profit of \$7.4 million.

With the UBIT in mind, a review of general athletic department practices is necessary to see not only if UBIT is applicable to profitable departments but if a potential forfeiture of the §501(c)(3) status is necessary. This review is essential as most universities and athletic departments maintain an educational mission to qualify for the §501(c)(3) tax exemption. If unrelated business activities appear to exist, potential taxation could follow. Furthermore, should these unrelated profit-oriented ventures continue to occur, all universities risk losing donation funding as individuals would lose the benefit of deducting charitable contributions provided to universities for their own personal tax liabilities. Take for example the LSU *Statement of Financial*

Position; within that document the Tiger Athletic Foundation (TAF) is recognized as providing \$23.5 million in contributions from alumni and other local business owners (“Tiger Athletic Foundation,” 2012). Contributions are significant toward helping that athletic department stay profitable and maintain their ability to conduct and operate other profit-oriented activities (e.g., maintain high coaching and administrative salaries and facility construction). A removal of the charitable deduction could cause a significant decrease in athletic department funding to where TAF could possibly not support LSU athletics” various expenditures.

While studied in various tax journals (e.g. Kaplan, 1980; Appleby, 2010; Colombo, 2010; Wight, 2012), research focused on UBIT and intercollegiate athletics is rather limited. Specifically, Colombo (2010) researched the tax-exempt status of the NCAA organization and its member institutions. He noted under the current laws, it would be nearly impossible for the IRS to withdraw the NCAA’s exemption despite outside pressure from Congress. However, utilization of UBIT may be a more feasible alternative (Columbo, 2010). With this concept, Williams and Seifried (2012) reviewed the potential effects of UBIT on bowl committee organizations. In that work, they suggested many bowl games appear to engage in activities that do not match the mission they identified on their tax forms or that of similarly sized non-profit organizations. These activities include inflated executive salaries, elaborate corporate benefits, lobbying and political contributions, and game development.

In comparison to these contributions, this research will expand upon their study to review the UBIT and the importance of non-profit classification for NCAA member institutions. A review of the recent questionable or profit-oriented behavior practiced by universities and athletic departments appears within to highlight potential tax implications that may depart from their core mission. Below is a brief review of the mission most institutions of higher education share to contextualize the analysis. A more thorough review of the history of §501(c)(3) is also provided to connect the components of this work.

Analyzing the Prospects of the UBIT

The Story of §501(c)(3) and the Connection to NCAA Member Institutions

Kaplan (1980) noted that many American universities have been known to participate in entrepreneurial efforts but direct participation with local organizations was very foreign until the mid-1900s when academic institutions began to acquire and create individual businesses. Kaplan (1980) reported the range of enterprises managed by universities was extensive and included automobile parts, cotton gins, food products, oil wells, theatres, and even airports. Since profits from these businesses would eventually be passed to the colleges, a question arose to whether a university's 501(c)(3) exemption shielded these commercial activities from federal income tax because they were not the result of educational opportunities. Additional thoughts addressed whether or not their business occurred at the detriment of local business firms or common good.

Without fear of income taxation, the growth of university owned enterprises became prevalent and prompted concerns from for-profit firms and tax collectors about the potential competitive advantages universities enjoy at the potential expense of others. In 1950, President Harry S. Truman addressed the idea of unrelated business income activity with Congress believing that the original exemption has been misused by universities and other nonprofit organizations to gain competitive advantages over private enterprises and for self-serving purposes unrelated to their core mission (Kaplan, 1980). It was also noted that the tax-exempt paid zero taxes on profits for activities that were either related or unrelated to their tax exempt purpose (Sansing, 2001). Thus, the U.S. government would enjoy substantially less cash flow due to missing income taxes. Although this favorable treatment is long standing and exists to foster activities that serve some type of common good (Smith, 2010), shared perspectives within the United States Congress prompted hearings to determine the scope of this situation and to refine the exemption qualifications for colleges (Kaplan, 1980).

Indignation toward the colleges for „abusing“ their privileged status as tax-exempt institutions was quite pervasive (Kaplan, 1980).

As an example, with knowledge of New York University's ownership of a macaroni company, Representative John Dingell expressed concerns shared by many Congressmen through saying that all the noodles produced in the United States could be theoretically made by companies held by universities and that the country would receive no revenue from their profit (Kaplan, 1980). Against this backdrop, Congress began to establish a tax law that would penetrate the tax-exempt veil of non-profit organizations. Better known as the Unrelated Business Income Tax (1950), the Internal Revenue Service (IRS) can subject §501(c)(3) organizations to federal income taxes on all earned income that that is unrelated to routine activities of a §501(c)(3) organization. Examples of §501(c)(3) organizations include entities operated exclusively for religious, charitable, scientific, literary, or educational purposes. In particular, charitable exemption status is important to universities and athletic departments because charitable organizations are permitted to receive tax-deductible contributions under §170. An example of this advantage is briefly identified above with the Tiger Athletic Foundation at LSU.

In order for an entity to be classified as exempt under § 501(c)(3), an organization must meet two broad requirements (Colombo, 2010). Treasury Regulation § 1.501(c)(3)-1(a) (2008) states that the first requirement, known as the organizational test, is met if an entity's articles of incorporation limit: 1) the purposes of such organization to one or more exempt purposes; and 2) do not expressly empower the organization to engage in activities which in themselves are not in furtherance of one or more exempt purposes. A better explanation of these requirements is that a § 501(c)(3) organization must be: a) organized as a state-law nonprofit organization (i.e., nonprofit corporation or charitable trust); b) must limit its organizational activities to those with a charitable purpose; and c) must have a provision in its articles of organization that all assets will be transferred to another charitable organization or to the government should it cease operations (Colombo, 2010). Both the NCAA and all member universities meet these requirements as they appear to have a *prima facie* charitable purpose and comply with

Analyzing the Prospects of the UBIT

several distinct operational limitations in order to maintain their exempt status.

The second general requirement is defined as the operational test. This test requires that the entity in question actually engage in charitable activities as their primary goal (Colombo, 2010). Charitable activities include items that pertain to religious, scientific, or educational purposes. In order for an entity to pass the operations test, the entity must have the four following elements that were identified through the court case *The Church of Scientology v. Commissioner* (1987). The operational test is applied using a facts and circumstances analysis to make certain that the resources and activities are devoted to furthering an organization's exempt purposes (Smith, 2010). Within the analysis, the organization must engage in activities which accomplish one or more of the exempt purposes specified in §501(c)(3). Second, the entity's net income cannot be utilized for the benefit of private shareholders or individuals (Smith, 2010). Treasury Regulation § 1.501(c)(3)-1 (1982) defines a private shareholder or individual as an individual with a personal and private interest in the activities of the organization. This differs from the members of the public with whom the organization interacts in carrying out its exempt functions. Third, the organization must not expend a substantial part of its resources attempting to influence legislation or political campaigns. Finally, courts have mandated that organizations seeking exemption from taxes must serve a purpose and confer a public benefit (Smith, 2010).

Application of UBIT

In 1960, IRC §511(a) was established to further refine the implementation of UBIT penalties resulting from activities that deviate from the core purpose of the organization. The three factors identified that must join the UBIT consideration involve: 1) an organization conducting a trade or business; 2) the trade or business being conducted on a regular basis; and 3) the trade or businesses being substantially unrelated to the entity's exempt purpose. Any activity can be considered to be a trade or business if income has

been generated from the sale of goods or performance of a service (Smith, 2010). However, the IRS does not consider students paying tuition to their university each school year the result of a profit motive.

The second main factor states that the UBIT can only be imposed if a trade or business occurs on a regular basis and if they are conducted in a similar manner as profit generating organizations (Smith, 2010). In order to determine this, the IRS and Treasury Regulations require consideration for frequency and continuity with the activities conducted and the manner or combination in which they are pursued (Plunkett & Christianson, 2004). If an exempt organization's activities are carried on generally and similar to comparable commercial activities of for profit businesses, the IRS will deem these procedures as regularly carried on activities. Yet, if an activity is only performed for a few weeks out of the year, the IRS generally would not consider this a regularly carried on activity (Plunkett & Christianson, 2004).

The final and most critically important factor has been subject to much interpretation since the inception of the UBIT. A nonprofit entity will have to pay the UBIT only if it is regularly conducting business that is substantially different from the purpose of the exempt organization (Plunkett & Christianson, 2004). Should the conduct of the trade or business in question emerge substantially unrelated to the exempt purposes of the organization, then the trade or business will lose its exempt status. While all exempt organizations tend to believe that all of their activities are substantially related to their core purpose, the IRS takes a different approach. For the trade or business to be substantially related to the exempt organization's purposes, the production or distribution of the goods or the performance of the services must contribute importantly to the accomplishment of those purposes (Plunkett & Christianson, 2004). The IRS has the authority to decide, on a case-by-case basis, whether activities performed by exempt organizations are substantially related or not (Craig & Weisman, 1994; Plunkett & Christianson, 2004). Their authority considers size and extent of

Analyzing the Prospects of the UBIT

activities or combination of behaviors in relation to the nature and extent of the exempt function they purport to serve.

Interestingly, a trade or business that is performed for the convenience of organizational stakeholders is not subject to UBIT (“Unrelated business income,” 2011). For instance, a university bookstore that sells books and other materials for students and faculty of a college does not have to pay any taxes on profits earned from sales. Activities that involve the sale of donated items, thrift stores, and some auctions also do not have to worry about UBIT. Many other activities practiced within university athletic departments also try to take advantage of this legal position. For instance, activities that are conducted with substantial individuals who are willing to work without compensation are not taxed (Pena & Reid, 2001; “Unrelated business income,” 2011). A Private Letter 971103 ruling highlighted such a position when it stated that income generated from the operation of bingo and other work within charitable organizations are not subject to UBIT if a substantial amount of work was carried out by unpaid volunteers (Pena & Reid, 2001). With these rules and exceptions in mind, we can now direct attention back to the current landscape of college athletics to examine any potential tax implications.

Division I Athletic Department Activity

As the potential for higher revenue generation exists, many schools have sought out new resources and tactics in order to capture more of the market share in the collegiate arms race. Interestingly, some of the latest ventures can be considered to violate the charitable missions that allow these organizations to enjoy §501(c)(3) tax benefits. Specifically, NCAA member institutions may appear to be in violation of certain limitations of § 501(c)(3) through various activities (i.e., private inurement, private benefit, and commercial pursuits). Below, a list of these potential profit-oriented or connected items are further analyzed.

Coaching and Administrator Salaries

Charitable organizations have several restrictions that must be followed if the business hopes to maintain its § 501(c)(3) status. Specifically, § 501(c)(3) cannot utilize any part of net earnings to inure to the benefit of any private shareholder or institution (Colombo, 2010). While there are different interpretations due to the language of this restriction, it has been well-defined over years of IRS and court interpretations as prohibiting a siphoning off of the assets of an exempt organization to an insider or a small number of employees (Hill & Mancino, 2009). This usually takes the form of the charity paying more than fair market value for property owned or services provided by an individual. A classic example of this practice is to pay an unreasonable salary to any one individual in excess of what the services are worth (Colombo, 2010).

In college athletics, it is not uncommon to see escalating salaries for the top Division I football and basketball coaches along with administrators (tables 1). For instance, the University of Alabama and Nick Saban recently signed an extension for him to remain the head coach of the Crimson Tide through January 31, 2020 (“Nick Saban gets raise, extension”, 2012). Saban will earn nearly \$45 million over the next eight years, receiving \$5.62 million in 2012. Similarly, the University of Kentucky signed an extension with their men’s basketball coach John Calipari to provide him a base salary of \$5.2 million until 2019 (“John Calipari’s salary boosted”, 2012).

Analyzing the Prospects of the UBIT*Table 1**Sample College Football and Basketball Head Coach and Athletic Director Salaries for 2011*

Coach/AD	University	Sport	Salary
Mack Brown	Texas	FB	\$5,193,500
Nick Saban	Alabama	FB	\$4,833,333
Bob Stoops	Oklahoma	FB	\$4,075,000
Urban Meyer	Ohio State	FB	\$4,000,000
John Calipari	Kentucky	MBB	\$4,000,000
Les Miles	Louisiana State	FB	\$3,856,417
Kirk Ferentz	Iowa	FB	\$3,785,000
Bobby Petrino	Arkansas	FB	\$3,638,000
Gene Chizik	Auburn	FB	\$3,500,000
Tom Izzo	Michigan State	MBB	\$3,500,000
Billy Donovan	Florida	MBB	\$3,500,000
Brady Hoke	Michigan	FB	\$3,254,000
Will Muschamp	Florida	FB	\$3,221,000
Bill Self	Kansas	MBB	\$3,000,000
Mark Richt	Georgia	FB	\$2,939,800
Steve Spurrier	South Carolina	FB	\$2,828,000
Chip Kelly	Oregon	FB	\$2,800,000
Bo Pelini	Nebraska	FB	\$2,775,000
Houston Nutt	Mississippi	FB	\$2,771,750
Jimbo Fisher	Florida State	FB	\$2,750,000
Gary Pinkel	Missouri	FB	\$2,700,000
Bret Bielema	Wisconsin	FB	\$2,598,186
David Williams	Vanderbilt	N/A	\$2,560,505
Dan Mullen	Mississippi State	FB	\$2,500,000
Rick Pitino	Louisville	MBB	\$2,500,000
Thad Matta	Ohio State	MBB	\$2,500,000

Table 1 (continued)

Rick Barnes	Texas	MBB	\$2,400,000
Mike Krzyzewski	Duke	MBB	\$2,400,000
Paul Johnson	Georgia Tech	FB	\$2,369,000
Jim Calhoun	Connecticut	MBB	\$2,300,000
Sean Miller	Arizona	MBB	\$2,300,000
Jeremy Foley	Florida	N/A	\$1,545,250
Tom Jurich	Louisville	N/A	\$1,427,704
DeLoss Dodds	Texas	N/A	\$1,095,756
Gene Smith	Ohio State	N/A	\$1,074,546
Barry Alvarez	Wisconsin	N/A	\$1,040,800
Joe Castiglione	Oklahoma	N/A	\$975,000
Jack Swarbrick	Notre Dame	N/A	\$932,232
Kevin White	Duke	N/A	\$908,659

Note: Salaries of head coaches and athletic departments are not reflective of any contract activity after the 2011 season. Retrieved from “The 20 Highest Paid Coaches in College Football”, by C. Gaines. (2011, November 30), *Business Insider*; “The Highest Paid College Basketball Coaches”, by T.V. Riper (2012, March 05), *Forbes*; “Athletic Director Salary Database for 2011”, by S. Berkowitz and J. Upton (2011, October 06), *USA Today*.

Critics of college athletics establish that many of the salaries for head coaches and administrators of Division I schools are far beyond the highest salaries of the most experienced faculty and highest levels of university administration (Colombo, 2010). As an example, David Williams of Vanderbilt University makes \$2.6 million a year while the second highest paid Athletic Director, Jeremy Foley of the University of Florida, earns \$1.5 million (Berkowitz & Upton, 2011). While these salaries are high for university officials, they are significant compared to the subordinates that they hire and manage and the full professors at their respective

Analyzing the Prospects of the UBIT

schools. This fact has prompted discomfort by many media outlets and respective blogs (Colombo, 2010).

In relation to other nonprofit entities, the Department of the Treasury began intermediate sanctions in 1996 that would use excise taxes to punish inurement transactions (Colombo, 2010). Specifically, IRC § 4958 states that inurement transactions are almost exclusively dealt with via excise taxes as opposed to a full withdrawal of exemption that may occur with rogue units. While this law does rectify some illegitimate practices, the angst related to coaching and administrator compensation may be difficult to resolve. § 4958 (1996) states that reasonable compensation is determined based on an employee's entire compensation package and the reasonableness of compensation is measured by the market value for services in both the nonprofit and for-profit market. In other words, the exorbitant salaries earned by Saban, Calipari, Williams, and others are determined to be reasonable by the market for other coaches and administrators in Division I sports as well as the professional leagues. Again, Table 1 shows that the salaries for Saban and Calipari are not unreasonable as several other coaches in Division I make similar salaries. In addition, coaches and executives in the National Football League (NFL) and National Basketball Association (NBA) also make comparable compensation. In the end, the law does not appear to support arguments that escalating salaries are *by themselves* an activity which could prompt the issuance of the UBIT.

Television Contracts and Networks

In September 2006, through a joint venture between the Comcast Corporation and the CBS College Sports Network, the Mountain West Sports Network was created in order to promote a specific NCAA Division I Conference – the Mountain West Conference – and its member schools (“About the Mtn.,” 2011). Also known as The Mtn., the television network airs MWC over 200 sporting events each year including football, men's and women's basketball, and men's and women's track and field events. The Mtn. also produces a growing number of original sports programming that

provides analysis and commentary on the events within the MWC, which inspired many other conferences to look into the idea of a conference themed network.

In August 2007, the Big Ten Network was the first conference-owned television network devoted to the promotion of the academic and athletic activities of each of its 12 member schools ("Company Profile," 2011). The Big Ten Network is on the air 24 hours a day, 365 days a year and annually televises more than 350 live events and streams over 300 events online ("Big Ten Network Programming," 2011). In addition to live events, the network also airs classic games and shows dedicated to the coaches and student-athletes of the Big Ten. Each campus also has the ability to produce original campus programming which highlights the various aspects of each university's campus life and the qualities that make each university unique.

Created with the help of Fox Sports, the Big Ten Network has provided the Big Ten Conference and its member schools with more national exposure sports while enhancing its existing television agreements with its other television partners ("Why the Network was Created," 2011). The conference also had other goals to achieve upon its creation including the desire to control the advertising environment in which its events were aired, to increase exposure for women's sports and other NCAA sports that had not previously been widely televised, and improve distribution for football and men's basketball games that were previously available only on a local or regional basis ("Why the Network was Created," 2011). The success of the Big Ten Network provided guaranteed payments of \$22.6 million from the conference's revenue sharing plan ("Big Ten Conference to Give," 2011). According to the Big Ten, each school received \$7.9 million in revenue alone from the Big Ten Network, a number up 21% from 2009.

The success the Big Ten Network created has led to other conferences attempting to renegotiate or establish new television deals. For example, the Southeastern Conference (SEC) and ESPN signed a 15-year deal to broadcast sporting events, including football and men's and women's basketball, for more than \$2 billion

Analyzing the Prospects of the UBIT

(Solomon, 2008). The University of Texas at Austin also successfully created their own network (i.e., Longhorn Network) in August 2011, which will provide cable and satellite outlets on a variety of content that is focused on the institution. Partnered with ESPN, the Longhorn Network will be highlighted by more than 200 exclusive events annually from 20 sports, historical programming, and academic and cultural happenings (“ESPN and University of Texas,” 2011).

As more schools and conferences begin to pursue these new methods of television income, there may be several implications that can occur. One of the Big Ten Network’s reasons for existence was to have more control over the advertising aspect and promotion of their member institutions. This is a strong distinction from the SEC and ESPN commercial partnership which squarely focused on promoting football and generating revenue for each. In addition to broadcasting the major sports of the Big Ten Conference, the Big Ten Network also aired less commercially attractive sports such as field hockey and men’s soccer as well as promoting the academic programs for each of the member schools of the conference (“Shows,” 2011). The SEC deal again only focused on the traditional revenue sports with a „token“ academic commercial promoting the scholastic efforts of their member institutions. The emphasis on control, noted above, may have major implications when it comes to private benefits and may extend to university-owned television and radio networks which essentially turn universities into both supplier and provider of a product that generates substantial private benefits. Thus, any income generated may be subject to UBIT since a profit motive is present (*Iowa State University v. Commissioner*, 1974; Vari, 1992; Plunkett & Christianson, 2004; Colombo, 2010; Smith, 2010).

Interestingly, the IRS has established that a nonprofit organization can lose its exemption if, as a result of serving its charitable class, it provides an excessive benefit (usually, but not necessarily, a financial benefit) on parties outside of the charitable class (Colombo, 2010). This differs from private inurement as the private benefit doctrine applies to transactions with independent

parties who have no influence with the organization. Essentially, it is necessary for nonprofit organizations to establish that it is not organized or operated for the benefit of private interests such as designated individuals or stakeholders of the organization or other profit-oriented organizations (Colombo, 2006). Should a §501(c)(3) organization conduct business to the benefit of private parties, the organization could lose its tax exempt status. On the other hand, if the organization conducts activities for private benefits on an incidental basis, the entity will not lose its exemption. Private benefits are considered incidental in both a qualitative and a quantitative sense (Colombo, 2010). In order to be incidental in a qualitative sense, the benefit must be a necessary component of the activity that will benefit the general public at large even though it is for specific private individuals. To be incidental in a quantitative sense, the private benefit must not be substantial after considering the overall public benefit.

Based on this, the private benefit doctrine could be potentially utilized to strip some profit-making universities of their exempt status. Division I athletic departments provide excessive private benefits to television networks and sponsors in comparison to the educational benefits that these entities are required to return. Television networks that broadcast athletic contests receive substantial benefits through increased profit potential. Funds received from the sale of television and radio rights to collegiate sporting events are considered to be related to the university's exempt purpose because athletic events have been used to promote the general welfare of the institution (Craig & Weisman, 1994). However, this exemption does not exist if the university does not receive a substantial return like that produced by the Big Ten Network.

Conference Movement

Texas A&M University, one of the founding members of the Big XII Conference, announced its intentions to leave the conference in 2011 ("Report: Texas A&M leaving Big 12", 2011). One of their major reasons for departure was the creation of the Longhorn

Analyzing the Prospects of the UBIT

Network. Texas A&M potentially foresaw what the network was really intended for: to disadvantage other revenue generating schools. Specifically, Texas A&M president R. Bowen Loftin believed that the Longhorn Network's plans to televise Big XII and high school football games created a great deal of financial uncertainty for the Aggies and the Big XII Conference overall (Staples, 2011). Loftin fears stemmed from a potential competitive imbalance he foresaw amongst the schools in the Big XII prompted by the new network.

Texas A&M's desire to leave the Big XII also sparked the interests of additional members. The University of Oklahoma considered making a move into the Pac-12 Conference in order to secure the long-term stability of the school's athletic interests they thought the Longhorn Network may jeopardize (Katz, 2011). This decision occurred fairly simultaneously with Texas A&M's intentions to leave the Big XII and the University of Missouri's conference movement to the SEC which was also approved in order to achieve a better opportunity (i.e., certain revenue stream) for the institution. Again, like A&M, Missouri reasoned movement to the SEC would allow them to earn additional guaranteed revenue through their generous television contracts. The recent contract agreed upon by the SEC and ESPN makes each share work about \$154 million and will be re-worked in order to provide each with a significantly larger share than the Big XII could provide (Solomon, 2008). Little discussion emerged on the academic consequences related to the movement or about the prospective academic benefits.

The Big Ten board of presidents and chancellors also accepted the University of Nebraska to the conference in 2011 ("Nebraska approved to the Big Ten," 2010). Nebraska's reasoning for the move from the Big XII to the Big Ten was similarly related to a level of financial stability that the Big XII failed to offer. Specifically, Nebraska President J.B. Milliken stated, "The University of Nebraska would have new opportunities with membership in the Big Ten – and I believe the Big Ten would be a stronger conference as well" ("Nebraska approved to the Big Ten," 2010, para. 10). The University of Colorado also chose to leave the

Big XII for the Pac-12. Colorado President Bruce D. Benson advocated his school and the Pac-12 was a „perfect match“ alluding to both the athletic and financial opportunities they could potentially earn in the new conference (“Colorado leaves Big 12 for Pac-10”, 2010).

In addition to these BCS institutions, many non-BCS schools also announced their intentions to leave their conference home (see Table 2). As an example, the University of Utah was invited leave the Mountain West Conference (MWC) and to become the twelfth member of the Pac-12 Conference (“Pac-10 invites Utah as 12th Member,” 2010). Utah officials were frustrated for a very long time regarding their inability to play for a football national championship while in the MWC and their ability to collect the significant revenues the BCS bowls presented. Utah went undefeated in both 2004 and 2008 but did not play for the championship nor did they obtain an equal share of money compared to their charter-member BCS peers (Seifried & King, 2012; Seifried & Smith, 2011). Another MWC peer also accepted an invitation to join a BCS conference in Summer 2011. Texas Christian University (TCU) accepted an invitation to join the Big XII Conference following a previous 2010 agreement to join the Big East Conference (McMurphy, 2011). Initially, TCU had agreed to move to the Big East but decided to leave when Syracuse University and the University of Pittsburgh agreed to join the Atlantic Coast Conference in 2011. Like Utah, TCU wanted a guaranteed payday and more prestige to reward and capitalize on their highly successful football program that had been snubbed by the BCS on several occasions (McMurphy, 2011). The Big XII could guarantee a placement in the BCS that the MWC was not entitled to under the BCS postseason agreement.

Analyzing the Prospects of the UBIT

Table 2

Division I FBS Conference Switching from January 2, 2010 to January 2, 2012

School	Old Conference	New Conference
Brigham Young University	Mountain West	Independent
Boise State University	Western Athletic/Mountain West	Big East
California State University, Fresno	Western Athletic	Mountain West
San Diego State University	Mountain West	Big East
Southern Methodist University	Conference USA	Big East
Syracuse University	Big East	Atlantic Coast
Texas A&M University	Big XII	Southeastern
Texas Christian University	Mountain West/Big East	Big XII
West Virginia University	Big East	Big XII
University of Central Florida	Conference USA	Big East
University of Colorado	Big XII	Pacific-12
University of Hawai'i at Manoa	Western Athletic	Mountain West
University of Houston	Conference USA	Big East
University of Missouri	Big XII	Southeastern
University of Nebraska	Big XII	Big Ten
University of Nevada, Reno	Western Athletic	Mountain West
University of Pittsburgh	Big East	Atlantic Coast
University of Texas at Arlington	Southland	Western Athletic
University of Texas at San Antonio	Southland	Western Athletic
University of Utah	Mountain West	Pacific-12

Overall, all types of NCAA schools appear to be engaging in „conference shopping“ to guarantee their financial stability without offering the public a rationale about the movement benefits student-athletes and the institutional mission. Both TCU's and Utah's departure from the Mountain West Conference could be argued as deviating from their university's core mission and reasoning for their exempt status. TCU's initial move to the Big East was certainly questionable as its closest competitor would have been the University of Louisville, roughly 900 miles away. Although TCU opted to join the Big XII, the Big East continued their efforts to attract new members outside of the Northeast U.S. Despite potential logistic issues, the Big East has now evolved to a national association that possesses members in each respective region of the United States. Specifically, the Big East now includes schools in the

Southern U.S. (University of Central Florida, University of Memphis, the University of Houston, and Southern Methodist University) and Western U.S. (Boise State University and San Diego State University) to associate with the Northern schools in the conference (“Source: Big East set to add,” 2011).

On the surface, one could argue that many of these schools changed conferences for larger financial gains opposed to the promotion of academics or concerns about the academic welfare of their student-athletes and regular student body. Therefore, the courts would likely be asked to measure the substantive aspect of these new sources of revenue by examining expenditures; the number of employees involved and the importance of the items in question to the good of the total organization and not just the athletic department or revenue sports (Colombo, 2010). When reviewing the conference shuffling, the transfer itself can be viewed as a substantial business activity because many of the conference moves were made in order to improve their current positioning in the college athletic landscape and not the functioning or education of the student body.

Corporate Sponsors

Many large corporations have been willing to provide large amounts of money in an exchange process (e.g., products for \$, \$ for services, services for products) because of the potential benefits. For the corporation, a marketing campaign can take place as the company can expose potential new clients to the name and products of the corporation. This establishes brand and name recognition for the business. One prominent example of this is the level of exposure FedEx received during the 2009 Orange Bowl and BCS National Championship games. Joyce Julius & Associates, a research firm dedicated to sponsorship impact measurement, reported that FedEx received nearly four hours of television exposure during the broadcasts of these games (Talalay, 2009). The value of this exposure was estimated to be \$383 million. Roughly \$256 million was derived from the 2009 BCS National Championship game and an additional \$126.8 million from the 2009 Orange Bowl. The research firm also noted FedEx averaged 55 mentions and close to

Analyzing the Prospects of the UBIT

two hours of screen time during both the championship game and the Orange Bowl game (Talalay, 2009).

The money received by the event can also help secure better teams to create a highly competitive game and commercial product (Seifried & King, 2012). It is this area where potential taxation could occur very frequently. Past cases and rulings have shown that the IRS has not been kind to income received from corporate sponsors. In 1991, the IRS passed Technical Advice Memorandum (TAM) 91-47-007 applying UBIT to organizers of corporate-sponsored bowl games (Vari, 1992). This rule was issued in response to the Cotton Bowl Athletic Association (CBAA) and their major sponsor at the time (i.e., Mobil Corporation). The bowl games during this year received nearly \$64 million in corporate sponsorship revenue, and the IRS wished to collect nearly \$20 million in taxes through the UBIT. The CBAA alone received \$1.5 million from Mobil, roughly 25% of their \$8 million budget at the time.

Today, many new revenue streams have attempted to capitalize on the „bowl game“ phenomenon by creating more festive commercial atmospheres through high profile regular season games. Recent developments that have emerged include the Cowboys Classic in Dallas, Texas and the Chick-fil-A Kickoff Game in Atlanta, Georgia. These season-opening games occur on neutral sites. For example, in 2011, LSU played the University of Oregon in the Cowboys Classic (Gardner, 2010). The preparation for these contests rivals what is needed to provide a postseason bowl game and thus a high number of volunteers were recruited for these events. The schools that choose to participate in these contests are also often highly compensated. LSU Athletic Director Joe Alleva (personal communication, October 2010) recently explained that the school was offered \$750,000 to move what was originally a home-and-home series with Oregon to the neutral site of Cowboys Stadium. Alleva also stated that he negotiated with ESPN/ABC (the producer for the Cowboys Classic) for any LSU football games not chosen through the SEC deal with CBS to be aired at no earlier than 7:00 p.m. eastern time to accommodate LSU traditions at night and the pursuit of revenue over the course of a longer day.

In addition to season openers, many high profile rivalries such as the Red River Rivalry between the University of Texas and the University of Oklahoma and the University of Florida/University of Georgia Football Classic have adapted to create additional revenue. Florida's Executive Associate Athletic Director stated that each school in the Florida-Georgia rivalry now earns \$1.7 million from their game in Jacksonville, Florida and \$3.4 million over a two-year cycle primarily from their 17 corporate sponsors and gate receipts (Verney, 2009). Moving this game from a home-and-home series to a neutral site allows each school to make more money than the home-home alternative which would provide approximately \$2.2 million over that same two-year time period (Verney, 2009). Similarly, playing in the 90,000-seat Cotton Bowl of Dallas, Texas, Oklahoma and Texas significantly increased their revenue from shared gate receipts, an additional \$700,000 subsidy from the City of Dallas, and the various naming rights agreements established for the contest with SBC and AT&T over the years. Again, part of the reason these schools can earn this much money has to do with the strength of the game sponsors.

The sponsor's prominence in terms of logos and other visibility may have a prolific bearing. For example, it should be noted that the common good of local businesses may be damaged by the movement of home games to these bowl-like neutral sites. In essence, community businesses lost one additional home game that could have provided a significant economic impact. Next, the Internet and mobile technology has become a very prominent tool for communication and marketing. Game sponsorship deals are often announced and those special regular season games have websites that are maintained throughout the year bearing the corporation's name. Thus, universities find themselves exposed to the UBIT since one could argue that the excessive promotion and movement to a neutral site for a regular season game is substantially unrelated to the core mission. Furthermore, there also exists a potential violation of the operational test as a facts and circumstances test may have difficulty establishing a link between these measures and furthering the organizational mission of each university. With these items in

Analyzing the Prospects of the UBIT

mind, this research now provides a practical example of the potential ramifications UBIT may have on universities.

A UBIT Example

Based on financial statements obtained from the Louisiana Legislative Auditor (2012), LSU is one of the 22 athletic departments that recorded a profit in the 2010 fiscal year (Fulks, 2011). Specifically, the LSU Athletic Department reported approximately \$10.9 million in profit for the year ended June 30, 2011 (Louisiana Legislative Auditor, 2012). In the past three years, LSU has agreed to new contracts with their respective coaches in football, men's basketball, women's basketball, and men's baseball as well as administrative positions. Table 3 shows the respective salaries for all these individuals.

Table 3

LSU Coaches and Athletic Director salaries in 2012

Coach/AD	Sport	Salary
Les Miles	FB	\$3,750,000
Johnny Jones	MBB	\$1,100,000
Nikki Caldwell	WBB	\$900,000
John Chavis	FB	\$900,000
Joe Alleva	N/A	\$725,000
Paul Mainieri	BB	\$625,000
Frank Wilson	FB	\$550,000
Greg Studrawa	FB	\$500,000
Steve Kragthorpe	FB	\$400,000
Andrea "Brick" Haley	FB	\$400,000
Corey Raymond	FB	\$300,000
Adam Henry	FB	\$300,000
Thomas McGaughey	FB	\$290,000
Robert Kirby	MBB	\$240,000
Steve Ensminger	FB	\$230,000
Charles Leonard	MBB	\$130,000

Table 3 (Continued)

Note: Salaries of head coaches and athletic departments are not reflective of bonuses earned in 2011 seasons. Retrieved from “LSU approves \$1 million in raises for Les Miles, assistants”, by G. Guilbeau. (2012, June 11), *USA Today*; “Athletic Director Salary Database for 2011”, by S. Berkowitz and J. Upton (2011, October 06), *USA Today*; “Former UCLA women's basketball Coach Nikki Caldwell set to triple salary at Louisiana State”, by B. Bolch. (2011, April 3), *Los Angeles Times*; “LSU baseball coach Paul Mainieri gets raise, extension”, by L. Lyons. (2010, January 29), *NOLA.com*.

LSU has also authorized the construction or rehabilitation of many of its sports facilities. Along with the \$85 million expansion to Tiger Stadium (Kleinpeter, 2012), the LSU Board of Trustees have approved new facilities for baseball (Alex Box Stadium, \$37.8 million cost; “Alex Box Stadium”, 2012), basketball (LSU Basketball Practice Facility, \$15.5 million cost; Martin, 2012) as well as renovations for the habitat dedicated to housing LSU's live tiger mascot (\$2.5 million cost; “Mike the Tiger Habitat”, 2012) and to their track and field facilities (\$5 million cost; “LSU Track & Field Facilities”, 2012). Many of these facility projects have been funded through private donations from various alumni and LSU supporters. Yet these contributions also carry the benefit for the donator to receive a tax deduction on their personal income tax returns.

In addition to their spending habits, LSU also maintains high revenue streams due to their association with the SEC. Due to the strong financial standing of the SEC, LSU has little incentive to relocate to another conference. This allows LSU to receive a significant portion of the revenue earned from the new broadcasting contract with ESPN (Solomon, 2008), which is dedicated toward the facilitation of football games only. Simultaneously, LSU Athletic Director Joe Alleva has negotiated with the television networks to move specific games to neutral sites as well as guaranteeing game times for certain home games (personal communication, October 2010). Based on this activity, a potential violation of §501(c)(3) could be available, either through the implementation of the UBIT or forfeiture of the exemption all together.

Analyzing the Prospects of the UBIT

To determine this, LSU's recent activity must be compared to the mission statements provided by the athletic department. The mission statement for the LSU Athletic Department states:

LSU seeks to inspire academic and athletic excellence in student-athletes by challenging them to achieve the highest level of intellectual and personal development...to create an environment conducive to the development of student-athletes with strong core values and personal integrity that will contribute to success throughout their lives and to provide the resources necessary to pursue championships, to graduate and to become productive citizens. ("LSU Office of Compliance", 2011, para. 1).

LSU is committed to maintain[ing] strong fiscal responsibility as a self-sustaining auxiliary of the University by making responsible financial decisions, maximizing fundraising opportunities and capitalizing on sponsorship assets. ("LSU Office of Compliance", 2011, para. 5).

Overall, the mission for the athletic department is centered on promoting educational values to its student-athletes through sound governance and historical traditions. Thus, any activity that appears to substantially deviate from this mission and is regularly carried out could have the UBIT implemented.

In regards to coaching salary and facility construction, these are activities that are normally not routine. Facility construction and renovation projects are much further apart and also cannot be considered a regularly carried out activity but their maintenance could. On the other hand, the solicitation of corporate sponsorships for athletic contests can be considered a trade that is routinely conducted by the athletic department. Many of the contests as well as the department itself have prominent displays of companies both known within the local community and on a global level. Some of these corporations include Capital One Bank, Coca-Cola, McDonald's, Taco Bell, and the Louisiana Lottery ("LSU Sports

Properties”, 2010). While sponsorship agreements can be conducted between companies and universities without scrutiny, the key component is the degree of relation to the entity that is being sponsored.

This becomes a substantial issue as the LSU Athletic Department has reached agreements with their broadcast partners to showcase their athletic contests in time slots that historically attract a large quantity of viewers. As an example, the 2011 football contest between LSU and Oregon originally was to be played in Tiger Stadium was moved to Cowboys Stadium in Dallas, Texas and broadcasted nationally on ABC (Gardner, 2010). Again, what was originally a season-opening contest metamorphosed into a bowl-game like event that attracted more viewers and potentially additional corporate sponsorships. When this move and the other activities of the athletic department are compared to the mission of the LSU Athletic Department, there does appear to be some deviation from the core principles LSU promotes. One important note to emphasize is that only the potential appearance of unrelated activities is necessary to implement the UBIT. Thus, one can reasonably argue that the movement of athletic contests in order to acquire additional corporate sponsorships to pay coaches and build bigger more complex sport facilities that few can enjoy outside of the game day can be considered to be a substantially unrelated activity that is regularly carried out by the athletic department.

Importantly, *The United States v. American College of Physicians* (1986) also ruled activities of an exempt organization may be fragmented to determine if the income-producing activities are substantially related to the organization's exempt purposes (Vari, 1992). Therefore, should the LSU Athletic Department be subject to UBIT, they would be taxed on the revenue and expenses generated from both their broadcasting agreements and corporate sponsorships opposed to their total revenues and expenses. According to the LSU Athletic Department’s financial statements (Louisiana Legislative Auditor, 2012), broadcasting rights revenue were approximately \$6.8 million and sponsorship revenue was \$2.3 million, combining for a total of \$9.1 million.

Analyzing the Prospects of the UBIT

Based on the operating expense categories provided in the LSU financial statements, the related costs for these items totaled to \$956,000 (marketing and promotion). Next, after a \$1,000 deduction allowed for administrative convenience (Internal Revenue Service, 2010), the potential income subject to the UBIT would be \$8.143 million. The UBIT would then be assessed based on the regular corporate tax rates according to the Tax Rate Schedule (Internal Revenue Service, 2010). Thus, the \$8.143 million in taxable income would generate UBIT of \$2.769 million for the LSU Athletic Department, reducing their total profit from \$10.9 million to \$8.13 million. With this example in mind and utilizing information from the Fulks (2011) report, the UBIT could have produced roughly \$57 million in tax revenue for the United States in 2010 from those 22 institutions making a profit. Should this activity continue to linger in college athletics, it is possible the IRS could remove the §501(c)(3) exemption from university athletic departments.

From another perspective, the LSU Athletic Department would have no issue passing the organizational test as classified with the State of Louisiana. However, LSU may face scrutiny when the operational test is analyzed under the facts and circumstances test that IRS has implemented (Colombo, 2010). Specifically, the LSU Athletic Department faces issues in regards to the private benefit of individuals and conferring a public benefit. First, the acquisition of corporate sponsorships and the movement of athletic contests do not appear to have substantial public benefits. While broadcasting a contest at a time where more people can access it is good for the general public, the detailed methods for some of these adjustments only appear to benefit the television networks and the university and not necessarily the public. Next, high salaries for coaches and athletic administrators do not violate the private inurement principle as salaries can be compared with other individuals in both college and professional sports. However, as these salaries continue to rise substantially, the issue shifts toward a private benefit problem since a public benefit cannot be fully established. Finally, as noted earlier, the LSU Board of Trustees has approved several construction projects that will enhance the sport facilities at LSU. While these

buildings are utilized properly during game day events, they are inaccessible to the general public at any other time and funding or administrative support may be lent at the expense of other campus projects. Thus, the LSU Athletic Department would violate the operational test and forfeit its §501(c)(3) exemption. Furthermore, with the removal of the tax deduction awarded to individuals for donations to §501(c)(3) organizations, the LSU Athletic Department could foresee substantial losses from their contribution revenue, which totaled \$31.9 million in 2011 fiscal year (Louisiana Legislative Auditor, 2012).

Conclusion

During the past decade, the NCAA reported large revenues from their television broadcasts and merchandise sales (Berkowitz, 2009; National Collegiate Athletic Association, 2010). In addition, high television ratings have created a demand from large television networks to pay substantial dollars for the rights to broadcast athletic contests. This, in return, has allowed many universities to review their current management practices to determine if any improvements are needed to capitalize on increased consumer interest. Orszag and Orszag (2005) suggested the arms race resulted from this opportunity and dominates athletic department budget decisions.

To meet the self-imposed demands associated with the arms race, universities have engaged in a variety of activities to bring in more revenue. Some of the more recent items have included the addition of corporate sponsorships, the addition of conference-themed television networks, the re-negotiation of existing broadcast deals, and the transfer to stronger conferences. While many of these moves are essential for athletic departments to cover their rapidly increasing costs, these activities appear to be deviating from the core mission of the university. Universities are considered to be a charitable organization due to the educational benefits they provide to the general public. By extension, athletic departments are also considered charitable organizations as through the facilitation of an educational mission. This is a key characteristic to consider as

Analyzing the Prospects of the UBIT

NCAA member institutions are classified as a §501(c)(3) tax exempt organization under the IRC.

While this exemption is beneficial to the universities, critics of these non-profit organizations can claim that an element of deception exists. Specifically, one can argue these schools do not deserve their exempt status because they engage in activities which possibly deviating from their core mission or purpose due to the new commercial nature that the universities have apparently adopted. Congress established the unrelated business income tax in order to limit the advantage that non-profit entities have over profit-oriented businesses. To impose the UBIT, a non-profit organization must 1) conduct a trade or business; 2) conduct the trade or business on a regular basis; and 3) have the trade or businesses substantially unrelated to the entity's exempt purpose. If activities that invite the UBIT are continued, the IRS could strip the §501(c)(3) exemption from charitable organizations.

Specifically, the IRS will determine, through the organizational test, if a charitable organization is classified as a state-law nonprofit organization; has limited its organizational activities to those with a charitable purpose; and has included plans to transfer assets if it should cease operations (Colombo, 2010). Next, the IRS will further analyze charitable organizations through the operational test, which states that an organization must engage in activities which accomplish one or more of the exempt purposes specified in §501(c)(3). These entities cannot generate income that will be used for the private benefit of individuals; cannot engage in substantial attempts to influence legislation or political campaigns; and must serve a purpose and confer a public benefit (Smith, 2010).

As schools continue to look for new ways to expand their product's reach among the masses and create higher revenues from prior years, the IRS may begin to research these activities for any potential unrelated business operations and issue income tax penalties on the university athletic departments that actually make a profit. Should the IRS consider certain activities to be unrelated, the athletic departments could be charged with a substantial expense that was not anticipated and could halt future expansion of athletic

programs and possibly impact the university overall. Specifically, university officials may have to pay for these taxes from the university's own general fund, even if the athletic department is separate from the university itself. If the tax penalty is similar to the one calculated earlier for LSU or possibly higher, university presidents may have to consider implementing employee furloughs or even layoffs for university faculty and staff. In addition, continued unrelated activity could allow the IRS to consider suspending the tax-exemption that athletic departments and universities have. This would create a substantial decrease in gift revenue and limiting resources that both athletic departments and universities depend upon to run day-to-day activities.

Therefore, it would be beneficial for both athletic administrators and university presidents to choose potential ventures carefully and confirm its utilization will be for the benefit for the greater good of education. With such a high penalty to pay for unrelated trades, athletic directors and university presidents would be wise to closely monitor any activities that stray from the purpose of the university. Items such as conference movement, television broadcast agreements, and corporate sponsorships appear to have implications that may damage the stability of athletic departments and create class warfare based on the financial standing of university departments.

References

- About the Mtn.* (2011, July 1). Retrieved from <http://www.themtn.tv/pages/aboutthemtn>.
- Alex Box Stadium Louisiana State University.* (2012, July 30). Retrieved from <http://www.athleticbusiness.com/galleries/project.aspx?id=396>.
- Appleby, A. D. (2010). For the love of the game: The justification for tax exemption in intercollegiate athletics. *The John Marshall Law Review*, 44, 179-207.
- Berkowitz, S. (2009, April 2). IMG jolts campus scene to give schools a cash boost. *USA Today*, C1.

Analyzing the Prospects of the UBIT

- Berkowitz, S. & Upton, J. (2011, November 6). *Athletics director salary database for 2011*. Retrieved from <http://www.usatoday.com/sports/college/story/2011-athletics-director-salaries-database/50669958/1>.
- Big Ten Conference to give members more than \$22 million this year; network income grows*. (2011, July 19). Retrieved from <http://www.chicagotribune.com/news/local/sns-ap-il--bigtenmoney,0,4776334.story>.
- Big Ten Network programming*. (2011, July 1). Retrieved from http://www.bigtennetwork.com/subindex/about_us.
- Bolch, B. (2011, April 3). *Former UCLA women's basketball Coach Nikki Caldwell set to triple salary at Louisiana State*. Retrieved from http://latimesblogs.latimes.com/sports_blog/2011/04/former-ucla-womens-basketball-coach-nikki-caldwell-set-to-triple-salary-at-louisiana-state.html?dlvrit=53285.
- Colorado leaves Big 12 for Pac-10*. (2010, June 14). Retrieved from <http://sports.espn.go.com/ncaa/news/story?id=5271438>
- Colombo, J. D. (2006). In search of private benefit. *Florida Law Review*, 58(5), 1063-1105.
- Colombo, J. D. (2010). The NCAA, tax exemption, and college athletics. *University of Illinois Law Review*, 2010(1), 109-163.
- Company profile*. (2011, July 1). Retrieved from http://www.bigtennetwork.com/subindex/about_us
- Congressional Budget Office. (2009). *Tax preferences for collegiate sports*. Washington, D.C.: Author. Retrieved from <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/100xx/doc10055/05-19-collegiatesports.pdf>
- Craig, C.K. & Weisman, K., (1994). Collegiate athletics and the Unrelated Business Income Tax. *Journal of Sport Management*, 8(1), 36-48
- Department of the Treasury, Internal Revenue Service. (2010). *Volunteers of America Tax Return (Form 990-T)*. Washington, D.C.: Internal Revenue Service Individual Forms and Publications Branch. Retrieved from <http://www.voa.org/Document-Vault/990-T.pdf>

- ESPN and University of Texas unveil 'Longhorn Network' name and logo.* (2011, April 3). Retrieved from <http://www.texassports.com/genrel/040311aaa.html>
- ESPN's BCS deal will mark first for sports TV.* (2008, November 18). Retrieved from <http://nbcsports.msnbc.com/id/27773409/>
- Fulks, D. (2011). *2004-2010 NCAA Division I Intercollegiate Athletics Programs Report*. Indianapolis, In: National Collegiate Athletic Association. Retrieved from <http://ncaapublications.com/p-4237-2004-2010-revenues-and-expenses.aspx>
- Gaines, C. (2011, Nov. 30). *The 20 highest paid coaches in college football.* Retrieved from <http://www.businessinsider.com/highest-paid-coaches-in-college-football-2011-11?op=1>.
- Gardner, T. (2010, September 09). *LSU, Oregon to play in 'Cowboys Classic' to open next year at Cowboys Stadium.* Retrieved from <http://content.usatoday.com/communities/campusrivalry/post/2010/09/l-su-oregon-to-play-in-cowboys-classic-to-open-next-year-at-cowboys-stadium/1>.
- Guilbeau, G. (2012, June 11). *LSU approves \$1 million in raises for Les Miles, assistants.* Retrieved from <http://www.usatoday.com/sports/college/football/sec/story/2012-06-08/l-su-salaries-les-miles-assistants-coaches/55465162/1>.
- Hanushek, E. & Woessmam. (2009). Do better schools lead to more growth? Cognitive skills, economic outcomes, and causation. *National Bureau of Economic Research Working Paper Series, Working Paper 14633*. Cambridge, MA: National Bureau of Economic Research. Retrieved from http://www.nber.org/papers/w14633.pdf?new_window=1.
- Haveman, R. & Smeeding, T. (2006). The role of higher education in social mobility. *Future of Children*, 16(2), 125-150. Hill, F.R. & Mancino, D.M. (2009). *Taxation of Exempt Organizations*. New York, NY: Thompson Reuters.

Analyzing the Prospects of the UBIT

- Internal Revenue Service. (1950). *Internal Revenue Code* (§170). Washington, D.C.: Author.
- Internal Revenue Service. (1950). *Internal Revenue Code* (§501(c)(3)). Washington, D.C.: Author.
- Internal Revenue Service. (1960a). *Internal Revenue Code* (§511(a)). Washington, D.C.: Author.
- Internal Revenue Service. (1996). *Internal Revenue Code* (§4958). Washington, D.C.: Author.
- Internal Revenue Service. (2010). *Instructions for Form 1120*. Washington, D.C.: Author.
- Iowa State University of Science and Technology v. Commissioner*. 500 F.2d 508 (Ct. Cls. 1974). *John Calipari's salary boosted to \$5.2 million annually plus incentives*. (2012, May 4). Retrieved from <http://aol.sportingnews.com/ncaa-basketball/story/2012-05-04/john-calipari-salary-raise-kentucky-basketball>
- Kaplan, R. (1980). Intercollegiate athletics and the unrelated business income tax. *Columbia Law Review*, 80, 1430-73.
- Katz, A. (2011, September 7). *Oklahoma Sooners pondering future*. Retrieved from http://espn.go.com/collegesports/story/_/id/6937589/oklahoma-sooners-continue-ponder-future-big-12-conference.
- Kleinpeter, J. (2012, April 28). *Expansion of Tiger Stadium unanimously approved by LSU Board of Supervisors*. Retrieved from http://www.nola.com/lsu/index.ssf/2012/04/expansion_of_tiger_stadium_una.html
- Louisiana Legislative Auditor. (2012). *Louisiana State University Athletic Department Agreed-Upon Procedures Report: Issued February 15, 2012*. Retrieved from <https://www.lsutaf.org/documents/2011NCAA.pdf>.
- LSU Office of Compliance – Mission Statement*. (2011, November 29). Retrieved from http://www.lsusports.net/ViewArticle.dbml?DB_OEM_ID=5200&ATCLID=177234.

- LSU Sports Properties – About Us*. (2010, March 12). Retrieved from http://www.lsusports.net/ViewArticle.dbml?DB_OEM_ID=5200&ATCLID=177328
- LSU Track & Field Facilities*. (2012, May 16). Retrieved from http://www.lsusports.net/ViewArticle.dbml?DB_OEM_ID=5200&ATCLID=177187.
- Lyons, L. (2010, January 29). *LSU baseball coach Paul Mainieri gets raise, extension*. Retrieved from http://www.nola.com/lsu/index.ssf/2010/01/lsu_coaches_pay_raises.html
- Martin, B. (2012, August 3). *LSU basketball practice facility*. Retrieved from http://www.lsusports.net/ViewArticle.dbml?DB_OEM_ID=5200&ATCLID=20501550
- McMurphy, B. (2011, October 6). *TCU to join Big 12 in 2012-13*. Retrieved from <http://brettmcmurphy.blogs.cbssports.com/mcc/blogs/entry/29532522/32536916>.
- Mike the Tiger Habitat Renovation*. (2012, July 30). Retrieved from <https://www.lsutaf.org/MiketheTigerHabitatRenovation>.
- National Collegiate Athletic Association. (2010, June 25). *Current budgeted revenues chart*. Retrieved from <http://www.ncaa.org/wps/wcm/connect/f9f4b0004e51efad9a02de22cf56f2f3/201011+Budgeted+Revenues.pdf?MOD=AJPERES&CACHEID=f9f4b0004e51efad9a02de22cf56f2f3>.
- Nebraska approved to Big Ten*. (2010, June 12). Retrieved from <http://sports.espn.go.com/ncaa/news/story?id=5276551>.
- Nick Saban gets raise, extension*. (2012, March 27). Retrieved from http://espn.go.com/college-football/story/_/id/7740227/alabama-crimson-tide-grant-coach-nick-saban-raise-2-year-extension.
- Orszag, J. N., and Orszag, P. R. (2005). *The Empirical Effects of Collegiate Athletics: An Update*. Indianapolis, IN: National Collegiate Athletic Association.

Analyzing the Prospects of the UBIT

- O'Toole, T. (2010, April 22). "NCAA reaches 14-year deal with CBS/Turner for men's basketball tournament, which expands to 68 teams for now". *USA Today*, Retrieved from: <http://content.usatoday.com/communities/campusrivalry/post/2010/04/ncaa-reaches-14-year-deal-with-cbturner/1>
- Pac-10 invites Utah as 12th member*. (2010, June 17). Retrieved from <http://sports.espn.go.com/ncaa/news/story?id=5293329> .
- Pena, J., & Reid, A. L. T. (2001). A call for reform of the operational test for unrelated commercial activity in charities. *New York University Law Review*, 76(6).
- Plunkett, J. P., & Christianson, H. N. (2004). The quest for cash: exempt organizations, joint ventures, taxable subsidiaries, and unrelated business income. *William Mitchell Law Review*, 31(1), 1-54.
- Report: Texas A&M Leaving Big 12*. (2011, August 30). Retrieved from http://espn.go.com/college-football/story/_/id/6907754/texas-notifies-big-12-leave-conference.
- Riper, T.V. (2012, March 05). *The Highest Paid College Basketball Coaches*. Retrieved from <http://www.forbes.com/sites/tomvanriper/2012/03/05/the-highest-paid-college-basketball-coaches/>.
- Sansing, R.C. (2001). In search of profits: Measuring income from the unrelated commercial use of a tax-exempt organization's assets. *The Accounting Review*, 76(2), 245-62.
- Seifried, C.S. & King, B. (2012). *Examining the history of Division I (FBS) bowl payouts: Current Bowl Championship Series (BCS) and non-BCS institutions and the growth of bowl games into BCS controlled contests*. Unpublished Manuscript.
- Seifried, C.S. & Smith, T. (2011). Congressional hearings and the Division I (Football Bowl Subdivision) postseason arrangement: A content analysis on letters, and testimonies. *Journal of Issues in Intercollegiate Athletics*, 4, 1-23.
- Shows*. (2011, July 1). Retrieved from <http://btn.com/shows/>.

- Smith, B. T. (2010). The tax-exempt status of the NCAA: Has the IRS fumbled the ball? *Sports Lawyers Journal*, 17, 117-133.
- Solomon, J. (2008, August 25). *ESPN, SEC reach 15-year, \$2.25 billion pact*. Retrieved from http://blog.al.com/spotnews/2008/08/espn_sec_reach_15year_225_bill.html.
- Source: *Big East set to add Boise State, four others in 2013*. (2011, December 6). Retrieved from http://sportsillustrated.cnn.com/2011/football/ncaa/12/06/big-east-expansion.ap/index.html?sct=hp_t2_a4&eref=sihp.
- Staples, A. (2011, July 21). *Texas' Longhorn Network sparking another Big 12 missile crisis*. Retrieved from <http://sportsillustrated.cnn.com/2011/writers/andystaples/07/21/longhorn-network-big-12/index.html>.
- Talalay, S. (2009, January 26). *FedEx's BCS and Orange Bowl exposure*. Retrieved from http://articles.sun-sentinel.com/2009-01-26/business/0901270099_1_orange-bowl-bcs-game-bcs-bowl.
- Technical Advice Memorandum 91-47-007 (August 16, 1991). *The Church of Scientology v. Commissioner*. 823 F.2d 1310, 1315. (9th Cir. 1987).
- The United States v. American College of Physicians*, 475 U.S. 834, 838-39 (1986).
- Treasury Regulation § 1.501(c)(3)-1. (1982).
- Treasury Regulation § 1.501(c)(3)-1(a). (2008).
- Vari, F.J. (1992). The unrelated business income tax and its effects upon collegiate athletics. *Akron Tax Journal*, 9, 111-27.
- Verney, S. (2009, October 9). *Money, not tradition keeps Florida-Georgia game in Jacksonville*. Retrieved from <http://www.bizjournals.com/jacksonville/stories/2009/10/05/story1.html?page=all>.
- Wight, B.R. (2012). College football's BCS (Bowl Charity System?): An analysis of the characterization of BCS Bowls as public charities that receive tax-exempt status. *The Sports Lawyers Journal*, 19, 129-144.

Analyzing the Prospects of the UBIT

Why the network was created. (2011, July 1). Retrieved from
<http://www.bigtennetwork.com/>

Williams, D.P. & Seifried, C.S. (2012). The taxing postseason: The potential impact of unrelated business income taxation on college football bowl organizers. *Unpublished Manuscript.*