

Our guest author, a member of The Drake Group argues against the status quo in the federal tax code applicable to college athletics and for Revisions to IRS Form 990 with its aims for enhanced transparency and accountability.

More on Taxing the Sports Factory

By Frank G. Splitt

In his October 1, 2007, *Inside Higher Ed* article, “Taxing the Sports Factory” John V. Lombardi, President, Louisiana State University System and former Chancellor at the University of Massachusetts Amherst, presents what is likely the first of many countermeasures in defense of the status quo.[1] Put another way, Dr. Lombardi presents arguments in opposition to the Revised IRS Form 990, stimulated by Senator Grassley and the Senate Finance Committee, that can help force the NCAA and its member institutions to tell the truth about their sports entertainment business.[2]

Dr. Lombardi says: “Since at least the early 20th century, it has been fashionable to attack college athletics as distorting the priorities of American colleges and universities, and there is often much evidence to support the attacks. The difficulty in taking these challenges seriously is that they are often unclear about the context within which college athletics functions and undervalue the significance of the constituencies that support this part of the American collegiate enterprise.”

Nothing could be clearer than the context within which college athletics functions; and certainly, the challenges don’t undervalue the significance of the constituencies that support the athletics part of the American collegiate enterprise. Here’s why:

First, the context within which college athletics functions is compromised academic integrity that enables out-of-control commercialization with its distracting influence on school officials, on America’s youth, and on the nation’s diminishing prospects as a leader in the 21st century’s global economy. All too often, secrecy, deceit, and deception, are hallmarks of the business of college-sports entertainment where hypocrisy, intimidation, and retaliation are the tools of the trade. It is a business where ethics, civility, shame, and truth telling are not to be expected, and where telling the truth about the negative impact of college sports on higher education can have dire consequences.

Second, rather than undervaluing the significance of the constituencies that support the athletics part of the American collegiate enterprise, most (if not all) challenges recognize the power of these constituencies to exert a stranglehold on America’s institutions of higher education to the extent that the athletic tail wags the academic dog. Constituents consist of rabid fans, wealthy boosters (with some sitting on governing boards), legislators, and other participants in multiple levels of the college-sports entertainment business — including those in sports media that have a symbiotic relationship with other

constituents. These are constituents with significant power – indeed, in the aggregate, capable of exerting almost absolute power over college athletics.

Dr. Lombardi states that: “Mega college athletics is indeed a remarkable American invention, it reflects the decisions of academic administrators and governing boards at almost all colleges and universities for over a century. It prospers because for the most part we (our faculty, our staff, our alumni, our legislators, our trustees, our students, and our many other constituencies) want it. We could easily change it, IF MOST OF US WANTED TO CHANGE IT. All protestations to the contrary, we, the colleges and universities of America and our friends and supporters, do not want to change it. What we really want is to imitate the best (often the most expensive) programs in America by winning games and championships.”

This statement brings to mind the opening line of a Selena Roberts’ column: “It is worth a take-home exam to discover how the brains behind higher education have lost their minds in the pursuit of football superiority”[3] and lines from Thomas Paine’s 1776, *Common Sense*: “Perhaps the sentiments contained in these pages are not yet sufficiently fashionable to procure them general favour; a long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason.”

It is interesting to note that Dr. Lombardi prefaced his above remark by saying: “If these mega programs are a bad thing, we should take them on and fix them directly rather than try to sneak in a fix that won’t work via the tax code.” Nowhere does he describe the tax-code “fix that won’t work” — avoiding any discussion of the enhanced transparency and accountability aims of the IRS’ Revised Form 990.

It is ironic that current federal tax policy forces parents, students, and other American taxpayers to help foot the bill for multimillion-dollar salaries for coaches, ‘stadium wars,’ tax breaks for wealthy boosters, NFL and NBA minor league teams, and other artifacts of the big-time college sports arms race. Meanwhile, the NCAA works to further its financial interests and thwart any and all serious reform efforts – especially those that could expose their ‘student-athlete’ ruse or possibly reduce their revenues.

Apparently, what may be the object of concern by the tax-exempt organizations in the big-time college-sports entertainment business are the following TDG recommendations submitted to the IRS:

1. Amend the revised Form 990 and schedules to provide a meaningful level of enhanced transparency – requesting the NCAA and its member institutions to disclose information that will provide evidence that their athletes: a) Are maintained as an integral part of the institution’s student body; b) Attend regular whole-period classes; c) Are on accredited degree tracks and are held to the same academic standards of performance as all other students; and d) Realize a 2.0 grade-point average, quarter-by-quarter or semester-by-

semester to gain and maintain eligibility for participation in athletic events, with the grades and academic records certified by the school's chief academic officer.

2. Advise the NCAA and its member institutions that: a) The need to vastly improve their transparency and reporting is a very serious matter and that their tax-exempt status will be conditioned on full disclosure; and b) Their operations will be subject to IRS and congressional oversight as well to severe penalties (in addition to the loss of their tax-exempt status) for noncompliance.
3. Eliminate what appear to be clear violations of fundamental tax principles such as the loopholes that were inserted in the tax laws to enable practices such as tax deductions for contingent fees on seat tickets and skybox lease payments.
4. Be more rigorous in assessing the UBIT status of the revenues received by organizations, such as the NCAA, whose sports entertainment business mission is largely tangential to the educational mission of colleges and universities.
5. Require the NCAA and their member institutions to employ a standard uniform system of accounting in their athletic departments that is subject to public financial audits.

The implementation of the above recommendations by the IRS – requiring enhanced transparency and reporting on the part of the NCAA and its member institutions – would not only increase tax revenues, but also help restore academic and financial integrity in colleges and universities supporting big-time sports programs, especially football and men's basketball.

These restorations would go a long way toward reclaiming academic primacy in higher education – doing that which presidents, governing boards, faculty, the NCAA, the Knight Commission, and others have failed to do for a variety of reasons.

Notes:

1 www.insidehighered.com/views/blogs/reality_check/taxing_the_sports_factory

2 www.thedrakegroup.org/Splitt_Reclaiming_Academic_Primary_IRS.pdf

3 Roberts, Selena, "An Awkward Coexistence on Campus," *The New York Times*, Sports of the Times, Nov. 12, 2005.

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Dr. Splitt’s commentary was posted on Inside Higher Ed on 10-9-07 following the article by Dr. Lombardi and it has been reprinted on Clips with the author’s permission.

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