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Assessing The Impact of the 2017 Tax Reform on College Athletic Donations Related to Ticket Sales

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The Tax Cuts and Jobs Act (TCJA) of 2017 affected many traditional tax deductions for a variety of organizations. One that went under the radar for many, except those in the college sport ecosystem, was the removal of a deduction for donations related to college sport ticket sales. Developed from the Technical and Miscellaneous Revenue Act of 1988, IRC §170(l) provided individual taxpayers the ability to claim 80% of the amount paid over the value of tickets to college athletic events as a charitable contribution. TCJA eliminated this itemized deduction, which concerned several university athletic directors about the long-term effects of this change on their program's revenue generation. This article assesses the history of the development and application of IRC §170(l) and determines whether these contributions should have been allowed as a charitable deduction overall. The article also examines the impact of IRC §170(l) after TCJA's implementation, finding the athletic directors' collective feared impact of reduced contribution revenues was not significant based on available data. Donors appear motivated by more than just the tax benefit, and the removal of the deduction did little to affect overall contributions.

Keywords: charitable donations, tax reform, college athletics, ticket sales

Introduction

During the 2020 U.S. Presidential election, Democratic candidate Joe Biden campaigned on repealing the Tax Cuts and Jobs Act (TCJA) of 2017, which was the most comprehensive tax reform in the United States since the Tax Reform Act (TRA) of 1986 (Gale et al., 2018; Kisska-Schulze, 2019). Signed into law by President Donald Trump, TCJA lowered income tax rates for individuals, reduced taxable

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income bracket levels, and doubled the standard deduction (Michel, 2017; Shesgreen, 2017). It also reduced the corporate tax rate to a flat 21% and limited various business deductions and credits to spur economic growth through employee wage increases and new job creation (Bellini, 2019; Holden & Kisska-Schulze, 2022). TCJA also installed measures to target college athletics, which has historically enjoyed favorable federal tax treatment from its connection with academic institutions (Schmalbeck & Zelenak, 2019; Williams & Seifried, 2013a, 2013b). IRC Section (§) 501(c)(3) grants athletic departments, bowl game organizers, the National Collegiate Athletic Association (NCAA), and other firms within the college sport industry a federal income tax exemption because they develop amateur sports competitions at a national or international level (Drennan, 2012; Williams & Seifried, 2013a, 2013b). Many critics oppose this exemption for intercollegiate sport as the NCAA and its members conduct activities with the purpose of generating income as opposed to promoting educational experiences and amateur sport (Clotfelter, 2019; Colombo, 2010; Schmalbeck & Zelenak, 2019). These commercialized means suggest a thorough evaluation as to whether the college sport industry should remain tax-exempt.

While the IRS has attempted to impose income taxes on revenue generated from broadcast revenue and corporate sponsorships (Kisska-Schulze, 2019; Smith, 2010; Wirtschafter, 1994), TCJA was the first successful challenge to college sport's tax exemption by eliminating IRC §170(l) as a charitable contribution deduction. Originally, this deduction allowed taxpayers to claim 80% of the amount paid over the value of tickets to college athletic events as a charitable contribution (Killpatrick, 2020; McWithey, 2020; Morgan, 2018). Though its abolishment was estimated to generate an additional $200 million in federal tax revenue (Committee on Ways and Means, 2017), IRC §170(l)'s repeal impacted a vital revenue source NCAA Division I athletic departments depend upon for their overall budgets (Kisska-Schulze & Holden, 2020; Murschel, 2018). It is estimated that NCAA Division I athletics departments generate approximately 25-30% of their annual revenue from charitable contributions (NCAA Research, 2020). Thus, numerous athletic directors voiced displeasure with IRC §170(l)'s removal while also providing their season ticket holders the ability to pay for multiple years in advance to claim the contribution benefit before its expiration (Rome, 2017; Rovell, 2017; Uhler, 2018).

As IRC §170(l)'s elimination is part of TCJA, it is set to return in 2026 unless the tax cuts are extended or made permanent (Gale et al., 2018; Kisska-Schulze, 2019). One could infer athletic departments would encourage IRC §170(l)'s return to boost overall revenues, particularly after the 2020 COVID-19 pandemic forced event cancellations (Cianfrone & Kellison, 2020; Swanson & Smith, 2020). Conversely, scholars argue IRC §170(l) should have never been allowed (Colombo, 2010; Kisska-Schulze, 2019; Lindsey, 2002-2003; Murphy, 1985; Schmalbeck & Zelenak, 2019). With TCJA's expiration on the horizon, this article explores the history and rationale for the creation of IRC §170(l) to determine if it should be reinstated or permanently removed as a charitable deduction for individual taxpayers.

IRC §170 – Charitable Contributions

Before assessing IRC §170(l), it is important to have a general understanding of the charitable contribution framework. The IRS (2022) defines a charitable contribution as "a donation or gift to, or for the use of, a qualified organization ... [i]t is voluntary and is made without getting, or expecting to get, anything of equal value" (p. 2). Deductions for charitable contributions were established in 1917, four years after the federal income tax was established (Gutting, 2012). Initially, federal income taxes were created to help fund the country's efforts in World War I (Finley, 2019). However, Congress passed the War Revenue Act of 1917, which increased federal rates to 2% and surtax rates to 50% on income above $1 million while simultaneously reducing exemption amounts to $1,000 for single taxpayers and $2,000 for married taxpayers (Schultz, 1985). However, Congress feared raising taxes would limit taxpayer donations to charities or institutions of higher learning (Aprill, 2001; Todres, 1996). Because these contributions generally relieved the government from funding charitable organizations, the charitable deduction was added to the IRC as §170 (Gutting, 2012; Lindsey, 2002-2003).

While the overall IRC has been altered many times over the past century, the charitable contribution's general mechanics have remained the same (Colombo, 2001; Finley, 2019; Todres, 1996). If an individual chooses to make a charitable donation, the taxpayer can claim an itemized deduction worth up to 50% of his or her adjusted gross income (AGI; Finley 2019). As an example, a taxpayer with an AGI of $100,000 could deduct up to 50%, or $50,000, in charitable contributions. TCJA (2017) increased this cap to 60%, meaning that one could deduct $60,000 in donations. However, this deduction must meet three important criteria before it can be claimed.

First, any charitable donation must be made to or for the use of a qualified recipient (Gutting, 2012). The IRS (2022) details the types of firms that qualify to receive deductible contributions, which generally include firms organized and operated for charitable, religious, scientific, literary, or educational purposes (Finley, 2019). Others listed include war veterans' organizations, domestic fraternal societies or associations that operate under the lodge system, and certain nonprofit cemetery companies (IRS, 2022). Finally, as noted earlier, Congress added firms fostering national or international amateur sports competitions as qualifying organizations (Colombo, 2010; Drennan, 2012). Thus, the NCAA, bowl game organizers, and university athletic departments are considered qualified charitable organizations (Clotfelter, 2019; Kisska-Schulze 2019; Williams & Seifried, 2013a, 2013b).

Next, taxpayers must be able to show proof of a donation through established substantiation requirements (Dale & Colinvaux, 2015). For gifts valued at $250 or higher, taxpayers claiming the deduction must substantiate the donation with written support from the donee organization (Aprill, 2013; Colinvaux, 2013). The acknowledgment must obtain the donation amount, a description of property contributed, whether any *quid pro quo* was provided, and a description and good faith estimate of the value of any such *quid pro quo* (Dale & Colinvaux, 2015). Items under $250 may also require donee substantiation unless the contribution is made in a circumstance where it is impractical to secure a receipt such as delivering items to an unattended drop site (Colinvaux, 2013). However, donors are required to keep reliable written records of all donations. Finally, if a taxpayer donates a noncash item exceeding $500 in value, he or she is required to file Form 8283, which requires description of the donated property, name and address of the donee, the date of the contribution, and the value of the property (Lindsey, 2002-2003). If the noncash item is over $5,000, an appraisal of the property must be obtained by the taxpayer and reported as well.

The final, and arguably most important, issue is that a donation must be considered a contribution or gift opposed to a payment for goods and services (Gutting, 2012). In 1954, Congress described charitable gifts as a payment an individual makes to an organization without expectation the firm would provide a financial return commensurate with the gift's value (Colinvaux, 2018). Though this definition appears simple, the judiciary overall has historically struggled to develop a standard to identify whether a payment to a charity qualifies as a contribution or gift and can be deductible for taxpayers (Colliton, 1980; Dale & Colinvaux, 2015; Gutting, 2012; Hobbet, 1980; Todres 1996). This struggle led to the creation of three differing tests to determine if a quid pro quo was in existence.

First, in *DeJong v. Commissioner* (1962), the Ninth Circuit developed the Intent of the Donor Test, which analyzes the donor's subjective motivation for contributions. This case explored if a payment of $1,075 to a non-profit religious-based school should be classified as a charitable deduction. The Ninth Circuit used the Supreme Court's definition of a gift, which includes "detached and disinterested generosity … out of affection, respect, admiration, charity, or like impulses" (*Commissioner v. Duberstein* 1960, p. 285). This test's main tenet is the court's assessment of the subjective intent of the donor upon providing the payment as a gift (Gutting, 2012; Hobbet, 1980). Using this analysis, the Ninth Circuit determined part of the payment (i.e., $400) went toward school tuition fees while the remainder (i.e., $675) could be claimed as a charitable deduction (*DeJong v. Commissioner* 1962). Unfortunately, the court did not provide an explanation for its application of the detached and disinterested generosity standard, making this test difficult to apply to other situations (Gutting, 2012; Kahn & Kahn, 2003).

Nine years later, the U.S. Court of Claims created an alternative to the Intent of the Donor in *Singer Co. v. United States* (1971). In this case, the Singer Company provided discounts for its sewing machines to various schools and charities ranging between 25-45%. The court considered whether Singer was entitled to a charitable deduction for "contributions made in the form of discounted sales of its … sewing machines" (*Singer Co. v. United States* 1971, p. 93). It recognized analyzing donor intent would be difficult and chose to assess contributions based on Substantial Benefits Received by the donor (Colliton, 1980; Gutting, 2012). This approach explored if the donor received substantial benefit in the eyes of the public or was merely incidental (Hobbet, 1980). While it appeared to remove subjective analysis, the Substantial Benefits Received Test was a quasi-subjective analysis that diverted into investigating personal intent (Gutting, 2012). The court ruled Singer's main purpose for providing the discounted machines was to develop goodwill and potentially increase future sales (Colliton, 1980; Hobbet, 1980). Therefore, they disallowed Singer to claim any charitable deduction for the machines even though there was no value established in terms of substantial benefit (Gutting, 2012).

Similarly dissatisfied with the Intent of the Donor approach, the First Circuit formulated an alternative test in *Oppewal v. Commissioner* (1972). This case was like *DeJong* as it assessed whether payments to a non-profit religious-based school qualified as a charitable donation (Murphy, 1985). The court also mirrored *DeJong's* decision, ruling that any payment more than the tuition cost was a charitable donation. However, in reaching its conclusion, the First Circuit established the objective Benefit Received Test to determine if a payment is a contribution or gift. Under this approach, the court only assesses if a donor receives a benefit when contributing (Gutting, 2012). If a benefit was received, the donor is only allowed a charitable deduction for the amount the payment exceeds the value of the benefit received (*Oppewal v. Commissioner,* 1972). As an example of this test, if one makes a $100 payment to a charitable organization and receives benefits valued at $10, they would be able to deduct $90, which is the difference between the payment and benefit received. The Benefit Received Test was the easiest of the three approaches as it eliminated inquiries into the subjective intent of the taxpayer or benefits received by the public (Gutting, 2012).

The Quid Pro Quo Test

After years of confusion surrounding contribution or gift, the U.S. Supreme Court would provide guidance through *United States v. American Bar Endowment* (1986). This case involved the American Bar Endowment, a charitable tax-exempt organization that sold group insurance policies to its members (Boyle, 2005; Donovan, 1987). It purchased a group policy for participating members from an insurance company at a negotiated premium, and the insurance company provided dividends to the Endowment when the actual policy cost proved to be lower than the premiums (Gutting, 2012). However, participating members were required to allow the Endowment to retain all dividends since the funds were critical to its fundraising efforts (Donovan, 1987). Though it had the ability to negotiate lower premiums, the Endowment competitively priced its policies with ones offered to the public and its members, allowing the Endowment "to generate large dividends to be used for its charitable purposes" (*United States v. American Bar Endowment* 1986, p. 108). The Endowment acknowledged to its members that their respective dividend share, less any administrative costs incurred, constituted a charitable deduction for each participant (Boyle, 2005; Donovan, 1987). The Supreme Court assessed whether these members could claim a charitable deduction on the portion of premium payments that exceeded the cost to the firm providing insurance (Kahn & Kahn, 2003).

Upon examination of the facts, the Court decided that a charitable donation is allowed when the amount the donor pays to the organization exceeds the value of the benefit received (Boyle, 2005). If a donor expects substantial benefit in return for payment, it cannot be considered a contribution or gift (Gutting, 2012). Additionally, donors can claim charitable deductions in the amount of the excess over value of the payment when payments have dual character (Donovan, 1987). For example, if one purchases tickets to a charity ball, the amount exceeding the market value of admission is tax deductible (*United States v. American Bar Endowment,* 1986). However, this deduction is only allowed if the donor can demonstrate intent to contribute the payment (Gutting, 2012). Using this two-part *Quid Pro Quo* test, the Court held many of the Endowment members failed the first part because their payments did not exceed the cost of similar insurance policies (Boyle, 2005; Donovan, 1987).

The *Quid Pro Quo* test combined all three prior approaches but was not completely free of the confusion surrounding contribution or gift. However, the Supreme Court would soon be challenged with the *Quid Pro Quo* test's application in *Hernandez v. Commissioner* (1989). This case involved taxpayers paying the Church of Scientology for auditing and training sessions based upon the Church's belief that a follower must pay for something he or she receives (Kahn & Kahn, 2003). These sessions were priced based on the length and sophistication of the training but refunded any unused portion of fees less an administrative charge (Gutting, 2012). The Court opined the payments for these services were the "quintessential *quid pro quo* exchange" due to the inherent reciprocal nature of the transaction (*Hernandez v. Commissioner,* 1989, p. 691). Furthermore, the Court noted the *Quid Pro Quo* test applies for religious benefits, disagreeing with the taxpayer who assumed Congress intended to distinguish religious benefits from others (Gutting, 2012). While confusion still surrounded the test, the Court clarified the intent prong of the test by requiring examination based on an objective standard (*Hernandez v. Commissioner,* 1989). Using *American Bar Endowment* as an example, the Court ruled intent is met by showing the donor knew he or she made a payment more than the benefit received. Interestingly, the IRS overruled the Court's decision in *Hernandez* with Revenue Ruling (RR) 93-73 by claiming payments made to the Church of Scientology for auditing or training purposes qualified as a charitable deduction under IRC §170 (Eaton, 1996). This ruling increased the confusion as to what could or could not be a charitable deduction.

However, the IRS officially adopted the *Quid Pro Quo* test in 1996 to determine whether a charitable deduction is allowed (Gutting, 2012). Using *American Bar Endowment's* fact pattern, Treasury Regulation 1.170A-1(h) (1996) establishes that contributions or gifts can only be claimed as charitable deductions if a donor has made a payment in an amount exceeding the fair market value of goods and services and can prove intent of this task. The regulation does not contain any requirement for donation intent, nor does it analyze whether substantial benefit is received (Kahn & Kahn, 2003). Instead, it notes there are various exceptions to the *Quid Pro Quo* test such as items of insubstantial value (e.g., keychains, T-shirt, etc.) or annual membership benefits under $75 (e.g., admission to facility or member-only events). Gutting (2012) argued there is no issue with this exception from scholars or practitioners as it allows for the practical administration of the *Quid Pro Quo* test, given potential valuation differences and nominal value.

IRC §170(l) – The 80% Deduction

The most controversial exception to the *Quid Pro Quo* test was the Congressionally approved exemption for a charitable deduction for 80% of a payment to a college or university for the right to purchase tickets for seating at an athletic event in the respective athletic facilities (Colombo, 2010; Kisska-Schulze, 2019; Lindsey, 2002-2003; Murphy, 1985; Schmalbeck & Zelenak, 2019). The history of this exemption began when the IRS issued RR 84-132 in 1984, which presented a generic situation of an individual paying $300 to a non-descript university's athletic scholarship program (i.e., booster club). Upon making the donation, the individual became a booster club member and received, as the only benefit to membership, the privilege to potentially purchase season tickets to home football games between the 40-yard lines for a list price of $120 (Hill, 1995; Murphy, 1985). Non-members could not obtain seats in this area, and an individual could only be made a member of the club when seats were available for purchase (RR 84-132, 1984). Finally, the school possessed a 2,000-person waiting list for membership (Murphy, 1985).

From these facts, the IRS held a taxpayer could not deduct any portion of the booster club membership fee under IRC §170 unless he or she could establish a payment exceeded the monetary value of the right to purchase preferred seats (Hill, 1995; Kisska-Schulze 2019). In essence, the IRS considered booster club membership a payment for a privilege opposed to a charitable contribution (Murphy, 1985). Using the Substantial Benefits Received tests, the IRS concluded the market value for the choice of preferred seating would likely exceed the payment amount, making no part of the payment deductible (RR 84-132, 1984).

Many stakeholders within the intercollegiate athletic industry (e.g., athletic directors, university presidents, the NCAA) heavily criticized RR 84-132. As an example, former University of North Carolina Athletic Director John Swofford noted the vague language found in the ruling created more questions than answers when attempting to apply it in a practical manner (Olson, 1984). Former Associate Director to the Georgia Student Educational Fund Claudia Osteen argued the denial of charitable deductions from ticket sales would negatively affect the $3.8 million the organization raised in contributions in 1984 for the University of Georgia Athletic Department (Dart, 1985). Iowa State University's former Cyclone Club Assistant Director Rod Wilson feared the ruling would "scare people from giving" (Wegner, 1985, para. 19). Along with other similar reactions, the NCAA and its member institutions requested the IRS withdraw the ruling, so schools would not see a decrease in fundraising from contributions (Kisska-Schulze, 2019). The IRS obliged and suspended the ruling to have public hearings in early January 1985 (Barnhart 1984; "Colleges Seek," 1985).

During these hearings, NCAA President John Toner argued widespread application of the ruling would initiate a drastic adverse effect on the intercollegiate athletic industry (Dart, 1985). Toner believed the ruling as written would create significant confusion and lead to considerable erosion in member schools' fundraising capabilities (Murphy, 1985). While he did not dispute some benefits should be valued, Toner requested the IRS permanently suspend the ruling to avoid a substantial collapse of contributions to athletic programs (Gutting, 2012). In contrast, University of Illinois Professor Richard Kaplan urged the IRS to uphold RR 84-132, arguing it was "one more statement of the well-recognized principle that a charitable contribution is deductible only to the extent that it is indeed a contribution" (Wegner, 1985, para. 8). While the IRS sided with the NCAA and its member schools to temporarily withdraw RR 84-132, the IRS reaffirmed its stance on charitable contributions being limited by the value received in an exchange (Gutfeld, 1986; Schmalbeck & Zelenak, 2019).

As a result, the IRS issued RR 86-63 (1986), which provided four examples of payments to an athletic department booster club and the right to purchase preferred seating at a football stadium. Scenario 1 was identical to the situation presented in RR 84-132 (e.g., individual paid $300 to become member and obtain right to purchase premium seating) and ruled the amount paid would not qualify as a charitable deduction (Meece, 1986). Scenario 2 altered the amount paid from $300 to $500 with the additional $200 providing no extra benefits, making the excess deductible (Williams, 1986). Scenario 3 described an athletic department that does not require additional payment for premium seat football tickets, noting the school establishes a fair market value on benefits received based on seat type, seat desirability, location, views, and scarcity (Meece, 1986; "Reagan's Tax," 1986). If one pays above the fair market value for the tickets, the IRS deems the excess payment to be deductible. Finally, Scenario 4 noted season tickets are readily available to the public but not premium seats (Williams, 1986). To obtain these seats, one must join the booster club and pay the $300 member fee. In this instance, a charitable donation is measured by the difference between the booster club membership fee and the fair market value of the rights received (i.e., price of the tickets; Meece, 1986). According to Gutting (2012), the donor bears the responsibility of establishing the preferred seating value should they seek a deduction.

Once again, the NCAA and its member institutions voiced displeasure with the new ruling (Kisska-Schulze, 2019; Ritter, 2022). For example, former University of Oklahoma Athletic Director Wade Walker called the ruling "devastating," and former University of Arkansas Athletic Director Frank Broyles argued "it endangers the financial structure of virtually every university athletic department at the major college level in the country" (Meece, 1986, para. 1, 3). Many athletic directors throughout the country began contacting their federal government representatives to get RR 86-63 repealed (Hochberg, 1987; "Scouting; Taxing," 1986). As a result, several bills were introduced by Representative Norman Dicks (D-Washington), Senator Steven Simms (R-Idaho), and Senator David Pryor (D-Arkansas) to revoke RR 86-63 and provide a full tax deduction for contributions to athletic programs (Meece, 1986). The chief argument contained in these proposed bills was that fundraising efforts by college athletic departments via contributions would drop drastically and impact the scholarships provided to student-athletes (Gutting, 2012; Kisska-Schulze, 2019; Schmalbeck & Zelenak, 2019). Unfortunately, none of the bills created were able to pass, leaving RR 86-63 intact (Meece, 1986). However, athletic directors would continue to lobby lawmakers to curtail the IRS's ruling as they were considering major tax reform in Congress (Newman, 2015).

Tax Reform in the 1980s

During the 1980s, former Louisiana State University (LSU) Athletic Director Bob Brodhead planned several renovations to his school's football stadium, Tiger Stadium (Seifried, 2016). These changes included expanded seating, structural support, new scoreboards and television screens, and other miscellaneous additions. To pay for these renovations, Brodhead charged Tigers Unlimited, a tax-exempt organization, to help raise funds for the LSU Athletic Department geared toward its sports venue construction and renovation projects ("McKeithen Predicts," 1985). Brodhead hoped any payments made by fans to secure luxury seating in Tiger Stadium could be claimed as a charitable deduction ("Brodhead Proposes," 1985; Hochberg, 1987). However, it was likely any contributions for luxury seating would match RR 86-63's first scenario, meaning the payments would not be deductible.

Therefore, Brodhead began persuading lobbyists such as Theodore L. Jones, a 20-year season ticket holder at LSU, to ensure any donations toward suites would be deductible (Bridges, 2019). Jones approached Louisiana Senator Russell Long, the senior Democrat on the Senate Finance Committee, to see if he could assist LSU's situation (Eichelberger & Babcock, 2012). In the past, Senator Long had used his influence to broaden antitrust exemptions established in the Sports Broadcasting Act of 1961 to help facilitate the National Football League and American Football League merger in 1966 (Williams, 2016a). He was also a graduate of LSU and represented Louisiana for nearly 40 years. Long was happy to assist his alma mater but did not want LSU to be the sole beneficiary of a potential rifle shot transition rule (Riggs, 1986). A rifle shot transition rule is a tax provision that is narrowly drafted where only one taxpayer or a very small amount of taxpayers will benefit from the relief (Zelenak, 1989). Upon Senator Long asking who else would be in support of such a rule, Jones suggested that Representative J.J. Pickle (D-Texas), a University of Texas (UT) alumnus, would be supportive of such a rule for LSU if it also benefitted UT (Didier, 1986; Riggs, 1986; Williams, 1986).

Thus, Senator Long and Representative Pickle collaborated on an exemption that would benefit their alma maters to be included in President Ronald Reagan's main domestic agenda during his second term: the simplification of the tax code (Luther, 1986; "Tax Reform," 1986). Both the Republican and Democratic parties desired tax reform but for varying reasons. Republicans sought to "eliminate the incentive-destroying effects of graduated tax rates" whereas Democrats condemned combining "loopholes for the few and high rates for the many" (Stewart III, 1991, p. 153). This shared goal and support from President Reagan allowed TRA 1986 to survive several critical junctions in both the House of Representative and the Senate to become law in October 1986 (Wilks, 1991).

One potential junction centered on Long and Pickle's exemption to RR 86-63. While the chief managers of the tax reform bill, Senator Bob Packwood (R-Oregon) and Representative Dan Rostenkowski (D-Illinois), made clear they would not overturn RR 86-63, they allowed Long and Pickle to circumvent the ruling through their provision (Didler, 1986; Luther, 1986). Specifically, Williams (1986) reported the provision possessed detailed exemptions to RR 86-63 for both UT (e.g., institution established by state in 1881, located in state capitol pursuant to statewide election in September 1881) and LSU (e.g., university with stadium plans for renovation that were approved by board of supervisors in December 1984, reaffirmed in December 1985 and January 1986, and approved by state board in February 1986). Though it is substantially favorable to these schools, Eichelberger and Babcock (2012) found the House Ways and Means Committee members did not object when the provision was crafted.

As the tax reform bill advanced in Congress, many became aware of LSU and UT's advantageous position and voiced displeasure (Didler, 1986; Hochberg, 1987; "Tax Reform," 1986). Several athletic directors were upset with the favoritism found in the Long/Pickle provision but felt it should include all schools as opposed to just two (Gutfeld, 1986; Luther, 1986). For example, former University of Arkansas Athletic Director Frank Broyles noted: "Pickle and Long have been catching the devil but the colleges shouldn't feel left out or feel double-crossed. I think it's a very positive thing because it opens the door for the rest of us to get it too" ("Two Schools," 1986, para. 5).

Former University of Nebraska Athletic Director Bob Devaney shared Broyles's sentiment, arguing the law cannot apply only to two universities (Williams, 1986). Along with the athletic directors, many on the Congress floor recognized this item and could not understand why others would not receive similar treatment (Gutfeld, 1986). Finally, Representative Pickle had not considered how the non-UT alumni in his Austin Congressional district would feel about UT's exclusive benefit (Kantor, 1986; Riggs, 1986). As a result, multiple efforts were conducted to eliminate the Long/Pickle provision before the end of the 1986 Congressional session (Didier, 1986). Unfortunately, these attempts were not successful, and the provision would become part of the TRA 1986 (Gutfeld, 1986). However, it was anticipated the Long/Pickle provision was temporary and planned to be corrected in the future (Didier, 1986; Luther, 1986).

After attempts in 1987 to change RR 86-63 and the Long/Pickle provision failed ("Zorinsky/Gramm," 1987), Congress addressed both with its measure to correct the technical issues found within TRA 1986 through the Technical and Miscellaneous Revenue Act (TAMRA) of 1988 (Gould, 1988). This law included measures such as removing a business deduction disallowance for a home telephone's monthly charges, providing permission to use tax-exempt bonds to finance high-speed rail projects, and establishing a taxpayer's Bill of Rights that provides individuals greater strength in dealing with the IRS (Keefe, 1988; Talwar, 1989). With relation to RR 86-63 and the Long/Pickle provision, TAMRA 1988 amended IRC §170 to establish the treatment of "80 percent of any amount … paid by the taxpayer to or for the benefit of an education organization" as a charitable deduction regardless of receiving the privilege of buying preferred seating at athletic events (p. 3684).

Congress desired a simpler rule to avoid thorough case-by-case examinations to determine if payments are gifts or the value of the right to purchase seating (Newman, 2015). Thus, it elected to treat all athletic programs the same, regardless of popularity (Keefe, 1988; Luther, 1988). Regarding the 80% figure, Congress estimated that 20% of the payment was the approximate value for the seating privileges with the remaining 80% as the charitable contribution (Newman, 2015). However, the rule only applied to athletic tickets as other booster club privileges were subject to the charitable contribution's *Quid Pro Quo* rules. Finally, Shapiro and Schwartzberg (1989) noted taxpayers had the ability to amend their tax returns as far back as 1984 to claim the 80% deduction on contributions to universities for athletic tickets. After

TAMRA 1988 became law, the IRS acknowledged the new tax policy in an advice memorandum in 1999, confirming § 170(l)'s 80% deduction for taxpayers purchasing tickets for skybox seating at athletic events in a university's athletic stadium (Kisska-Schulze, 2019).

Discussion

Though tax reform would continue to occur with each Presidential administration after 1988, the college athletic industry would evade any major tax implications for three decades despite several attempts to do so (Kisska-Schulze, 2019; Kisska-Schulze & Holden, 2020). First, the IRS tried to impose unrelated business income taxes on the NCAA and its member schools for broadcast revenue (Martz & Sinclair, 1977). However, the IRS was persuaded by several universities to change its stance in late 1978, deeming "broadcast income is not subject to the tax on unrelated business income because the events are directly related to the academic endeavors of institutions" ("IRS Rules," 1978, para. 7). The organization issued several guidance memoranda in the 1980s to clarify it would not impose taxes on revenue from broadcasting rights for college athletics (Kisska-Schulze & Epstein, 2018; Wirtschaefer, 1994). The IRS also attempted to tax advertising revenue derived from the sale of advertisements in souvenir programs at the NCAA Division I Men's Basketball Championship (Comacho & Dunn, 1992). Though the U.S. Tax Court ordered the NCAA to pay taxes, the Tenth Circuit Court of Appeals reversed the decision and ruled the occurrence of selling advertisements was so infrequent that its occurrence and commercial nature was insignificant (NCAA v. Commissioner, 1990).

Finally, the IRS published a memorandum regarding a corporate sponsorship arrangement between the Cotton Bowl Athletic Association (CBAA) and the Mobil One Corporation (Alfonso, 1990; Mulligan, 1991; Wilstein, 1991). It asserted that "corporate sponsorship accompanied by a contract with extensive and explicit conditions for recognition and provisions for media exposure constituted advertising rather than acknowledgement" and was subject to taxation (Roberts, 1997, p. 404). As a result, the IRS determined the CBAA violated the *Quid Pro Quo* test as Mobil One received a substantial return for its payment to CBAA with its logo and trademarks being prominently showcased during the bowl game (Guruli, 2005). However, the IRS received criticism from various charitable and tax-exempt organizations for this ruling, arguing the memorandum was an attempt to act quasi-legislatively by creating standards for taxing corporate sponsorships (Farbman, 1995; Roberts, 1997). Facing public scrutiny, the IRS again changed its stance on imposing taxes on corporate sponsorship revenue for college sport (Kisska-Schulze, 2019; Wirtschaefer, 1994). Additionally, Congress passed legislation within the Taxpayer Relief Act of 1997 that excluded corporate sponsorship income from unrelated business income taxation if the sponsor does not actively promote a product in their advertisement (Casey, 1997; Gaul & Fitzpatrick, 2000).

As time passed, the opinion surrounding taxation and college sports began to shift dramatically, mainly due to the increased commercialization that emerged in the late 1990s and 2000s (Colombo, 2010; Holden & Kisska-Schulze, 2022; Kisska-Schulze, 2019; Kisska-Schulze & Epstein, 2018; Schmalbeck & Zelenak, 2019). Several Congressmen were also concerned with this activity and began to seek answers. For example, in 2006, Representative Bill Thomas (R-California), chairman of the House Ways and Means Committee, wrote an eight-page letter to former NCAA President Myles Brand requesting clarification on how "playing major college football or men's basketball in a highly, commercialized, profit-seeking, entertainment environment further the educational purpose" of the member schools for its tax exemption (Alesia, 2006, para. 11). In 2007, Senator Chuck Grassley (R-Iowa), Senior Republican on the Senate Finance Committee, sought to investigate the college sports tax exemption and if donors should receive deductions for athletic department contributions (Dochterman, 2007; Wolverton, 2007). Unfortunately, these investigations did not result in any changes to college sport and taxation despite significant criticism from scholars and analysts (Colombo, 2010; Drennan, 2012; Guruli, 2005; Kisska-Schulze, 2019; Schmalbeck & Zelenak, 2019; Williams & Seifried, 2013a, 2013b).

After 30 years of inactivity, President Trump's TCJA radically altered the tax code, creating repercussions for many industries including college athletics (Shesgreen, 2017). Though the changes would not go into effect until the 2018 tax year, many athletic directors feared the impact of the increased standard deduction for individual taxpayers and eliminating IRC §170(l) as a charitable deduction (Christensen, 2017; Rome, 2017; Rovell, 2017). Much of the athletic directors' collective fear centered on the simplicity of linking charitable donations with ticket sales and removing that right would reduce donations significantly (Murschel, 2018). For example, in 2017, University of Alabama Athletic Director Greg Byrne noted the following:

> We're very concerned about it. On two fronts: one, the donations people make and through Tide Pride that can write off part of their ticket cost have allowed us to fund 21 programs, to obviously support our football program in the manner that we do, to go out and compete for championships, it's allowed us, from the opportunity standpoint, for thousands upon thousands upon thousands of young women nationally where we can provide great opportunities for young women to go to school on scholarships academically. (Rome, 2017, para. 8)

Former LSU Athletic Director Joe Alleva shared this sentiment, noting the tax bill would be "disastrous, for not just us, but every athletic department in the country" (Rome, 2017, para. 25). LEAD1 President and Chief Executive Officer Tom McMillen, who leads the membership association representing over 120 NCAA Division I Football

Bowl Subdivision (FBS) athletic directors, felt Olympic sports would feel the biggest effect upon elimination of the contribution deduction since these sports "don't make money and all the profits of college sports, literally go into supporting these sports, which many of them are Olympic development sports" (Murschel, 2018, para. 24).

Other athletic directors like University of Central Florida's Danny White and University of Oklahoma's Joe Castiglione noted TCJA's impact could be significant to donations but acknowledged it was too early to know how hard schools would be affected (Murschel, 2018; Rovell, 2017). University of Idaho Athletic Director Rob Spear noted "schools that have lived by increasing seat back prices will see significant changes ahead" but argued most donors give to an athletic department because they love the program or school (Murphy, 2017, para. 13). Christensen (2017) proved such sentiment existed from talking with a University of Minnesota football season ticket holder, who acknowledged he donated money to support the school and not for the tax deduction.

Comparatively, several politicians weighed the TCJA's benefits over its cost. Representative George Holding (R-North Carolina) argued sacrificing a tax preference like the 80% deduction was worth an overall lower tax rate and a growing economy (Murphy, 2017). Similarly, former Senator Richard Shelby (R-Alabama) supported ending the deduction in support of TCJA to create more jobs, increase paychecks, and make the process simpler and fairer for taxpayers (Rome, 2017). Finally, former Florida Governor and current Senator Rick Scott (R-Florida) argued people donate to colleges because they want to help students, not for any potential charitable deduction (Murschel, 2018).

Based on these initial reactions, one can understand the concern athletic directors had due to the changes of the contribution deduction. Their initial response to their donors was to advertise the changes in the tax law and encourage donors to purchase future years of season tickets before TCJA goes into effect in 2018 (Rome, 2017; Smith, 2017). For example, Oklahoma's "Pay It Forward" campaign allowed boosters to purchase three years of season tickets to claim the 80% deduction for the 2017 tax year (Wingerter, 2018). Others like Alabama, Florida State University, Southern Methodist University, and Syracuse University offered future purchases for one or two years (Gutierrez, 2017; Rovell, 2017). Yet, Dave Ridpath, Ohio University professor and President of the Drake Group, which helps educate U.S. lawmakers and higher education policymakers about critical issues in intercollegiate athletics, did not expect TCJA to have any effect on the 25-30% of revenue earned from contributions to major athletic departments, but could reduce the out-of-control and excessive spending found in college athletics (Murschel, 2018; Wingerter, 2018).

While spending has not declined, it appears the loss of IRC §170(l) has not created a setback in terms of donations for college athletic programs. According to the Knight-Newhouse College Athletics Database (n.d.), donor contributions for all

Football Bowl Subdivision schools have grown from $1.72 billion in 2017 to $1.99 billion in 2022, an increase of 16.4%. Additionally, Table 1 provides a sampling of various Division I Football Bowl Subdivision programs that make their annual financial reports available publicly on their athletic department websites. Known as the NCAA Agreed-Upon Procedures (AUP) Financial Reports, all athletic departments are required to submit annual financial statements based on NCAA guidelines over operating revenues, expenses, and capital related to their programs (Williams, 2016b). One important item within these financial reports is the line item for Contributions. This item includes all amounts received from individuals, corporations, associations, foundations, and other organizations that are designated, restricted, or unrestricted by donors for athletic program operations as well as amounts paid in excess of ticket value (Williams, 2016b).

Upon analysis of Table 1, any impact of IRC §170(l)'s repeal appears to vary between schools. TCJA became effective in 2018, and the average percent change between the 2017 and 2018 fiscal years for the selected schools was a 2.81% decrease. However, many of these schools saw an increase in contributions for the 2018 fiscal year. For example, the University of Georgia, University of Kansas, and Virginia Tech all had year-over-year increases of 20% or higher. This trend would continue in the 2019 and 2020 fiscal years.

However, contributions would decrease substantially for many schools during the 2020 COVID-19 pandemic as many events were either cancelled or maintained restricted seating (Cianfrone & Kellison, 2020; Swanson & Smith, 2020). For example, The University of Texas saw its donations tied to premium seating decrease from $33.6 million in 2019 to $29.9 million in 2020 as it instituted 25% stadium capacity at Royal-Memorial Stadium (Davis, 2022). Though the university's athletic department was able to maintain self-sustaining operations, unlike many Division I institutions, Texas saw its total revenues decrease $48.1 million in 2020 and report a $14.6 million loss after several years of earning profits. Other Division I schools like East Carolina University, the University of Iowa, the University of Minnesota, and Stanford University eliminated several of their sponsored teams such as rowing, swimming, tennis, track, and volleyball as a means to trim budgets (Marshall et al., 2020).

The 2020 pandemic painted a dire picture for college athletics as many athletic departments feared net losses as high as $100 million due to revenue shortfalls (Novy-Williams et al., 2022). However, these worst-case scenarios did not come to fruition as events like football and men's basketball returned in the later fiscal year. Concurrently, many schools reverted to their pre-2020 contribution figures and even surpassed them. The University of Colorado, University of Florida, Kansas State University, LSU, University of Louisville, University of Mississippi, University of Virginia, and the University of Utah all saw year-to-year increases ranging from 105% to approximately 400%.

Table 1. Total Contributions Received for Select Division I FBS Schools, FY2017 – FY2022

School	FY2017	FY2018	Change	FY2019	Change	FY2020	Change	FY2021	Change	FY2022	Change	Overall Change
Arkansas	$23,953,548	$23,271,463	-2.85%	$22,630,356	-2.75%	$17,911,565	-20.85%	$19,119,047	6.74%	$21,514,268	12.53%	-4.93%
Cal-Berkeley	$20,486,038	$18,098,032	-11.66%	$15,235,662	-15.82%	$13,285,517	-12.80%	$12,009,049	-9.61%	$15,646,730	30.29%	2.70%
Cincinnati	$3,871,098	$4,159,767	7.46%	$6,399,903	53.85%	$13,609,544	112.65%	$9,968,270	-26.76%	$14,168,736	42.14%	121.39%
Colorado	$14,587,775	$16,434,097	12.66%	$16,113,839	-1.95%	$13,282,266	-17.57%	$3,739,003	-71.85%	$12,794,319	242.19%	-20.60%
Florida	$36,624,248	$36,975,975	0.96%	$38,635,095	4.49%	$37,889,677	-1.93%	$8,038,375	-78.78%	$39,499,772	391.39%	2.24%
Georgia	$54,804,606	$67,772,093	23.66%	$52,575,183	-22.42%	$64,604,359	22.88%	$45,149,286	-30.11%	$74,315,945	64.60%	41.35%
Iowa State	$16,686,813	$19,346,279	15.94%	$17,259,520	-10.79%	$17,660,589	2.32%	$16,563,832	-6.21%	$22,220,941	34.15%	28.75%
Kansas	$21,748,629	$27,549,851	26.67%	$34,038,269	23.55%	$22,661,147	-33.42%	$21,180,040	-6.54%	$26,619,405	25.68%	-21.80%
Kansas State	$21,803,007	$22,218,725	1.91%	$20,210,111	-9.04%	$20,368,045	0.78%	$13,577,867	-33.34%	$27,917,946	105.61%	38.14%
LSU	$35,100,139	$33,191,089	-5.44%	$40,105,757	20.83%	$41,284,692	2.94%	$19,808,577	-52.02%	$73,857,138	272.85%	84.16%
Louisville	$39,268,342	$33,002,180	-15.96%	$37,592,173	13.91%	$30,383,911	-19.17%	$11,641,455	-61.69%	$30,413,091	161.25%	-19.10%
Minnesota	$14,018,855	$15,442,027	10.15%	$17,776,802	15.12%	$10,528,221	-40.78%	$15,486,239	47.09%	$24,356,852	57.28%	37.01%
Ohio State	$37,612,936	$33,530,397	-10.85%	$29,681,048	-11.48%	$48,179,862	62.33%	$19,774,979	-58.96%	$62,982,851	218.50%	112.20%
Ole Miss	$31,681,284	$33,540,127	5.87%	$27,440,563	-18.19%	$25,407,336	-7.41%	$13,911,421	-45.25%	$33,100,799	137.94%	20.63%
Oregon	$55,534,963	$24,838,586	-55.27%	$34,051,077	37.09%	$298,451,159	776.48%	$79,136,880	-73.48%	$40,275,982	-49.11%	18.28%
Penn State	$30,779,975	$34,917,579	13.44%	$31,499,197	-9.79%	$30,494,428	-3.19%	$22,483,488	-26.27%	$39,248,059	74.56%	24.60%
Tennessee	$33,455,709	$34,107,827	1.95%	$31,285,720	-8.27%	$26,310,433	-15.90%	$21,891,612	-16.79%	$32,718,373	49.46%	4.58%
Virginia	$25,609,203	$27,140,596	5.98%	$26,863,555	-1.02%	$27,652,579	2.94%	$23,875,609	-13.66%	$62,123,932	160.20%	131.26%
Virginia Tech	$15,620,732	$21,646,646	38.58%	$18,715,733	-13.54%	$21,806,832	16.52%	$16,241,934	-25.52%	$25,836,965	59.08%	38.05%
Utah	$8,890,497	$9,486,097	6.70%	$12,213,982	28.76%	$11,652,513	-4.60%	$7,881,878	-32.36%	$28,501,715	261.61%	133.35%
Washington	$35,367,278	$34,290,640	-3.04%	$31,032,425	-9.50%	$24,482,901	-21.11%	$32,730,995	33.69%	$28,037,008	-14.34%	-9.65%
Washington State	$8,124,395	$9,143,479	12.54%	$11,662,904	27.55%	$14,563,852	24.87%	$7,746,721	-46.81%	$9,945,450	28.38%	-14.73%
West Virginia	$34,222,386	$29,612,944	-13.47%	$18,820,793	-36.44%	$10,923,407	-41.96%	$15,292,854	40.00%	$14,672,758	-4.05%	-22.04%
Wisconsin	$21,964,082	$14,055,347	-36.01%	$16,102,509	14.57%	$11,851,854	-26.40%	$27,583,780	132.74%	$7,004,024	-74.61%	-56.50%
AVERAGE	$26,742,356	$25,990,493	-2.81%	$25,330,924	-2.54%	$35,635,279	40.68%	$20,201,383	-43.31%	$31,990,544	58.36%	26.29%

Interestingly, Ohio State University also saw an over 200% increase in its donor contributions but did so in a surprising manner. In 2021, Ohio State announced plans to require its season ticket holders to purchase preferred seat contributions starting in the 2022 football season (Kaufman, 2021). Originally, the school utilized an annual donation model for season tickets like a private seat license but felt the shift would yield higher revenues (Baird, 2021). Though the athletic department generated more than $200 million for three straight fiscal years before the 2020 COVID-19 pandemic, Ohio State officials wanted to remain competitive to its peer schools regarding revenue generation. It also felt it had reached its ceiling on other revenue sources like ticket sales and corporate sponsorships (Baird, 2021; Kaufman, 2021). This move proved to be very successful as the school generated $251.6 million in revenue, a record high for the university (Berg, 2023). Helping reach that figure was the $62.9 million in contributions received, a massive jump from the $19.7 million during the 2021 fiscal year and $48.1 million in the 2020 fiscal year (Kaufman, 2023).

Based on these financial figures, it appears the initial reaction from several athletic directors regarding IRC §170(l)'s repeal was incorrect, as many schools did not see a substantial reduction in contributions. Moreover, donors do not seem to be motivated exclusively by a potential tax deduction to their favorite athletic program. Instead, donors are willing to contribute to the universities financially because they want to show their support for the school (Christensen, 2017). However, preferred seat contributions often come with benefits outside of obtaining a ticket for events. These features include better parking, the ability to request tickets to away and neutral site games, and exclusive facility tours. Utilizing the *Quid Pro Quo* test, one purchasing season tickets with a preferred seat contribution is becoming a member of a booster club to earn these extra benefits. While intent to make the payment can be confirmed, the fair market value of these items would arguably exceed the total contribution, making it hard to qualify as a charitable contribution if it were not for IRC §170(l). Thus, its repeal is necessary. Comparatively, if the payment is not attached to these benefits and is made without an exchange of goods or services, then it should be allowed as a charitable contribution.

From this perspective, it appears athletic departments have pursued contributions in one of two capacities. The first is detaching required seat contributions as a component to athletic fundraising, focusing payments on other elements like capital projects, student-athlete scholarships, or name, image, and likeness (NIL) collectives. The other capacity is maintaining preferred seat contributions as a requirement for season tickets but acknowledging it is not a charitable contribution. Regardless of action taken, it appears the loss of IRC §170(l) has not had a substantially negative effect on the financial status of college athletics.

Instead, the continued usage of generating revenue through season tickets may be a necessity for college athletics programs in the wake of the NCAA's interim policy to allow student-athletes to earn money through NIL activities, which must be consistent with a member school's state laws on NIL or lack thereof, and the *NCAA v. Alston* (2021) ruling, which eliminated many NCAA restrictions on non-cash compensation for academic-related purposes. These two items pierced the amateurism veil the NCAA has relied on for decades surrounding student-athlete compensation, leading NCAA President Charlie Baker to suggest radical changes to the association's structure (Forde, 2023; Kraft, 2023). His proposal would create a new subdivision within Division I in which schools would be required to offer at least half their athletes a payment of at least $30,000 per year through an educational trust fund (Wolken, 2023). Concurrently, the National Labor Relations Board (NLRB) ruled basketball players at Dartmouth University are school employees and have the right to unionize (Golden, 2024; Witz, 2024). Should student-athletes become university employees, O'Brien (2024) suggested schools would need to generate significant funding to provide both wage compensation and benefits like workers' compensation insurance. When considering these potential changes, the practice of charging contributions for season tickets is not unreasonable if it is not paired with a potential tax deduction.

Conclusion

The initial concerns from Division I athletic directors fearing revenue shortfalls from the tax deduction's removal appear to be unwarranted as donations have remained consistent since TCJA's passage in 2017 based on the findings from the schools listed in Table 1. While contributions declined during the 2020 COVID-19 pandemic, the decreases can be attributed to restricted seating at events, as contributions returned to pre-pandemic levels. This situation emphasizes individuals are willing to contribute financially to a university's athletic program without the need for an individual tax benefit.

Concurrently, where past attempts to challenge college sport's tax exemption have failed, TCJA successfully eliminated a benefit related to college athletics that has a questionable history. However, this repeal sunsets upon TCJA's expiration in 2026, which will require important discussions for all taxpayers as the federal income tax system reverts to pre-TCJA rules and can cause various tax implications. These conversations will also occur within Congress as federal lawmakers will debate future changes to the federal tax code. One element they should not allow to return is IRC §170(l), as its expulsion has not caused considerable changes to the donations received by college athletic departments. In 1984, the IRS deemed a mandated preferred seating contribution was not a charitable deduction. Applying the *Quid Pro Quo* test, one can see an exchange of goods and services for individuals making a preferred seat contribution occurs, disqualifying taxpayers from claiming the payment as a charitable contribution. Thus, Congress needs to act to permanently eliminate IRC §170(l) despite fears from the NCAA and its members.

However, any potential changes to tax policy will confront challenges found within today's political climate. When TRA 1986 was considered for law, it was introduced by Democrat Representative Dan Rostenkowski, passed by a majority vote in a Democrat-controlled House of Representatives (292-136) and a Republican-controlled Senate (74-23), and signed into law by Republican President Ronald Reagan. Comparatively, TCJA passed through Congress's reconciliation process, which does not require a majority vote in the Senate. It was able to pass the House (224-201) and Senate (51-49) by very slim margins before becoming law. Such a divisive situation makes any possible change difficult to achieve and could come at the expense of the individual taxpayer. Still, common ground has been found when discussing tax policy, particularly regarding the rise in commercial activity within college sports.

The pursuit to generate revenue through problematic means invites an assessment of the college sport tax-exempt position. The rising coach salaries, large broadcast deals, and ample facility expansion have often been identified by scholars and pundits as excessive for the basis of college sport's amateurism defense (Colombo, 2010; Kisska-Schulze, 2019; Schmalbeck & Zelenak, 2019; Williams & Seifried, 2013a, 2013b). Further, Supreme Court Justice Brett Kavanaugh illustrated this fact in his concurring opinion in *Alston v. NCAA,* noting the NCAA's business model raises serious antitrust questions as it has used unpaid student-athletes to generate billions of dollars (Quinn, 2021). Future research should adhere to Justice Kavanaugh's suggestion to explore the NCAA's amateur status from both a taxation and antitrust perspective. Such analysis will help change college athletics as we view them today.

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