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College Athlete Unions Raise Specter of Scholarship Tax Hit

- Dartmouth basketball team vote opened door for more unions
- Scholarships' tax benefit unclear if considered compensation

Dartmouth College's basketball team made waves across the college sports world when they voted to form a union, a move with potential tax consequences for student-athletes on scholarships seeking to follow in their footsteps.

The players at the Ivy League school [voted](#) to unionize with a local Service Employees International Union in March, just a month after a National Labor Relations Board regional director [found](#) students should be considered employees. Despite not receiving athletics scholarships, NLRB's Laura Sacks found they were compensated through nearly \$3,000 in equipment per person each season as well as tickets to games and events.

The decision caught many legal observers and universities by surprise, and they now question what will happen when players with athletic scholarships to play sports organize. Under current federal tax law, scholarships aren't taxed as long as they're not considered compensation, but that could change if the NLRB continues to rule that student athletes are employees and deems scholarships compensation.

The Internal Revenue Service [was asked](#) the question in 2014. At that time, IRS Commissioner John Koskinen in a letter to Sen. Richard Burr (R-N.C.) said the tax code, not the NLRB, controls how scholarships are treated for tax purposes, and the tax code excludes scholarships from taxable income.

Now, a change to how the IRS treats scholarships could be harder to avoid as labor law continues to expand its classification of student athletes as employees, tax professionals said.

"The IRS isn't going to decide that it is compensation for services unless it's backed into a corner," said Lawrence A. Zelenak, a tax professor at Duke Law school. "Maybe labor law is starting to back the IRS into a corner, but we're not all the way there yet."

The cost of losing tax exempt status would fall on universities and students alike, and schools with limited scholarship resources are likely to rethink their processes. Legal and tax observers noted that large profitable athletic departments may be able to manage increased costs, but smaller schools and low-revenue sports would likely bear the brunt of the change, putting those programs in jeopardy.

Employees Under Labor Law

Whether student workers could unionize has flip-flopped at the NLRB in recent years. The Obama-era board's 2016 [Columbia University](#) ruling allowed graduate students to organize, but several prominent unions withdrew representation petitions later fearing the Trump administration's board would [strike](#) the precedent down if given the chance.

During Biden's tenure, graduate students have been on the vanguard of a campus labor [renaissance](#). The momentum has expanded to college athletes with the Dartmouth vote and NLRB General Counsel Jennifer Abruzzo's [case](#) against the NCAA, University of Southern California, and the Pac-12 Conference in which she claims the three entities jointly violated federal labor law by not classifying the university football and basketball teams as employees.

Dartmouth wasn't the first time an NLRB official found college athletes to be employees with a right to unionize. A decade ago, a regional director [ruled](#) players at Northwestern University's football team—who received scholarships to play—were employees.

But the case was eventually [dismissed](#) by the full board because it didn't want to exert jurisdiction over a school that played in a conference filled with public universities. The NLRB never ruled on the merits of whether those students were in fact employees.

The Dartmouth players have revived the issue, opening the door to more college athletes receiving employee status, including at universities that offer athletic scholarships, said Joshua D. Nadreau, vice chair of the labor relations group at Fisher & Phillips LLP.

The "test" to determine whether someone is an employee under the National Labor Relations Act consists of three factors: whether the alleged employee provides services, has control over the services, and whether those services are made in exchange for compensation, Nadreau said.

"If you look at those decisions and what the NLRB is saying constitutes control over the student athletes—telling them what to practice, telling them when the games are, telling what time you're going to get in the bus to get to the game—those are things that are just inherent to an athletics team," he said.

Taxing Scholarships

The IRS stance that who is considered an employee for tax purposes doesn't necessarily have to follow labor law "doesn't strike me as a very viable long-term position," Zelenak said. "The inconsistency would be so obvious that probably the tax law would end up having to follow the labor law."

Despite the potential consequences, Jamila M. Brinson, a labor and employment attorney at Jackson Walker LLP in Houston, doubted that it would altogether stop other teams from moving forward if they want to unionize.

"I just wonder if the focus is on 'Let's become unionized, and then we figure out all the rest of that,'" Brinson said.

Ultimately, the IRS wouldn't even have to enforce the taxability of athletic scholarships if they were deemed to be compensation, said Alexander L. Reid, leader of BakerHostetler's tax-exempt organizations team.

"It's easier for the IRS to give stuff away than it is for them to tax it," Reid said. "If the IRS wanted to exempt students, they could, certainly, just as a matter of under-enforcing the law."

Zelenak noted that the agency has chosen this path in other areas, like not collecting taxes on frequent-flier miles gained by employees resulting from business travel.

The Congressional Option

Many of the issues arising from student-athletes being classified as employees could be solved by Congress, legal and tax observers said.

Sens. Chris Murphy (D-Conn.) and Bernie Sanders (I-Vt.) have been pushing since 2021 for Congress to pass [legislation](#) to amend the NLRA to grant college athletes the right to organize. The bill also sets safeguards against questions over the tax implications of scholarships and explicitly ensures that financial aid remain tax-free regardless of whether it's considered payment for work.

But Republicans on Capitol Hill reject the idea of student-athletes being classified as employees, calling the issue an "[existential threat](#)" to college athletics in a recent House hearing. Among the concerns cited by the lawmakers was the future of athletic scholarships if they are suddenly considered compensation for work.

Sen. Ted Cruz (R-Texas) has [proposed](#) legislation that would bar student-athletes from being considered employees under any federal statute. The bill would maintain the status quo, block college athletes' ability to unionize or be owed wages under any law, and ensure scholarships can't be considered compensation for work—keeping them tax exempt.

But Murphy said the concerns over scholarships' tax status were mostly fear mongering to avoid changes to a business model he said is obsolete. "That's a silly argument. That's just a construction to try to keep the existing status quo," Murphy said in an interview.

The gulf between the two proposals shows the challenge of legislating around the issue on Capitol Hill. But lawmakers will need to start considering legislative solutions as the courts and agencies like the NLRB continue to act on their own, generating "a lot of open questions," said Nadreau.

"Some sort of federal approach makes the most sense," he said. "There's a reason why we have federal labor law and a baseline wage and hour law—because those things impact people everywhere."