

WHERE DO SPORTS LEAGUES STAND AFTER THE NFL REVOKES ITS TAX EXEMPT STATUS?

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INTRODUCTION

In April of 2015, the National Football League (NFL) announced, unexpectedly, it was voluntarily giving up its tax exemption.¹ Many were shocked to discover that the NFL was a tax-exempt organization in the first place.² Some were outraged that a multi-billion-dollar company could receive the same benefits of tax exemption as the local soup kitchen feeding the hungry.³ Some of this outrage is displaced because the NFL as a whole is not

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1. Chris Isidore, *NFL Gives Up Tax Exempt Status*, CNN MONEY (April 28, 2015, 4:48 PM), <http://money.cnn.com/2015/04/28/news/companies/nfl-tax-exempt-status>.

2. Matt Blitz, *Why the NFL is Tax Exempt*, TODAY I FOUND OUT (Jan. 29, 2014), <http://www.todayifoundout.com/index.php/2014/01/nfl-tax-exempt>.

3. See Ryan Rudominer, *Sack the NFL's Nonprofit Tax Exempt Status*, THE HILL (Feb. 5, 2014 9:00 AM), <http://thehill.com/blogs/congress-blog/economy-budget/197431-sack-the-nfls-nonprofit-tax-exempt-status>. The following is a personal statement about the “fans” views about the NFL tax exemption:

We football fans would not be any less passionate about the game we love if the league actually paid its fair share. Additionally, believe it or not, we are actually smart enough to recognize the fact that the NFL is rolling in the dough and doesn't need ordinary Americans to pay its taxes.

What I can also tell you is this—the NFL's nonprofit status and refusal to pay its fair share has ignited a national grassroots campaign of hundreds of thousands of angry sports fans and taxpayers in states and congressional districts across the country.

Blitz, *supra* note 2; SACK NFL TAXBREAKS.ORG, <HTTPS://SACKNFLTAXBREAKS.WORDPRESS.COM> (last visited June, 30, 2016) (a WordPress advertisement calling for people to sign a petition to make the NFL stop having so many tax exemptions); Sean Gregory, *Why the NFL Suddenly Wants to Pay Taxes*, TIME (Apr. 28, 2015), <http://time.com/3839164/nfl-tax-exempt-status> (“Political threats to revoke the tax-exemption of pro sports organizations hold populist appeal. After all, how can commercial outfits that sell expensive tickets and generate millions of dollars for owners and players be considered non-profit organizations—and thus exempt from paying taxes?”); Roger Sherman, *Why the NFL Decided to Start Paying Taxes*, SB NATION (Apr. 28, 2015, 2:23 PM), <http://www.sbnation.com/2015/4/28/8508905/nfl-tax-exempt-nonprofit-roger-goodell-salary> (“Normally, we associate the concept of a ‘nonprofit’ with charities, religions, and schools—organizations that are supposed to value making the world a better place rather than earning cash.”).

tax exempt, only the NFL headquarters are tax exempt.⁴ Each team, merchandise and ticket sales are subject to corporate taxation.⁵ However, there are other sports organizations, not just the NFL, that benefit from being tax exempt under the business league exemption, I.R.C. § 501(c)(6).⁶ These other sports leagues include, but are not limited to, the National Hockey League (NHL), Professional Golf Association (PGA) Tour, and the Ladies Professional Golf Association (LPGA).⁷ These leagues represent a combined total of \$1.9 billion of untaxed yearly revenue.⁸ This revenue is not helping a community end homelessness or hunger, nor is it assisting people to learn to read. Further, the revenue is not making the community beautiful or being used for any other philanthropic cause. These leagues receive their tax exemption for the sole purpose of being a sports league because they are promoting a trade or business industry.⁹

The Internal Revenue System (IRS) has classified I.R.C. § 501(c)(6) as “business leagues,” and has written administrative materials on the rules and procedures on how to be classified as a trade association or business league and thus receive the tax exemption.¹⁰ However, the IRS does not lay out a

4. Isidore, *supra* note 1 (“While the league is tax-exempt, the \$1 billion or so it makes a year is distributed to the 32 teams, all of which do pay taxes.”); Blitz, *supra* note 2. See Sherman, *supra* note 3 (“The NFL as a whole made a reported \$10 billion in revenue in 2013. The NFL’s league office reported a revenue of \$326 million in 2012.” (footnotes omitted)).

5. Except the Green Bay Packers who are a nonprofit organization. See Jonathan Zasloff, *Who Owns the Green Bay Packers? And Why Should Congress Care?*, SAMEFACTS.COM (Jan. 25, 2011), <http://www.samefacts.com/2011/01/everything-else/who-owns-the-green-bay-packers-and-why-should-congress-care>.

6. See National Football League, *Return of Organization Exempt from Income Tax*, I.R.S. FORM 990, I (2013), [hereinafter NFL 990], http://990s.foundationcenter.org/990_pdf_archive/131/131922622/131922622_201403_990O.pdf?_ga=1.225837022.557847961.1479863440 (last visited Nov. 22, 2016); PGA Tour, *Return of Organization Exempt from Income Tax*, I.R.S. FORM 990, I (2013), [hereinafter PGA 990], http://990s.foundationcenter.org/990_pdf_archive/520/520999206/520999206_201312_990O.pdf?_ga=1.260118729.557847961.1479863440 (last visited Nov. 22, 2016); Ladies Professional Golf Association, *Return of Organization Exempt from Income Tax*, I.R.S. FORM 990, I (2013), [hereinafter LPGA 990], http://990s.foundationcenter.org/990_pdf_archive/750/750055465/750055465_201312_990O.pdf?_ga=1.234369882.557847961.1479863440 (last visited Nov. 22, 2016); National Hockey League, *Return of Organization Exempt from Income Tax*, I.R.S. FORM 990, I (2013), [hereinafter NHL 990], http://990s.foundationcenter.org/990_pdf_archive/980/980036067/980036067_201406_990O.pdf?_ga=1.205395156.557847961.1479863440 (last visited Nov. 22, 2016).

7. John K. Ross, *Sports Cronyism: The NFL and Other Pro Leagues Are Tax Exempt*, REASON.COM (Apr. 27, 2013, 1:30 PM), <http://reason.com/blog/2013/04/27/sports-cronyism-the-nfl-and-other-pro-le>.

8. PRO Sports Act, H.R. 547, 114th Cong. (2015).

9. *Id.*

10. John Francis Reilly et al., *IRC 501(c)(6) Organizations*, EXEMPT ORGANIZATIONS-TECHNICAL INSTRUCTIONS PROGRAM FOR FY 2003, 2003, at K-2, K-4.

specific course of action in order to revoke the exemption.¹¹ The argument in this Note is not whether the NFL and other sports leagues should be tax exempt, but rather should sports leagues be penalized or have an exit tax when the league voluntarily revokes its tax exemption. Many agree that the NFL and like-minded sports leagues should not have a tax exemption and are pleased the NFL decided to voluntarily revoke its exemption.¹² However, there has not been a discussion on whether these leagues should be penalized for unilaterally deciding the exemption is no longer an asset, and revoking the exemption when the league has benefited from decades of tax exemptions. As Bruce Hopkins has stated in his book, *The Law of Tax-Exempt Organizations*, “exempt status is the ‘most prized of all tax concessions sanctioned by Congress.’”¹³ However, under the current tax code there is no downside for losing such a *prized concession*.

The business league subsection of the Internal Revenue Code (I.R.C.) for Exempt Organizations¹⁴ has not addressed this issue before, so this Note will analyze other sections of the tax code in order to determine if it is feasible for sports leagues to be subject to restrictions and penalties upon termination. This Note will venture into the murky waters of where the sports league tax exemption originated; identify the creation and amendments over the years; discuss the current state of affairs of the exemption; analyze how to become a tax-exempt organization; and list which sports leagues are categorized under the Business League exemption currently.

Part I will discuss where the business league exemption originated. Part II will review the current landscape of the exemption and how the sports leagues are utilizing the exemption. Part III and IV will examine the policy reasons of why the NFL decided to revoke its exemption and the policy reasons of why the other sports leagues should do the same. Finally, Part V will discuss and evaluate whether the business league exemption should be reformed to include an exit tax and whether the language of the exemption should now be updated. The main argument of this Note is that other tax exemptions and other parts of the tax code include penalties for voluntarily relinquishing their tax exemption and therefore, business leagues should do the same.

11. *See generally id.* at 1. (The sixty-eight-page document omits any system or guidelines for voluntarily revoking tax-exempt status under I.R.C. § 501(c)(6) (2015)).

12. *See* Blitz, *supra* note 2.

13. BRUCE HOPKINS, *THE LAW OF TAX-EXEMPT ORGANIZATIONS* 8 (11th ed. 2015).

14. I.R.C. § 501(c)(6) (2015).

I. BACKGROUND INFORMATION ON SPORTS AND THE TAX EXEMPTION

A. *Rationale Behind Organization Tax Exemptions in General*

In order to answer the question of whether a sports league should be exempt, it is vital to understand the underlying rationale for tax exemptions in the tax code. Before 1894, taxes were taken from specific commodities and through individual customs.¹⁵ Therefore, if an organization did not deal in customs or commodities, it was automatically exempt¹⁶ “by reason of statutory omission.”¹⁷ However, in 1894, the United States began taxing income across the board through a National Income Tax.¹⁸ Therefore, the Tax Code had to clarify which organizations were specifically tax exempt.¹⁹

“There are six basic rationales underlying qualification for tax exemption:”²⁰ (1) no other reason than Congress says so; (2) to further existing law; (3) pure tax rationale; (4) policy with regard to less essential elements of the structure of a civil society; (5) philosophical principle; and (6) the view that exemption is required to facilitate achievement of an end of significance to the entirety of society.²¹ Sections 501 through 530 of the I.R.C. details every tax-exempt entity under the I.R.C.²² These twenty-nine different sections are classified as Subchapter F of the I.R.C.²³ In 1975, there were over 600,000 organizations benefiting from a Subchapter F tax exemption.²⁴ Currently, there are now over 1.5 million organizations.²⁵ Section 501(c)(3)²⁶

15. Oliver A. Houck, *With Charity for All*, 93 YALE L.J. 1415, 1422 n.6 (1984). See McGovern, *The Exemption Provisions of Subchapter F*, 29 TAX LAW., no. 3, 523, 524–25 (1976).

16. Houck, *supra* note 15.

17. McGovern, *supra* note 15, at 525.

18. Houck, *supra* note 15.

19. *Id.* at 1422–23 n.6. McGovern, *supra* note 15, at 525. The Tariff Act provided for the exemption of “corporations, companies or associations organized and conducted solely for charitable, religious or educational purposes.” *Id.* (quoting Tariff of 1894, ch. 349, § 32, 28 Stat. 556.).

20. Hopkins, *supra* note 13, at 10.

21. *Id.* at 10–11.

22. See I.R.C. §§ 501–530 (2015).

23. *Id.*

24. McGovern, *supra* note 15, at 523.

25. See Internal Revenue Service, *Exempt Organizations Business Master File Extract (EO BMF)*, I.R.S. (Aug. 8, 2016), <https://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Business-Master-File-Extract-EO-BMF> [hereinafter EO BMF].

26. The portion of the *Internal Revenue Code* emphasizing charitable organizations is as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of

is the most recognized exemption as those organizations represent over 1.2 million of the organizations under Subchapter F.²⁷ However, there are over twenty-eight other organizational exemptions,²⁸ including the business league exemption.²⁹ Of those 1.5 million organizations, 63,444 are registered under the business league tax exemption, I.R.C. § 501(c) (6).³⁰

James J. McGovern, a tax law specialist, states there are three specific rationales for the Subchapter F exemptions, which include heritage, morality, and special interest legislation.³¹ The heritage and morality rationales deal with charitable organizations.³² The third rationale of special interest legislation leans more toward the business league exemption, explaining that “certain exemption provisions were specifically enacted upon the urging or lobbying of industry representatives that their activity was not an appropriate subject of taxation.”³³ Sports leagues and business leagues are a section of Subchapter F where an industry has lobbied to receive a tax exemption.³⁴

its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

I.R.C. § 501(c)(3) (2015).

27. EO BMF, *supra* note 25 (This number is calculated by downloading all four Exempt Organizations Business Master File Extract (EO BMF). Using Excel function CountIf (Range Column I, “3”) at the end of column I in each file. Add the number from each file together. As of September 5, 2016: Northeast had 184,944, Mid-Atlantic and Great Lakes Areas had 440,016, Gulf Coast and Pacific Coast Areas had 589,123, and all other areas had 2,713. The total number was 1,216,796).

28. I.R.C. § 501 (2015). Charitable Organizations is only one of the twenty-nine exemptions. *Id.* at § 501(c)(3).

29. McGovern, *supra* note 15, at 531; I.R.C. § 501(c)(6) (the exemption under which sports leagues fall).

30. See EO BMF, *supra* note 25 (This number is calculated by downloading all four Exempt Organizations Business Master File Extract (EO BMF). Using Excel function CountIf (Range Column I, “6”) at the end of column I in each file. Add the number from each file together. As of September 5, 2016: Northeast had 7,598, Mid-Atlantic and Great Lakes Areas had 24,849, Gulf Coast and Pacific Coast Areas had 30,899, and all other areas had 98. The total number was 63,444).

31. McGovern, *supra* note 15, at 523, 525–27.

32. *Id.*

33. McGovern, *supra* note 15, at 527.

34. The Chamber of Commerce Secretary wrote a letter petitioning for a tax exemption. *Id.* at 531–32.

B. *History of the Business League Tax Exemption and Sports Leagues*

The business league tax exemption³⁵ finds its origins in the Tariff Act of 1913,³⁶ where it is assumed the “U.S. Chamber of Commerce request[ed] an exemption for nonprofit ‘civic’ and ‘commercial’ organizations.”³⁷ The Chamber of Commerce urged the exemption on the grounds of “public service.”³⁸ The Chamber of Commerce is an association working in “common interest” for the “economic welfare of a . . . geographic area.”³⁹ The Secretary of the United States Chamber of Commerce stressed in a letter to the Chairman of the Senate Finance Committee that the “semi-public nature of commercial organizations was a historic fact . . . that the activities of nonprofit commercial organizations are similar to those of other exempt organizations, and that taxation would lessen their capacity for public usefulness.”⁴⁰ The Tariff Act of 1913 ultimately added section 501(c)(4)(civic organizations) and section 501(c)(6)(commercial organizations) into Subchapter F. Since 1913, this section has been amended twice: once in 1928 “to provide for the exemption of real estate boards,”⁴¹ and again in 1966 when Congress amended the code to specifically include professional football leagues.⁴²

The 1966 amendment solidified the NFL as a tax-exempt organization.⁴³ The amendment was created as a way for the NFL to circumvent the House of Representatives in order to merge with the American Football League (AFL).⁴⁴ In 1966, “[w]ith a week before the end of the Congressional Session,

35. I.R.C. § 501(c)(6) (2015).

36. Tariff Act of 1913, H.R. Con. Res. 38, 63rd Cong. (1913) (enacted).

37. Reilly et al., *supra* note 10, at K-2.

38. Houck, *supra* note 15, at 1432. See McGovern, *supra* note 15, at 524–25.

39. Houck, *supra* note 15, at 1433. See *Retailers Credit Assoc’n v. Comm’r*, 90 F.2d 47, 51 (9th Cir. 1937).

40. McGovern, *supra* note 15, at 530–32 (citing *Hearings on Tariff Schedules of the Revenue Act of 1913 Before the Subcomm. of the Comm. on Fin.*, 63d Cong., 1st Sess., at 2002 (1913)).

41. McGovern, *supra* note 15, at 532.

42. *Id.*; Act of Nov. 8, 1966, Pub. L. No. 89-800, § 6(a), 80 Stat. 1508, 1515 (1966). See I.R.C. § 501 (2015).

43. Act of Nov. 8, 1966, Pub. L. No. 89-800, § 6(a), 80 Stat. 1508, 1515 (1966).

44. Before 1966 there were two professional football leagues, the National Football League and the American Football League, the NFL History site states:

A series of secret meetings regarding a possible AFL-NFL merger were held in the spring between Hunt of Kansas City and Tex Schramm of Dallas. Rozelle announced the merger, June 8. Under the agreement, the two leagues would combine to form an expanded league with 24 teams, to be increased to 26 in 1968 and to 28 by 1970 or soon thereafter. All existing franchises would be retained, and no franchises would be transferred outside their metropolitan areas. While maintaining separate schedules through 1969, the leagues agreed to play an annual AFL-

NFL Commissioner Pete Rozelle sought out Chairman Long for advice on how to break the impasse. The Chairman decided . . . that he could bypass the House Chairman by adding the merger language to a tax bill.⁴⁵ The bill passed, and the code was amended to include professional football leagues specifically so that those leagues with a tax exemption would not be affected if a league gives out a pension fund.⁴⁶ Except for the limitation of not being allowed to incur private inurement, the code is silent on any other limitations such as “lobbying, litigation, or even participation in political campaigns.”⁴⁷ Furthermore, the statutory language in section 501(c)(6) lacks any reference on how to terminate the exemption.⁴⁸

II. THE CURRENT LANDSCAPE OF THE BUSINESS LEAGUE TAX EXEMPTION

A. *How to Receive the Tax Exemption Today*

Today the tax code for business leagues⁴⁹—including professional sports leagues—states that “[b]usiness leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private

NFL World Championship Game beginning in January[] 1967, and to hold a combined draft, also beginning in 1967.

NFL History by Decade, NFL.COM <http://www.nfl.com/history/chronology/1961-1970> (last visited July 24, 2016) [hereinafter *NFL Decade*]. See generally *History*, U.S. SENATE COMMITTEE ON FIN., <http://www.finance.senate.gov/about/history> (last visited July 24, 2016) [hereinafter *History*]. The Huffington Post blog also provides more about the AFL-NFL merger:

The exemption for football stems from lobbying efforts by Pete Rozelle in the 1960s to earn an antitrust exemption for the merger of the NFL and AFL. The antitrust and tax exemptions were cleverly attached to an uncontroversial 1966 bill to “suspend the investment credit and the allowance of accelerated depreciation in the case of certain real property.” The NFL-AFL merger language was included at the end of the bill that had nothing else to do with football.

Brian Frederick, *Why Does the National Football League Deserve Tax-Exempt Status?*, HUFFINGTON POST, http://www.huffingtonpost.com/brian-frederick/nfl-tax-exempt_b_1321635.html (last updated May 8, 2012).

45. *History*, *supra* note 44.

46. Reilly et al., *supra* note 10, at K-2; H.R. CONF. REPT. NO. 2308, 89th Cong., 2d Sess. (1966), reprinted in 1966-2 C.B. 958, 963-64. See Act of Nov. 8, 1966, Pub. L. No. 89-800, § 6(a), 80 Stat. 1508, 1515 (1966).

47. Houck, *supra* note 15, at 1433-34 (footnote omitted).

48. See I.R.C. § 501(c)(6) (2015).

49. *Id.*

shareholder or individual”⁵⁰ are tax exempt. According to the *Code of Federal Regulations*:

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade.⁵¹

In the seminal case of *American Auto Association v. Commissioner*,⁵² the Tax Court of the United States put forth six requirements that must be satisfied before gaining business-league-exemption eligibility:

- (1) It must be an association of persons having a common business interest.
- (2) Its purpose must be to promote that common business interest.
- (3) Its activities should be directed toward the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.
- (4) It should not be engaged in a regular business of a kind ordinarily conducted for profit.
- (5) It must not be organized for profit.
- (6) Its net earnings, if any, must not inure to the benefit of any private shareholder or individual.⁵³

The two requirements receiving the most scrutiny are (3) whether it is improving a business condition and (5) whether it is actually organized for-profit.⁵⁴ Most sports leagues satisfy the requirement of being a *trade association* by collecting membership dues from the sports teams under their control (which are for-profit organizations).

However, the NFL receives their tax exemption because “Section 501(c)(6) of the Internal Revenue Code specifically defines *professional football leagues* as exempt organizations under that section.”⁵⁵ Unlike the NFL, other sports leagues are not expressly defined in the statute and therefore, must satisfy the above requirements of being a business league or trade association.

50. *Id.*

51. 26 C.F.R. § 1.501(e)(6)-1 (2016).

52. *Am. Auto. Ass’n. v. Comm’r*, 19 T.C. 1146 (1953).

53. *Id.* at 1158.

54. NICHOLAS P. CAFARDI & JACLYN FABEAN CHERRY, UNDERSTANDING NONPROFIT AND TAX EXEMPT ORGANIZATIONS 221 (2d ed. 2012).

55. *Professional Football Leagues*, IRS, <https://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Professional-football-leagues> (last visited Jan. 4, 2016).

B. *Sports Leagues That Currently Use the Tax Exemption*

The sports leagues that applied for and received tax exemption under I.R.C. § 501(c)(6) for the tax year 2013–2014 included the NFL, PGA Tour, NHL, and the LPGA.⁵⁶ According to the NFL 990 Form,⁵⁷ which is public record, from 2013–2014 the NFL received roughly \$295 million in membership dues and league fees.⁵⁸ Over \$100 million of the revenue collected from membership dues and league fees were expensed into salaries and compensation.⁵⁹ The money for merchandise, ticket sales, and television rights are not tax exempt, and the teams themselves pay the taxes on those revenues.⁶⁰ According to Form 990, the NFL is a “[t]rade association promoting interests of its thirty-two member clubs.”⁶¹ The Form 990 further states that the NFL’s program service accomplishment is “[t]o present the National Football League and its teams at a level that attracts the broadest audience and makes NFL football the best sports entertainment in the world.”⁶²

Next is the PGA analysis. The PGA Tour, Inc. actually has more revenue than the NFL.⁶³ In the fiscal year 2013–2014, the PGA had a revenue of over \$1 billion.⁶⁴ Only approximately \$35 million was left after expenses for take-home revenue.⁶⁵ The PGA’s mission is “to promote the sport of professional golf of touring golf professionals.”⁶⁶

The LPGA is also a profitable sports league. The mission of the LPGA is to “promote worldwide interest in the game of Women’s Professional Golf.”⁶⁷ In the fiscal year of 2013–2014, they received revenue of approximately \$102 million and a take-home of approximately \$1.2 million.⁶⁸

56. See Legal Sidebar, *NFL Gives Up Its Tax-Exempt Status*, FAS 2 (2015), <https://www.fas.org/sgp/crs/misc/nfl-tax-status.pdf>.

57. NFL 990, *supra* note 6, at I(12). The 990 Form from the IRS is the form that all tax exempt organizations must file in order to stay tax exempt. *Return of Organization Exempt from Income Tax*, I.R.S. Form 990 (2016), available at <https://www.irs.gov/pub/irs-pdf/f990.pdf>.

58. NFL 990, *supra* note 6, at I(12).

59. *Id.* at I(15).

60. Drew Griffin & Sean Kennedy, *Is the NFL Skirting the Tax Man?*, CNN (Sept. 23, 2014, 8:45 AM), <http://www.cnn.com/2014/09/22/us/nfl-nonprofit-taxes>.

61. NFL 990, *supra* note 6.

62. *Id.* at III.

63. See PGA 990, *supra* note 6, at I(12); NFL 990, *supra* note 6, at I(12).

64. PGA 990, *supra* note 6, at I(12).

65. *Id.* at I(19).

66. *Id.* at I(1).

67. LPGA 990, *supra* note 6, at I(1), III(1).

68. *Id.* at I(12), I(19).

Finally, the mission of the NHL is “[t]o perpetuate the game of professional hockey in the United States and Canada.”⁶⁹ In the fiscal year of 2012–2013, they had revenues of \$41 million and a take-home of negative \$71 million.⁷⁰

All these organizations are tax exempt, and the PGA, LPGA, and the NHL have not stated that they will follow in the NFL’s footsteps, thereby revoking tax-exemption status.⁷¹

III. POLICY CONSIDERATIONS AND PAST REMEDIES

A. Past Bills

Over the years, congressional representatives have tried to enact bills to eradicate the tax exemption for sports leagues and other organizations that meet a threshold amount of revenue. On January 27, 2015, a bill—entitled “PRO Sports Act”—was introduced into the House of Representatives by Rep. Chaffetz.⁷² The bill proposed to strike the wording of the special accommodation for professional football leagues and add a subsection stating that professional sports leagues are unable to get tax exemption if they receive more than \$10 million in annual gross receipts.⁷³ If this bill were to pass, the PGA, LPGA, and the NHL would all lose their tax exemption privilege.⁷⁴ However, this bill has not moved from when it was first introduced into the House on January 27, 2015.⁷⁵ According to the website Government Tracks (GovTracks), it has a zero percent chance of being enacted.⁷⁶ This prediction is supported by the fact that the bill has previously been introduced in the Senate in 2013.⁷⁷

69. NHL 990, *supra* note 6, at I(1).

70. *Id.* at I(12), I(19).

71. As of February 19, 2016, no reports have come out about the PGA, LPGA, and NHL surrendering their tax-exempt status.

72. PRO Sports Act, H.R. 547, 114th Cong. (2015).

73. *Id.*

74. This is because they all have gross receipts of over \$10 million: PGA Tour, Inc. (\$1,549,571,629), the LPGA (\$102,886,275), NHL (\$41,167,569). PGA 990, *supra* note 6, at G; LPGA 990, *supra* note 6, at G; NHL 990, *supra* note 6, at G.

75. PRO Sports Act, H.R. 547, 114th Cong. (2015).

76. *Id.*; see also H.R. 547 (114th) PRO Sports Act, GOVTRACKS.COM, <http://www.govtrack.us/congress/bills/114hr547/details> (last visited Mar. 8, 2017). To calculate this prognosis the Government Track website uses an elaborate algorithm that looks to multiple factors. The main factors that are hindering the progress of this bill include “The bill was referred to House Ways and Means” and “This bill was a re-introduction of H.R. 3965 (113th) from the previous session of Congress.”

77. S. 1524, 113th Cong. § 1 (2013).

There are multiple factors as to why these bills have not passed, including lobbyists and/or because the bills do not deal with situations where the take-home revenue is actually negative.⁷⁸ The PRO Sports Act proposes a change to the code by adding certain language that only ascertains to professional sports leagues. The bill states explicitly:

No organization or entity shall be treated as described in subsection (c)(6) if such organization or entity—

(1) is a professional sports league, organization, or association, a substantial activity of which is to foster national or international professional sports competitions (including by managing league business affairs, officiating or providing referees, coordinating schedules, managing sponsorships or broadcast sales, operating loan programs for competition facilities, or overseeing player conduct), and

(2) has annual gross receipts in excess of \$10,000,000.⁷⁹

The language of the bill leans toward forcing top sports leagues to pay taxes. If the bill came into effect, it would hinder the PGA, LPGA, NHL, and other major sports leagues from having the benefit of a tax exemption.

B. *Citizens Sentiment*

When people hear about the NFL and other sports organizations receiving tax exemption, they are understandably upset. Most people assume the term “tax exemption” refers to charitable organizations. However, in America, there is a growing *business* of charities. Some tax-exempt charities bring in revenue upwards of billions of dollars. Currently, the largest charity in the United States is United Way, with revenues (from donations) of over \$3.87 billion.⁸⁰

78. See Patrick Doyle, *Why is the NFL a Nonprofit?*, PUB. SOURCE (Oct. 9, 2014), <http://publicsource.org/investigations/why-nfl-nonprofit#.WDqyCNlo4y8> (“The NFL is very active with lobbyists. . .”).

79. PRO Sports Act, H.R. 547, 114th Cong. (2015).

80. William P. Barrett, *The Largest U.S. Charities for 2014*, FORBES (Dec. 10, 2014, 7:45 AM), <http://www.forbes.com/sites/williambarrett/2014/12/10/the-largest-u-s-charities-for-2014/#6e8a427f5455>.

Citizens have become involved in the NFL-tax-exemption debate.⁸¹ Lynda Woolward⁸² started a Change.org petition a few years ago. The petition stated:

Despite the fact that it is a \$10 Billion/Year Industry, the National Football League (NFL) continues to enjoy status as a non-profit organization

. . . .

The NFL should pay their fair share towards our economy! . . .

The NFL has methodically worked to shift all the power to their side, leaving players, employees and PARTICULARLY THE FANS little say in what goes on with the league. We deserve a say, but do not wish to boycott our teams! Therefore, we are calling on our elected representatives to revoke the tax-exempt status we bestowed upon the league half a century ago. Please sign this petition, and let Congress know that you want them to reconsider the NFL's tax exempt status.⁸³

In an interview, Ms. Woolward also stated that “[i]t’s a matter of basic fairness. . . . And wouldn’t it be nice to see something come out of Washington, D.C., that is for the benefit of the American people?”⁸⁴ The Change.org petition received 429,396 signatures and was categorized as a confirmed victory once the NFL revoked its tax exemption.⁸⁵ This Change.org petition shows that citizens feel strongly about the sports league tax exemption and believe that the NFL and other sports leagues do not deserve the benefits of receiving the tax exemption.

81. Daniel Roberts, *NFL Drops Tax Exempt Status, Gains Good PR*, FORTUNE (Apr. 29, 2015, 11:21 AM), <http://fortune.com/2015/04/29/nfl-tax-exempt-status>.

82. Lynda Woolward is a local activist, who is a die-hard Saints fan. She states, “I have come to feel an extreme responsibility to the signers of this petition. I do think it is my job, having started this effort, to stick with it to the end, no matter how long it takes.” David Roth, *Meet the Woman Who Wants to Make the NFL Pay Its Taxes*, SB NATION (Sept. 24, 2014, 11:15 AM), <http://www.sbnation.com/nfl/2014/9/24/6538489/nfl-tax-exempt-non-profit-status-petition-change>.

83. Lynda Woolward, *Revoke the Tax-Exempt Status of the National Football League*, CHANGE.ORG, <https://www.change.org/p/congress-revoke-the-tax-exempt-status-of-the-national-football-league> (last visited July 24, 2016).

84. Roth, *supra* note 82.

85. Woolward, *supra* note 83.

IV. NFL GIVING UP ITS TAX EXEMPTION

In March 2015, the NFL stated that it was voluntarily giving up its tax exemption status.⁸⁶ The NFL Commissioner, Roger Goodell, in a letter to the teams, “called the exemption a distraction and said a league study found that giving it up won’t affect the function or operation of the league office or management council at all.”⁸⁷ Goodell and the NFL, with the surrendering of the Business League tax exemption, have illuminated a problem with the Business League exemption. The problem is the ease with which the NFL, and the Major League Baseball (MLB), seem to have moved between tax designations of non-profit (tax exempt) and for-profit (taxed) entities. This ease of re-categorization sheds light on the underlying issue of whether an organization classified as a business league should be penalized for moving from a non-profit organization to a for-profit organization.

Commissioner Goodell wrote a letter to the franchise owners discussing the reasoning behind giving up the exemption: “[H]e was eliminating a ‘distraction.’”⁸⁸ Furthermore, Goodell stated that the reason they were voluntarily revoking their tax exemption was because “the change in filing status will make no material difference to our business.”⁸⁹

One of the “distractions” that Commissioner Goodell referred to is the salary reporting standards of the employees for Form 990. In 2008, the IRS wanted reporting standards for employees of a non-profit organization to include all employees that made over \$150,000.⁹⁰ The NFL pushed back hard—lobbying to multiple congressmen to make this change only apply to charitable organizations rather than to trade organizations.⁹¹ However, this limited application did not come to fruition. Therefore, the NFL still does not have to disclose private financial information about the NFL Commissioner and top executives.⁹²

86. Richard Rubin, *NFL Will End Its Tax-Exempt Status, Goodell Tells Owners*, BLOOMBERG POL. (Apr. 28, 2015, 4:35 PM), <http://www.bloomberg.com/politics/articles/2015-04-28/nfl-will-end-its-tax-exempt-status-goodell-tells-team-owners>.

87. David van den Berg, *NFL May Have to Flout Exemption Rules to Drop Status*, TAXANALYST.COM (May 1, 2015), <http://www.taxanalysts.org/content/nfl-may-have-flout-exemption-rules-drop-status>.

88. Rubin, *supra* note 86.

89. *Id.*

90. Duff Wilson, *N.F.L. Executives Hope to Keep Salaries Secret*, N.Y. TIMES (Aug. 11, 2008), <http://www.nytimes.com/2008/08/12/sports/football/12nfltax.html>.

91. *Id.*

92. They will no longer have to file a public form 990 as they are foregoing non-profit status. Janet Novak, *Penalty for Holding: Why The NFL Should Be Forced to Keep Its Tax Exemption*, FORBES (May 20, 2015, 01:19 PM), <http://www.forbes.com/sites/janetnovack/exemption.2015/05/20/penalty-for-hold>

Moreover, another “distraction” is that Congress holds the tax exemption over the NFL as a way to leverage the NFL into dealing with matters of public concern—matters such as domestic abuse and the Washington Redskins name change.⁹³ People have acknowledged that, “in hindsight, the public often regrets the conversion because the for-profit enterprise escapes its public good requirement as well as supervision from the state attorney[] general.”⁹⁴ With the tax change, “[t]he NFL’s action removes a point of leverage for Congress in its continuing inquiries into the league’s handling of concussions and domestic violence.”⁹⁵

Even with these leverage points now dissipated due to the tax exempt status foregone, the legislative branch views the NFL’s actions favorably. The “Congress’ Joint Committee on Taxation estimates that eliminating the exemption for professional sports leagues would raise \$109 million over ten years,”⁹⁶ if all the organizations together are stripped of their tax exemption. Members of Congress have publicly applauded the NFL’s decision to change its status from a non-profit. Rep. Jason Chaffetz (R., Utah) and Rep. Elijah Cummings (D., Md.) stated for instance,

“We are extremely pleased with the decision from the NFL to waive its tax-exempt status . . .” It is rewarding to see such an important and positive step toward restoring basic fairness. We hope other professional sports organizations in similar situations will follow the positive example set by the NFL, and we look forward to rightfully returning millions of dollars to the federal treasury as a result.⁹⁷

However, Professors Samuel D. Brunson⁹⁸ and David J. Herzig⁹⁹ state that “[e]ither the NFL was not providing a public good and should not have been granted the status in the first place, or if the NFL wants to be for-profit, then the benefits of the tax exemption should be recaptured, e.g., with an exit tax.”¹⁰⁰ This notion of a penalty will be discussed in detail for the remaining portion of this Note.

ing-why-the-nfl-should-be-forced-to-keep-its-tax-exemption.

93. Daniel Roberts, *supra* note 81.

94. *Id.*

95. Rubin, *supra* note 86.

96. Novak, *supra* note 92.

97. Jonathan Clegg, *NFL to End Tax-Exempt Status*, WALL ST. J. (April 28, 2015, 4:02 PM), <http://www.wsj.com/articles/nfl-to-end-tax-exempt-status-1430241845>.

98. Novak, *supra* note 92 (Professor of Law at Loyola University Chicago School of Law).

99. *Id.* (Professor of Law at Valparaiso University Law School).

100. *Id.*

V. THE FUTURE OF THE TAX EXEMPTION

A. *Exit Tax or Penalty*

Currently, when a professional sports league decides to end its tax exemption there is no penalty or exit tax.¹⁰¹ There is not even a systematic way for the organization to surrender its non-profit status.¹⁰² A couple of reasons why there is no penalty for relinquishing an exemption are: (1) not many organizations voluntarily give up their exemption so no one has thought it an issue, or (2) the writers of the tax code believe that loss of the exemption itself is the penalty.¹⁰³ However, it is arguable that—in the scenario of a voluntary revocation—the latter reason is insufficient, because the loss of a tax exemption serves as a benefit rather than a penalty.

People speculate that the NFL is giving up its status due to “be[ing] uncomfortable and politically untenable on an increasing basis to have the threat of Congressional investigations and hearings to remove that exemption for its current and past sins.”¹⁰⁴ Therefore, the actual loss of the exemption is not the punishment, but the benefit.

For policy reasons, the NFL and other organizations under this code should not be allowed to benefit from an exemption. Sports leagues should be penalized for voluntarily giving up the exemption, similar to when private foundations are penalized for giving up their exemptions.

101. *Id.*

102. See *Termination of an Exempt Organization*, IRS (Apr. 19, 2016), <http://www.irs.gov/charities-non-profits/termination-of-an-exempt-organization>. (The IRS documentation only discusses termination under the section “Termination of Exempt Organization,” but that section analyzes the situation where the organization is bankrupt or dissolving, not when they are just changing status).

103. When an organization fails to meet the requirements of an exempt organization under the IRS Code, the IRS can involuntarily revoke the tax-exempt status. See IRM § 4.75.37 (2014). The IRS determines whether an organization is still valid through its audit process. *Id.* “When the IRS determines that exemption[s] should be revoked, it can wreak havoc on an organization, its donors, and its employees.” CAFARDI & CHERRY, *supra* note 54, at 378.

104. Roger Groves, *NFL Chooses to Lose Its Tax Exempt Status but Loses Little Else*, FORBES (Apr. 28, 2015, 11:30 PM), <http://www.forbes.com/sites/rogergroves/2015/04/28/nfl-chooses-to-lose-its-tax-exempt-status-but-loses-little-else/#2db8573a1490>.

1. *Private Foundations*

The private foundation section of the code requires penalties for voluntarily leaving a code status.¹⁰⁵ The Internal Revenue Service Code section 507, Termination of Private Foundation status, lays out the ways that organizations have to pay to exit the status of being a private foundation.¹⁰⁶ Private foundations are “tax-exempt charitable organizations.”¹⁰⁷ All 501(c)(3) organizations are “private foundation[s,]” unless they fit into one of four categories under Sections 509(a)(1)–(4).¹⁰⁸

For a private foundation to voluntarily terminate its tax exemptions, it must give the IRS advance notice “of its intention to do so and either pay[] back all the tax benefits it and its donors ever received or secure[] IRS abatement of such tax through a private ruling.”¹⁰⁹ This two-step process for termination of a private foundation was enacted through the Tax Reform Act of 1969.¹¹⁰ Specifically, the Act added Section 507 to the tax code, which lays out the two-step process in subsection (a).¹¹¹ To satisfy the first step of notification, the IRS lays out specific guidelines an organization must take in order to dissolve their status, which includes a list of four specific elements.¹¹²

105. This is one of the only sections of the I.R.C. Subchapter F categories where *voluntary* revocation of a tax exemption is mentioned. All other sections of the code discuss *involuntary* revocation. This goes back to my earlier argument that revocation of the exemption in itself is a penalty. I.R.C. § 507 (2012).

106. *Id.*

107. BRUCE HOPKINS & JODY BLAZEK, PRIVATE FOUNDATIONS: TAX LAW AND COMPLIANCE 1 (John Wiley & Sons, Inc., 2d ed. 2013). *See* I.R.C. § 509 (2012).

108. CAFARDI & CHERRY, *supra* note 54, at 320. Furthermore, according to the IRS, “[e]very organization that qualifies for tax-exempt status under section 501(c)(3) of the Code is further classified as either a public charity or a private foundation. Under section 508, every organization is automatically classified as a private foundation unless it meets one of the exceptions listed in section 509(a).” I.R.S., CATALOG No. 49830S, PUB. 4221-PF, COMPLIANCE GUIDE FOR 501(C)(3) PRIVATE FOUNDATIONS (2014) [hereinafter COMPLIANCE GUIDE]. *See* I.R.C. §§ 508, §§ 509(a)(1)–(4) (2012).

109. HOPKINS & BLAZEK, *supra* note 107, at 483.

110. Tax Reform Act of 1969, Pub. L. No. 91-172, § 507, 83 Stat. 492, 498 (1969).

111. *Id.*

112. The four elements that must be met in order to satisfy the notice step are explained by the IRS as follows:

For the tax year in which your foundation is fully liquidated, dissolved, or terminated, you must file a final Form 990-PF, *Return of Private Foundation*. You should check the Final Return box in the header area on page 1 of the return, answer “Yes” to the question 5 in Part VII-A whether the foundation had a liquidation, termination, dissolution, or substantial contraction during the year; and provide the information set forth in General Instruction T of the Form 990-PF instructions. This information includes the following:

- A statement attached to the return explaining the termination,

The process of notice that a private foundation must go through is more in-depth than that of a business league; a business league only has to change their bylaws to say the organization is a *for-profit* rather than a *non-profit* organization. The NFL's current bylaws state that "[t]he league is not organized nor to be operated for profit."¹¹³ Once the bylaws of a business league have been changed and filed, its status under Section 501(c)(6) is automatically null-and-void. This is because under the six steps of the exemption, the business league must not be a for-profit organization.¹¹⁴ A business league or any other trade association does not even have to notify the IRS of their termination.¹¹⁵

On the other hand, when terminating a private foundation, the IRS does not stop at the complex notification process; it also adds complex exit tax restrictions.¹¹⁶ The general rule is that an organization has to pay an exit tax.¹¹⁷ However, there are two main ways to abate the tax. The private foundation can either (1) try and qualify as a public charity under one of three subsections of Section 509(a)¹¹⁸ continuously for a sixty-month period,¹¹⁹ or (2) disburse its assets into a public charity categorized under Section 509(a)(1).¹²⁰ If the private foundation cannot terminate through one of the two options above, then it must pay an exit tax.¹²¹

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- A certified copy of any liquidation plan, resolution, etc., and all amendments or supplements that were not previously filed,
 - A list of the names and addresses of all recipients of assets, and
 - An explanation of the nature and fair market value of assets distributed to each recipient.

You also must consider the special rules that apply to termination of private foundation status.

Life Cycle of a Private Foundation—Termination of Foundation Under State Law, IRS (Jan. 22, 2016), <https://www.irs.gov/Charities-&-Non-Profits/Private-Foundations/Life-Cycle-of-a-Private-Foundation-Termination-of-Foundation-Under-State-Law>.

113. *Constitution and Bylaws of the National Football League*, NFL art. II, § 2.2, http://static.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf (last updated 2006).

114. *Am. Auto. Ass'n. v. Comm'r*, 19 T.C. 1146, 1158 (1953).

115. *Life Cycle of a Business League*, *supra* note 102.

116. *See* I.R.C. § 507(c) (2012).

117. *Id.*

118. COMPLIANCE GUIDE, *supra* note 108, at 21. *See* I.R.C. § 509(a)(1)–(3) (2012).

119. Before the sixty-month period begins they must notify the IRS of their intention to cease being a private foundation and become a public foundation. COMPLIANCE GUIDE, *supra* note 108, at 21.

120. The charity must have been in existence for at least sixty months (five years). *Id.*

121. The exit tax includes the following parameters:

Section 507(c) states the two ways a private foundation could have to pay taxes.¹²² Under Section (c)(1), the IRS determines a private foundation's penalty tax by reviewing the benefit the tax exemption has inured upon the organization since it became a private foundation.¹²³ Under Section (c)(2), the IRS looks at the valuation of the net assets of the foundation either on the day the organization took action to terminate its private foundation or on the day it ceased being a private foundation (whichever is greater).¹²⁴ The Committee summary states the reasoning of adding this exit tax into the Code, stating that "[a] charity should not be permitted to deliberately cause loss of its exempt status in order to relieve itself of the law's limitations upon its activities, after it has already obtained substantial tax benefits."¹²⁵

The reasoning for adding an exit tax to private foundations is similar to the rationale behind the NFL leaving its tax exemption. Although a sports league is not a charity, the reason for not allowing a charity to voluntarily revoke their exemption without a penalty should invoke the same rationale in relation to a sports league. Essentially, the NFL should not be allowed to voluntarily revoke its status without paying an exit tax. The NFL is deliberately causing the loss of its exempt status by changing its bylaws to state "for profit." However, it has already benefitted from sixty plus years of tax benefits. Therefore, there must be a bill introduced to add a section about termination for business leagues,¹²⁶ similar to Section 507(c) for private foundation termination.¹²⁷ This would then penalize sports leagues in the future for voluntarily surrendering their tax exemption.

There is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of—

(1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or

(2) the value of the net assets of such foundation.

I.R.C. § 507(c) (2012).

122. *Id.*

123. *Private Foundation Termination Tax*, IRS (Mar. 24, 2016), <https://www.irs.gov/Charities-&Non-Profits/Private-Foundations/Private-foundation-termination-tax>.

124. *Id.*

125. STAFFS OF JOINT COMM. ON INTERNAL REVENUE TAX'N & COMM. ON FIN., 91ST CONG., SUMMARY OF H.R. 13270, THE TAX REFORM ACT OF 1969, at 20 (Comm. Print 1969) [hereinafter SUMMARY].

126. *See generally* I.R.C. § 501(c)(6) (2015).

127. *See id.* at § 507(c) (2012).

2. *Expatriation Tax*

Additionally, the tax code penalizes individuals for surrendering their United States citizenship through an expatriation tax.¹²⁸ Expatriation occurs when a person decides to renounce their American citizenship to avoid paying United States income tax when living in a foreign country.¹²⁹ There have been a record number of Americans renouncing their citizenship—mainly due to the more stringent reporting standards of foreign bank accounts.¹³⁰ To abandon American citizenship, a person has a few different options: (1) renounce his or her United States nationality before a diplomatic or consular officer of the United States, (2) receive citizenship in a foreign country, or (3) take an oath in front of a foreign national.¹³¹

After renouncing his or her citizenship, a person must pay back taxes for the year that they left and the property that they own.¹³² The IRS determines the specific dollar-amount to be paid back through a mark-to-market regime, which means “[a]ll property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.”¹³³ The person must pay taxes on the value of whatever gain the person has amassed from the property he or she owns at the time of revoking his or her citizenship.¹³⁴ The rationale behind the expatriation tax is similar to the rationale behind the private foundation: an individual has to pay back the value of the benefit he or she has amassed pre-change in tax exemption.

128. *Id.* at § 877A.

129. *See Expatriation Tax*, IRS, <http://www.irs.gov/individuals/international-taxpayers/expatriation-tax> (last visited Sept. 22, 2017).

130. Liam Plevin & Laura Saunders, *Expatriate Americans Break Up with Uncle Sam to Escape Tax Rules*, WALL ST. J. (June 16, 2014, 11:08 PM), <http://online.wsj.com/articles/more-expatriate-americans-break-up-with-uncle-sam-to-escape-tax-rules-1402972439>.

131. There are actually seven ways to renounce American Citizenship which are stated in 8 U.S.C.S. § 1481(a)(1)–(7). However, you only have to repay taxes on your property under subsections one through four of section (a), because you only have to repay taxes if you are renouncing your citizenship for the purpose of avoiding taxes in the future. *See Expatriation Tax*, IRS (May 13, 2016), <https://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax>.

132. *Id.*

133. I.R.C. § 877A(a)(1) (2012).

134. *Id.* There are some standards to minimize the amount of tax required. *See, e.g., id.* at § 877A(a)(3) (“Exclusion for certain gain.”).

B. *Revocation of the Language in Business Leagues*

In the past, certain bills have tried to repeal the tax exemption for sports leagues.¹³⁵ However, thus far, none of these bills have passed the House—a strange phenomenon as Congress is not averse to repealing antiquated exemptions that no longer serve its purpose. For instance, in 1957, Congress repealed the exemption for all savings and loan associations.¹³⁶ “[T]he purpose of the exemption . . . was no longer appropriate, because the savings and loan industry had developed to the point where the ratio of capital account to total deposits was comparable to nonexempt commercial banks.”¹³⁷ Similarly, Congress has repealed exemptions when the purpose is no longer valid, such as exemptions for legal service organizations in 1992 and health insurance agencies.¹³⁸

However, the reason the bills have not passed before now is due to the NFL’s lobbying against them. Today’s landscape is very different. The NFL no longer has a stake in the outcome of section 501(c)(6). Therefore, the Senate Finance Committee could repeal the language stating, “or professional football leagues (whether or not they administer a pension fund),”¹³⁹ because this language is now extremely redundant. The NFL no longer uses the exemption, and no other professional football leagues exist due to the American Football League (AFL) and NFL merging in 1966.¹⁴⁰

Although changing the language will neither hinder the PGA, LPGA, nor the NHL from still qualifying as tax-exempt,¹⁴¹ it will hinder the NFL from reverting back to tax-exempt status. If the NFL decides that it prefers tax-exemption status, then it would have to either lose the pension fund or require the wording to be reestablished into the code.

CONCLUSION

The sports league tax-exemption has been around since nearly the beginning of the tax code. The language of section 501(c)(6) has not changed

135. PRO Sports Act, H.R. 3965, 113th Cong. (2014).

136. HOPKINS, *supra* note 13, at 7.

137. *Id.* at 7–8.

138. *Id.* at 8.

139. See I.R.C. § 501(c)(6) (2015).

140. *June 08, 1966: NFL and AFL Announce Merger*, HIST. (2009), <http://www.history.com/this-day-in-history/nfl-and-afl-announce-merger>.

141. This is because their tax-exempt status stems from being “business leagues.” I.R.C. § 501(c)(6) (2015).

or been altered since 1966, when the NFL and the finance committee circumvented Congress.¹⁴² However, with the changes in the NFL tax status as a for-profit organization, it may be time to make a change in the law.

After looking at all the options the tax code faces and the penalties the NFL is evading, the best course of action seems to require (1) an exit tax and (2) deletion of the code's professional football language. By doing so, the PGA (actually having the most savings from the tax exemptions), LPGA, and NHL will be unable to revoke their tax-exemption without paying back all the benefits they have incurred throughout the years. The exit tax could, and should, be structured like the private foundation calculations or the expatriation tax. Both look to the amount of money the organization or person has at the time of voluntarily leaving their respective status. The Private Foundation Section, Section 507, may be easier to implement as it is already based on an organization that is tax exempt, and is moving towards paying tax. By contrast, the expatriation exit tax is based on an individual attempting to elude taxes by renouncing his or her citizenship. Congress can create a statute that clarifies how a Business League terminates its status similar to Section 507(c) language.

The IRS has decided that they want to reprimand the behavior of moving easily through exempt status when they are discussing a charity by stating: "[a] charity should not be permitted to deliberately cause loss of its exempt status in order to relieve itself of the law's limitations upon its activities, after it has already obtained substantial tax benefits."¹⁴³ This rationale could be easily translated towards the sports leagues or any other tax-exempt organization. An organization, whether for charity or not, should not be allowed to benefit from a tax-exemption for a long period of time; revoking the exemption when the personal benefit of not having the exemption outweighs the benefit of having the exemption.

This Note has shown that there are multiple courses of action the IRS can undertake to address the issue of voluntary revocation of tax-exempt status. However, it is high time for the IRS to decide which options work best to create a code that reflects public sentiment.

142. *NFL Decade*, *supra* note 44.

143. SUMMARY, *supra* note 125.