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The 2017 Tax Cuts And Jobs Act: Analyzing Its Financial Impact On Division I Universities

By

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ABSTRACT

The Tax Cuts and Jobs Act has had a substantial impact in the United States since its inception in 2017. This tax code overhaul has had a profound effect on the way Division I universities operate their athletic department operations and fundraising efforts. By creating new channels of federal tax revenues and eliminating deductions, such as the "80/20" premium seating deduction that has been used by universities, athletic programs have already begun to see a shift in how they must operate. This modification is done in order to avoid any major repercussions from the new tax code. This thesis discusses the history of these types of deductions and the benefits that have been attributed to their use, and analyzes the consequences that have arisen from their sudden elimination from the tax code. Such consequences include universities having to find new ways to stimulate donor spending or having to develop various strategies to avoid additional taxation implications. Conclusions found from this study discovered that it has become difficult for many universities to understand the necessary steps they are allowed to take in order to provide quality information to donors and shareholders related to the TCJA.

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INTRODUCTION

Division I athletic programs have steadily become a substantial source of revenue generation for educational institutions. These athletic programs have become reliant on generous donations from growing pools of charitable boosters in order to create state-of-the-art facilities for their athletes and to provide the scholarships necessary to retain elite talent. The "arms race," the term given to the process by which universities are continuously updating and redeveloping their on-campus facilities to impress young recruits, illustrates the significance of competitive athletic programs to these universities (Redd 2018). For example, in 2018 Clemson broke ground on a $55,000,000 upgrade to its football facility, including the installation of a miniature golf course. In the same year, Kansas, a considerably less successfully football program, broke construction on a new indoor-football facility, thanks to a $50,000,000 donation (Redd, 2018). Such donations have been able to remain consistent year-over-year as a result of the tax incentives put in place by previous tax codes and administrations.

Prior to 2017, these donations were almost entirely tax-deductible, as stated in the tax code. A specific tax code section used by universities to deduct a large portion of these contributions is referred to as the "80/20 Rule." Originally, this rule gave donors the right to deduct eighty percent of their ticket purchases from their tax returns in exchange for purchasing premium seating for an athletic event.

However, recently under the Trump Administration's Tax Cuts and Jobs Act (TCJA) passed on January 1, 2018, various new tax regulations were put in place in order to stimulate the economy. These regulations caused shifts in areas ranging from corporate growth to consumer spending. In order to allow for these new tax regulations, the

administration found other areas of the tax code to modify to increase taxes. These changes caused some athletic donations to lose their previous deductibility status and, as a result, are now zero percent tax-deductible. Due to this drastic alteration of the tax code, many universities have already begun to feel the strain on their bottom line from losing these needed charitable contributions.

By reviewing the history of donor-related tax deductions and understanding its impact on the development of Division I athletic programs, the consequences of the Trump Administration's change in deductibles become apparent. These findings will help universities and donors become more informed of the TCJA's impact on colleges' vital athletic programs, and, in-turn, avoid potentially hindering the overall livelihood of the university.

HISTORY

Prior to January 1, 2017, the Internal Revenue Service stated, "If you make a payment to, or for the benefit of, a college or university and, as a result, you receive the right to buy tickets to an athletic event in the athletic stadium of the college or university, you can deduct 80% of the payment as a charitable contribution. If any part of your payment is for tickets (rather than the right to buy tickets), 100% of that part isn't deductible. Subtract the price of the tickets from your payment. You can deduct 80% of the remaining amount as a charitable contribution" (IRS, 2016). The "80/20 Rule" has been a highly utilized deduction for universities and their various programs since its official inception by Congress in 1988. It has also helped create a tight-knit relationship with universities and their dedicated alumni/donor base. These universities were

permitted to exchange the right to purchase premium tickets or seating to attend athletic events, and in return, donors were able to achieve massive tax-deductibles from their charitable donations. The purchase of the actual tickets, however, was not considered to be tax-deductible. The deduction was only applied to the contributions made specifically for the right to purchase priority tickets or seating (Flahaven, 2018). The remaining twenty percent of the contribution has never been tax-deductible because it is a “quid pro quo,” or an advantage granted in return for something, which in these cases would be the initial values of the seating or tickets themselves.

The IRS had key criteria to determine if these contributions were made for the primary purpose of benefitting the university itself. Establishing charitable intent was arguably the most important for donors to prove. Charitable intent can be described as the reasoning behind any persons’ gift or donation. For example, if a payment that was made for seating never exceeded the fair market value of the benefits received then no charitable deductions were to be allowed, since they were acquired at a discount. The value placed on donor benefits was also a means for the IRS to measure charitable intent. Universities themselves were in charge of placing value on these benefits, which cost a large amount of money and had a direct impact on donor decision-making. This helped play a large part as to why the “80/20 Rule” was established in the first place: to ease the burden for universities and the valuation estimates employed for donor benefits (Paglia, 2018). The universities would then be in charge of sending letters to donors explicitly stating the acknowledgement of a donation and the value of return from the benefits received. This was done in order to show that the value received from the donation was

more valuable to the school, rather than accepting a full payment for the fair value of their seating (Paglia, 2018).

There was a similar tax plan employed in the early 1980's by the Internal Revenue Service, Section 170 of the Internal Revenue Code (IRS, 1985), to rid the seating deduction from the tax code, similarly to the Tax Cuts and Jobs Act. Despite the market for college athletics and the revenues generated, there were still lobbying efforts by administrators and athletic directors to allow for deductions to be considered. The argument at that time was that if a tax-deduction was allowed for 'scholarship-fund gifts,' despite receiving preferential seating in return, then colleges wouldn't have any other choice but to seek more funding from state tax revenues. This would seem to ultimately cancel out any extra taxes collected by government and end up costing the states more, rather than simply allowing a deduction to be utilized. The IRS's main argument towards the outcry was a principle that has deep roots: a contribution can be considered as such only if nothing is received in return, for example, when a donor acquired benefits that included higher-quality seating or perks for the given market price.

The seats that were to become available to the donors were considered to be worth more than the donation itself. In lieu of this, some universities developed a two-step loophole that began with donors giving various sums of money to the colleges themselves. Usually, depending on the size of the donation, donors would be placed in a hypothetical line to purchase tickets that were significantly undervalued (Seidel, 2018). In 1986, large universities that held millions of donation dollars led a successful lobbying effort that opposed the ruling against seating deductions. However, it wasn't until 1988 that Congress officially voted to mention donations tied specifically to premium seating in the

tax code (Novy-William, 2019). This was met by a wave of praise and an explosive effort of seating expansions and ticket programs across the country to create ‘premium’ seats allowed by the government to meet the deduction requirements.

This recent history of deductible donations has allowed donors to invest vast amounts of capital towards their favorite Division I athletic programs. Each school in the Southeastern Conference (SEC), for example, is calculated to have an average of $38,200,000 of contributions in 2017 (Berkowitz and Varney, 2017). The overall revenues of SEC schools were located within the top thirty-five of all Division I programs, with Texas A&M coming in at number 2 behind the University of Texas. Programs like the University of Alabama, for example, have reaped the benefits of having a historically successful athletic program. This can be attributed in large part from having a loyal alumni base committed to the excellence and preservation of their athletic programs. In 2017, Alabama reported a total of $174,300,000 in revenue with charitable contributions making up around $33,000,000, or almost 19%, of the total. The success of competitive football programs over the years has been a significant component of these donations.

In 2017, Daniel L. Fulks, Ph.D., CPA prepared a report for the NCAA that intended to show the impact that athletics (men/women/coed) has on Division I universities’ financial statements. Subdividing various categories of information and comparing their effects to the overall or generated revenues can help determine the financial status of Division I intercollegiate sports. In FY2016, NCAA Division I Football Bowl Subdivision (FBS) athletic programs accounted for median total revenue of $68,614,000, or a 7.8% jump from the FY2015 total of $63,659,000. This is vastly in

part from the year-over-year growth in popularity of college football. If Division I football revenue is removed from these statistics, then the FY2016 median total revenue falls to $16,018,000, or a 77% drop (Attachment I). These numbers indicate that football remains by far the most popular—and profitable—athletic program.

What is more notable, however, is the year-over-year change in median total generated revenue. According to the NCAA report, generated revenues "are produced by the athletics department and include ticket sales, radio and television receipts, alumni contribution, guarantees, royalties, NCAA distributions, and other revenue sources that are not dependent upon institutional entities outside the athletics department" (NCAA, pg. 6). The median total generated revenue from football bowl subdivision (FBS) programs in FY2016 was $52,845,000, which was a 10.2% increase from FY2015 of $47,962,000. The FBS total generated revenue percent changed at a year-over-year pace that was larger than the total revenue change at 7.8%. This translates to Division I programs' ability to generate revenue from their athletics not just from donors, but also from TV deals and endorsement opportunities. However, if football is taken away from Division I athletic programs, then there is a seismic shift in the trend. The FY2016 total generated revenue plummets an astounding 95% to $2,842,000. Furthermore, there is a negative 2.5% change year-over-year from FY2015 total generated revenue that stands at $2,915,000 (Attachment I).

Another notable statistic from the NCAA report is that the percentages made up from cash contributions by alumni and others' stands as the largest subdivision of both the total generated and total revenues for Division I FBS programs. In FY2016, contributions from both alumni and other donors accounted for almost a fourth of total

generated revenue (23%) and almost a fifth of total revenue (19%) (Attachment II). With only ticket sales (22%) and broadcast rights (19%) coming close behind in contributions, with respect to generated revenue, there is no doubt as to what these universities have come to regularly expect from their consumer base. For example, for the 2018-2019 fiscal year, the SEC generated $720,600,000 in total revenue thanks to their athletic programs. This resulted in the average payout per school being nearly $45,300,000 (Berkowitz, 2020).

IMPACT OF THE TAX CUTS AND JOBS ACT

The data provided above explains how the growth of universities are largely entwined with the development of their athletic programs, and more specifically, the success of their donor-related activities (NCAA, 2017). These donations have steadily grown larger and larger over the years, due in part to the generous tax incentives that were associated with these types of charitable gifts. However, as of January 1, 2018, the TCJA changed the "80/20 rule" from having the popular eighty percent tax-deductible on charitable donations to having a total of zero percent tax-deductible for colleges. This deduction occurred when donations were made in exchange for access to premium tickets and seating to athletic events. This incredible shift in the Internal Revenue Services' deduction policy, originating from the Tax Cuts and Jobs Act in 2017, has caused many universities to worry about their ability to garner funds in support of vital athletics programs. Athletic programs are known to be crucial to the development and expansion of universities' brands and student population (Vanover and Debowes, 2013).

Another serious modification by the Trump Administration relates to the standard deduction: the standard deduction nearly doubled for individual filings, going from $6,300 to $12,200, and married individuals filing jointly, going from $12,600 to $24,400 in 2019. This has an impact on universities because it affects individuals who choose to claim the standard deduction, rather than itemizing their deductions. Due to the higher standard deduction thresholds, there is now less of an incentive for taxpayers to utilize charitable contributions as a means of reducing their tax burden.

Before the new tax codes were implemented, the House Ways and Means Committee estimated that the change in deduction practices for "amounts paid in exchange for college athletic event seating rights" would net the government around $200,000,000 per year (House Ways and Means, pg. 6). While this is obviously a gain for the federal government, many see this tax reform as being detrimental towards donor participation for university athletics. Jon Bakija, an economist at Williams College, calculated a drop of donor participation to be as high as twenty to thirty percent from the new law (Uhler, 2018). But others, like Duke University law professor Rickard Schmalbeck, claim that the change has been coming for a long time. Schmalbeck argues, "the notion that you should not be allowed a deduction for contributions that buy something, namely in this case seating privileges, is really just a sound tax policy argument (Uhler, 2018)." The Duke law professor then goes on to justify how the deduction variation will not affect his judgment on whether or not he will purchase tickets to Duke University sporting events. He states, "It does not depend on any particular predisposition about the virtues of the college sports system." (Uhler, 2018)

Those who support the new policy, like Schmalbeck, consider the change regarding the deduction loophole to be a constructive shift to more proper tax regulations.

It’s also worth considering the possibility that the popularity of the largest Division I college sports, such as football, basketball, and baseball, will increase the sale of tickets and donations towards athletic programs and academic institutions, no matter the rate of taxation imposed. The healthy year-over-year growth associated with these sports should be able to compensate for the dip associated with the policy change. An indicator used by some experts with analyzing the health of various sports is the percentages associated with television viewership. In October of 2018, the Fox broadcast network reported an 11% jump in viewership compared to that point in 2017, while their streaming services saw a 55% increase in “average minute audience” compared to the year prior (Hookstead, 2018). These reported increases help bolster the arguments supporting the policy change, and supporters have viable evidence as to why the new tax code shouldn’t have a legitimate impact on college athletics. On the other hand, fans staying home, rather than buying tickets and going to the actual game, can hurt supplemental spending that occurs during these events. Supplemental spending includes individuals coming to the game and buying parking, concessions, and team memorabilia in addition to the cost of the ticket.

Skeptics have argued that universities with larger fan bases, such as Louisiana State University (LSU), can’t possibly absorb such a large drop in donations correlating directly with a change in the tax code. LSU’s Senior Associate Athletic Director, Robert Munson, commented about how the school received more than $60,000,000 each year in donations annually tied directly to seating privileges (Seidel, 2018). It wouldn’t be

possible for a college to make up revenues of that caliber if there was a twenty percent drop, like Bakija predicts, in a reasonable time frame. Munson goes on to comment about how the drastic loss of donation revenue could potentially, "erase roughly ten million a year that the (LSU) Tigers contribute to the academic part of the institution . . . and could even make the department reliant once again on funding from the school's general coffers" (Novy-William, 2019). In other words, this loss of charitable contributions has an indirect effect on the revenues typically accounted for the academic functions of a university. There also is an underlying emphasis that the lost revenue negatively affects the student-athletes of these programs more than it positively benefits the government from the additional taxation incurred on individuals. With less money from donations, there is less money to go towards scholarships and for athletes to be properly provided with a well-rounded college experience including both athletics and adequate academics.

For football, it is typical for universities to expect a preliminary donation from potential ticket-holders before they are even considered for season tickets. Notre Dame, for example, requires a $1,500 donation to be granted a 'special contributor' status, mainly for those that have never attended the university, to be able to enter the season's ticket lottery (Notre Dame FAQ, 2020). Besides a handful of basketball programs, including Kentucky that sells season tickets for around $1,400, no other college sport can compete with football in areas relating to profit generation, such as ticket revenue or television rights. Sports that aren't as nationally popular or televised, such as swimming or wrestling, are the types of programs that will suffer before any type of budgetary cuts affect sports like football, baseball, or basketball. Women's sports, on the other hand, are largely protected from budgetary cuts made by administrators as a result of Title IX.

Passed by Congress in 1972, Title IX was created as an effort to impose federal protections against gender discrimination in any federally funded educational facility or program (Harvard Title IX Office, 2019).

In the NCAA report created by Fulks (NCAA, 2017), financials are presented that indicate how weak Division I athletics would be without football. As an example, without football, Division I athletics generated total revenues of $2,842,000, with total expenses of $15,956,000 (or more than 5 times the revenues) (Attachment II). When the financials include football, there is still a net deficit in revenues, however it remains nowhere near the astronomical levels of the less popular sports. It will be the student-athletes of these swimming, track, and wrestling programs, for example, who will most likely be affected the most. The amount of available scholarships will likely decline for these athletes considering they are known to be less profitable athletic programs at the universities.

OTHER TAX LAWS AFFECTING UNIVERSITY BUDGETING

The “80/20” rule has been regarded as a major marketing tool for universities to attract donor-related spending since its inception in the 1980s. The Tax Cuts and Jobs Act, having recently negated this tax break, has shaken up how universities approach offering packages of premium seating and perks for their alumni and fans, as well as their spending habits for athletics. However, the “80/20” rule isn’t the only tax law that applies to a university and their approach to the budgeting and spending phases of their athletics program. In fact, there are dozens of other repercussions that have occurred due to the TCJA that have further complicated the processes used to deal with these implications.

For example, the TCJA implemented a new tax code, called Section 4960, and this change has been in effect since December 31, 2016 (Ropes & Gray, 2019). The code is designed to impose an excise tax equal to the current corporate tax rate—21%—on the five highest paid employees of applicable tax-exempt organizations (ATEOs) if, during the taxable year, the organization pays these individuals over $1,000,000. Employees with salaries this large typically include seasoned university presidents or athletic directors.

In 2017, 39 of the 50 highest paid employees per state were men Division I football or basketball coaches (Gibson, 2017). The highest paid employees for any Division I program has typically been the head coach for one of the big three sports (football, basketball, or baseball). In 2019, USA Today's annual database of Football Bowl Subdivision coaches illustrated that the coaches of top-tier programs are, on average, being paid around $2,670,000 per year, or up 9% from 2018. The database also shows that for the first time ever, every head coach for the SEC is being paid at least $3,000,000 (Lederman, 2019). Also in 2019, it was reported that a record-setting sixty-nine Division I basketball coaches will make over $1,000,000 for the season (Shapiro, 2019). For Ole Miss, this excise tax is covered by their athletic foundation, but that may not be the case for other athletic programs. Impacts of this tax include higher tax burdens on universities, who are already being effected by a loss in contribution revenues. Colleges with multiple successful athletic programs will have to cover the excise tax for various coaches exceeding the $1,000,000 threshold.

Another tax law provision affecting university athletic development from the TCJA has been the increase in the Estate Tax limit. Prior to 2017, the limit was

$5,490,000 million per person, or around $11,000,000 million for a married couple. The limit now stands at $11,180,000 million per person, or $23,360,000 million per married couple. This has a significant impact for state universities because the dollars that would be taxed over the exemption would go towards the funding of these same institutions for various academic or athletic projects. Seeing this massive drop off of federal taxation due to the raise in the Estate Tax limit hinders universities' expectations for future tax dollars without having to invest in significant lobbying efforts. With this being the case, investment dollars spent on lobbying can take away from re-investment opportunities into the university itself for long-term benefits. However, it can also be argued that the higher limit means larger legacy donations coming from these individuals to the universities.

Section 4968 of the TCJA has also become a burden for universities that have established massive endowment funds. These endowments can be used by colleges for an array of expenses such as construction of new residential halls or academic buildings. Most notably, roughly 49% of these endowment funds go towards financial aid and scholarship opportunities that could be granted to prospective students, according to a study conducted by the National Association of College and University Business Officers in 2018. Since the inception of section 4968, an excise tax of 1.4% has been placed on the net investment income of applicable educational institutions that meet certain criteria. This criterion begins with universities having at least 500 tuition paying students, with at least 50% of these students being geographically located in the United States. These same institutions also must have at least $500,000 of endowment assets per student to be placed under this new excise tax (Eversheds Sutherland, 2019).

The sheer size of these endowments can top hundreds of millions, with the highest ranked universities to be in the tens of billions. At the end of 2018, Harvard University held the position of highest endowment in the country with a record $39,233,736,000, up 6% from the previous year. Comparably, the median university endowment fund at the end of 2018 was slightly over $65,000,000 (Kerr, 2019). The ramifications from this new tax can have significant consequences on a university, such as Harvard, with hundreds of millions of investment income dollars on the line. However, this should not deter a university from staying below the minimum endowment threshold. In 2018 alone, the average returns on these endowments topped 8.2% for the fiscal year, raising the 10-year average returns of endowment investment returns to 5.8% (Seltzer, 2019).

Another example can be illustrated from Stanford University and its recent challenges facing the TCJA's excise tax. As of 2020, Stanford is facing up to $43,000,000 in taxes on their massive $27,700,000,000 endowment fund, which currently ranks as the third largest private college fund in the United States. The university also estimates that they will soon have to pay up to $40,000,000 in taxes for both realized and unrealized capital gain from its 2019 fiscal year (Lorin, 2020). Cristian Tiu, an associate professor of finance at the University of Buffalo, calls this new tax, "an unhealthy precedent" (Lorin, 2020). The main reasoning behind professor Tiu's assessment comes from the tax causing indirect effects on long term budgetary spending and charitable giving that universities now must redefine (Lorin, 2020).

Another new section of the tax code aimed specifically at targeting unrelated business income earned by trusts or universities is Section 512(a)(6). The organizations that are subject to this tax must meet the criteria of Section 511 in the tax code, which

states that this shall, “apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions.” (Findlaw, 2020) An example of what this code is targeting can be found at the University of Mississippi. The Inn at Ole Miss, which serves as a hotel and conference center on campus for visiting fans and guests, counts as an operation that is wholly owned by the university itself. However, this entity is still seen as an unrelated business generating income. The income generated from this establishment, even though supported by a tax-exempt educational institution, must report unrelated business taxable income separately from the university thanks to the new tax code.

Unrelated business taxable income can be described as, “the gross income derived by any organization from any unrelated trade or business . . . regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business” (Legal Information Institute, 2020). Essentially, Section 512(a)(6) is put in place to treat the Inn at Ole Miss as any typical taxable business. These entities are to be taxed under the same rates as any entity operating under normal circumstances. This section presents another obstacle universities must face under the TCJA as it relates to predicting internal revenue streams and budgetary planning for future investments and expansions.

PERCEIVED CONSEQUENCES OF THE TCJA - RESULTS FROM A SOUTHEASTERN CONFERENCE SURVEY

With the introduction of the Tax Cuts and Jobs Act of 2017, universities have begun to develop budgetary habits to mitigate harsh outcomes. Schools in the Southeastern Conference (SEC), for example, have been especially crafty in attempts to avoid deduction problems with their donors. In a survey sent to all fourteen of the athletic departments in the SEC, designed to gauge the shift in their internal policies, eight universities responded and explained the changes being made in their offices to deal with the various impacts made by the new tax laws. The names of the individual respondents have been replaced with their title and office as a means of anonymity for those surveyed. The University of Mississippi's Fowler Staines, CPA, the CFO of the Ole Miss Athletics Foundation, was instrumental in gathering this information and extremely beneficial in the research conducted with these universities.

When asked about any specific changes being made to their priority seating for ticketed sports due to the TCJA (Attachment V, Question One), many schools reported that they would not be making a drastic change. However, a handful of schools have made subtle changes to avoid any confusion with donors. For example, Mississippi State's Director of Annual Giving explained that their office started calling any donation tied to a ticket or premium seat a "required seat donation." This assigned name to the specific class of donations tied to premium seating helps to avoid misguided decisions made on the part of donors and makes it clear that these donations are no longer tax deductible. This classification also helps to separate the unique seat donations from other philanthropic gift giving funds received, which still remain completely deductible after the TCJA.

When asked the same question (Attachment V, Question One), LSU's Development Officer for Annual Giving explained how their season ticket pricing system had already been set up in a way that includes two prices. These prices include a season ticket cost and a per-seat contribution that holds to the 80% deductibility, which is separate from any philanthropic donations that include complete deductibility. After the TCJA, the pricing remains the same for LSU. The university simply stripped the deductibility portion in tax letters to donors. LSU Athletics also kept their ticket prices at the same price level due to their priority point system remaining a strong sell for donors to continue giving at high levels. LSU's priority point system, similar to most major universities' point systems, is used to reward donors by granting benefits such as free parking upgrades or away game tickets (LSU Track and Field, 2020). Based upon this information, it is clear that SEC schools have leaned to avoid altering any ticket prices solely from the impact of the TCJA. Instead, the leaders at these schools have made it a priority to alert to donors that the deductibility no longer exists.

Another question in the survey was asked to understand the biggest changes made in SEC Athletic offices as a result from the TCJA (Attachment V, Question Two). The University of Kentucky's Associate Director of Development reported that their office no longer sends out official tax receipts to donors. Instead, Kentucky's offices send out gift acknowledgement letters that include the fair market value of premium seating, but these letters don't include any deductibility percentages. These percentages are excluded to avoid any confusion on the donor's part. This acknowledgment also confirms that a transaction did, in fact, occur between the two parties. When LSU's Development Officer for Annual Giving was asked the same question, they explained that there was no major

change. However, they did identify the opportunity to educate donors of what exactly constitutes a ‘contribution’ and what is a ‘charitable gift’ when acquiring season tickets. LSU’s Development Officer believed that this helps LSU gain more philanthropic gifts by educating the impact that these donations have on their athletic programs and selling the deductibility of charitable gift giving. Again, these types of letters are more forward-looking, and are focused on providing explicit, explanations to donors, instead of dwelling on the loss of the seating deduction.

When asked the same question, Auburn’s Assistant Director of Annual Giving explained that the discussion of deductibility itself has been a major topic (Attachment V, Question Two). Donations made by donors are meant primarily for the benefit of the student athletes themselves, not solely for the benefits of tax deductibility and benefits granted by the university. To Auburn’s Assistant Director, the real sell of donations is made by focusing on the seat amenities available to the donors and for the betterment of the students that benefit from these donations. By going back to the roots of what donations are meant to mean to the athletic program, Auburn’s Assistant Director and LSU’s Development Officer have similar outlooks in that there is an opportunity to educate their booster base in order to re-invigorate the spirit of philanthropic gift giving.

Some athletic departments have instituted additional incentives in order to retain high-spending donors. The University of Florida’s Assistant Director of Annual Giving explained how they have added perks to upper levels of annual and major gift giving in order to retain individuals that wanted to drop annual contributions because of the deduction loss. Florida’s Assistant Director then explained how their office has seen no substantial changes in the amount of renewals or retentions within their athletic programs’

donor bases. This can be a sign that the strategies of additional benefits employed by Florida garnered the support of their donors in a way that makes them want to remain an active and viable source of funding for athletics.

The priority point systems used by universities are helpful ways to rank donors by the amount they have given to various programs. This system is used to grant perks, such as an upgraded parking pass or extra tickets, and establishes who is able to purchase season tickets first for sporting events. These systems have generally remained untouched by the athletic programs surveyed. However, the use of these points and the way they remain deductible in areas differ among universities.

When asked about any changes made to the methods of their priority point systems (Attachment V, Question Three), how points are gained, and how points are used, LSU's Development Officer explained how their Executive Legal Counsel instructed that the way the point system is used by their programs doesn't guarantee any seat locations. Because of this, there is no direct ticket benefit to the donor, which allows LSU to continue offering points for gifts and contributions with no change in how they are rewarded and no change to how gifts are deductible.

Mississippi State's Director of Annual Giving, when asked about their point system (Attachment V, Question Three), explained how their legal counsel advised that any donation receiving priority point status should not receive any sort of tax deductibility. Unlike LSU, Mississippi State has created a process that allows donors to decline priority points in order to remain eligible for deductions on gifts that don't involve seat donations. For philanthropic giving, this forces donors to choose between

receiving points for future benefit or taking the tax deduction associated with charitable donations.

When these programs were asked about any fluctuations of philanthropic giving (Attachment V, Question Four), their responses were mixed. This can partially be attributed to the fact that the survey was sent before the end of most of these programs' fiscal years. Some programs were frankly unable to answer this question because most gift giving is based on the on-field performance of their respective athletic programs. This can be seen in Auburn's response from their Assistant Director of Annual Giving, who stated that their university has seen no increase or decrease in philanthropic giving, which they credit to the fact that most season ticket holders hold off on renewing tickets and charitable gifts until later in the renewal process; on-field performance is always the largest factor with gift giving. The same can be seen in the response from Kentucky's Associate Director of Development, who predicted similar giving numbers to their previous year, however the information needed to accurately understand the philanthropic gift dollars trend to be received is not yet available.

Florida's Assistant Director of Annual Giving pointed to a recent spike in their philanthropic and major gift giving resulting from the TCJA. Their office explained that donors that have been used to writing off their ticket contributions still require these write-offs for taxation purposes. Because of this, some individuals have increased the number of smaller gifts given to the university to meet the requirements for a deduction. Florida's Assistant Director continues to explain how many donors have accrued additional priority points by contributing extra charitable gifts to the university, rather than taking the typical deduction that these individuals have become used to over the

years. Accruing these priority points improves these donors' position in the ranking system used by the University of Florida. They credit this new trend to the pitching tactics utilized by Florida's athletic foundation that is meant to incentivize major gift giving in an effort to continue acquiring donation dollars.

When these programs were asked about any sizable drop of season ticket holders in higher-value seating sections because of the loss in deductions (Attachment V, Question Five), the University of Missouri's Assistant Director of Development explained how this has been where Missouri has taken its largest financial hit. Missouri's Assistant Director elaborated that their premium seating areas (club seats and boxes) have seen a decrease in renewals, as well as their non-premium seating sections. Missouri's donor base is considered to be extremely transactional, so the biggest losses came from donors that gave $350 - $1,500 thanks to their per seat donation requirement. In order to reacquire donor dollars that they lost because of lost seat purchases, Missouri has pushed for philanthropic gifts from their donors, using the 100% deduction as the main selling point. These gifts would go on to add to the donor's priority point totals that can go back to potentially generate some of the ticket revenue lost.

Other universities surveyed have not necessarily seen a decline in season ticket holders. Rather, they have seen a decrease in the amount of seats purchased by individual ticket holders. For example, LSU's Development Officer explained how their office has seen less than a 1% drop in renewals from the 2017 football season to the 2018 football season. In fact, he points out that due to marketing efforts focused on promoting season ticket sales, they will actually see an increase in season ticket sales for the current year. LSU can also contribute this recent success in ticket sales to an outstanding past few

years of on-field performance by their football program. However, LSU's Development Officer admitted that their offices have had conversations with season ticket holders about intentions to drop the seat counts involved in their purchases. Looking at on-field success specifically, where programs like LSU has thrived in recent years, Florida's Assistant Director of Annual Giving admitted that the fear of missing out from donors has far outweighed the tax implications stemming from premium seating purchases that go on to benefit successful athletic departments.

ALTERNATIVE EFFORTS

In attempts made by universities to give their donors advice on how to avoid any unforeseen financial issues from the Tax Cuts and Jobs Act, athletic offices have developed strategies to best move forward for donating activity. But the issue with these strategies stems from the fact that the Internal Revenue Service doesn't provide any specific guidelines for universities to create these plans. Instead, it has rested on the shoulders of the Division I athletic offices and general counsel at universities to create their own guidelines.

For example, before the tax code took effect at the beginning of 2018, in an attempt to alleviate booster complications due to the elimination of deductions, some universities began instructing their alumni bases that it would be in their best interest to pay-forward donations for premium seating. Paying-forward can be done by giving universities money for future years in order to secure season tickets early. This would avoid the loss of their tax deductions while also helping university athletics prevent a potential drop in donations from donors rescinding their plans to donate.

A more in-depth example looks at the University of Florida and the tactics used to avoid donor repercussions. Where the TCJA eliminated popular athletic-donor deductions used by universities, it also nearly doubled the standard deduction that can be claimed when filing taxes. In turn, this has caused most lower and middle-income citizens to take the new, larger standard deduction, rather than itemizing their taxes. This action goes on to affect the charitable tax deductions that have typically been taken by these donors. In light of this, in 2018, Florida began instructing donors to consider gifting the university stock or appreciated property. In doing so, these individuals would be able to deduct the full values of these contributions if they decide to itemize their yearly taxes. If they instead decided to take the enlarged standard deduction, however, they would be able to deduct the gains on the appreciated property if it had been held for over a year, constituting the appreciated amount as a long-term gain.

Another means used by Florida to encourage donor's continued support has been to create a 'bundle' of gifts that takes multiple years of giving and creates one large gift in a single year. For example, if a family is used to donating $1,000 per year to the University of Florida, than the school has begun recommending to donate $4,000 every four years. In doing so, the family would itemize their deductions in the same year as the large donation and take the standard deduction in the other three years when there has been no donation. This essentially created the idea of a 'bundle' taking form (University of Florida Advancement, 2018).

These efforts appear to be efficient moves made by the University of Florida in protecting donor interests. However, considering that there remains to be no standard set of guidelines created by the federal government, it's still a murky environment for donors,

and university offices have to work double-time to operate and advise individuals adequately. Currently, it has become a normal practice for universities to gain credible advice from public accounting firms to understand what is in the realm of their legal limits. But even advice from these firms does not totally decrease the burden on individual donors. Without any formal guidelines or recommendations from the IRS, the universities can only do so much; donors still remain liable for additional tax implications, not the universities themselves. In essence, the IRS has become a reactive government entity as it relates to universities and their strategies involving tax implications from the TCJA, rather than a proactive entity. Universities are now given the ability to employ internally made strategies designed to advise donors on ways to continually give to these schools, without immediate discretion from the government.

Research conducted by Katy Morgan for The University of Minnesota Duluth (UMD), a Division II program, discussed how their athletic department should best respond to the Tax Cuts and Jobs Act, specifically as it relates to philanthropy and premium seating strategies (Morgan 2018). Her research is mainly focused on scholarly research that includes reaching out to various athletic programs and utilizing readily available contemporary news sources, similar to the methods used in this thesis (Morgan 2018). Ms. Morgan's thesis is meant to help curb the impact on UMD's Athletic Department only, without considering the effects that the TCJA has on other smaller universities or Division I programs.

The research undergone by Ms. Morgan showed that many universities have decided to continue their typical sales pitches to donors as they have done in the past (Morgan 2018). The only difference is that universities now state that contributions

typically used for priority seating are no longer tax-deductible. This would avoid any disruptions in the processes used by the athletic department as it pertains to contributions by ticket holders. Ms. Morgan believes that this is also the best route for UMD's Athletic Department (Morgan 2018). Her reasoning stems from finding a trend that ticket holders paying for premium seating account for roughly 10% of the $1,000,000-$2,000,000 philanthropic contributions brought in for UMB Athletics yearly (Morgan 2018). Paying for these seats, as she points out, are mostly made solely for the ability to access preferential access in arenas, rather than the tax incentives themselves (Morgan, 2018).

The thesis concludes by stating how the use of transparency by the UMD Athletic Department will prove beneficial (Morgan 2018). For example, by communicating with ticket holders their options moving forward, as it relates to the TCJA, this will create a softer transition into any future methods utilized by the athletic department. Also, if the university chooses to implement new processes to the tax code in the future, allowing athletic staff and external shareholders to have a say will ensure a higher success rate of these new strategies.

CONCLUSION

Looking back at the history that incentives in the tax code have had on Division I athletic programs, it becomes clear how large of an impact the new tax code has had on universities. These consequences are far-reaching. They vary from the redaction of deductions that have become customary with donor spending and gift giving to failing to employ any standard set of guidelines that could be utilized by universities to properly inform and advise consumer bases on tax implications.

It is difficult to evaluate the real impact that these new tax regulations have had on university athletics until more data is distributed and analyzed from donor spending trends. There are other factors to consider besides the tax code itself, however, including the on-field performance of athletic programs. Football programs at LSU and Clemson, for example, have had very successful years, which will likely increase donor spending without concern of the tax code's consequences.

At this time, Division I athletic departments should work on selling to their donor base the idea that the elimination of these deductions shouldn't deter them from purchasing seats or donating at the same prior-year rates. Instead, the focus should be on the spirit of philanthropic giving and supporting their favorite university athletic programs.

ATTACHMENT I

	FBS	Autonomy	Non-Autonomy	FCS	Div. I w/o Football
Median Total Revenue					
2016	68,614,000	97,276,000	33,470,000	17,409,000	16,018,000
Percent change from 2015	7.8%	6.1%	5.3%	6.7%	5.1%
2015	63,659,000	91,688,000	31,771,000	16,314,000	15,243,000
Percent change from 2014	2.2%	4.6%	6.6%	6.5%	5.8%
2014	62,275,000	87,637,000	29,797,000	15,315,000	14,413,000
2004	28,214,000	44,724,000	18,175,000	7,770,000	7,281,000
Median Total Generated Revenue					
2016	52,845,000	94,903,000	13,195,000	4,492,000	2,842,000
Percent change from 2015	10.2%	10.8%	5.3%	11.0%	-2.5%
2015	47,962,000	85,655,000	12,526,000	4,047,000	2,915,000
Percent change from 2014	7.9%	4.9%	5.3%	-2.2%	9.3%
2014	44,455,000	81,660,000	11,895,000	4,137,000	2,667,000
2004	22,864,000	40,819,000	8,557,000	2,047,000	1,469,000

ATTACHMENT II

REVENUE DISTRIBUTION PERCENTAGES DIVISION I – FBS

FISCAL YEAR 2016 – BASED ON MEAN VALUES

	Total Subdivision Percent of	
	Gen. Rev.	Total Rev.
Total Ticket Sales	22%	18%
NCAA and conference distributions	13%	11%
Guarantees and options	2%	2%
Cash contributions from alumni and others	23%	19%
Third-Party Support	0%	0%
Other:	0%	0%
Concessions/Programs/Novelties		3%2%
Broadcast Rights	19%	15%
Royalties/Advertising/Sponsorship	9%	8%
Sports camps	1%	1%
Endowment/Investment Income	2%	2%
Miscellaneous	3%	3%
Total Generated Revenues	100%	81%
Allocated Revenues:		0%
Direct Institutional Support		9%
Indirect Institutional Support		2%
Student Fees		6%
Direct government support		1%
Total Allocated Revenues		19%
Total All Revenues		100%

ATTACHMENT III

SOURCES OF REVENUES
DIVISION I – FBS

FISCAL YEAR 2016 – MEDIAN VALUES

Total Ticket Sales	8,937,000
NCAA and conference distributions	4,715,000
Guarantees and options	837,000
Cash contributions from alumni and others	9,155,000
Third-Party Support	0
Other:	
Concessions/Programs/Novelties	1,015,000
Broadcast Rights	2,516,000
Royalties/Advertising/Sponsorship	3,995,000
Sports camps	78,000
Endowment/Investment Income	238,000
Miscellaneous	0
Total Generated Revenues	52,845,000
Allocated Revenues:	
Direct Institutional Support	3,886,000
Indirect Institutional Support	263,000
Student Fees	2,257,000
Direct government support	0
Total Allocated Revenues	13,730,000
Total All Revenues	68,614,000

ATTACHMENT IV

NET OPERATING RESULTS
DIVISION I MEDIAN VALUES

FISCAL YEARS 2004, 2014-2016

Football Bowl Subdivision	2004	2014	2015	2016
Total Generated Revenues	22,864,000	44,455,000	47,962,000	52,845,000
Total Expenses	28,991,000	63,959,000	66,295,000	71,689,000
Median Net Generated Revenue	(5,902,000)	(14,734,000)	(12,868,000)	(14,407,000)
Football Bowl Subdivision - Autonomy				
Total Generated Revenues	40,819,000	81,660,000	85,655,000	94,903,000
Total Expenses	43,323,000	87,292,000	92,208,000	98,913,000
Median Net Generated Revenue	(1,549,000)	(3,433,000)	(2,676,000)	(3,570,000)
Football Bowl Subdivision - Non-Autonomy				
Total Generated Revenues	8,557,000	11,895,000	12,526,000	13,195,000
Total Expenses	18,622,000	29,797,000	31,910,000	33,113,000
Median Net Generated Revenue	(8,444,000)	(18,267,000)	(19,173,000)	(19,893,000)
Football Championship Subdivision				
Total Generated Revenues	2,047,000	4,137,000	4,047,000	4,492,000
Total Expenses	7,810,000	15,154,000	16,174,000	17,290,000
Median Net Generated Revenue	(5,907,000)	(11,041,000)	(12,020,000)	(12,550,000)
Division I without Football				
Total Generated Revenues	1,469,000	2,667,000	2,915,000	2,842,000
Total Expenses	7,147,000	14,322,000	15,066,000	15,956,000
Median Net Generated Revenue	(5,266,000)	(11,245,000)	(11,764,000)	(12,595,000)

ATTACHMENT V

Question One	Did your office make any significant changes to priority seating for ticketed sports (i.e. include donation in ticket price, remove donations, increase ticket price etc.) due to the tax change?
Question Two	What is the biggest change your office has made as a result of this new tax code?
Question Three	Did you make any changes to the way you do priority points, including how donors gain the points, what they are used for, etc.?
Question Four	Have you seen an increase or decrease in philanthropic giving?
Question Five	Did you have a lot of season ticket holders drop out of the higher value sections now that is not deductible, and if so, how did you combat this?

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