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## Official Timeout on the Field: Critics Have Thrown a Red Flag and are Challenging the NFL's Tax-Exempt Status, Calling for It to Be Revoked

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OFFICIAL TIMEOUT ON THE FIELD: CRITICS HAVE  
THROWN A RED FLAG AND ARE CHALLENGING  
THE NFL'S TAX-EXEMPT STATUS, CALLING  
FOR IT TO BE REVOKED

*“If they quack like a profit-making entity and waddle like a profit-making entity, they should be taxed like a profit-making entity.”*

– John M. Strefeler & Leslie T. Miller<sup>1</sup>

I. INTRODUCTION

Recently, the Internal Revenue Service (“IRS”) has come under fire for allegedly targeting particular groups and organizations that were applying for federal tax-exempt status.<sup>2</sup> Most of the highly publicized controversies have regarded 501(c)(4) organizations, which are more commonly referred to as civic leagues or social welfare organizations.<sup>3</sup> Specifically, the allegations claimed that the IRS singled out groups applying for 501(c)(4) tax-exempt status whose names sounded too political in nature.<sup>4</sup> These targeted groups were then subject to extra scrutiny to determine if they actually qualified for tax-exempt status, given that such groups may not engage in political activities as their primary purpose.<sup>5</sup> Although these controversies have yet to be fully resolved, they have

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1. John M. Strefeler & Leslie T. Miller, Article, *Exempt Organizations: A Study of Their Nature and the Applicability of the Unrelated Business Income Tax*, 12 AKRON TAX J. 223, 230-31 (1996).

2. See Doug Farrar, *The U.S. Senate May – and Should – Review the NFL’s Tax-Exempt Status*, YAHOO SPORTS (May 21, 2013), <http://sports.yahoo.com/blogs/nfl-shutdown-corner/congress-may-review-nfl-tax-exempt-status-004521453.html> (explaining that IRS has recently faced allegations of targeting groups seeking tax-exempt status).

3. See Dylan Matthews, *Everything You Need to Know About the IRS Scandal in One FAQ*, WASHINGTON POST (May 14, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/14/everything-you-need-to-know-about-the-irs-scandal-in-one-faq/> (discussing IRS scandal of 2013, where IRS targeted groups applying for tax-exempt status, especially 501(c)(4) applicants).

4. See *id.* (suggesting IRS targeted applications from organizations whose names implied that organizations’ activities were primarily political).

5. See *id.* (explaining that extra scrutiny from IRS likely came about because 501(c)(4) organizations may only lobby/organize and may not “interven[e] in ongoing political campaigns,” and overly politically-sounding names may have called into question the associated organization’s activities).

reignited the debate about the utility and fairness of the IRS's policies for granting organizations tax-exempt status.<sup>6</sup>

When people think of tax-exempt organizations, they most often think of charities and other foundations or organizations that provide a public service or public good.<sup>7</sup> For example, when people hear "tax-exempt organization," they often think of entities such as the American Red Cross.<sup>8</sup> As it turns out, however, the Internal Revenue Code (IRC), which codifies the federal tax law, enables a much broader array of organizations to receive tax-exempt status.<sup>9</sup>

Section 501(c) of the IRC identifies the types of organizations that can receive tax-exempt status.<sup>10</sup> Currently, there are twenty-nine different types of tax-exempt entities identified in that section.<sup>11</sup> Included are the aforementioned 501(c)(4)'s, as well as charities, educational, and religious organizations; all three of which are labeled 501(c)(3) organizations.<sup>12</sup> Other entities one may expect to see listed are corporations organized by Acts of Congress, such as Federal Credit Unions, which are classified as 501(c)(1) organizations.<sup>13</sup> And then there is the 501(c)(6) exempt category for "business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues."<sup>14</sup>

Yes, that is correct, "[s]ection 501(c)(6) specifically mentions professional football" as a type of organization that can receive tax-exempt status.<sup>15</sup> And, yes, this means exactly what you think – the

6. See Brent Schrottenboer, *To Tax or Not? The NFL's Relationship with the IRS*, USA TODAY (May 30, 2013), <http://www.usatoday.com/story/sports/nfl/2013/05/29/nfl-sports-leagues-irs-tax-exemption/2370945/> (explaining how IRS controversies have given rise to debates regarding "fairness of the tax code and questions about whether some groups are worthy of tax exemptions").

7. See Aarthi Manohar, *Take a Hike! Why the NFL Shouldn't Enjoy Tax-Exempt Status*, MOORAD SPORTS L.J. BLOG (Jan. 12, 2013), <http://lawweb2009.law.villanova.edu/sportslaw/?p=1446> (discussing common perceptions and examples of "tax-exempt" and "non-profit" organizations).

8. See Kristi Dosh, *Examining NFL's Tax-Exempt Status*, ESPN.COM (June 4, 2013), [http://espn.go.com/nfl/story/\\_/id/9342479/examining-nfl-tax-exempt-status-challenged-us-senator-tom-coburn](http://espn.go.com/nfl/story/_/id/9342479/examining-nfl-tax-exempt-status-challenged-us-senator-tom-coburn) (citing American Red Cross as organization that many people may assume to be tax-exempt).

9. See I.R.C. § 501(c) (2011) (outlining twenty-nine types of tax-exempt entities).

10. See *id.* (identifying and describing twenty-nine types of tax-exempt entities).

11. See *id.* (outlining twenty-nine types of tax-exempt entities).

12. See *id.* (defining 501(c)(3) and 501(c)(4) tax-exempt entities).

13. See *id.* (defining 501(c)(1) tax-exempt entities).

14. *Id.* (defining 501(c)(4) tax-exempt entities).

15. Dosh, *supra* note 8 (discussing exemption afforded to "professional football leagues" under 501(c)(6)).

National Football League (“NFL” or the “League”) is a tax-exempt organization.<sup>16</sup> However, to be fair, the “NFL” in this context, and throughout this Comment, is referring to the entity that is the NFL League Office, and not the collection of the thirty-two NFL teams.<sup>17</sup> Moreover, before one compares the NFL to the American Red Cross, it is also important to note that there are different standards for obtaining tax-exempt status under each of the IRC’s enumerated types of tax-exempt categories.<sup>18</sup> Furthermore, “in no way is the NFL claiming to be a charity.”<sup>19</sup> Instead, the NFL claims to be “a not-for-profit organization” “whose primary purpose is to further the industry or profession it represents.”<sup>20</sup> Specifically, the NFL asserts that it is a trade or industry organization and should be treated as such under the tax law.<sup>21</sup>

Even considering these caveats, however, many people are still quite surprised to learn that the NFL is tax-exempt.<sup>22</sup> It simply does

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16. See *id.* (discussing that NFL is tax-exempt organization under 501(c)(6)).

17. See *id.* (discussing comments from NFL league spokesman regarding NFL’s tax-exempt status). Brian McCarthy, league spokesman for the NFL, provided details regarding the NFL’s tax-exempt status when he stated that only the NFL League Office is tax-exempt and that the revenues distributed to the teams are taxed at the team level. See *id.* The teams that currently make up the League are all for-profit entities. See *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 186-88 (2010) (detailing basic organizational structure of NFL); see also Michael A. McCann, Feature, *American Needle v. NFL: An Opportunity to Reshape Sports Law*, 119 *YALE L.J.* 726 (2010). Each team is organized under various legal forms, all of which are required to pay federal taxes on revenues they generate. See *Am. Needle, Inc.*, 560 U.S. 183, 186-88 (detailing basic organizational structure of NFL); see also Dosh, *supra* note 8 (discussing that teams pay taxes on revenues distributed to them by NFL).

18. See Dosh, *supra* note 8 (discussing different types of tax-exempt organizations, some of which are more commonplace than others); see also 501(c) 3 vs. 501(c) 6 Status, NAT’L BLACK CHAMBER OF COMMERCE, [http://www.nationalbcc.org/index.php?option=com\\_content&view=article&id=936](http://www.nationalbcc.org/index.php?option=com_content&view=article&id=936) (last visited May. 6, 2014) (comparing requirements and purposes of 501(c)(3) organizations with requirements and purposes of 501(c)(6) organizations); see also 501(c)(3) and (6) Organizations: A Comparative Analysis, NONPROFIT LAW CENTER, [http://www.nonprofitlawcenter.com/resDetails.php?item\\_ref=247](http://www.nonprofitlawcenter.com/resDetails.php?item_ref=247) (last visited May 6, 2014) (comparing 501(c)(3) and 501(c)(6) organizations).

19. Dosh, *supra* note 3.

20. *Id.* (quoting Jeffrey Tenenbaum, chair of Nonprofit Organizations Group at Venable LLP, discussing NFL’s tax-exempt status).

21. See *id.* (discussing comments from NFL league spokesman Brian McCarthy in response to proposal from U.S. Senator Tom Coburn (R-OK) to end classification of NFL as tax-exempt organization). Sen. Tom Coburn challenged the NFL’s tax-exempt status by introducing an amendment to the Marketplace Fairness Act that would “end the NFL’s exemption from taxation.” See *id.* The NFL identifies itself as a “trade association promoting interests of its 32 member clubs” on tax forms. See Schrotenboer, *supra* note 6.<sup>44</sup>

22. See Patrick Hruby, *The People vs. NFL Welfare*, SPORTS ON EARTH (Oct. 1, 2013), <http://www.sportsonearth.com/article/62280950/> (discussing how it is not widely known that NFL is nonprofit organization). According to Lynda Woolard, a

not make sense that an organization representing the most profitable sports league in the world is tax-exempt under the federal tax law.<sup>23</sup> Thus, it should also come as no surprise that people are taking action to try to affect change.<sup>24</sup>

Efforts by ordinary citizens petitioning Congress to revoke the NFL's tax-exempt status have yet to produce any noticeable results.<sup>25</sup> Similarly, attempts by lawmakers to bring about a vote in Congress on this issue have flatly been ignored.<sup>26</sup> Nevertheless, although Congress will likely and ultimately decide this issue, perhaps the public can look to the currently embattled IRS to resolve the situation – which may also help restore some of the public's faith in that agency.<sup>27</sup> Were the IRS to reevaluate the NFL's tax-exempt status in light of fairly recent case law and other relevant authorities, it would surely determine that the NFL fails to qualify as a tax-exempt 501(c)(6) organization.<sup>28</sup>

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political organizer from Louisiana, “When people hear about it, mostly they think it's not right.” *Id.*

23. *See id.* (discussing how various individuals, including ordinary citizens, critics, and even elected officials, do not think it is right for NFL to be tax-exempt).

24. For a discussion regarding actions citizens and lawmakers have taken to address seemingly unfair and nonsensical tax-exempt status of the NFL, see *infra* notes 44-64 and accompanying text.

25. *See* Hruby, *supra* note 22 (suggesting that efforts to revoke NFL's tax-exempt status have been “quixotic at best” thus far).

26. *See* Ira Boudway, *A Republican Senator's Lonely Mission to Make the NFL Pay Taxes*, BLOOMBERG BUS. WK. (Sept. 19, 2013), <http://www.businessweek.com/articles/2013-09-19/a-republican-senator-s-lonely-mission-to-make-the-nfl-pay-taxes> (discussing how Sen. Coburn's proposed amendment to Marketplace Fairness Act was never brought up for vote).

27. *See* Schrottenboer, *supra* note 6 (suggesting that issue regarding NFL's tax-exempt status will ultimately be “a tax policy decision for Congress”); *see also* Greg Richter, *Issa: IRS Scandal Broke Trust of American People*, NEWSMAX.COM (Aug. 14, 2013), <http://www.newsmax.com/Newsfront/issa-irs-scandal-trust/2013/08/14/id/520491> (citing House Oversight Committee Chairman Darrell Issa (R-CA) as suggesting that “trust of American people was broken” by IRS scandal regarding targeting certain groups applying for tax-exempt status); *see also* Glenn Reynolds, *IRS Scandal Means Bad News for Obama: Column*, USA TODAY (Sept. 30, 2013), <http://www.usatoday.com/story/opinion/2013/09/29/irs-tea-party-column/2892135/> (citing reports that trust in government “is lower than during Watergate,” which poses particular challenges for IRS because it relies on voluntary compliance). “If everyone starts cheating, there aren't enough IRS agents to make a dent [in enforcement of the tax law].” *Id.*

28. *See* Rick Cohen, *Coburn Calls for End to Tax Exemption for Pro Sports Leagues*, NONPROFIT QUARTERLY (Apr. 25, 2013), <http://www.nonprofitquarterly.org/policy-social-context/22196-coburn-calls-for-end-to-tax-exemption-for-pro-sports-leagues.html> [hereinafter Coburn Calls for End] (“To many observers, the NFL's tax-exempt status is one big practical joke that has existed since 1966.”). “It's time to alleviate legitimate nonprofits from having to explain the problem in the statement, ‘you mean the NFL is nonprofit just like you.’” *Id.* For a more detailed analysis of the NFL's tax-exempt status under the relevant seven-prong test, *see infra* notes 71-242 and accompanying text.

This Comment analyzes the NFL's tax-exempt status and attempts to demonstrate that the League does not meet the requirements of a 501(c)(6) organization.<sup>29</sup> Part II of this Comment provides additional background on: (1) the NFL's tax-exempt status; (2) the challenges that have been made to try and revoke that status; and (3) the seven factor-based analysis that courts and the IRS use to determine if particular organizations qualify for 501(c)(6) status.<sup>30</sup> Part III provides an in-depth explanation of each of the seven prongs considered in the courts' and the IRS's analyses, as well as an examination of how each factor relates to the NFL's situation.<sup>31</sup> Finally, Part IV provides some brief concluding commentary addressing how the NFL does not qualify for 501(c)(6) status, why the League's tax-exempt status should be revoked, and the potential impact of such revocation.<sup>32</sup>

## II. BACKGROUND

In 1961, Congress passed the Sports Broadcasting Act.<sup>33</sup> This Act allowed major professional sports to negotiate certain television-broadcast agreements that normally would have violated federal antitrust laws.<sup>34</sup> This special treatment, however, was not enough for the two professional football leagues existing at that time: the American Football League and the National Football

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29. For a further discussion outlining the requirements an association must satisfy to qualify for 501(c)(6) status, see *infra* notes 65-70 and accompanying text. For a detailed discussion suggesting that the NFL fails to satisfy all of the necessary requirements to maintain its tax-exempt status, see *infra* notes 71-242 and accompanying text.

30. For a detailed discussion on additional background information regarding the NFL's tax-exempt status, see *infra* notes 33-70 and accompanying text.

31. For a detailed discussion analyzing the NFL's tax-exempt status under the relevant requirements, see *infra* notes 71-242 and accompanying text.'

32. For a detailed discussion concluding that the NFL does not qualify for 501(c)(6) tax-exempt status, see *infra* notes 243-251 and accompanying text.

33. See Thomas Francis Moran, *The Sports Broadcasting Act: Is an Update Needed?*, SETON HALL L. REPOSITORY PAPER 273, 3-9 (2013), [http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1273&context=student\\_scholarship](http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1273&context=student_scholarship) (discussing history leading to passage of Sports Broadcasting Act in 1961, and legislative intent behind Congress's swift action to enact law); see also Gregg Easterbrook, *How the NFL Fleeces Taxpayers*, ATLANTIC (Sept. 18, 2013), <http://www.theatlantic.com/magazine/archive/2013/10/how-the-nfl-fleeces-taxpayers/309448/> (discussing background to "gift-wrapped legislation," including 1961 Sports Broadcasting Act, which gave National Football League and American Football League special privileges under federal laws).

34. See Easterbrook, *supra* note 33 (describing practical impact of 1961 Sports Broadcasting Act).

League.<sup>35</sup> Thus, in 1966, the two leagues lobbied Congress to enact Public Law 89-800.<sup>36</sup>

Although it had no popular name, Public Law 89-800 had a major impact on how professional sports, especially the NFL, would be treated under various federal laws.<sup>37</sup> First and foremost, the 1966 statute had the effect of broadening the anti-trust exemptions from the earlier Sports Broadcasting Act.<sup>38</sup> “Essentially [the law] said that if the two pro-football leagues of that era merged – they would complete such a merger four years later, forming the current NFL – the new entity could act as a monopoly regarding television rights.”<sup>39</sup> As it turned out, this “was effectively a license for NFL owners to print money,” and the special treatment afforded the NFL did not stop there.<sup>40</sup>

The second major benefit the NFL obtained from the enactment of Public Law 89-800 was much less conspicuous, but equally remarkable.<sup>41</sup> While the 1966 law was being negotiated in Congress, NFL lobbyists successfully advocated for the inclusion of the phrase “professional football leagues” in Section 501(c)(6) of the IRC.<sup>42</sup> This small change explicitly granted the NFL tax-exempt status and has saved the League millions in tax obligations over the

35. *See id.* (describing how American Football League and National Football League, which later merged to form NFL, lobbied to gain even more special treatment under federal anti-trust and tax laws during 1960s).

36. *See id.* (discussing lobbying efforts of American Football League and National Football League aimed at passing Public Law 89-800).

37. *See id.* (suggesting that Public Law 89-800 did not have popular name to keep bill low profile, as to not draw attention to major benefits said bill provided to NFL, especially to NFL owners).

38. *See id.* (discussing practical impact of Public Law 89-800).

39. *Id.* (outlining potential, and eventual, benefit that Public Law 89-800 afforded NFL as regarding negotiating television rights/agreements). *See also* Phil Corso, *The NFL's Nonprofit Status Challenge*, LEGALZOOM (Feb. 2014), <http://www.legalzoom.com/legal-headlines/debate-controversy/nfls-nonprofit-status-challenge> (suggesting that Public Law 89-800 essentially gave NFL monopoly with regard to television rights).

40. Easterbrook, *supra* note 33 (discussing further impacts of Public Law 89-800 on business operations of NFL).

41. *See id.* (discussing favorable tax-treatment provided to NFL resulting from lobbying Congress).

42. *See id.* (discussing how NFL lobbyists changed Section 501(c)(6) by tossing in “the sort of obscure provision that is the essence of the lobbyist’s art”); *see also* Libin Zhang, *Tax-Loophole for the Non-Profit Organization that is the National Football League (NFL)*, BEST TAX LOOPHOLES OF THE INTERNAL REVENUE CODE (Mar. 17, 2014), <http://taxloops.blogspot.com/2013/03/tax-loophole-for-non-profit.html> (discussing modification to Section 501(c)(6) of Internal Revenue Code made by Conference Committee after both United States House of Representatives and Senate passed bill aimed at addressing “investment credit and accelerated depreciation”).

years.<sup>43</sup> Although the inclusion went largely unnoticed at the time, lawmakers and members of the public have recently started to take note, and have been organizing reform efforts.<sup>44</sup>

Some ordinary citizens have been disappointed by the recent behavior of the NFL, including the League's failure to effectively acknowledge and respond to the risks of concussions faced by its players, as well as the blacking out of games to force fans to buy tickets instead of watching on television.<sup>45</sup> Lynda Woolard, a political organizer and football fan from Louisiana, decided to take action to address the NFL's abuse of power and public trust.<sup>46</sup> She took to the Internet and started a petition to ask Congress to revoke the NFL's tax-exempt status.<sup>47</sup> The petition, which has more than 250,000 signatures, asks that the most profitable sports league in the world pay its "fair share."<sup>48</sup>

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43. See Easterbrook, *supra* note 33 (suggesting that NFL must have saved millions of dollars, at ordinary taxpayer's expense since obtaining tax-exempt status). Since the NFL was not paying taxes, "ordinary people must pay higher taxes, public spending must decline, or the national debt must increase to make up for the shortfall." *Id.*

44. See generally Hruby, *supra* note 22 (detailing actions taken by private citizens and lawmakers to attempt to revoke NFL's tax-exempt status). For a further discussion addressing actions taken by citizens and lawmakers to revoke the NFL's tax-exempt status, see *infra* notes 45-59 and accompanying text.

45. See Hruby, *supra* note 22 (discussing how Lynda Woolard, political organizer from Louisiana, has "seen enough" of disappointing behavior by NFL and is petitioning Congress to revoke NFL's tax-exempt status as way of fighting back against NFL's abuse of power). Recently the NFL has come under fire in the form of numerous lawsuits for allegedly concealing "the effects of multiple head injuries." See Bianca Iozzia, *Lawsuits on the Brain: Seau Suit Adds to the NFL Concussion Litigation*, MOORAD SPORTS L.J. BLOG (Jan. 25, 2013), <http://lawweb2009.law.villanova.edu/sportslaw/?p=1519> (discussing lawsuit brought by family of Junior Seau, former NFL linebacker, in context of *In Re: National Football League Players' Concussion Injury Litigation*, class action suit similarly accusing NFL of fraudulently concealing negative impacts of concussions). The NFL, as defendant, and plaintiffs in the class action suit recently settled the case for \$765 million. See Bajereah LaCava, *NFL Prepared to Settle Concussion Claims for \$765 Million*, LEXISNEXIS (Aug. 29, 2013), <http://www.lexisnexis.com/legalnewsroom/labor-employment/b/labor-employment-top-blogs/archive/2013/08/29/nfl-prepared-to-settle-concussion-claims-for-765-million.aspx> (discussing settlement of class action suit regarding NFL concussion issue).

46. See Hruby, *supra* note 22 (detailing Woolard's actions aimed at curtailing NFL's power and correcting apparent wrong of NFL's economic success coming at expense of public).

47. See *id.* (discussing Woolard's petition to Congress); see also Lynda Woolard, *Congress: Revoke the Tax-Exempt Status of the National Football League*, CHANGE.ORG, <https://www.change.org/petitions/congress-revoke-the-tax-exempt-status-of-the-national-football-league> (last visited Oct. 19, 2013) (presenting text of Woolard's petition and number of signatures).

48. See Woolard, *supra* note 47 (detailing requests made in Woolard's petition).



At least one lawmaker too has a similar point of view.<sup>49</sup> U.S. Senator Tom Coburn (R-OK) strongly disagrees with the NFL's tax-exempt status and believes that the League is simply "taking advantage of the . . . tax code."<sup>50</sup> To Sen. Coburn, this situation is "one of the things in the tax code that just doesn't make any sense."<sup>51</sup> The NFL is the most profitable sports league in America.<sup>52</sup> Yet, the NFL is organized as a nonprofit.<sup>53</sup> To make matters worse, the League does not pay federal taxes due to its tax-exempt status under Section 501(c)(6).<sup>54</sup>

In an attempt to address this apparent paradox, in 2013 Sen. Coburn proposed an amendment to a Senate bill that would have revoked the NFL's tax-exempt status.<sup>55</sup> Although the amendment was never voted on, Sen. Coburn continues to make his case.<sup>56</sup> He has sent a letter to Senate Finance Committee Chairman Max Baucus (D-MT) and ranking member Orrin Hatch (R-UT) "asking that sports subsidies be included in any legislation to overhaul the tax code."<sup>57</sup> Additionally, in September 2013, Sen. Coburn intro-

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49. See Hruby, *supra* note 22 (explaining that Sen. Coburn also finds NFL's tax-exempt status to be "hardly fair" as it requires ordinary citizens to "subsidize special breaks for sports leagues").

50. Dosh, *supra* note 8 (citing comments from Sen. Coburn's annual "Waste Book" report).

51. Schrottenboer, *supra* note 6 (citing comments from spokesperson for Sen. Coburn).

52. See *Sports Industry Overview*, PLUNKETT RESEARCH, LTD., <http://www.plunkettresearch.com/sports-recreation-leisure-market-research/industry-statistics> (last visited May 7, 2014) (outlining, among other things, league revenues, operating incomes, average team values for major sport leagues including NFL, MLB, NBA, NHL, and other major sports industries).

53. See Schrottenboer, *supra* note 6 (discussing history of NFL's non-profit status); see also Manohar, *supra* note 7 (indicating that NFL and other major sports leagues are actually non-profit organizations).

54. See Schrottenboer, *supra* note 6 (stating that due to classification as 501(c)(6), NFL does not pay federal taxes); see also Dosh, *supra* note 8 (discussing that NFL is classified as 501(c)(6) organization, and not 501(c)(3) charitable organization).

55. See Hruby, *supra* note 22 (detailing Sen. Coburn's attempt to attach amendment to Marketplace Fairness Act which would have eliminated NFL's exempt status); see also Boudway, *supra* note 26 (describing Sen. Coburn's efforts to "close the sport-league loophole" which currently grants NFL tax-exempt status).

56. See Boudway, *supra* note 26 (discussing how Sen. Coburn's proposed amendment never came up for vote in Senate); see also Hruby, *supra* note 22 (discussing Sen. Coburn's efforts to eliminate NFL's tax-exempt status generally).

57. Hruby, *supra* note 22 (reporting that Sen. Coburn sent letter to leaders of Senate Finance Committee to ensure leadership was aware of issues surrounding NFL's tax-exempt status); see also Aaron Lorenzo, *NFL Nonprofit Status Seen Targeted in IRS Code Revision: Taxes*, BLOOMBERG (Sept. 9, 2013), <http://www.bloomberg.com/news/2013-09-09/nfl-nonprofit-status-seen-targeted-in-irs-code-revision-taxes.html> (discussing Sen. Coburn's letter to leaders of Senate Finance Committee,

duced his previously proposed amendment as a stand-alone bill.<sup>58</sup> Although the aptly named “Properly Reducing Over-Exemptions” bill does not yet have a co-sponsor, it emphasizes that Sen. Coburn, like many other critics and commentators, is not buying the NFL’s tax-exempt story.<sup>59</sup>

Aside from the paradox of a profitable non-for-profit organization, critics of the NFL’s status also disagree with the characterization of the NFL as a trade or industry organization.<sup>60</sup> Specifically, people question “whether the NFL is furthering the entire football industry.”<sup>61</sup> There is no question that the NFL promotes the interests of its thirty-two member teams, but it does not appear to do anything more than that.<sup>62</sup> The NFL has a “very closed circle” of members, and, unlike traditional trade or industry associations, one cannot simply “start a professional football team and join the NFL.”<sup>63</sup> This limited membership style has led critics to argue that the NFL is only “furthering a segment of the industry,” which should cause the League to fail one of the requirements necessary to maintain 501(c)(6) tax-exempt status.<sup>64</sup>

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who did not respond specifically to Sen. Coburn’s letter, but rather stated that “everything is on the table” as regarding tax reform).

58. See Hruby, *supra* note 22 (describing Sen. Coburn’s continued attempts to address matter of NFL’s tax-exempt status by introducing bills on Senate floor).

59. See *id.* (discussing generally petition to revoke NFL’s tax-exempt status and Sen. Coburn’s personal efforts to have NFL’s tax-exempt status revoked); see also Andrew B. Delaney, *Taking a Sack: The NFL and Its Underserved Tax-Exempt Status*, SOC. SCIENCE RESEARCH NETWORK (2010), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1605281](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1605281) (analyzing tax-exempt status of NFL and suggesting that such status is unwarranted). One author has been quoted as stating,

I really don’t care how they run their business. But call it a business. Don’t feed me this line about how the NFL is a nonprofit trade association. Don’t try to tell me that the NFL’s tax-exempt status is warranted. Show [the average citizen] some respect and pay your taxes, NFL. The rest of us do.

*Id.*

60. See Dosh, *supra* note 8 (citing comments that suggest NFL does not act like trade organization).

61. *Id.* (suggesting critics of NFL’s situation do not find that NFL acts like trade or industry organization).

62. See *id.* (discussing that NFL does further interest of member teams, but not necessarily entire “football” industry); see also Rick Cohen, *Is the NFL’s Tax-Exempt Status All That?*, NONPROFIT QUARTERLY (June 4, 2013), <http://www.non-profitquarterly.org/policysocial-context/22395-is-the-nfl-s-tax-exempt-status-all-that.html> [hereinafter NFL’s Exempt Status] (stating that “the NFL operates for the benefit of 32 member [teams] – no more, no less”).

63. Dosh, *supra* note 8 (explaining how difficult and nearly impossible it is to join NFL).

64. *Id.* (discussing comments by nonprofit organizations tax practitioner suggesting that NFL does not truly qualify as 501(c)(6) as NFL does not operate as true industry or trade association as it does not further the entire football industry); see also NFL’s Exempt Status, *supra* note 62 (“The NFL isn’t advocating for

Courts and IRS practitioners agree that for associations to qualify as tax-exempt entities under 501(c)(6), such associations must meet the requirements of the statute itself, as well as Treasury Regulation 1.501(c)(6)-1.<sup>65</sup> To satisfy the requirements of the Regulation, which “merits serious deference,” courts have held that an entity must be an association:

(1) of persons having a common business interest; (2) whose purpose is to promote the common business interest; (3) not organized for profit; (4) that does not engage in a regular business of a kind ordinarily conducted for profit; (5) whose activities are directed to the improvement of business conditions of one or more lines of a business as distinguished from the performance of particular services for individual persons; and (6) of the same general class as a chamber of commerce or a board of trade.<sup>66</sup>

Furthermore, IRS practitioners have indicated that organizations claiming 501(c)(6) status must also meet the requirements of the relevant statute itself.<sup>67</sup> Section 501(c)(6) of the IRC states that organizations claiming tax exempt status may not be “organized for profit” and “no part of the [organization’s] earnings . . . [may inure] to the benefit of any private shareholder or individual.”<sup>68</sup> Taken altogether, these requirements create a seven-prong test for determining whether organizations qualify for tax-exempt status

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professional football as a line of business, but for the profitability of its 32 corporate-person members.”).

65. See *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 621 (9th Cir. 2009) (indicating that relevant Treasury Regulation warrants great deference in determining 501(c)(6) tax-exempt status of organizations); see also John Francis Reilly et al., *Exempt Organizations-Technical Instructions Program for FY 2003: IRC 501(c)(6) Organizations*, at K-4 (2003), <http://www.irs.gov/pub/irs-tege/eotopick03.pdf> (indicating that in order to qualify for 501(c)(6) tax-exempt status, organizations must meet characteristics outlined in Treasury Regulation § 1.501(c)(6)-1). To obtain and maintain tax-exempt status, organizations must also perform particular duties such as filing a Form 990 with the IRS, which verifies that all the various requirements are being met. See Jami A. Maul, Comment, *America’s Favorite “Nonprofits”: Taxation of the National Football League and Sports Organizations*, 80 UMKC L. REV. 199, 201 (2011) (describing generally filing requirements for tax-exempt organizations).

66. *Bluetooth SIG Inc.*, 611 F.3d at 621 (outlining six-prong test); see also *ABA Ret. Funds v. United States*, 2013 U.S. Dist. LEXIS 60086, 10-11 (N.D.Ill. 2013) (outlining same six-prong test that organizations must meet to receive tax-exempt status); see also *Treas. Reg. § 1.501(c)(6)-1*.

67. See Reilly, *supra* note 65, at K-4 (stating that organizations claiming tax-exempt status under 501(c)(6) must meet all requirements of both I.R.C. § 501(c) and *Treas. Reg. § 1.501(c)(6)-1*).

68. I.R.C. § 501(c) (2011).

under 501(c)(6).<sup>69</sup> When considering these requirements in an analysis, such as the one that is to follow, it is important to understand that the requirements do not stand alone, but rather are interrelated, resulting in a holistic review of an association's qualification(s).<sup>70</sup>

### III. ANALYZING THE NFL'S TAX-EXEMPT STATUS

#### A. Requirement 1 – “[A]ssociation . . . of persons having a common business interest.”<sup>71</sup>

The IRS interprets the term “persons” as referring not only to individuals, but also legal entities such as trusts and corporations.<sup>72</sup> Furthermore, the term “business” is construed quite liberally, encompassing “everything about which a person can be employed.”<sup>73</sup> Given these broad interpretations, the NFL likely satisfies the first requirement.<sup>74</sup>

The NFL, as a professional football league, consists of thirty-two teams, each of which is organized as a separate legal entity.<sup>75</sup> Regardless of their legal form, however, all of the teams share in

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69. For an outline of the resulting seven-prong test, see *supra* notes 66-68 and accompanying text.

70. Reilly, *supra* note 65, at K-5 (explaining that “analysis of any IRC 501(c)(6) case should not be limited to one characteristic” as characteristics, or requirements, are interrelated).

71. See *Bluetooth SIG Inc.*, 611 F.3d at 622 (9th Cir. 2009) (outlining six-prong test as provided by Treas. Reg. § 1.501(c)(6)-1).

72. See Reilly, *supra* note 65, at K-3 (defining “persons” for purposes of interpreting I.R.C. § 501(c)(6)).

73. *Id.* (defining “business” for purposes of interpreting I.R.C. § 501(c)(6)).

74. See *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 197 (2010) (discussing that all thirty-two NFL teams share common interest of promoting NFL brand of professional football).

75. See *id.* at 186-87 (detailing basic organizational structure of NFL); see also McCann, *supra* note 17, at 730 (discussing basic organizational structure of NFL). The NFL is composed of member teams, which are “separately owned and operated franchises. . . that compete in games and ancillary components of those games, such as hiring of players, coaches, and staff.” *Id.*

the common business interest of promoting the economic success of professional football.<sup>76</sup> Or do they?<sup>77</sup>

One of the most important tasks in examining this first requirement is to properly identify the true, common business interest of the NFL and its member teams.<sup>78</sup> The question is whether the NFL and its member teams share the interest of promoting “professional football” generally, or if they only share the interest of promoting an NFL version of professional football.<sup>79</sup> All evidence seems to suggest that it is the latter, and that the NFL is really only interested in promoting “NFL football.”<sup>80</sup> While this narrower business interest still satisfies the first requirement, it plays a significant role in evaluating requirements four and five.<sup>81</sup>

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76. See *Am. Needle, Inc.*, 560 U.S. at 197 (discussing that although in certain situations member teams act independently for their own economic interests, all teams share common interest of promoting NFL brand of professional football). “The teams must compete in order to generate competitive football.” McCann, *supra* note 17, at 730. “Less obviously, they necessarily collaborate too.” *Id.* Furthermore, the fact that each of the thirty-two teams also clearly has an interest in promoting their own economic success does not prevent the NFL from satisfying this first requirement. See Reilly, *supra* note 65, at K-6 (stating that “although the members may have a variety of interests, they must have a common interest of a business nature that the organization promotes”); see generally *Am. Needle, Inc.*, 560 U.S. at 188-203 (discussing how NFL teams share interest of promoting and making league successful, while concurrently looking out for their own economic interests).

77. For a discussion determining the common business interest of the NFL and its member teams, see *infra* notes 78-80 and accompanying text.

78. For a discussion regarding the importance of the NFL’s narrow interest of promoting only “NFL football,” rather than football or professional football generally, see *infra* notes 79-81 and accompanying text.

79. See Dosh, *supra* note 8 (stating that “questions arise as to whether the NFL is furthering the entire football industry”).

80. See Coburn Calls for End, *supra* note 28 (suggesting that NFL does not promote professional football generally, but rather focuses on promoting “NFL football”). “It isn’t about the business of promoting professional football, but ‘promoting NFL football, because it is the NFL brand and the NFL teams and logos and products that make it a profitable business.” *Id.* See also Sara Hoffman, *The NFL in Europe: International Expansion and Possibilities*, MOORAD SPORTS L.J. BLOG (Nov. 11, 2012), <http://lawweb2009.law.villanova.edu/sportslaw/?p=1076> (discussing how NFL has attempted to use international expansion as way of “promoting the NFL brand”); see also Daniel Kaplan, *Can the NFL Get to \$25 Billion?*, SCALAR MEDIA (Jan. 28, 2013), <http://scalarmedia.com/uncategorized/can-the-nfl-get-to-25-billion> (discussing comments by Eric Grubman, Executive Vice President of NFL Ventures and Business Operations, which suggested NFL competes as global entertainment brand).

81. For a discussion regarding the importance of the NFL’s narrow interest of promoting only “NFL football,” rather than football or professional football generally, see *infra* notes 146-175 and accompanying text.

B. Requirement 2 – “[A]ssociation . . . whose purpose is to promote the common business interest.”<sup>82</sup>

As suggested above, it seems clear that the “persons” who constitute the NFL have a common “business” interest.<sup>83</sup> Furthermore, as previously stated, the NFL League Office surely promotes the common interest of its thirty-two member teams.<sup>84</sup> Therefore, the NFL also likely satisfies the second requirement.<sup>85</sup>

C. Requirement 3 – “[A]ssociation . . . not organized for profit.”<sup>86</sup>

According to the IRS, an association need not operate at a loss in order to be considered “not organized for profit.”<sup>87</sup> In other words, an association does not need to have expenses exceeding income to satisfy this requirement.<sup>88</sup> Instead, the crucial inquiry is whether income is distributed to the association’s members, which would ipso facto disqualify the association from exemption under requirement seven below (again, the interrelation between the requirements cannot be overlooked).<sup>89</sup> As will be discussed in greater detail under requirement seven, the NFL does not meet this requirement because there is clear evidence of distribution of income among the League’s members.<sup>90</sup>

Even when examining the third requirement from a less technical perspective, commentators point out that the League likely

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82. *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 622 (9th Cir. 2009) (outlining six-prong test as provided by Treas. Reg. § 1.501(c)(6)-1).

83. For a discussion determining if the teams that make up the NFL share a common business interest, see *supra* notes 75-80 and accompanying text.

84. For a further discussion regarding how the NFL promotes the common business interest of its member teams, see *supra* notes 62-63 and accompanying text; see also Dosh, *supra* note 8 (discussing that NFL League Office furthers interests of member teams).

85. For a discussion regarding how the NFL promotes the common business interest of its member teams, see *supra* notes 75-81 and accompanying text.

86. *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 622 (9th Cir. 2009) (outlining six-prong test as provided by Treas. Reg. § 1.501(c)(6)-1).

87. See Reilly, *supra* note 65, at K-15 (clarifying that “not organized for profit” does not mean organizations cannot have positive earnings; rather, organizations cannot issue stocks that carry rights to any distribution of income).

88. See *id.* (describing IRS position regarding what it means for organizations to be “not organized for profit”).

89. See *id.* (discussing that distribution of accumulated income can constitute inurement, which would violate requirement seven under seven-prong test for tax-exempt status under 501(c)(6)).

90. For a further discussion regarding how distribution of income, which constitutes inurement, disqualifies an association from 501(c)(6) status, see *infra* notes 236-242 and accompanying text.

fails to satisfy this necessary condition.<sup>91</sup> Critics have suggested that the NFL's organizational structure is especially troubling.<sup>92</sup> Not only is Roger Goodell the Commissioner of the League, but he also leads various other nonprofit and for-profit organizations affiliated with the NFL.<sup>93</sup> These for-profit entities controlled by Mr. Goodell and the NFL have been the primary subjects of criticism.<sup>94</sup> Specifically, critics highlight the risk of the NFL commingling its tax-exempt income (from membership dues and assessments) with revenues from affiliated for-profit ventures.<sup>95</sup> That is, given the complex structure of the NFL's multifarious business entities, monitoring the flow of money to ensure compliance with 501(c)(6) requirements is prohibitively difficult.<sup>96</sup>

Other commentators need only look at the NFL's expenses and revenues to conclude that the NFL is in fact "organized for profit."<sup>97</sup> While it is true that the NFL's expenses have exceeded revenues for the past few years, this is a weak defense of the League's nonprofit, tax-exempt status.<sup>98</sup> The NFL's large expenditures are due in substantial part to the exorbitant salaries it pays

91. See generally Maul, *supra* note 65, at 218 (suggesting that organizational structure of NFL, which includes close relationships between various for-profits and nonprofits, warrants closer scrutiny of NFL's current tax-exempt status).

92. See *id.* (providing issues of NFL's organizational structure); see also Delaney, *supra* note 59 (discussing how NFL operates through associated for-profit entities, which distribute revenues to NFL teams and use portion of revenues to pay NFL membership dues and assessments).

93. See Maul, *supra* note 65, at 218 (describing Commissioner Goodell's various responsibilities as related to NFL-affiliated organizations). The nonprofit organizations affiliated with the NFL include the Professional Football Players Insurance Trust, the NFL Non-Player Insurance Trust, the NFL Youth Football Fund, the NFL Disaster Relief Fund, the NFL Management Council, the NFL Alumni Dire Need Charitable Fund, and NFL Charities. See *id.* The for-profit entities under the NFL umbrella include NFL Enterprises LLC, NFL Ventures LP, NFL Ventures, Inc., NFL Productions LLC, NFL Properties LLC, and NFL International LLC. See *id.*

94. See *id.* (suggesting that critics have called into question relationship between non-profit tax-exempt NFL and for-profit affiliated organizations).

95. See *id.* at 218-19 (discussing apparent trouble of mixing income from for-profit ventures with tax-exempt income from membership dues and assessments); see also Delaney, *supra* note 59 (suggesting that NFL affiliated for-profit companies, such as NFL Properties, LLC and NFL Enterprises, LLC, help to finance NFL in scheme that "some people might call [...] something ugly like 'money laundering'").

96. See NFL's Exempt Status, *supra* note 62 (discussing NFL's cash flow complying with 501(c)(6)).

97. For a discussion of the "not organized for profit" requirement as it relates to the NFL's expenses and revenues, see *infra* notes 98-100 and accompanying text.

98. See NFL's Exempt Status, *supra* note 62 (suggesting that argument defending NFL's tax-exempt status based on expenses exceeding revenues "rings a little hollow").

out, and the League would almost instantaneously be profitable if it scaled back some of those salaries.<sup>99</sup> For example, it is debatable whether Mr. Goodell's services as Commissioner are really worth the \$29.4 million he received in 2012, which is more than the salaries of chief executives at famous for-profit organizations such as Coca-Cola and Wal-Mart.<sup>100</sup> Mr. Goodell's massive salary exemplifies how the League's operations, and in turn its goals, are at odds with its nonprofit status.<sup>101</sup>

D. Requirement 4 – “[A]ssociation . . . that does not engage in a business ordinarily conducted for profit.”<sup>102</sup>

Under the fourth requirement, the term “business” has “essentially the same meaning as ‘trade or business’ under IRC 513.”<sup>103</sup> That is, when courts evaluate whether an activity constitutes a “trade or business,” they adopt a “profit motive” standard.<sup>104</sup> This does not mean, however, that an association will satisfy the fourth requirement simply by operating a business for no profit.<sup>105</sup> Although profitability is a consideration, ultimately “it is the nature of the activity that determines whether it is a business ordinarily carried on for profit.”<sup>106</sup>

For example, certain “courts have repeatedly found organizations to be involved in a trade or business even when [such] organi-

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99. *See id.* (suggesting that reducing salaries would cause NFL's revenues to exceed expenses). For reference purposes, according to the NFL's latest Form 990, Roger Goodell (Commissioner), Jeff Pash (EVP & Gen. Counsel), Steve Bornstein (EVP of Media), and Paul Tagliabue (Former Commissioner) had total compensation in 2011 from the NFL and related organizations in the amounts of over \$29 million, over \$8 million, over \$5 million, and over \$8.5 million, respectively. *See NFL Form 990* at 7 (2012), available at [http://990s.foundationcenter.org/990\\_pdf\\_archive/131/131922622/131922622\\_201203\\_990O.pdf](http://990s.foundationcenter.org/990_pdf_archive/131/131922622/131922622_201203_990O.pdf) (last visited May 7, 2014) (outlining compensation details for officers, directors, trustees, key employees and highest compensated employees of NFL).

100. *See Schrottenboer, supra* note 6 (discussing Roger Goodell's large salary and comparing it to salaries of other executives at large for-profit organizations).

101. *See Manohar, supra* note 7 (suggesting that Goodell's salary is excessive and at odds with NFL's nonprofit status); *see also Kaplan, supra* note 80 (discussing NFL's aggressive plans to grow revenue to \$25 billion by 2017).

102. *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 622 (9th Cir. 2009) (outlining six-prong test as provided by Treas. Reg. § 1.501(c)(6)-1).

103. Reilly, *supra* note 65, at K-34 (citing G.C.M. 37100 (Apr. 21, 1977) and G.C.M. 39723 (Apr. 8, 1988)).

104. *See id.* (citing *United States v. American Bar Endowment*, 477 U.S. 105 (1986)).

105. *See id.* (discussing Revenue Rulings establishing that profitability alone does not determine if fifth requirement is satisfied).

106. *Id.* (citing Rev. Rul. 81-174, 1981-1 C.B. 335 and Rev. Rul. 81-175, 1981-1 C.B. 337).



zations provided few services themselves and made available [services and benefits] through the activities of third-party companies.”<sup>107</sup> Other courts have found that associations are engaged in business ordinarily carried on for profit if such associations “compete[ ] with for-profit entities in the same marketplace,” or, “if for-profit businesses could and would perform similar functions if the [association] ceased its operations.”<sup>108</sup> Further, at the most basic level, an association that “develop[s] and sell[s] a ‘product’ . . . [and] defends its property interest by threat of litigation for trademark infringement” is engaging in business ordinarily conducted for profit.<sup>109</sup> Given the nature of these guiding standards, determining whether an association is engaged in a business of a kind ordinarily conducted for profit is a question of fact.<sup>110</sup>

One final consideration that further complicates the factual analysis under this fourth requirement, as well as requirements five and seven, is the “incidental” exception.<sup>111</sup> Courts interpreting these requirements have held that an exempt association “will not forfeit tax exempt status by engaging in incidental activities which, standing alone, would be subject to taxation.”<sup>112</sup> The “incidental” exception thus allows associations to engage in some business activities ordinarily conducted for profit as long as such activities are “merely incidental to the [association’s] main [tax-exempt] purpose.”<sup>113</sup>

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107. *ABA Ret. Funds v. United States*, 2013 U.S. Dist. LEXIS 60086, 34-35 (N.D.Ill. 2013) (discussing various court rulings holding that tax-exempt organizations who contract with third-party companies to provide benefits or services may nonetheless be considered to be engaged in such trade or business).

108. *Mertens Law of Federal Income Taxation* § 34:78 (Westlaw Thomas Reuters) (2013) (citing *N.C. Ass’n of Ins. Agents, Inc. v. United States*, 739 F.2d 949, 955 (4th Cir. 1984)).

109. *Bluetooth Association Fails to Qualify as 501(c)(6) Trade Association*, NON-PROFIT ISSUES (Feb. 1, 2008), <http://www.nonprofitissues.com/public/features/leadfree/2008feb1-IS.html#.UmMi9ShNNjR> (discussing Ninth Circuit’s holding and reasoning regarding fourth prong in decision of *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 621 (9th Cir. 2009)).

110. *See Reilly, supra* note 65, at K-32 (discussing general rule for business activities).

111. *See Am. Plywood Ass’n v. United States*, 267 F. Supp. 830, 833 (D.Wash. 1967) (discussing “incidental” exception to three requirements under 501(c)(6)).

112. *Id.* at 832 (explaining that associations’ engagement in taxable activities which are merely incidental to associations’ tax-exempt purposes will not cause automatic forfeiture of such tax-exempt status).

113. *Mertens Law of Federal Income Taxation* § 34:78 (Westlaw Thomas Reuters) (2013) (describing incidental exception to rule that tax-exempt associations ordinarily may not engage in business ordinarily carried on for profit); *see also N.C. Ass’n of Ins. Agents, Inc. v. United States*, 739 F.2d 949, 955 (4th Cir. 1984) (explaining that associations whose tax-exempt status was challenged may be

This begs the question of what determines whether an activity is “primary” or “incidental.”<sup>114</sup> For example, according to the U.S. District Court for the Western District of Washington, a determination of what constitutes a “primary” activity hinges on “the particular circumstances [of a specific case] and the reasonable conclusions to be drawn therefrom.”<sup>115</sup> The reviewing court must consider “the totality of the facts and circumstances including the business activity’s financial impact, its proportional requirements of staff time, and the directness of its functional relationship to a tax-exempt purpose.”<sup>116</sup>

It is difficult to apply the facts and circumstances tests described above to the NFL’s situation because the tests require close examination of the League’s various income streams and financials; information that is not readily available to the public.<sup>117</sup> Nevertheless, even without analyzing the NFL’s financial records, commentators have strongly suspected that the NFL operates like a “for-profit business juggernaut [ ] . . . behind [a] nonprofit cloak.”<sup>118</sup> One need only look to some of the NFL’s own statements and actions to determine that the League is operated like a business ordinarily conducted for profit.<sup>119</sup>

Consider, for example, the League’s aggressive goal of reaching revenues of \$25 billion by the year 2027.<sup>120</sup> As Eric Grubman, Executive Vice President of NFL Ventures and Business Operations, explained, the NFL “intended the [revenue] figure to convey what

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allowed to maintain status if business activities ordinarily conducted for profit were “incidental” to association’s tax-exempt purposes).

114. See *Am. Plywood Ass’n.*, 267 F. Supp. at 833 (discussing that determining whether activities are “primary” or “incidental” depends on specific facts and circumstances of each case).

115. *Id.* (suggesting what constitutes “primary” activity as compared to “incidental” activity).

116. *N.C. Ass’n of Ins. Agents, Inc.*, 739 F.2d at 956 (describing test to be used in determining whether certain activities constitute association’s “primary” and “incidental” activities).

117. See *The Business of Professional Football*, LIBRARY OF CONG. BUSINESS REFERENCE SERVICES, <http://www.loc.gov/it/business/BERA/issue3/football.html> (last updated July 9, 2013) (suggesting that financials regarding NFL are hard to come by).

118. Rick Cohen, *Playing by the NFL’s Tax Exempt Rules*, NONPROFIT QUARTERLY (Aug. 14, 2008), [http://www.nonprofitquarterly.org/index.php?option=com\\_content&view=article&id=3056:playing-by-the-nfls-tax-exempt-rules&catid=149:rick-cohen&Itemid=991](http://www.nonprofitquarterly.org/index.php?option=com_content&view=article&id=3056:playing-by-the-nfls-tax-exempt-rules&catid=149:rick-cohen&Itemid=991) (discussing blurred lines between nonprofits, like NFL, acting as for-profit organizations and vice versa).

119. See Manohar, *supra* note 7 (discussing how NFL appears to be operated like for-profit corporation that is designed and run to make money).

120. See Kaplan, *supra* note 80 (discussing NFL’s aggressive plans to grow revenue to \$25 billion by 2027).

scale the NFL needed in order to compete as a global entertainment brand.”<sup>121</sup> Mr. Grubman’s comments further suggested that the League not only competes against other sports leagues, but also “consumer product companies such as Procter & Gamble, Walt Disney and Apple.”<sup>122</sup> These comments reveal the true business nature of the NFL, which aims to compete with various for-profit organizations in different industries; goals that should cause the League to lose its tax-exempt status.<sup>123</sup> Under this basic analysis “it seems inconceivable that the NFL is not engaging in a regular business of a kind ordinarily carried on for profit.”<sup>124</sup>

The NFL would likely respond to the above criticisms by claiming that the League’s for-profit business activities are only “incidental” to its “primary” tax-exempt activities.<sup>125</sup> Currently, each of the thirty-two NFL teams pay the League Office around six million dollars each year in membership dues and assessments.<sup>126</sup> These payments provide the NFL roughly two hundred million dollars annually, a number that may actually be increasing.<sup>127</sup> These funds are used to cover “non-revenue overhead activities such as office rent, League Office salaries and game officiating.”<sup>128</sup> While two

121. *Id.* (discussing comments by Eric Grubman which suggested NFL was competing as “global entertainment brand”); see generally Hoffman, *supra* note 80 (discussing NFL’s repeated and continued attempts at global expansion, most recently by “focus[ing] the league’s international business strategy to presenting the NFL to the widest possible global audience, including broader media visibility and the staging of international regular-season games”).

122. Kaplan, *supra* note 80 (discussing comments regarding NFL’s alleged competitors); see also Mike Vorkunov, *NFL is First Sports League to Start Venture Capital Arm, Looking For New Revenue Streams*, NJ.COM (May 25, 2013), [http://www.nj.com/sports/index.ssf/2013/05/nfl\\_teams\\_with\\_equity\\_firm\\_to.html](http://www.nj.com/sports/index.ssf/2013/05/nfl_teams_with_equity_firm_to.html) (discussing how NFL is more than “just a football-only conglomeration . . . [it] must do more than just sell its sport[ ]” to achieve aggressive revenue goals).

123. For a discussion of how courts determine if associations engage in business ordinarily conducted for profit, and how such determinations impact associations’ tax-exempt status, see *supra* notes 106-109 and accompanying text.

124. Brian Frederick, *Why Does the National Football League Deserve Tax-Exempt Status?*, BUSINESS INSIDER (Mar. 5, 2012), <http://www.businessinsider.com/why-does-the-national-football-league-deserve-tax-exempt-status-2012-3> (arguing that NFL should not enjoy tax-exempt status); see also Manohar, *supra* note 7 (discussing how NFL appears to be operated like for-profit corporation that is designed and run to make money).

125. For a discussion regarding “incidental” activities exception to the fourth requirement, see *supra* notes 111-116 and accompanying text.

126. See Frederick, *supra* note 124 (stating that teams pay NFL about six million dollars per year); see also Dosh, *supra* note 8 (stating that teams pay NFL six million dollars each year in dues and assessments).

127. See Frederick, *supra* note 124 (discussing membership dues and assessments paid to the League Office).

128. Dosh, *supra* note 8 (citing comments from NFL spokesman Brian McCarthy regarding funding NFL receives from member teams for “overhead activities”).

hundred million dollars is certainly a great deal of money, it does not compare to the \$1.8 billion that was generated by NFL Ventures in 2010 (an amount that also likely increased in subsequent years).<sup>129</sup>

Technically, NFL Ventures is owned by the thirty-two NFL teams and is an entity separate from the NFL.<sup>130</sup> However, it is difficult to find that NFL Ventures and the NFL League Office do not constitute one economic unit.<sup>131</sup> The thirty-two teams that own NFL Ventures are also the only members of the NFL and, consequently, the only entities with the power to elect the Commissioner of the NFL, who runs the NFL League Office.<sup>132</sup> Furthermore, the stated goal of NFL Ventures is to “advertise, promote and market the [NFL] and its Member Clubs.”<sup>133</sup> Additionally, Eric Grubman, the current President of NFL Ventures, is listed on the NFL’s Form 990 as the NFL’s Executive Vice President of Business Ventures.<sup>134</sup> Given these close relationships and the common control group, NFL Ventures and the NFL League Office could and should be considered one economic unit.<sup>135</sup> Therefore, NFL Ventures’ revenues and service activities are clearly more than “incidental” as

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For a further discussion addressing the NFL’s “administrative” function of negotiating stadium deals, and how the NFL’s stadium funding scheme appears to run afoul of the inurement prohibition, see *infra* notes 229-235 and accompanying text.

129. See Tommy Craggs, *Exclusive: Leaked Documents Show Operating Profits For NFL Ventures Rose 29 Percent Last Year*, DEADSPIN (July 15, 2011), <http://deadspin.com/5821386/audited-financials-operating-profit-for-nfl-ventures-lp-rose-from-999-million-to-13-billion-last-year> (discussing financials of NFL Ventures).

130. See Dosh, *supra* note 8 (discussing ownership of for-profit NFL Ventures organization).

131. For further discussion about how NFL Ventures and the NFL League Office act as one economic unit, see *infra* notes 132-136 and accompanying text.

132. See Mark Maske, *Owners Pick Goodell as NFL Commissioner*, WASHINGTON POST (Aug. 9, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/08/AR2006080801043.html> (stating that owners of thirty-two NFL member teams voted to elect Goodell as NFL commissioner).

133. *NFL Ventures, L.P. and Subsidiaries Independent Auditors' Report* at 6, available at <http://edge-cache.gawker.com/deadspin/nflventures.pdf> [hereinafter *Auditors' Report*] (describing organizational structure and background of NFL Ventures, L.P.).

134. See *NFL Form 990* at 7 (2012), available at [http://990s.foundationcenter.org/990\\_pdf\\_archive/131/131922622/131922622\\_201203\\_990O.pdf](http://990s.foundationcenter.org/990_pdf_archive/131/131922622/131922622_201203_990O.pdf) (last visited May 7, 2014) (outlining details regarding titles, average work hours, compensation, etc. for officers, directors, trustees, key employees and highest compensated employees of NFL); see also *NFL signs deal with Ticketmaster*, TAMPA BAY BUS. J. (Dec. 19, 2007), <http://www.bizjournals.com/tampabay/stories/2007/12/17/daily26.html> (identifying Eric Grubman as President of NFL Ventures).

135. For further discussion about how NFL Ventures and the NFL League Office act as one economic unit and should be considered one such economic unit, see *supra* notes 132-134 and accompanying text.

compared to the “non-revenue overhead activities” that supposedly constitute the NFL’s “primary” business activities.<sup>136</sup>

Finally, a bit of careless drafting by NFL Ventures may also shed some light on the League’s true business intentions.<sup>137</sup> According to consolidated financials for NFL Ventures publicized in 2011, the operations of NFL International LLC, a wholly-owned subsidiary of NFL Ventures, “consist primarily of marketing, publicizing, promoting, licensing, distributing and developing the NFL’s international business.”<sup>138</sup> These are curious operational objectives, considering that all NFL member teams are located within the United States.<sup>139</sup> Not to mention, it seems odd that an alleged U.S. trade association would have any sort of “international business,” considering that such an association may not even engage in any domestic business for profit.<sup>140</sup>

E. Requirement 5 – “[A]ssociation . . . whose activities are directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.”<sup>141</sup>

There are two major components to the fifth requirement, namely a “line of business” component and a “performance of particular services” component, each of which will be addressed in turn.<sup>142</sup>

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136. For a discussion regarding the relationship between “incidental” and “primary” activities for determining whether a business activity is of a kind ordinarily engaged in for profit which would disqualify an association from 501(c)(6) tax-exempt status, see *supra* notes 111-116 and accompanying text.

137. See Auditors’ Report, *supra* note 133 (detailing operations of NFL Venture’s subsidiaries).

138. *Id.* (describing operations of NFL International LLC).

139. See *National Football League – NFL Map*, SPORT MAP WORLD, available at <http://www.sportmapworld.com/map/american-football/usa/nfl/> (last visited Oct. 7, 2013) (indicating location of all thirty-two NFL member teams on map of United States).

140. For a discussion regarding the prohibitions for 501(c)(6) trade associations or business leagues from engaging in business of kind regularly engaged in for profit, see *supra* notes 103-110 and accompanying text.

141. *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 622 (9th Cir. 2009) (outlining six-prong test as provided by Treas. Reg. § 1.501(c)(6)-1).

142. For a discussion regarding the line of business component, see *infra* notes 143-180 and accompanying text. For a discussion regarding the performance of particular services component, see *infra* notes 181-200 and accompanying text.

### 1. *Line of Business Analysis*

The first component that must be considered under this analysis is the “line of business” test, which requires an understanding of what constitutes a “line of business.”<sup>143</sup> Courts have defined a “line of business” as “an entire industry or all components of an industry within a geographic region.”<sup>144</sup> The IRS offers a more detailed definition stating that a “line of business” is a “trade or occupation, entry into which is not restricted by a patent, trademark, or other means that allow private parties to restrict the right to engage in the business.”<sup>145</sup>

To determine whether the League satisfies the line of business requirement, the particular industry to which the NFL and its member teams belong must first be established.<sup>146</sup> Is the NFL part of a professional football industry that would include other professional football leagues such as Arena Football?<sup>147</sup> Or, does the NFL constitute its own industry, namely the industry of professional “NFL

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143. See *Nat'l Muffler Dealers Ass'n v. United States*, 440 U.S. 472, 482-83 (1978) (discussing history of interpretation of meaning of “line of business”); see also *Nat'l Prime Users Grp., Inc. v. United States*, 667 F. Supp. 250, 255 (D. Md. 1987) (interpreting “line of business” as meaning “an entire industry or all components of an industry within a geographic area”). But see *Pepsi-Cola Bottlers' Ass'n v. United States*, 369 F.2d 250, 252 (7th Cir. 1966) (holding that association shall not be denied tax-exempt status “merely because its members all bottle a particular soft drink product”), *abrogated by Nat'l Muffler Dealers Ass'n*, 440 U.S. at 472.

144. *Nat'l Muffler Dealers Ass'n*, 440 U.S. at 482-83; see also *Nat'l Prime Users Grp., Inc.*, 667 F. Supp. at 256 (defining “line of business”).

145. Reilly, *supra* note 65, at K-21 (defining “line of business”).

146. For a discussion regarding the importance of determining what industry an association belongs to for purposes of determining if such association satisfies the “line of business” requirement, see *supra* notes 143-145 and accompanying text.

147. See *National Football League, Arena Football League Games Will Air on NFL Network in 2010*, NFL.COM (Feb. 11, 2010), <http://www.nfl.com/news/story/09000d5d81658e83/article/arena-football-league-games-will-air-on-nfl-network-in-2010> (“‘We embrace football at all levels,’ [stated] Charles Copin, Vice President of Programming of NFL Network.”). But see Dosh, *supra* note 8 (discussing comments from nonprofit organizations practitioner who questions NFL’s 501(c)(6) status, particularly whether NFL “is furthering the entire football industry”). The NFL seems to function more like an “exclusive club” rather than an industry association. See *id.* That is, one “can’t start a professional football team and join the NFL,” which operates in a “very closed circle.” *Id.*; see also NFL’s Exempt Status, *supra* note 62 (“The members of the American Professional Football League or the Professional Indoor Football League – other professional football leagues – aren’t about to be admitted as members to the NFL, because the NFL is a closed-membership group.”).

football?”<sup>148</sup> Or, is the NFL part of a larger entertainment or professional sports industry?<sup>149</sup>

Although no court has issued any determinative ruling as to whether the NFL is part of a larger entertainment industry, or if the League constitutes its own industry, the NFL would likely cite dicta from a Supreme Court case that supports the latter view.<sup>150</sup> In its “line of business” analysis in *National Muffler Dealers Association v. United States*, the Supreme Court briefly compared the National Muffler Dealers Association (NMDA) to the NFL.<sup>151</sup> The Supreme Court stated that the NFL was different from the NMDA as the NFL was “an ‘industrywide’ professional football league.”<sup>152</sup> According to the Court, the fact that the League was an “industrywide” association supported its tax-exempt status, unlike the NMDA, which was a simply a collection of franchisees selling a particular brand of car mufflers.<sup>153</sup>

This “industrywide” view of the NFL, however, is outdated and misplaced.<sup>154</sup> Suggesting that the NFL constitutes “an ‘industrywide’ professional football league” ignores the fact that other professional football leagues exist.<sup>155</sup> For example, since the Supreme Court’s 1979 *National Muffler Dealers Association* decision, the Arena

148. See Coburn Calls for End, *supra* note 28 (suggesting that NFL does not promote professional football generally, but rather focuses on promoting “NFL football”). For a further discussion addressing whether the NFL constitutes its own industry, see *infra* notes 161-175 and accompanying text.

149. Research on the entertainment and professional sports industries, as well as commentary by NFL executives, would suggest that the NFL is actually part of one or both of the aforementioned industries. See *Sports Industry Overview*, *supra* note 52 (indicating that NFL is classified as member of “Sports Industry”); see also *The Sports Market*, ATKEARNEY (March 2011), [http://www.atkearney.com/paper/-/asset\\_publisher/dVxv4Hz2h8bS/content/the-sports-market/10192](http://www.atkearney.com/paper/-/asset_publisher/dVxv4Hz2h8bS/content/the-sports-market/10192) (suggesting that “U.S. Football” is part of global sports industry); see also Kaplan, *supra* note 80 (discussing comments by Eric Grubman, Executive Vice President of NFL Ventures and Business Operations, which suggest NFL competes as “global entertainment brand”).

150. See *Nat’l Muffler Dealers Ass’n v. United States*, 440 U.S. 472, 486-87 (1978) (suggesting that following 1966 merger, NFL became “industrywide” professional football league which may be afforded tax-exempt status).

151. See *id.* (comparing association of franchisees with NFL).

152. *Id.* (contrasting NFL with NMDA).

153. See *id.* (explaining Court’s view that NFL, unlike NMDA, was “industrywide” association).

154. For a discussion regarding how the NFL should not constitute an “industrywide” association, see *infra* notes 155-160 and accompanying text.

155. See Howie Long, *Professional American Football Leagues Besides the NFL*, DUMMIES.COM, <http://www.dummies.com/how-to/content/professional-american-football-leagues-besides-the.html> (last visited May 7, 2014) (identifying Arena Football, Canadian Football League and United Football League as other forms of professional American football); see also Chris Johnson, *The Growth of American Football: How Successful Can the Sport be Overseas?*, BLEACHER REPORT (July 15, 2009), <http://>

Football League has been created and established itself as a legitimate form of professional football in the United States.<sup>156</sup> Not to mention, the Canadian Football League has fared reasonably well in Canada since its founding in 1958.<sup>157</sup> If the NFL were truly an industry association, it would not hesitate to accept other professional football teams from the Arena Football League, Canadian Football League, or other leagues into its ranks.<sup>158</sup> But the NFL has not incorporated other professional football teams from other leagues, nor is there evidence to suggest that the NFL is considering doing so in the future.<sup>159</sup>

Perhaps then the NFL does constitute its own industry, rather than a broader, inclusive professional football industry.<sup>160</sup> Even if one subscribes to this view, however, and believes that the NFL represents its own "NFL football" industry, the League still faces an uphill battle to satisfy the "line of business" requirement.<sup>161</sup> From an economic standpoint, with annual revenues of almost nine billion dollars (and growing), the NFL surely could constitute a freestanding industry, as the average person understands that term.<sup>162</sup> The problem for the League, however, lies not in its financials, but

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bleacherreport.com/articles/218330-growth-of-american-football (listing international professional American football leagues).

156. See *Key Dates*, ARENAFOOTBALL.COM, <http://www.arenafootball.com/history/key-dates.html> (last visited Oct. 20, 2013) (outlining history of Arena Football, which was first conceptualized in 1981 and whose first regular season debuted in 1987).

157. See *Canadian Football League History*, [http://www.mmbolding.com/BSR/CFL\\_NFL\\_CFL\\_History.htm](http://www.mmbolding.com/BSR/CFL_NFL_CFL_History.htm) (last visited May 7, 2014) (providing background and historical information on Canadian Football league generally).

158. See *The Rules: AFL v. NFL*, MEN'S FITNESS, <http://www.mensfitness.com/life/sports/the-rules-afl-vs-nfl> (discussing "the basic differences between NFL and AFL). The article presents a chart comparing each game's rules, including length of field, width of goal posts, but emphasizing that both leagues are examples of professional football. See *id.*

159. See NFL's Exempt Status, *supra* note 62 (discussing how NFL operates like "closed-membership group" that does not allow other members to join, which is not how industries and industry associations typically operate).

160. For a discussion addressing how the Supreme Court's decision in *Nat'l Muffler Dealers Ass'n* suggested that the NFL was an "industrywide" association, see *supra* notes 149-153 and accompanying text.

161. For a discussion regarding NFL's apparent struggles to establish itself as a freestanding industry constituting its own line of business, see *infra* notes 162-175 and accompanying text.

162. See *Sports Industry Overview*, *supra* note 52 (providing revenue amount for NFL during 2011-12 season).



rather with how the courts have interpreted what it means to constitute an industry.<sup>163</sup>

Courts find that an industry does not exist where an association, such as the NFL, has created and controls a particular product line or type of commerce.<sup>164</sup> The NFL is similarly situated with Bluetooth SIG Inc. (“SIG”), which applied for and was denied 501(c)(6) tax-exempt status in 2009.<sup>165</sup> SIG was an association that owned and marketed both a technology and a trademark (i.e., “Bluetooth”).<sup>166</sup> In reaching its decision to deny SIG 501(c)(6) tax-exempt status, the Ninth Circuit clearly outlined why Bluetooth-enabled products did not constitute their own industry, a discussion relevant to the present analysis of the NFL.<sup>167</sup>

First, the court noted that SIG “create[d] a common interest between its members” as opposed to “serving as a vehicle for advancing a common and pre-existing interest between members.”<sup>168</sup> Next, the Ninth Circuit cited that SIG could not identify any other line of business (or industry) in which one needed to join the industry association in order to meaningfully participate in that industry.<sup>169</sup> “Nor has SIG pointed to any industry where the industry organization created the industry itself. The ‘Bluetooth industry’ is inextricable from [Bluetooth SIG Inc.] itself, which controls the rights to the technology and trademark.”<sup>170</sup>

163. For a discussion addressing how courts would likely analyze the NFL’s situation regarding whether the League constitutes its own industry or not, see *infra* notes 164-171 and accompanying text.

164. For a discussion regarding courts’ hesitation to recognize an industry created and controlled by one association, see *infra* notes 168-170 and accompanying text.

165. See generally *Bluetooth SIG Inc., v. United States*, 611 F.3d 617, 622-28 (9th Cir. 2009) (explaining how Bluetooth SIG Inc. (SIG) was applying for tax-exempt status, but was denied such status on grounds that it failed requirements one, four and five of Treasury Regulation § 1.501(c)(6)-1). For a further discussion comparing the situations of SIG and the NFL, see *infra* notes 171-174.

166. See *Bluetooth SIG Inc.*, 611 F.3d at 618 (describing Bluetooth technology that “provides a language for electronic devices to talk to one another”).

167. See *id.* at 625 (explaining why “Bluetooth-enabled products” do not constitute industry). For a further discussion addressing how the Ninth Circuit’s ruling may relate to the NFL’s circumstances, see *infra* notes 171-174 and accompanying text.

168. *Bluetooth SIG Inc.*, 611 F.3d. at 623 (discussing technical distinction between association that creates common interest among members and association that brings together members who already have common interest).

169. See *id.* at 625 (discussing that SIG was unable to identify any other industry that required membership in specific industry association as prerequisite to participating in such industry).

170. *Id.*

It is difficult to see how the NFL could distinguish itself from SIG sufficiently to survive the type of analysis applied by the Ninth Circuit.<sup>171</sup> Just like SIG, the NFL created the industry and common interest among its member teams with the merger of the American Football League and National Football League in 1970.<sup>172</sup> Next, one cannot participate in the “NFL football” industry without joining the NFL, which is nearly impossible due to the League’s exclusivity.<sup>173</sup> Finally, the “NFL football” industry is “inextricable” from the NFL, which goes to great lengths to protect all of its private interests.<sup>174</sup>

Some league executives even suggest that the NFL should not constitute its own industry, but rather, should be considered part of the larger entertainment or entertainment sports industry.<sup>175</sup> If the NFL wishes to compete in the global entertainment market with for-profit entities, it should be allowed to do so unimpeded.<sup>176</sup> However, if the NFL is going to compete in the global entertainment industry, it cannot simultaneously claim to be a tax-exempt industry association.<sup>177</sup>

In the end, the NFL does not serve the entire entertainment industry, or all portions thereof within a geographic location.<sup>178</sup> In fact, the NFL does not even serve all of “professional football”

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171. For a discussion regarding obstacles the NFL may face in distinguishing its situation from that of Bluetooth SIG Inc. as decided by the Ninth Circuit, see *infra* notes 172-174 and accompanying text.

172. See *Nat'l Muffler Dealers Ass'n v. United States*, 440 U.S. 472, 486-87 (1979) (discussing generally how NFL came into existence following 1966 merger, creating “industrywide” professional football league); see also Maul, *supra* note 65, at 216 (discussing generally 1966 merger of American Football League and National Football League).

173. See Dosh, *supra* note 8 (discussing how membership in NFL is limited and one “can’t start a professional football team and join the NFL”).

174. See generally Auric D. Steele, *The NFL Flexes its Copyright Muscle*, THE BRAND .COM, <http://brandlaw.org/2010/01/nfl-flexes-its-copyright-muscle/> (last visited Oct. 20, 2013) (discussing generally various ways in which NFL protects images, pictures, statistics, and other information or data which is somehow related to NFL games, teams, etc.).

175. See Kaplan, *supra* note 80 (discussing comments by Eric Grubman, Executive Vice President of NFL Ventures and Business Operations, which suggest NFL competes as global entertainment brand).

176. See *id.* (discussing NFL and member teams’ aggressive goals of increasing revenues by competing with various global organizations in various industries).

177. For a discussion addressing impact of industry association competing with for-profit organizations in the marketplace, that is, engaging in business ordinarily conducted for profit, see *supra* notes 103-110 and accompanying text.

178. For a further discussion regarding the requirement that industry associations serve an entire industry, or all portions of an industry within a geographic region, see *supra* notes 143-145 and accompanying text.

within the United States.<sup>179</sup> The League does not seek to improve the business conditions of any line of business – it serves only its thirty-two member teams, and does nothing more.<sup>180</sup>

## 2. *Performance of Particular Services Analysis*

The second component under the fifth requirement is essentially the converse of the first factor, requiring that an association not have as its primary activity the “performance of particular services for individual persons.”<sup>181</sup> That is, when an association directs its primary activities to the improvement of business conditions for one or more lines of business (i.e. for more than just thirty-two football teams), such an association would not be primarily performing services for individual members or persons.<sup>182</sup> This is not to say, however, that a 501(c)(6) association may never incidentally perform particular services for its members.<sup>183</sup>

This limitation is best illustrated by two cases that have come before the IRS.<sup>184</sup> In one case, the tax-exempt status of an associa-

179. For a discussion addressing how the NFL does not constitute an industry association serving to promote professional football generally, see *supra* notes 154-160.

180. See *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 197-98 (2010) (discussing how NFL teams share economic interest of “promoting NFL football” and “the NFL brand”); see also Maul, *supra* note 65, at 218-19 (suggesting that NFL operates for benefit of its members); Dosh, *supra* note 8 (discussing how critics question if NFL furthers “the entire football industry”); NFL’s Exempt Status, *supra* note 62 (suggesting that “the NFL isn’t advocating for professional football as a line of business, but for the profitability of its [thirty-two] corporate-person members”).

181. Reilly, *supra* note 65, at K-20 (discussing converse relationship between primarily improving business conditions of line of business and performing particular services). Organizations claiming 501(c)(6) tax-exempt status must primarily improve business conditions of one or more lines of business, which inherently would prevent such organizations from primarily performing particular services. See *id.*

182. See *id.* (explaining converse relationship between “improvement of business conditions of one or more lines of business” and “performance or particular services for individual persons”).

183. See *id.* at K-24 (acknowledging that when associations perform valid promotional activities, such as general advertising campaigns, members will incidentally benefit from such activities as though associations had performed particular services, but such incidental benefits will not cause associations to jeopardize their tax-exempt status). Much like incidentally engaging in business of a kind ordinarily conducted for business will not cause an association to run afoul of requirement four, as discussed above, so too may an association engage in activities that incidentally benefit individual members. For a further discussion addressing the incidental exception, see *supra* notes 111-116 and accompanying text.

184. For discussion explaining technical distinction between performing particular services and receiving incidental benefits from activities directed at improving business conditions of one or more lines of business, see *infra* notes 185-188 and accompanying text.

tion of merchants in a particular shopping center was denied because the association's advertisements contained the names of the individual merchants.<sup>185</sup> This type of specific advertising was determined to constitute performance of particular services.<sup>186</sup> Alternatively, the IRS found no issue with a different association that engaged in "a general advertising campaign to encourage the use of products and services of the industry as a whole."<sup>187</sup> The basic principle is that if the benefits of an association's advertising, or other activities, reach only members of that association, as opposed to members of the industry as a whole, the association would fail to meet this fifth requirement.<sup>188</sup>

Furthermore, courts ruling on this issue have stated that in deciding if an association performs particular services, the "ultimate inquiry is whether the association's activities advance the members' interests generally, by virtue of their membership in the industry, or whether they assist members in the pursuit of their individual businesses."<sup>189</sup> Under this framework, it has been found that when an association benefits only those who participate in the association, as opposed to all members of the corresponding industry, 501(c)(6) tax-exempt status shall be denied.<sup>190</sup> Moreover, courts also look to the relationship between the services rendered by an association to its members and the fees and assessments collected from those members.<sup>191</sup> If the fees and assessments that the association col-

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185. See Reilly, *supra* note 65, at K-24 (discussing Revenue Ruling 64-315 which determined that advertising carrying names of particular members of organization constituted performing particular services).

186. See *id.* ("Advertising that carries the names of members generally constitutes the performance of particular services for members.").

187. *Id.* (discussing Revenue Ruling which determined that general advertising promoting use of products/services of entire industry did not violate prohibition of performing particular services for members).

188. See *id.* (discussing technical distinction between performing particular services and receiving incidental benefits from general activities directed at improving business conditions of one or more lines of business); see also Rev. Rul. 67-77, 1967-1 C.B. 138 (determining that general advertising activities of association which limited membership to car dealers of a particular make of automobile constituted performance of particular services as the activity was not improving business condition of entire automotive industry).

189. ABA Ret. Funds v. United States, 2013 U.S. Dist. LEXIS 60086, \*14-15 (N.D. Ill. Apr. 25, 2013) (providing standard by which courts determine whether association provides particular services).

190. See generally *id.* at \*15-16 (discussing that organization's activities were invalidly assisting individual members as opposed to promoting industry members' interests generally through activities such as "educational programs, lobbying activities, and institutional advertising services").

191. See MIB, Inc. v. Comm'r, 734 F.2d 71, 79 (1st Cir. 1984) (discussing that major factor in determining if services performed are "particular" is proportion of fees and assessments collected compared to benefits that members received).

lects from its members correspond exactly or substantially to the value of the benefit the members receive, the courts will likely find that particular services have been performed, and tax-exempt status will be denied.<sup>192</sup>

When addressing this issue, the NFL would likely argue that it is purely engaged in general “non-revenue overhead activities” and that it does not perform any particular services for any of its member teams.<sup>193</sup> While this position may seem reasonable, observers taking a more critical view of the common control group and close relationships between the NFL and NFL Ventures, for example, reach a very different conclusion.<sup>194</sup> Specifically, the NFL could be said to perform particular services for its members based on the activities that NFL Ventures performs on behalf of, and likely at the direction of, the NFL for the benefit of member teams.<sup>195</sup>

One need only look at NFL Ventures’ own descriptions of the operations performed by its wholly owned subsidiaries to conclude that those entities, which are very closely related to the NFL, generate benefits enjoyed primarily by the NFL and its member teams.<sup>196</sup> For example, the operations of NFL Enterprises LLC, one of the NFL Ventures’ wholly owned subsidiaries, “consist primarily of advertising, publicizing, promoting, marketing and selling broadcasts of NFL games through ‘NFL Sunday Ticket’ and related programming, including NFL Network.”<sup>197</sup> Additionally, NFL Productions LLC, another of NFL Ventures’ wholly owned subsidiaries, “primarily produces NFL-related programming for the NFL and its Member Clubs.”<sup>198</sup> Although NFL Productions LLC supposedly also

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192. See *id.* at 78-79 (discussing how *MIB* court knew of “no case under the current regulation where business league status has been granted to an entity whose *modus operandi* involves the performing of discrete services for individual members – and at charges substantially tied to those very services”).

193. See Dosh, *supra* note 8 (describing activities NFL League Office engages in, including paying for game officiating).

194. For a further discussion of the close relationship between the common control group for the NFL and NFL Ventures, which creates a strong case to consider the related entities as one economic unit, see *supra* notes 130-136 and accompanying text.

195. For a discussion regarding the particular services that NFL Ventures performs which should be attributed to the NFL, due to the close relationship between the two entities, see *infra* notes 196-199 and accompanying text.

196. For a discussion regarding the particular services that NFL Ventures and its wholly-owned subsidiaries perform to benefit NFL member teams, see *infra* notes 197-199 and accompanying text.

197. Auditors’ Report, *supra* note 133, at 6 (describing operational activities of NFL Enterprises LLC).

198. See *id.* (describing primary operational activities of NFL Productions LLC as marketing related activities).

“provides services to customers operating in the entertainment and media industries,” one can reasonably assume such services still relate to and benefit the NFL and its member teams, which does not help the NFL’s case.<sup>199</sup> Based on the close relationship between the NFL, NFL Ventures, and NFL Ventures’ wholly owned subsidiaries, and the services these entities provide, it is clear that the League’s primary activity is performing particular services for individual persons/teams, which violates the fifth requirement.<sup>200</sup>

F. Requirement 6 – “[A]ssociation . . . of the same general class as a chamber of commerce or a board of trade.”<sup>201</sup>

Courts have stated that in determining whether an association is “of the same general class as a chamber of commerce or a board of trade” the association “must possess the general characteristics of [a chamber of commerce or a board of trade].”<sup>202</sup> To assist in such determinations courts have indicated that the important factors one must consider are the purposes and operations of chambers of commerce or boards of trade, and how these purposes and operations relate to the applying association.<sup>203</sup> Essentially, an association will be considered to be “of the same general class as a chamber of commerce or a board or trade” if such association’s purposes are: (1) “to promote [a] common interest;” (2) “similar to those ‘of a chamber of commerce or a board of trade;’” and (3) not “to engage in a regular business of a kind ordinarily carried on for profit.”<sup>204</sup> As prongs one and three of this analysis have already been discussed, the focus here will be on the second prong regard-

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199. *See id.* (describing additional activities of NFL Productions LLC in entertainment and media).

200. For a discussion addressing how courts and the IRS handle determinations of whether associations provide particular services to individuals and how those criteria apply to the NFL’s situation suggests that the NFL would be found to be performing particular services, see *supra* notes 181-199 and accompanying text.

201. *Bluetooth SIG Inc. v. United States*, 611 F.3d 617, 622 (9th Cir. 2009) (outlining six-prong test as provided by Treas. Reg. § 1.501(c)(6)-1).

202. *Produce Exch. Stock Clearing Ass’n v. Helvering*, 71 F.2d 142, 144 (2d Cir. 1934) (determining that organizations attempting to qualify for tax-exempt status must “possess the general characteristics of [the] other groups with which the statute groups [such organization]”).

203. *See Retailers Credit Ass’n v. Comm’r*, 90 F.2d 47, 50 (9th Cir. 1937) (discussing how to determine if association applying for tax-exempt status meets requirement of being “of the same general class as a chamber of commerce or board of trade”).

204. *Id.* (outlining analysis used to determine if association is like chamber of commerce).

ing purposes “similar to those ‘of a chamber of commerce or board of trade.’”<sup>205</sup>

In order to determine whether an organization can satisfy the second purpose prong under this sixth requirement, courts have had to clarify what constitutes either a “chamber of commerce” or a “board of trade” and how their respective purposes differ.<sup>206</sup> A chamber of commerce is “a board or association to promote the commercial interests of a locality, a county or the like.”<sup>207</sup> Alternatively, a board of trade is considered to be “a body of men organized for the advancement and protection of business interests.”<sup>208</sup> Although these terms have very similar definitions, their purposes differ in an important respect.<sup>209</sup> Specifically, chambers of commerce promote “all businesses in a particular geographic location,” while boards of trade only promote and advance one or more, but not all, lines of business in a particular geographic area.<sup>210</sup>

Applying these principles to the NFL, it is clear that the League does not constitute a chamber of commerce.<sup>211</sup> “The NFL exclusively promotes NFL football,” and does not promote business generally.<sup>212</sup> The more involved analysis, however, considers whether the NFL is a board of trade.<sup>213</sup>

Only if the NFL were found to constitute its own industry could it potentially qualify as a board of trade, one that promotes the line of business of “NFL football.”<sup>214</sup> However, as argued above, “NFL football” is not, and should not constitute, an industry (or line of

205. For a discussion addressing prong one (promotion of a common interest) as applied to the NFL, see *supra* notes 72-81 and accompanying text. For a discussion addressing prong three (not engaging in business ordinarily carried on for profit) as applied to the NFL, see *supra* notes 103-141 and accompanying text.

206. See *Retailers Credit Ass’n*, 90 F.2d at 51 (examining difference between “chamber of commerce” and “board of trade”).

207. *Id.* (explaining definition of “chamber of commerce” as defined by Webster’s New International Dictionary).

208. *Id.* (explaining definition of “board of trade” as defined by Webster’s New International Dictionary).

209. See *id.* (discussing difference between “board of trade” and “chamber of commerce”).

210. *Id.* (discussing specific, technical distinction between “board of trade” and “chamber of commerce”).

211. See Hruby, *supra* note 22 (suggesting that NFL does not operate like local Chamber of Commerce by promoting specific brand of product).

212. *Id.* (discussing that unlike Chambers of Commerce NFL does not promote business generally).

213. For a discussion addressing whether the NFL constitutes a board of trade, see *infra* notes 214-217 and accompanying text.

214. For a further discussion regarding definition of “line of business” and whether the NFL constitutes its own industry, see *supra* notes 143-180 and accompanying text.

business).<sup>215</sup> Furthermore, at its core, the League has “clear for-profit goals” and competes with for-profit companies and corporations.<sup>216</sup> These undertakings are inapposite to the standard purposes of either chambers of commerce or boards of trade, which leads to the conclusion that the NFL fails this sixth requirement.<sup>217</sup>

G. Requirement 7 – “[A]ssociation . . . no part of the net earnings of which inure to the benefit of any private shareholder or individual.”<sup>218</sup>

The inurement prohibition invoked by this requirement applies to numerous tax-exempt organizations under Section 501(c), including 501(c)(6) entities.<sup>219</sup> The determination of whether inurement has occurred or is occurring is very fact specific.<sup>220</sup> Consequently, courts and commentators have struggled to establish a precise definition for what constitutes “inurement.”<sup>221</sup>

Black’s Law Dictionary defines inure as “to take effect” or “to come into use.”<sup>222</sup> That definition, however, is not as helpful as the explanation provided by one commentator on the NFL’s tax-exempt status.<sup>223</sup> As that commentator stated, “in language [your average] Bob could understand [this requirement provides that]: a nonprofit can’t pass its financial benefits onto others.”<sup>224</sup>

This simplified conceptualization of inurement, however, is somewhat misleading because it fails to address the “incidental” ex-

215. For a discussion addressing that the NFL should not constitute its own industry, see *supra* notes 161-180 and accompanying text.

216. See Manohar, *supra* note 7 (suggesting that NFL is operated like for-profit corporation designed to make money); see also Kaplan, *supra* note 80 (discussing NFL’s aggressive goals for increasing revenue and competing with multi-national corporations).

217. For a further discussion regarding the operations and purposes of chambers of commerce and boards of trade, see *supra* notes 206-210 and accompanying text.

218. I.R.C. § 501(c)(6) (2011).

219. See Reilly, *supra* note 65, at K-16 (detailing all classifications of tax-exempt organizations that are subject to inurement prohibition).

220. See *id.* (indicating that determinations of inurement are case and fact-specific).

221. See *id.* (stating that courts have not established one, precise definition of “inurement”); see also Delaney, *supra* note 59 (discussing possible definitions of “inurement”).

222. BLACK’S LAW DICTIONARY 842 (8th ed. 2004) (defining “inure”).

223. See generally Delaney, *supra* note 59 (examining NFL’s tax-exempt status through sarcastic, yet academic lens).

224. Delaney, *supra* note 59 (suggesting practical, more understandable definition of “inure”).



ception, which also applies here.<sup>225</sup> IRS documents addressing this topic provide that, “the inurement prohibition does not preclude members receiving some kind of benefits from the organization such as newsletters and similar informative material.”<sup>226</sup> Furthermore, the same publication states that the “profitability of the members’ individual enterprises may be enhanced by the [association’s] successful promotion of the common business interest.”<sup>227</sup> Finally, the IRS documentation indicates that inurement does, however, result from “an expenditure of organizational funds resulting in a benefit which is beyond the scope of the benefits which logically flow from the organization’s performance of its exempt functions.”<sup>228</sup>

One such area where the NFL’s expenditures and activities result in benefits that do not flow from its exempt functions is the League’s stadium funding scheme.<sup>229</sup> Under this system, the NFL negotiates new deals for stadiums that are financed by a combination of public money, NFL loans, and owner-provided financing.<sup>230</sup> Although this may be an oversimplification of the financing activity, it provides the backdrop for understanding that the NFL’s stadium funding arrangement runs afoul of the inurement prohibition.<sup>231</sup>

When the NFL contributes money to stadium construction projects in the form of interest-free loans, such contributions inure

225. For a further discussion addressing the incidental exception, see *supra* notes 111-116 and accompanying text.

226. Reilly, *supra* note 65, at K-16 (discussing that associations may provide members with some small, “incidental” benefits without running afoul of inurement prohibition).

227. *Id.* (indicating that prohibited inurement does not result when association engages in general activities that promote common business interests of all members, regardless of potential positive impact such activities may have on profitability of individual member’s businesses).

228. *Id.* (citing G.C.M. 38559 (Nov. 8, 1980) as example of inurement resulting from association providing members with benefits that exceed incidental exception).

229. For discussion regarding the NFL’s possible violation of the inurement prohibition as it pertains to stadium funding, see *infra* notes 230-232 and accompanying text.

230. See *The NFL: Big Business with Big Tax Breaks*, NPR (Jan. 18, 2014), <http://www.npr.org/2014/01/18/263767372/the-nfl-big-business-with-big-tax-breaks> (identifying various activities, such as negotiating stadium deals, as NFL functions that may be classified as “administrative” or “organizational”). Jeremy Spector, outside tax counsel for the NFL, suggests that the league office may engage in “administrative” and “organizational” activities without putting the league’s tax-exempt status at risk. See also Delaney, *supra* note 59, at 17 (detailing, generally, NFL’s G3 stadium funding program). In certain cases private-equity investments may also provide funding. See *id.*

231. See Delaney, *supra* note 59, at 16-19 (arguing that NFL’s stadium funding program improperly inures to benefit of members, specifically team owners).

to the benefit of the member teams, specifically the owners of those teams.<sup>232</sup> The League would likely argue that these stadium fund contributions are valid general promotional activities, which, at most, produce incidental benefits.<sup>233</sup> The problem with this view, however, is that it ignores the basic realities that funds are limited, and that the renovation or construction of a new stadium for one team comes at the expense of other member NFL teams.<sup>234</sup> Such an unequal distribution of funds violates the inurement prohibition.<sup>235</sup>

Another potentially problematic area for the NFL concerns the billions of dollars the League collects in the form of "TV rights fees, postseason revenue and shared ticket revenue from visiting teams."<sup>236</sup> According to the NFL, these billions of dollars are simply collected by the League Office and distributed to the teams, where such money is taxed.<sup>237</sup> Although the NFL does not believe that such collection and distribution of funds is problematic, this activity should be characterized as inurement.<sup>238</sup>

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232. See *id.* (arguing that team owners benefit from NFL's stadium funding program); see also *The NFL's New Stadium Fund Explained (Sort of)*, FIELD OF SCHEMES (July 26, 2011), [http://www.fieldofschemes.com/news/archives/2011/07/4619\\_post\\_32.html](http://www.fieldofschemes.com/news/archives/2011/07/4619_post_32.html) (detailing, generally, that NFL's new stadium funding program, which replaced old G3 system, will take 1.5% of NFL revenues and contribute such funds to construction or renovation projects of select stadiums throughout NFL).

233. See Reilly, *supra* note 65, at K-16 (stating that inurement prohibition does not prohibit associations from generally promoting common business interest of its members, which may lead to some incidental benefit for members and members' businesses).

234. See *Stadium Geek Week: G3 Financing*, FOOTBALLPHDS.COM (July 19, 2011), <http://www.footballphds.com/2011/07/19/stadium-geek-week-g3-financing/> (answering basic questions regarding NFL's previous stadium funding scheme (titled "G3") and specifically noting that after Meadowlands Stadium construction started, no funds remained for distribution to other teams).

235. See Reilly, *supra* note 65, at K-16 (indicating that organizations who provide benefits to some members at expense of other members violate inurement prohibition).

236. Schrottenboer, *supra* note 6 (citing that in NFL's most recent tax form, \$4.3 billion were collected by NFL and distributed to member teams).

237. See Dosh, *supra* note 8 (discussing comments from NFL representative regarding NFL's business activities and distribution of revenues among member teams).

238. See Maul, *supra* note 65, at 219-20 (discussing how NFL's revenue sharing plan benefits individual shareholders (team owners) and disqualifies NFL from 501(c)(6) status); see also Reilly, *supra* note 65, at K-15 (discussing that "distribution of accumulated income to members may constitute inurement, which would disqualify an organization from exemption"). Generally 501(c)(6) organizations may only make cash distributions if such distributions "represent no more than a reduction in dues or contributions previously paid to the organization to support its activities." See *id.*

Furthermore, the Supreme Court's recent decision to overturn the NFL's longstanding single entity status for antitrust purposes has lead critics to suggest that the NFL "should also not be considered a single entity for tax purposes."<sup>239</sup> Specifically, critics claim that the NFL team owners are like "private franchise holders of a business" who directly benefit from the business that is "NFL football."<sup>240</sup> That is, due to the League's revenue sharing plan, when the League increases its overall revenues from national television deals, each individual owner receives the benefit of increased distributed revenues as well.<sup>241</sup> Based on the benefits enjoyed by particular individuals as a result of the NFL's revenue sharing plan, the NFL should fail the seventh and final requirement for tax-exemption.<sup>242</sup>

#### IV. CONCLUSION

The IRS and courts provide that associations who wish to qualify for 501(c)(6) status must meet all of the requirements outlined in I.R.C. 501(c) and the relevant Treasury Regulations.<sup>243</sup> As demonstrated in the discussion above, it is clear that the NFL fails at least one, if not most, of those requirements.<sup>244</sup> Specifically, the close relationship between the NFL and affiliated for-profit entities calls into question whether: (1) the NFL is organized for profit; (2) the NFL is engaging in business ordinarily conducted for profit; and (3) the NFL performs particular services for its member teams.<sup>245</sup> Furthermore, the NFL does not improve any line of busi-

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239. Maul, *supra* note 65, at 219 (positing that NFL should not be considered single entity for either antitrust or tax purposes); *see also generally* Am. Needle, Inc. v. NFL, 560 U.S. 183 (2010) (holding that NFL is made up of distinct economic entities (teams) that can have differing economic interests and can violate § 1 of Sherman Act).

240. Maul, *supra* note 65, at 219 (suggesting that NFL team owners can be compared to private franchise holders).

241. *See id.* at 219-20 (explaining that NFL team owners receive financial benefits in terms of increasing amounts of shared revenues when NFL increases overall revenues).

242. *See id.* (arguing that NFL team owners do benefit from NFL's earnings, which constitutes inurement and should disqualify league from 501(c)(6) tax-exempt status).

243. For a discussion outlining the requirements an association must satisfy to qualify for 501(c)(6) tax-exempt status, see *supra* notes 65-70 and accompanying text.

244. For a detailed discussion suggesting that the NFL fails to satisfy some of the requirements under the applicable seven-prong test, see *supra* notes 71-242 and accompanying text.

245. For a discussion addressing whether the NFL is organized for profit, see *supra* notes 86-101 and accompanying text. For a further discussion regarding whether the NFL engages in business ordinarily conducted for profit, see *supra*

ness and thus also does not resemble a chamber of commerce or board of trade.<sup>246</sup> Finally, the League's monetary practices, including its stadium-funding scheme and distribution of revenues, also violate the applicable inurement prohibition.<sup>247</sup>

In light of these shortcomings, the IRS should not wait for Congress to act and should revoke the NFL's tax-exempt status.<sup>248</sup> Not only would such action simply constitute application of the black letter law, but many people also see it as the fairest course of action from a policy perspective.<sup>249</sup> And while the IRS reviews the NFL's case, it should also look at other sports leagues, such as the National Hockey League and the PGA Tour, who currently benefit from the same 501(c)(6) tax-exempt status.<sup>250</sup> In the end, there

notes 102-140 and accompanying text. For a detailed discussion addressing whether the NFL performs particular services for its member team, see *supra* notes 181-200 and accompanying text.

246. For a discussion suggesting that the NFL does not improve any lines of business, see *supra* notes 143-180 and accompanying text. For a discussion addressing whether the NFL constitutes either a chamber of commerce or board of trade, see *supra* notes 201-217 and accompanying text.

247. For a further discussion suggesting that the NFL's questionable monetary practices constitute inurement, see *supra* notes 218-242 and accompanying text.

248. See Schrottenboer, *supra* note 6 (suggesting that debate regarding fairness of tax code which provides tax exempt status to some groups while denying such status to other groups "boils down to a tax policy decision for Congress"); see also John Mariani, *Should the NFL Pay Taxes? Petition Seeks to End League's Federal Tax-Exempt Status*, SYRACUSE.COM (Oct. 2, 2013), [http://www.syracuse.com/news/index.ssf/2013/10/should\\_the\\_nfl\\_pay\\_taxes\\_you\\_make\\_the\\_call.html](http://www.syracuse.com/news/index.ssf/2013/10/should_the_nfl_pay_taxes_you_make_the_call.html) (discussing Woolard's petition to revoke NFL's status, as well as Sen. Coburn's actions in Congress, and asking if "Congress should blow the whistle on the NFL's tax-exempt status?").

249. See Coburn Calls for End, *supra* note 28 (suggesting that although federal tax revenues to be obtained from revoking NFL's tax-exempt status are unknown, it is clear that "as a matter of fairness" NFL should lose its 501(c)(6) status). Until public attitudes change, those at the top of the pro-football pyramid will keep getting away with whatever they can. This is troubling not just because ordinary people are taxed so a small number of NFL owners and officers can live as modern feudal lords and ladies. It is troubling because athletics are supposed to set an example – and the example being set by the NFL is one of selfishness. Football is the king of sports. Should the favorite sport of the greatest nation really be one whose economic structure is based on inequality and greed? Easterbrook, *supra* note 33.

Would taxing the NFL in line with its actual profitable purpose impact America in a major way? Most likely not – even if [Sen.] Coburn's estimates are correct, "at least \$91 million" can be carved up rather quickly by any government. But fair is fair, and the NFL's claim that it operates at anything but a near bullet-proof money machine is ludicrous a[t] best, and near criminal at worst.

Farrar, *supra* note 2.

250. See Mariani, *supra* note 248 (discussing that Sen. Coburn's new stand-alone bill (PRO Sports Act) would impact National Hockey League and PGA Tour, in addition to NFL, as those two organizations also currently file as nonprofit orga-

appears to be no compelling reason for the NFL, the most profitable sports league in the world, to be tax-exempt.<sup>251</sup>

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nizations); *see also* Schrottenboer, *supra* note 6 (stating that “for decades . . . the PGA Tour and NHL haven’t been required to pay [federal income taxes]”).

251. *See* Delaney, *supra* note 59, at 9 (suggesting that there is “no logical explanation” as to why NFL has tax-exempt status); *see also* NFL’s Exempt Status, *supra* note 62 (suggesting, sarcastically, that NFL’s tax-exempt status is justified as NFL, and NHL for that matter, does not constitute sports or business association, but rather tax-exempt religion).

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