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6 Takeaways For The Sports Industry From Tax Reform

By **Adam Rhodes**

Law360 (February 16, 2018, 1:24 PM EST) -- As taxpayers and employers alike grapple with the sweeping changes to federal tax law signed late last year, athletes, coaches and teams aren't immune from the money-saving — and cash-costing — effects of the reform.

In December, President Donald Trump signed into law H.R. 1, formerly known as the Tax Cuts and Jobs Act, which brought about massive, Republican-led reform to the U.S. tax code.

Here, Law360 looks at six takeaways about what the changes mean for the sports industry.

Congress Is Becoming More of an Adversary Than an Ally

Though the final version of H.R. 1, formerly known as the Tax Cuts and Jobs Act, scrapped a provision that would have eliminated tax breaks for public bonds used for stadiums, Morgan Lewis & Bockius LLP partner Alexander L. Reid told Law360 that it signals a shift in the relationship between the industry and lawmakers.

"Congress has been not as friendly to sports this year as they have been in the past," Reid said. "Usually they go out of their way to do things that are very favorable to the sports industry, but the fact they were even considering doing something like eliminating the tax-exempt financing of stadiums was somewhat adversarial to the sports industry."

With the NHL's Islanders in the process of moving back to Long Island and the NFL's Raiders moving to Las Vegas, the change could have crippled those moves and other leagues' expansion efforts if it made it in the final version of the bill, Morgan Lewis partner Jack Concannon said.

But Reid was quick to note that professional sports have more favor than college athletics because of their structure — if they are built as pass-through companies, which pass profits through to the owners, or as C corporations, which are taxed separately from their owners.

"In terms of professional sports, I think to the extent they're organized as pass-through or a C corp, they just got a tax cut, so that's gonna be good for business," he said. "The fact that the president intervened for the stadium bonds is a good sign."

Donating to Your Alma Mater Might Be Costly

Another more specific provision in the now-signed bill, Reid noted, was a change that would make charitable donations to universities nondeductible if any of the contributions gave donors the right to purchase seats at sporting events.

Concannon, co-chair of the firm's sports practice, said the change could especially hurt large universities with big athletic followings.

"That's how a lot of stadiums got financed," he said. "If that's all gone now, that whole scheme for funding at athletic departments is gone."

Reid called the move harsh and said it would be more economically sound to disallow deductions for the amount of seating or purchase rights awarded instead of entire donations.

Coaches Face a Choice Between Going Public or Private

Not all of the changes in the bill as so specific, however. One such change, Reid noted, is a new excise tax, payable by universities, on compensation over $1 million, but it's unclear whether that tax applies to both public and private schools or just to private schools.

With many athletic coaches earning above that threshold, Reid said the change could create a situation where a coach at a private school like Duke University could be subject to that excise tax while someone at a public school like the University of Alabama would not be subject to it.

That potential discrepancy and whether the statute was intended to cover state schools is currently being debated, he added.

Coaches making well over $1 million wouldn't feel the effects as much as coaches who are right at the margin, however, Reid said. For those lower-paid coaches, it could make the difference in their hiring — the schools could decide to hire someone else to avoid the tax — and it would be more difficult for schools to hire coaches who had other opportunities in the private sector, he added.

Tax Bracket Change Favors No-Tax States

The top tax bracket dropping 39.6 percent down to 37 percent could exacerbate a divide between players in no-income tax and high-income tax states, said Joseph J. Criscuolo, managing associate at Drucker & Scaccetti.

Criscuolo predicted that for players in no-income tax states like Texas, Florida and Nevada, the lost state and local tax deductions aren’t going to be as big of an impact as for athletes in high-income-tax states.

While he said players in high-tax states may still be able to offset those lost deductions, he expects that for especially high-earning athletes, it won't totally offset those lost deductions or will only offset a small amount.

Criscuolo said that for a New York athlete making about $3 million and making normal deductions, they may face a tax increase of about $40,000 to $50,000. That same taxpayer in Florida, however, could save $60,00 to $70,000 in taxes.

Deduction Caps Could Be Brutal

Criscuolo added that individual athletes could be most affected by changes in what they can deduct as business expenses and under state and local income taxes.

Thanks to the new $10,000 cap on SALT deductions, Criscuolo said the taxable income of one of his NFL clients could go up by nearly $1.5 million, adding that the change could additionally affect where players agree to sign.

"Obviously teams in [no-income-tax states like] Texas and Florida have even a higher advantage of signing these players over states like California and New York, even under the old tax law," Criscuolo said. "But now with that state and local income tax deduction capped at $10,000, [that advantage] just exponentially increases."

Coupled with that change, he said, is the lost deduction for unreimbursed employee business expenses. The change could be particularly disastrous for players who previously deducted their agent fees, which Criscuolo said are typically athletes' biggest expenses. For his NFL client, it was just under $500,000 last year.

Under that change, players would also be unable to deduct union dues, payments to trainers in the offseason, gym fees and fines, he said.

1099 Employees Fare Better Under the Bill

While most of the changes are geared toward those who file a W-2 come tax time, who are treated as standard employees, players who operate under a 1099 as independent contractors have a lot more flexibility to work with and avenues to explore, Criscuolo said.

He said the best financial move for them would be setting up a loan-out company that would allow them to deduct expenses that W-2 athletes can't.

For example, thanks to a loan-out company, a 1099 athlete could be able to deduct their full agent fee on their companies' tax returns, could set up payroll for wages and could start a solo 401(k) program and get full retirement deferral.

W-2 employees could enjoy some of those advantages, however, if they make the right moves, Criscuolo said. For those employees, he recommended similarly setting up loan-out companies and working with teams or employers to move at least part of their compensation through those companies, allowing them to recoup at least part of those now-lost deductions.

--Editing by Katherine Rautenberg