

## Legal Sidebar

# NFL Gives Up its Tax-Exempt Status

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On April 28, 2015, [it was reported](#) that Roger Goodell, Commissioner of the National Football League (NFL), notified team owners and Members of Congress that the NFL would be giving up its tax-exempt status, beginning with tax year 2015. Commissioner Goodell reportedly described the exemption as a “distraction,” in apparent reference to recent questions about whether the NFL’s handling of several high-profile controversies suggested the League [was not deserving of tax-exempt status from a public policy perspective](#) and whether the NFL [actually meets the legal criteria for such status](#).

The NFL has been exempt from federal income taxes as an organization described in [§501\(c\)\(6\) of the Internal Revenue Code](#) (IRC). (This applies only to the League—the teams are not, and never have been, tax-exempt). Section 501(c)(6) describes:

Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

A [Treasury regulation](#) explains that “a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.” People sometimes think the statutory language referencing professional football leagues means that other sports leagues cannot qualify for §501(c)(6) status. This is not true. Professional sports leagues are business leagues because they are designed to promote the common business interests of their team members. Thus, assuming they meet the other criteria—such as being operated on a not-for-profit basis and not violating the prohibition against private inurement—they qualify for §501(c)(6) status. So, why then are professional football leagues specifically mentioned? The language was added by a [1966 law](#) that addressed legal issues arising from the then-proposed merger between the NFL and the American Football League. Prior to it, professional football leagues and other sports leagues could qualify for §501(c)(6) status, and the effect of the 1966 amendment was merely to provide that the post-merger NFL would continue to qualify even if it administered a pension fund for its players (i.e., this would not violate the prohibition against private inurement).

Why would the NFL give up its tax-exempt status? While it might seem this would be a costly decision, it is actually not expected to have a [significant impact on the League’s finances](#). And there is precedent to believe this will be true: Major League Baseball (MLB) gave up its §501(c)(6) status in 2009, describing it as a “[tax-neutral decision](#).” This is because the NFL, like any taxable business, will be taxed only on its net (not gross) income and thus be able to claim any lawful deductions and credits to reduce its taxable income. The NFL’s recent Form 990s—the annual information returns filed by §501(c) groups with the IRS—suggest the League will likely have significant business expense deductions. For example, in 2013, the NFL reported \$308 million in expenses against \$294 million in revenue (note it cannot be assumed that all of these expenses [would be deductible](#)).

Furthermore, the loss of tax-exempt status may provide at least one benefit from the League’s perspective: it will no longer have to file the Form 990. [The Form 990 must be publicly disclosed](#) and thus was a key source for information about the NFL’s finances. [It has been speculated](#) that [avoiding public disclosure](#) of the League’s finances, including Commissioner Goodell’s salary, was a factor in the NFL’s decision to no longer be a §501(c)(6) entity. It has been reported that [MLB had similar motivations](#) when giving up its status in 2009.

What must the NFL do to give up its §501(c)(6) status? It does not appear to be as easy as the League simply saying it is no longer exempt. No federal law provides for an organization (other than a private foundation) to voluntarily

relinquish its tax-exempt status. Further, the [IRS has reasoned](#) that because the [federal statute providing tax-exempt status](#) states that entities described in Section 501(c) “shall be exempt” from tax, this mandatory language means that the IRS and the qualifying organization cannot simply disregard such status so long as the organization has not violated the requirements for exemption. As such, the organization cannot simply have a “[change of mind regarding its desire to be exempt](#),” rather, it must take action to change or propose to change its operations in order to terminate its status. One option for the NFL might be to amend its charter or bylaws to provide that it is now a for-profit entity, which would then mean it could no longer qualify for §501(c)(6) status. (It should be noted that the NFL must also comply with any applicable state laws addressing such things as the conversion of a non-profit entity to for-profit status).

With the NFL and MLB giving up their §501(c)(6) status, there is a dwindling number of professional sports leagues having such status. The most prominent are the National Hockey League (NHL) and the Professional Golfers’ Association (PGA). The National Basketball Association (NBA), meanwhile, has always operated as a for-profit venture and thus never had tax-exempt status.

In the 114<sup>th</sup> Congress, one bill has been introduced that would repeal the §501(c)(6) status of professional sports leagues. Specifically, the [Properly Reducing Overexemptions for Sports Act or PRO Sports Act \(H.R. 547\)](#) would not allow any entity with more than \$10,000,000 in annual gross receipts to qualify as a §501(c)(6) organization if it:

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