

New Dollars for Your Name, Image and Likeness: Important Things You Should Know



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As of July 1, 2021, Ohio authorizes athletes and others for that matter to receive compensation for the use of their name, image, and likeness (“NIL”). This action comes in tandem with the changes in the NCAA rules permitting athletes to receive compensation without jeopardizing their standing for college sports.

This creates a new opportunity for athletes and other students; there are a few essential items that the student should consider prior to entering into any agreement.

1. Scope of License. Be very clear exactly what rights that you are giving to the business. For example, is your picture/name available for their use in print, video, social media, or point-of-sale displays? What is the duration of the license, such as a six-month use or longer? When do you get paid and is it a fixed amount or a percentage of income generated by the business? Unless defined and expressly limited, a license to use your name or picture could run forever and in multiple marketing channels. While you would get the fee you negotiated, they could continue to reap financial benefits from your NIL for years to come. You should also be clear that the use is limited to the specific business which you reached an agreement and they cannot assign or let anyone else use your NIL. The same would be true for limiting the license to a particular location and not business wide. For example, should you enter into an agreement with a local pizza shop, that pizza shop should not be able to then have your image be used at the 20 other locations in other parts of the State, unless you had agreed to that use and negotiated appropriate levels of compensation.
2. Taxes. As part of the agreement, you need to be very clear when you are paid. Most payments will be in a form of a specific amount. This payment is taxable income and it would be unlikely that the business will deduct taxes from the check. You will need to plan to recognize that income when you file your annual tax return and potentially based on your tax bracket you may need to set aside money to pay the taxes on that payment when April 15th rolls around. The business is required by law to report to the Internal Revenue Service that it made a payment to you and the IRS will have a record of your receiving those funds. Payments in cash may lead to later claims of tax fraud.
3. School Regulations. We anticipate that each school will likely adopt their own internal rules and regulations to report or disclose endorsements or other financial arrangements for NIL licenses. You should ask about your respective school’s rules. The NCAA, for example, has not created a uniform reporting mechanism but has already announced prohibitions on students endorsing certain types of products such as alcohol.

The NIL license rules do create new opportunities for students to generate additional income to meet their education and living expenses. At the same time, you should be mindful that your

NIL is a valuable commodity and you need to take reasonable steps to protect your image and to be treated fairly both now and in the future. Problems with breach of contracts and tax issues may haunt you for years so protect yourself up front. Check with your school to make sure any reporting requirements are fully met. We recommend that any license agreement be in writing. If you are uncertain as to the terms or conditions, you might consider consulting with a lawyer who can protect your interests in these important matters.

If you have further questions, please contact Scott Sandrock at 330-253-4367, spsandrock@bmdllc.com.