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WHEN IS A CPA AS IMPORTANT AS YOUR ERA? A COMPREHENSIVE EVALUATION AND EXAMINATION OF STATE TAX ISSUES ON PROFESSIONAL ATHLETES

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Although Article I, Section 8 of the United States Constitution establishes the dual sovereignty of the states and the federal government,¹ states in the past rarely taxed nonresidents on personal income. This all changed as increased fiscal pressures faced by many state and local governments at the end of the last century led to increased enforcement against athletes of nonresident tax laws that in most instances have been on the books for many years.²

Nonresident taxation on professional athletes gained national attention in the early 1990s. Philadelphia began enforcing its city tax on nonresidents, specifically athletes, while Illinois retaliated against California's nonresident tax on Michael Jordan and his Chicago Bulls teammates following their 1991 National Basketball Association (NBA) Championship against the Los Angeles Lakers. Despite the publicity received from both Philadelphia's and Illinois's implementation of a nonresident tax, state court cases have shown that California had been taxing nonresident athletes as early as 1968, while New York has been doing so since 1971.³

Professional athletes make an attractive target for state tax collectors because of their high salaries. For example, Major League Baseball (MLB) average player's salary has increased from \$512,804 in 1989 to \$3,154,845 this year.⁴ This increased revenue, as well as the fact that athletes are easy to identify by the simple use of a box score and schedule has caused the increased enforcement by states against athletes of nonresident tax.⁵

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1. U.S. CONST. art. 1, § 8.

2. See generally James W. Wetzler, Chair, *State Income Taxation of Nonresident Professional Team Athletes: A Uniform Approach*, J. FED'N OF TAX ADMIN., Mar. 1994.

3. See *In re Partee*, 1976 Cal. Tax LEXIS 35 (Equal'n 1976); *In re White*, 1980 N.Y. Tax LEXIS 535 (Tax Comm'n 1979).

4. MLB Salaries, <http://www.sportsline.com/mlb/salaries/avgsalaries> (last visited Apr. 11, 2009).

5. Robert D. Platter, *FTA Recommendations on Taxing Nonresident Athletes Could Have Wider Application*, J. MULTISTATE TAX'N & INCENTIVES 36, 36 - 40 (Mar./Apr. 1994).

With nearly 3,500 professional athletes playing in the four major league sports leagues and participating in twenty states that have individual state income tax, athletes and their advisors need to be informed on how state taxation affects them. Knowledge of how resident and nonresident state tax affects these athletes and the education to protect them from being over taxed is just as important in the current market place as securing their next big contract.

This article will begin with a historical look at the states' ability to tax both their resident and those nonresidents who earn income within their borders by reviewing the Supreme Court's interpretation whether this is within the state's constitutional power. This will be followed by an examination on how individual states came to determine the apportionment of income of a nonresident. This section reviews the individual state court decisions that define the tax implications to off season training, spring training the post season, and the allocation of athletes playing and signing bonus for a nonresident athlete. The article then examines the practical application of this tax in whether or not states increase their overall income tax revenue by this practice. Research in this section indicates that they in fact do. The article then concludes with the practical consequences on how these laws affect individual athletes. This Article concludes with the fact that there may be at least one reason why you may want to sign a free agent client with the Tampa Bay Rays rather than with the San Diego Padres.

I. HISTORICAL BACKGROUND

How did we get to this complexity of state taxation of professional athletes? Even though Congress possesses the "constitutional power and legislative resources adequate to cope with major conflicts, it refrained for the most part from taking the requisite action."⁶ With the void caused by Congress' nonaction, nonresident taxation policies, specifically those for professional athletes, have been interpreted and developed by the United States Supreme Court and state court rulings, state law, other states policies, and the recommendations of conformity by the Federation of Tax Administrators [FTA].

There are two issues that specifically effect professional athletes in the area of state taxation on personal income. The first is the ability of states to tax nonresidents on income earned in their state. The second is the states' constitutional power to tax residents on all of their personal income from

6. Jerome Hellerstein & Edmund Henefeld, *State Taxation in a National Economy*, 54 HARV. L. REV 949, 949 1941.

whatever source derived.

The first issue was addressed by the Supreme Court in their ruling in *Shaffer v. Carter*.⁷ Shaffer, a taxpayer of Illinois and resident of Chicago, believed his \$1.5 million income earned in Oklahoma during 1915 and 1916 should not be subjected to personal income tax because he was a nonresident.⁸ Shaffer argued that the \$76,000 tax subjected by the state of Oklahoma violated, amongst other things, his constitutional rights of guaranteeing privileges and immunities and the Equal Protection Clause as outlined under the Fourteenth Amendment by discriminating against nonresidents by depriving them the ability to deduct losses incurred outside of Oklahoma while citizens and residents of the state could do so.⁹

On March 1, 1920 the court ruled in favor of the state and upheld the tax on Shaffer, stating that a state “may impose general income taxes upon its own citizens and residents whose persons are subject to its control.”¹⁰ Most importantly, the court went on to say that a state may “levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein.”¹¹

The second issue, whether a state is able to tax a resident’s income no matter where it is derived, was first addressed by the Supreme Court in *Cohn v. Graves*.¹² Cohn, a resident of New York and a land owner in New Jersey, argued that New York’s attempt to tax her New Jersey rental income violated both her equal protection and due process rights, due to the fact that the income was derived from sources that are located outside of the state.¹³

On March 1, 1937 the Supreme Court upheld the tax on Cohn stating, “that the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil[e] itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government.”¹⁴ The Court then stated that, “taxes are what we pay for civilized society.”¹⁵

7. 252 U.S. 37, 45 (1920).

8. *Id.* at 46.

9. *Id.*

10. *Id.* at 52.

11. *Id.*

12. 300 U.S. 308,(1937).

13. *Id.* at 312.

14. *Id.* at 312-13.

15. *Id.* at 313 (quoting Holmes dissent in *Compania General de Tabacos v. Collector*, 275 U.S.

II. FORMULATION OF EARLY STATE TAX POLICIES

With the taxation of nonresidents having been found to be constitutional by the Supreme Court of the United States, this has left states to determine the apportionment of this income earned inside and outside the state. The three issues specifically effecting nonresident athlete taxation were first addressed by the state courts of California, New York and to a lesser extent Wisconsin. First, how is a nonresident's compensation to be apportioned within and outside the state? Second, what constitutes a season for a professional athlete and what should be included in the apportionment formula? Third, what constitutes compensation, specifically the apportionment of signing bonuses to a nonresident state?

How Is Income Apportioned?

In order to determine how to apportion income to multiple states, the courts have addressed the merits of both the duty-day and game day formulas. The game day formula only takes into consideration the number of games participated in a given state as a percentage of total games in the season. The duty-day or working day formula takes the total number of days that an athlete performs services, such as a game, practice or participation in a team meeting for his team in a particular state as a percentage of total days in the season.¹⁶

Determining non-resident apportionment of income was first addressed in *In re Partee*.¹⁷ The case involved San Diego Charger's punter and place kicker Dan Partee, a Texas resident, earning income in the state of California during the 1968 AFL season.

Partee, a nonresident of California, claimed that his California income should be apportioned by the games played in and out of the state. With a fourteen game schedule and only eight games played in state, Partee argued that fifty-seven percent of his entire personal income should be subjected to taxation in California.¹⁸ California in turn, used the working day or duty-day approach calculating a much greater apportionment figure of seventy-six percent that reflected the seventy-four out of ninety-eight days that Partee worked in the state of California.¹⁹

On October 6, 1976, the California Board of Equalization ruled in favor of the state's 'working day' apportionment formula as opposed to Partee's 'game

87, 100 (1927).

16. *Id.*

17. *In re Partee*, 1976 Cal. Tax LEXIS at 35.

18. *Id.* at 4.

19. *Id.*

day' approach.²⁰ The court justified their ruling with the wording in Partee's contract that "required each player to participate in practice sessions" thus concluding, "that professional football players are paid for practices and necessary travel, as well as for playing in games."²¹

In *In re Partee*, the court also addressed the issue of a fair and justifiable measure in determining an athlete's allocation to a state. The court stated that although the "working-day" formula worked in football, other sports such as baseball, basketball, and hockey, which play a relatively large number of games during their respective playing seasons, may be more justified to use the 'games played' method as it may be more appropriate due to the fact that it is more convenient and produces approximately the same result.²²

What Can and Cannot Be Included in the Apportionment Factor?

In addition to justified rationale of what is a fair method of apportioning income within a given state, courts have also needed to determine what can and cannot be included in the apportionment factor. To determine the apportionment factor, courts have addressed the issue of what actually qualifies as a season to an athlete.²³ Early court rulings concluded that training camp, exhibition games, and league playoffs, which are required in a standard player's contract, are to be included in the apportionment factor while later rulings determined off season training, despite being beneficial for both the team and the player were not to be included.

The first state court cases to rule on what constitutes a season for an athlete was *In re White*.²⁴ White, an outfielder for the New York Yankees and a resident of New Jersey during the 1971 and 1972 baseball seasons, apportioned spring training exhibition games into his total number of games played within and outside the state of New York.²⁵

On February 10, 1979 the court ruled that since White is obligated to participate in spring training or face consequences, such as breach of contract, his salary and compensation should take into consideration the exhibition games, even though he is not paid directly for those games, as White had as much of a contractual and professional obligation to participate in exhibition

20. *Id.* at 11.

21. *Id.* at 9.

22. *Id.*

23. The total number of games in a season represents the denominator in the apportionment factor for athletes.

24. *In re White*, 1979 N.Y. Tax Comm'n LEXIS at 535.

25. *Id.* at 1.

games as he did in regular season games.²⁶

The state of California has also addressed this issue in *Wilson v. Franchise Tax Board*.²⁷ Wilson, a resident of the state of Washington and employed by the Los Angeles Raiders as a quarterback argued that preparation for a NFL season was a year round event.²⁸ Wilson used the entire calendar year and apportioned 153 days to the state of California for an apportionment factor of 41.8% of his income allocated to the state.

California used their own apportionment factor of 144 California working days, while using a denominator of 162 total days that included additional non-California football season days when the Raiders and Wilson were playing road games in other states, therefore apportioning a much higher 88.88% of his income to the state of California.²⁹

On December 13, 1993 the California Court of Appeals ruled in favor of the state's apportionment formula stating that, while it was in the player's self-interest, and the team encouraged him to train year round, his contract did not require it.³⁰ Therefore Wilson's off-season training could not be included in the apportionment formula.³¹

What Is Considered Compensation?

The last issue focuses on what constitutes compensation that can be allocated and taxed. Early state court cases determined that a signing bonus did not qualify as income earned for services and therefore could not be apportioned. Later ruling, specifically those in California and Wisconsin, narrowed the scope of what actually qualified as a true signing bonus, thus making nearly all signing bonuses income and therefore properly apportioned to all states in which services were performed.

The first state court case regarding apportioning of a nonresident's signing bonus as income to that state occurs in New York, *Clark v. N.Y. State Tax Commissioner*.³² Clark, a hockey player from the University of New Hampshire, signed a contract with the Boston Bruins for the 1974-75 NHL season that included a signing bonus of \$20,000.³³ During the fall of 1974

26. *Id.* at 3.

27. *Wilson v. Franchise Tax Bd.*, 20 Cal. App. 4th 1441, 1448 (Ct. App. 1993). The court follows and expands on the previous ruling from *In re Krake*. 1976 Cal. Tax LEXIS 32 (Bd of Equal'n 1976).

28. *Wilson*, 20 Cal. App. 4th at 1448

29. *Id.*

30. *Id.* at 1447.

31. *Id.* at 1452.

32. *Clark v. N.Y. State Tax Comm'n*, 86 A.D.2d 691, 691 (Ct. App. 1982).

33. *Id.* at 691.

Clark was assigned to the Bruins minor league affiliate in Rochester, New York, where he played the first part of the NHL season.³⁴

The issue in the case centered on Clark's signing bonus and his failure to apportion it to the state of New York. As a nonresident of New York, Clark apportioned his 1974 salary to New York but did not apportion his signing bonus.³⁵

On January 7, 1982 the court ruled that since both Clark and the Boston Bruins were nonresidents of New York that receipt of the "signing bonus" is not in connection with the subsequent performance of the contract in New York and it is therefore not to be allocated to the state.³⁶

The Clark case is simplistic, and is the only court case regarding a nonresident's signing bonus apportionment in the state of New York. However, the issue is addressed three times each in the states of California and Wisconsin. California first addressed this issue *In re Foster*.³⁷

Foster, an outfielder for the Cincinnati Reds and a nonresident of California during the 1979 tax year, argued that a signing bonus of \$400,000 was not attributable to any games played in the state of California and should not be subject to apportionment.³⁸ Foster, a resident of Ohio, argued that a sign-on fee is not compensation for labor or personal services, therefore the bonus should not be apportioned, and should be taxed only in the state of residence.³⁹

The main issue to be decided by the court in *Foster* was whether the \$400,000 in compensation should be categorized as a signing bonus received for exclusive signing rights by the team, or as a playing bonus received as compensation for services performed.⁴⁰ On November 14, 1984 the court ruled that Foster's "playing bonus was plainly distinguishable from that of a signing bonus in both custom and practice, and the disputed \$400,000 portion of Foster's salary clearly represented compensation for his services and should be apportioned to the state of California."⁴¹

Following New York and California, Wisconsin's *In re Dorsey*⁴² provides the ruling that all cases since have directly or indirectly followed. Dorsey, a

34. *Id.*

35. *Id.*

36. *Id.* at 692.

37. *In re Foster*, 1984 Cal. Tax LEXIS 18 (Bd of Equal'n (1984).

38. *Id.* at 2.

39. *Id.*; see also *In re McAneeley*, 1980 Cal. Tax LEXIS 48 (1980).

40. *In re Foster*, 1984 Cal. Tax LEXIS at 6.

41. *Id.*; see also *In re McAneeley*, 1980 Cal. Tax LEXIS 48 (1980).

42. *In re Dorsey*, 1989 Wis. Tax LEXIS 8 (Tax App. Comm'n 1989).

Linebacker out of the University of Connecticut, was drafted in the fourth round of the 1984 NFL draft by the Green Bay Packers. On July 10, 1984 he signed a three-year contract with the team that included a "signing bonus" that was to be received at the time of signing the contract.⁴³ As a resident of Connecticut and nonresident of Wisconsin, at issue was Dorsey's failure to apportion the signing bonus to the state of Wisconsin.⁴⁴

Dorsey argued that the bonus received was strictly a signing bonus for which he was required to do nothing more than execute a contract with the Green Bay Packers.⁴⁵ As such, it would not be taxable since it was not in return for any personal services that he performed within the state.⁴⁶ The state countered that this was not a pure signing bonus since Dorsey was required to do more than just sign his contract in return for the bonus.⁴⁷

On March 17, 1989 the court agreed with the state and ruled that Dorsey's signing of his contract was just one of several conditions he was required to meet in order to collect and retain his bonus.⁴⁸ The court used as justification the fact that Dorsey's contract stated that his bonus was refundable should he fail to report or should he leave the team without their consent.⁴⁹ The court then concluded that the signing bonus represented income derived from a performance of personal services, and therefore represented the compensation of services that were performed within the state of Wisconsin and should be apportioned to the state.⁵⁰

III. STATE TAXATION OF NONRESIDENT ATHLETES

Despite New York and California taxing of nonresident professional athletes, this practice received little public attention until the early 1990s. At that time though, both the state of Illinois and the city of Philadelphia created national media attention when they began taxing nonresident athletes on their apportioned income earned inside their respective jurisdictions.

Illinois tax, which began on December 31, 1992, was retaliatory, as it was implemented in response to lawmakers discovering a similar tax on Michael Jordan and the Bulls by the state of California following their 1991 NBA Championship against the Lakers. The law, reciprocal in nature taxed only

43. *Id.* at 2.

44. *Id.*

45. *Id.* at 9.

46. *Id.*

47. *Id.* at 10.

48. *Id.* at 12.

49. *Id.* at 10.

50. *Id.* at 14.

those athletes whose resident state taxed Illinois athletes.⁵¹

Philadelphia's tax, on the other hand, was in response to an additional need for revenue as the city was nearly a quarter-billion dollars in debt and City Hall had run out of virtually everything, from postage stamps for its letters to trousers for its police recruits.⁵² Philadelphia hoped to increase revenue by eight million, mailed more than 20,000 tax notices to professional athletes, assessing taxes as far back as 1986, the last year open under its statute of limitations.⁵³

Contrary to Illinois's new tax law, Philadelphia was only enforcing a law that had already been on their books for decades, as the Pennsylvania Constitution authorizes cities and towns to impose a variety of local taxes, including taxes on earned income.⁵⁴ The tax in question, known as the Philadelphia Wage and Net Profits Tax, was first enacted in 1939 and applied to both residents and nonresidents of Philadelphia.⁵⁵

A Uniform Approach

In June of 1992, in response to the growing number of states either enacting or enforcing their nonresident tax on professional athletes, the Federation of Tax Administrators [FTA] formed a task force chaired by James W. Wetzler. With tax administrators from New York, California, Wisconsin, Colorado, Iowa, New Jersey, Vermont, Virginia and input from the four major league players associations, the task force focus was to examine the various nonresident income tax issues and develop a uniform approach to appropriately apportioning the income of professional athletes across states for tax purposes.⁵⁶

Until that time, and since then, the task force is the only effort to provide a uniform approach to the taxation of nonresident professional athletes in response to the growing number of states looking to increase their tax revenue by this practice. The task force came up with two general recommendations to the states. First, states should adopt a uniform formula for apportioning the income of team members.⁵⁷ Second, states should take affirmative steps to reduce the return filing and compliance burden facing team members and

51. Hugh Dellios, *Legislators OK Jordan's Revenge*, CHI. TRIB., July 1, 1991, at 3.

52. Michael DeCourcy Hinds, *Philadelphia Climbs out of Fiscal Depths and Builds by Sharing Sacrifices*, N.Y. TIMES, Apr. 6, 1993, at A19.

53. Wetzler, *supra* note 2.

54. Thomson/RIA 2007 Checkpoint State and Local Taxes ¶ 59,285.

55. Thomson/RIA 2007 Checkpoint State and Local Taxes ¶ 59,287.

56. Wetzler, *supra* note 2.

57. *Id.*

sports teams.⁵⁸

The task force believed that the compliance burden facing taxpayers, teams, and states could be addressed effectively only through a consistent method of taxation.⁵⁹ To provide guidance on this issue, the task force proposed uniform state regulations in the appendix of the report for states to apply to professional athletes.⁶⁰

The task force suggested that states apply a uniform apportionment formula that can be applied to the athletes and team personnel that travel with the team.⁶¹ Apportionment of income would be under the duty-day formula and would include the exhibition season as well as any days during the off-season when a team member undertakes training activities as part of a team imposed program, but only if conducted at the facility of the team.⁶²

Income to be apportioned by the duty-day formula includes all compensation paid to a team member for the performance of a required service.⁶³ Income not subject to apportionment would include strike benefits, severance pay, termination pay, contract buyout payments, relocation payments, and other payments not related to services rendered to the team.⁶⁴

Bonuses earned as a result of play during the regular season or for participation in championship, playoff, or all-star games would be apportioned under the formula.⁶⁵ Signing bonuses would not be subject to apportionment under the formula if they are not conditional on playing any games for the team, are payable separately from any other compensation, and are nonrefundable.⁶⁶

The Current Status of Nonresident State Taxation on Professional Athletes

Fifteen years after the FTA task force's recommendation and sixteen years after the implementation of Philadelphia's city tax and Illinois retaliatory tax, we now find twenty of the twenty-four states that are home to a professional sports team in the four major leagues currently enforcing their nonresident

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*; see also *Wilson*, Cal. App. 4th at 1441.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

state tax laws.⁶⁷

Although states, such as Arizona, New York, and Wisconsin have completely adopted the FTA's recommendations, and others such as Massachusetts and Maryland have adopted aspects of the FTA's recommendations, the majority of states continue to use their own interpretation of their nonresident state tax laws and how they relate to professional athletes. Of the twenty states that enforce their tax on nonresident athletes, twelve fail to use the term professional athlete and duty-day allocation in their tax codes.

In specifically addressing those states that affect Major League Baseball, we can focus on the issues which athletes from this league face on an annual basis. Excluding the District of Columbia and Toronto, Canada, Major

67.

State	No. Pro Teams	Tax Non- Residents
CA	15	YES
FL	9	NO
NY	9	YES
TX	8	NO
PA	7	YES
OH	6	YES
IL	5	YES
MO	5	YES
AZ	4	YES
CO	4	YES
DC	4	NO
GA	4	YES
MA	4	YES
MI	4	YES
MN	4	YES
WA	4	NO
NC	3	YES
TN	3	NO
WI	3	YES
IN	2	YES
LA	2	YES
MD	2	YES
NJ	2	YES
UT	1	YES

League Baseball plays in twenty-eight cities spread out in seventeen different states. A professional baseball player may be subjected to resident and nonresident tax in fourteen of these states and is subject to city tax in ten additional jurisdictions.

The following chart below outlines the seventeen states that affect professional baseball players, outlining each state's tax rates along with any additional tax it may be subjected to, as well as a list of reciprocal agreements between the different states.⁶⁸

CHART I

State	State Tax Rate	Additional Tax	States with Reciprocal Agreements
Arizona	Minimum 2.74% on income under \$10,000. Up to 4.79% on income over \$150,000	No	California
California	Minimum 1% on income under \$6,620. Up to 9.3% on income over \$43,467	1.00% on taxable incomes over \$1 million	None
Colorado	4.632% Flat Rate	No	None
Florida	0.00%	No	None
Georgia	Minimum 1% on income under \$750. Up to 6% on income over \$7,000	No	None
Illinois	3% Flat Rate	No	Kentucky, Wisconsin, Michigan, Iowa
Maryland	4.75% on income over \$3,000	Nonresidents pay Additional 1.25% tax	Pennsylvania, Virginia, West Virginia, the District of Columbia
Massachusetts	5.3% Flat Rate	No	No tax liability if non-resident's Income earned in MA is under \$8,000
Michigan	3.9% Flat Rate	1.35% Detroit City Tax	Wisconsin, Indiana, Kentucky, Illinois, Ohio, Minnesota
Minnesota	Minimum 5.35% on income under \$17,570. Up to 7.85% on income over \$67,360	No	Wisconsin, Michigan, North Dakota
Missouri	Minimum 1.5% on income under \$1,000. Up to 6% on	1% St. Louis Tax 1% Kansas City Tax	None

68. See Appendix.

	income over \$9,000		
New York	Minimum 4% on income under \$16,000. Up to 6.85% on income over \$20,000	No	None
Ohio	Minimum 0.681% on income under \$5,000. Up to 6.87% on income over \$200,000	2.0% Cleveland City Tax 2.1% Cincinnati City Tax	Indiana, Kentucky, Michigan, Pennsylvania and West Virginia
Pennsylvania	3.07% Flat Rate	1.00% Pittsburgh City Tax 2.801% Philadelphia City Tax. 3.7716% Non-residents of Philadelphia	New Jersey, Maryland, Indiana, Ohio, Virginia, And West Virginia
Texas	0.00%	No	None
Washington	0.00%	No	None
Wisconsin	Minimum 4.6% on income under \$9,106. Up to 6.75% on income over \$137,4100	No	Illinois, Indiana, Kentucky, Michigan, and Minnesota

Of the seventeen states in which a professional baseball player may play in any given year, Florida, Texas and Washington do not have a tax on resident or nonresident income. Of the remaining fourteen, California subjects its residents and nonresidents with the highest state tax rate at 9.3% on income over \$43,467 as well as imposing an additional 1% on taxable incomes over \$1 million. The millionaires' tax, which California voters approved on November 2, 2004, is a 1% surcharge on those with taxable income over \$1 million with all revenues generated to provide additional funds for various mental health programs beginning in January of 2005.⁶⁹

The imposition of a city tax further complicates matters for professional athletes in four of the fourteen states that impose individual income tax. Athletes performing services in Ohio, not only are subjected to a 6.87% state tax rate on income over \$200,000 they also are subjected to city tax in both Cleveland and Cincinnati, which increases their overall tax rate to nearly 9%.⁷⁰

Discrepancies in how nonresidents and residents are taxed take place in two of the jurisdictions. Both Maryland and the city of Philadelphia impose a higher income tax rate on nonresidents than those who are residents. Maryland adds an additional 1.25% tax to all nonresidents' income.⁷¹

69. CAL. REV. & TAX. CODE §17043 (West 2005).

70. 2006 Tax Tables for Form IT-1040 and IT-1040EZ & ¶59,259 Cleveland Income Tax Summary – Ohio, Thomson/RIA 2007 & ¶59,251 Table of Ohio Municipal Income Taxes Ohio, Thomson/RIA 2007.

71. 2006 Form 505 Instructions—Nonresident Income Tax Returns.

Philadelphia's income tax rate for nonresidents is 3.7716% in comparison to an individual resident's tax rate of 2.801%.⁷²

Reciprocal agreements between states to not tax each other's nonresidents are found in seven of the fourteen states that tax individuals alleviating both burden and compliance issues for the taxpayers and the collectors. Michigan and Pennsylvania have entered into six reciprocal agreements with other states, while Ohio and Wisconsin have agreements with five, Illinois has four and Maryland has two.

All fourteen states that have residential tax on personal income while taxing the apportioned income earned by nonresidents within their state also provide a tax credit for their residents for taxes paid to another state.⁷³ These tax credits eliminate the possibility of double taxation on athletes; however, in all cases they are limited and in most cases do not totally eliminate the additional taxes paid as a nonresident.

IV. A MACTRO ANALYSIS OF NON-RESIDENT TAX USING MAJOR LEAGUE BASEBALL

With only California and New York taxing nonresident athletes prior to the 1990s these two states did not have to concern themselves with other states taxing their residents. However, with the increase of additional states taxing nonresident athletes, the supplemental income received by this practice has been eroded by having to provide tax credits to their own residents. Having in the previous section outlined the history and the number of states that tax nonresidents, the question that will now be addressed is whether the taxing of nonresident athletes is still a revenue producing opportunity for these states?

By looking at the fourteen states outlined in the previous section and using the payrolls of the thirty Major League Baseball teams, it can be determined that states in nearly all instances do in fact increase revenue in this process.⁷⁴ As Chart II illustrates, in spite of having to pay out \$19,336,169 in tax credits to resident athletes, simply by enforcing tax on nonresident personal income earned within their state, states have increased their tax revenue by \$32,762,444 for a net increase of \$13,426,275.

72. PHILADELPHIA, PA CODE §19-1502 (1)(a) & (b) (2006).

73. Wetzler, *supra* note 2.

74. 2006 MLB Total Payroll, USATODAY.COM, <http://content.usatoday.com/sports/baseball/salaries/totalpayroll.aspx?year=2006> (last visited Apr. 11, 2009).

CHART II

Home State	Payroll	Resident Tax	Resident Credit	Non-Resident Tax	Tax Collected	Net Difference	Ratio
Illinois	\$197,175,166	\$5,915,255	\$1,436,596	\$1,304,657	\$5,783,316	-\$131,939	0.9777
New York	\$295,748,042	\$20,258,344	\$3,605,578	\$3,573,232	\$20,225,998	-\$32,346	0.9984
Georgia	\$90,156,876	\$5,409,223	\$1,157,901	\$1,378,810	\$5,630,132	\$220,909	1.0408
Massachusetts	\$120,099,824	\$6,365,291	\$1,281,878	\$1,618,709	\$6,702,122	\$336,831	1.0529
Arizona	\$59,684,226	\$3,006,947	\$448,010	\$724,736	\$3,283,673	\$276,726	1.0920
Michigan	\$82,612,866	\$3,221,902	\$498,375	\$811,702	\$3,535,229	\$313,327	1.0972
Wisconsin	\$57,568,333	\$3,885,313	\$792,045	\$1,384,658	\$4,477,926	\$592,613	1.1525
California	\$424,114,826	\$39,432,035	\$3,728,316	\$9,401,568	\$45,105,287	\$5,673,252	1.1439
Pennsylvania	\$134,991,083	\$4,144,226	\$907,245	\$1,524,252	\$4,761,233	\$617,007	1.1489
Ohio	\$116,941,019	\$8,029,380	\$1,597,545	\$3,124,534	\$9,556,369	\$1,526,989	1.1902
Missouri	\$136,185,371	\$8,170,672	\$1,784,328	\$3,407,073	\$9,793,417	\$1,622,745	1.1986
Maryland	\$72,585,582	\$3,447,763	\$729,412	\$1,409,360	\$4,127,711	\$679,948	1.1972
Minnesota	\$63,396,006	\$4,975,699	\$813,539	\$1,901,273	\$6,063,433	\$1,087,734	1.2186
Colorado	\$41,233,000	\$1,909,088	\$555,401	\$1,197,880	\$2,551,567	\$642,479	1.3365
TOTAL		\$118,171,138	\$19,336,169	\$32,762,444	\$131,597,413	\$13,426,275	1.1136

How Is this Possible?

An increase in nonresident tax revenue to states is directly determined by one of two factors. States that possess either a higher tax rate or are home to a team with a low payroll will be more profitable in this practice. By using the example of California and Colorado it will help further explain how these two variables help create an increase in revenue.

California's tax revenue increase of \$5,673,252 represents 42% of the overall increase of \$13,426,275 and can be explained by the fact that California has the highest personal income tax rate of 9.3%. As a result, when California provides a tax credit to their residents for taxes paid to other states it does not completely erode away the additional tax revenue produced by the taxing of nonresidents personal income earned in California.

In contrast, Illinois's loss of revenue is due to the fact that, unlike California's high tax rate, their three percent income tax rate is the lowest rate of the fourteen states. As a result, Illinois ends up providing a full credit to residents for taxes paid to other states and therefore completely eliminates any additional revenue produced by the taxing of nonresidents.

To further illustrate this point, the following example below shows the consequences of two athletes who are residents of either California (taxpayer A) or Illinois (taxpayer B) that equally split their season between the two states and earn \$1,000,000.

Example A

Taxpayer	Residency	Income	CA	IL	CA	IL	CA Tax	IL Tax	Total	Difference
			Income	Income	Tax ⁷⁵	Tax	Credit	Credit	Revenue	
A	California	\$1,000,000	\$1,000,000	\$500,000	\$90,871	\$15,000	\$15,000	\$0		
B	Illinois	\$1,000,000	\$500,000	\$1,000,000	\$45,436	\$30,000	\$0	\$15,000		
				California	\$136,307		(\$15,000)		\$121,307	1.33
				Illinois		\$45,000		(\$15,000)	\$30,000	1.00

As the chart shows, each state credits their residents for their income taxes paid as nonresidents, however since Illinois tax rate of 3% is below that of California's effective tax rate of over 9%, Illinois maximizes their resident's tax credits, therefore eliminating any addition tax revenue gained by taxing taxpayer A's nonresident income.

In contrast California, with an effective tax rate of over 9%, is able to tax both taxpayer A and B at this rate, while only providing a limited income tax credit of 3% to taxpayer A's income earned in Illinois, resulting in an increase in tax revenue of \$30,436 or 33% to the state of California.

A state's tax rate is only one factor in whether it will be profitable. The role a state's home team's payroll must also be taken into consideration. Colorado's 34% increase in tax revenue represents the greatest return as a percentage in comparison to the twelve states that showed a profit in taxing nonresidents. The fact that Colorado is home to the Rockies, which has the third lowest team payroll for the year in question provides the rationale of why this occurs. Whereas New York, the home to two of the top five payrolls in major league baseball with the Yankees and Mets, sees their additional revenue received from the taxing of nonresident athletes eclipsed by the tax credits provided to their residents.

To help illustrate this point, the chart below shows the consequences of two athletes who are residents of either New York (taxpayer A) or Colorado (taxpayer B) that equally split their season between the two states. The difference though, is that taxpayer B plays for the Colorado Rockies and earns \$350,000 per year while taxpayer A plays for either the Yankees or Mets and

75. CAL. REV. & TAX § 17041 (h)(1) & (2) calculates California income over \$43,467 by multiplying the amount over \$43,467 by .093 and adding \$1,913.78 to that amount.

earns 3.59 times that rate.⁷⁶

Example B

Taxpayer	Residency	Income	NY	CO	NY	CO	NY Tax	CO Tax	Total	Difference
			Income	Income	Tax	Tax	Credit	Credit		
A	New York	\$1,255,205	\$1,255,205	\$627,603	\$85,982	\$29,058	\$29,055	\$0		
B	Colorado	\$350,000	\$175,000	\$350,000	\$11,988	\$16,205	\$0	\$8,103		
				New York	\$97,613		(\$29,058)		\$80,899	0.94
				Colorado		\$45,263		(\$8,103)	\$37,160	2.29

In conclusion, the fact that Colorado's home team has one of the lowest team payrolls offsets the fact that their state income tax rate of 4.63% is lower than New York's 6.85%. Colorado gains \$29,058 in revenue from taxpayer A's Colorado based income, while in return providing a tax credit to taxpayer B's nonresident New York income of only \$8,103. The result for the state of Colorado is a net increase in taxable revenue of \$20,955 or 129%.

New York, in contrast, increases its tax revenue by only \$11,988 in taxing taxpayer B's New York based income and therefore is unable to cover the \$29,058 tax credit provided to taxpayer A's Colorado nonresident income, thus causing New York to lose revenue in this scenario as they do in real life.

Finally, it should be noted that states that possess both variables are the most profitable in this practice, as 75% of the entire increase in revenue collected as shown in Chart II comes from only four states: California, Missouri, Ohio, and Minnesota. This is due to the fact that California (9.23%), Minnesota (7.8%) and Ohio (6.76%) represent three of the four highest personal income tax rates amongst the fourteen. In addition, all four of the states possess at least one home team in that state that falls into the bottom third in payroll. The combination of these two factors makes these four states highly profitable in the practice of taxing nonresident athletes who come into their state and perform services.

V. A MICRO ANALYSIS OF NON-RESIDENT TAX USING MAJOR LEAGUE BASEBALL

In the previous section it was determined that taxing nonresident athletes is in fact a profitable practice. This section addresses the practical

76. 2006 MLB Total Payroll, *supra* note 74. During the 2006 MLB season the average salary for the Mets (\$101,084,963) and Yankees (\$194,663,079) was 3.5863 times the average salary for the Colorado Rockies (\$41,233,000). *Id.*

implications on those nonresident individuals who are affected. In order to achieve this, the state and federal tax consequences were studied for individual professional athletes that perform services in Major League Baseball.

Chart III below shows the results of those individuals on the twenty-eight teams involved. In order to provide a fair representation it is assumed that each individual earned \$3 million annually, filed as single, and did not miss any games due to an injury that would have caused them not to travel with the team. In addition, the only deductions that were taken on Schedule A of the federal return were state taxes paid during the year.

CHART III

Team	State	Federal	State	Non-Res	Resident		Actual		State	Take	
		Tax Rate	Tax Rate	Tax Rate	State Tax	Tax Credit	Non-Resident Tax	Non-Res Tax	Federal Tax	Tax	Home
Tampa Bay Rays	FL	35.73%	0.00%	1.66%	\$0	\$0	\$49,835	\$49,835	\$1,072,031	\$49,835	\$1,878,134
Texas Rangers	TX	35.68%	0.00%	1.86%	\$0	\$0	\$55,857	\$55,857	\$1,070,295	\$55,857	\$1,873,848
Houston Astros	TX	35.67%	0.00%	1.88%	\$0	\$0	\$56,320	\$56,320	\$1,070,069	\$56,320	\$1,873,611
Florida Marlins	FL	35.72%	0.00%	1.90%	\$0	\$0	\$57,097	\$57,097	\$1,071,452	\$57,097	\$1,871,451
Seattle Mariners	WA	35.60%	0.00%	2.26%	\$0	\$0	\$67,682	\$67,682	\$1,067,963	\$67,682	\$1,864,355
Chicago Cubs	IL	35.24%	3.00%	1.04%	\$89,940	-\$22,504	\$53,752	\$31,248	\$1,057,314	\$121,188	\$1,821,498
Chic. White Sox	IL	35.18%	3.00%	1.13%	\$89,940	-\$21,003	\$54,905	\$33,902	\$1,055,539	\$123,842	\$1,820,619
Detroit Tigers	MI	34.37%	3.87%	1.13%	\$116,015	-\$18,085	\$52,104	\$34,019	\$1,031,103	\$150,034	\$1,818,863
Pittsburgh Pirates	PA	35.06%	3.07%	1.59%	\$92,100	-\$26,763	\$74,503	\$47,740	\$1,051,756	\$139,840	\$1,808,404
Baltimore Orioles	MD	34.93%	4.74%	0.46%	\$142,239	-\$29,603	\$43,525	\$13,922	\$1,047,986	\$156,161	\$1,795,853
Colorado Rockies	CO	34.71%	4.62%	0.94%	\$138,611	-\$39,340	\$67,622	\$28,282	\$1,041,311	\$166,893	\$1,791,796
Phil. Phillies	PA	34.81%	3.07%	2.40%	\$92,100	-\$21,833	\$93,776	\$71,943	\$1,044,252	\$164,043	\$1,791,705
Boston Red Sox	MA	34.77%	5.29%	0.33%	\$158,690	-\$35,023	\$44,817	\$9,794	\$1,043,021	\$168,484	\$1,788,495
AZ Diamondbacks	AZ	34.55%	4.56%	1.47%	\$136,720	-\$20,024	\$63,958	\$43,934	\$1,036,503	\$180,654	\$1,782,843
Atlanta Braves	GA	34.64%	5.81%	0.22%	\$174,439	-\$43,861	\$50,580	\$6,719	\$1,039,238	\$181,158	\$1,779,604
K.C. Royals	MO	34.32%	5.86%	0.90%	\$175,823	-\$41,120	\$68,122	\$27,002	\$1,029,711	\$202,825	\$1,767,464
St. Louis Cardinals	MO	34.32%	5.86%	0.96%	\$175,737	-\$39,547	\$68,441	\$28,894	\$1,029,724	\$204,631	\$1,765,645
Mil. Brewers	WI	34.22%	6.73%	0.24%	\$201,903	-\$43,404	\$50,595	\$7,191	\$1,026,548	\$209,094	\$1,764,358
N.Y. Yankees	NY	34.15%	6.83%	0.24%	\$204,986	-\$36,315	\$43,436	\$7,121	\$1,024,528	\$212,107	\$1,763,365
New York Mets	NY	34.12%	6.83%	0.33%	\$204,986	-\$37,576	\$47,616	\$10,040	\$1,023,503	\$215,026	\$1,761,471
Cleveland Indians	OH	33.94%	6.76%	1.00%	\$202,783	-\$49,465	\$79,565	\$30,100	\$1,018,223	\$232,883	\$1,748,894
Cincinnati Reds	OH	33.92%	6.76%	1.09%	\$202,783	-\$46,621	\$79,297	\$32,676	\$1,017,643	\$235,459	\$1,746,898
Minnesota Twins	MN	33.84%	7.80%	0.25%	\$234,122	-\$48,358	\$55,861	\$7,503	\$1,015,162	\$241,625	\$1,743,213

S.F. Giants	CA	33.83%	9.22%	0.11%	\$276,554	-\$24,277	\$27,468	\$3,191	\$1,014,800	\$279,745	\$1,705,455
Oakland Athletics	CA	33.87%	9.22%	0.07%	\$276,554	-\$28,409	\$30,412	\$2,003	\$1,016,075	\$278,557	\$1,705,368
L.A. Angels	CA	33.84%	9.22%	0.11%	\$276,554	-\$26,739	\$30,009	\$3,270	\$1,015,093	\$279,824	\$1,705,083
L.A. Dodgers	CA	33.86%	9.22%	0.11%	\$276,554	-\$29,002	\$32,372	\$3,370	\$1,015,654	\$279,924	\$1,704,422
San Diego Padres	CA	33.86%	9.22%	0.11%	\$276,554	-\$24,660	\$28,015	\$3,355	\$1,015,919	\$279,909	\$1,704,172

The Results

The practice of taxing nonresident athletes has four effects on those individuals in which it targets. First, it increases the overall tax burden on the athlete. Second, athletes based in states with no personal income tax pay the greatest share of nonresident tax, yet are taxed the least overall. Third, athletes performing services in cities that also tax nonresidents receive no credit for these taxes and therefore bare a greater burden of nonresident taxes. Fourth, those athletes who perform services in states that have the highest income tax rates are taxed the greatest.

Nonresident taxation increases the tax burden for each individual athlete by \$27,644.32 or .92% in the above chart. Of the \$774,041 in additional nonresident tax paid by athletes, a disproportioned 37.05% is paid by Florida, Texas and Washington resident athletes. On average, individuals in these states are taxed \$57,358.20. This is due to the fact that these states do not offer a tax credit against their individual state income tax since they do not subject their residents to one.

The second result is that athlete employed in states that do not have individual tax on personal income, such as Florida, Texas and Washington, are taxed far less than those individuals whose home states do tax personal income. In spite of the fact that athletes from these states are subjected to the highest percentage of nonresident state tax paid to other states, they take home on average \$107,694.50, or 6.1% more than those athletes in states that impose a tax on personal income.

The third result is that although individuals on all twenty-eight teams studied are affected by city tax, athletes performing services for teams based in those cities have a greater tax burden than those who are not. On average, individuals in these cities after tax credits are taxed \$38,910.57 or 40.75% more than those individuals who are not based in these cities. Individuals performing services for the Philadelphia Phillies have the greatest exposure to city tax. Playing in a state that has one of the lowest state tax rates of 3.07% these individuals are subjected to Philadelphia's city tax, which in this incident represents \$47,910, or 66.59% of their actual non-resident tax paid out.

The final result is that individuals exposed to the highest resident tax rate are taxed the greatest amount. Individuals performing services in California,

New York, Ohio, Minnesota and Wisconsin on average took home only \$1,732,063.55 or 57.74% of their total income in comparison to the 58.82% of all individuals or the 62.41% those that played in a state with no income tax took home. Therefore, on average an individual playing in these five states received \$140,216.25 less after taxes than those athletes who played in Florida, Texas, or Washington.

An interesting consequence to these high state tax rates is that since both state and city tax paid is deductible against federal income, those individuals that are subjected to high individual state taxes are able to lower their federal tax rate with these deductions. As a result, individuals whose home state is in California, Minnesota, Ohio, New York, and Wisconsin have the lowest federal tax rate on their income due to their state tax deductions declared on schedule A of their federal return.

The end result is that despite their exposure to nonresident state tax, and their higher federal tax, athletes who reside in states with no state income tax keep a greater percentage of their overall salary. Therefore resulting in a player that performed services for the Tampa Bay Rays actually taking home \$173,962 or 10% more than a player who performed services for the San Diego Padres during the 2006 baseball season.

VI. CONCLUSION

The Supreme Court has established that both the taxing of a nonresident's income to that state, as well as, the inclusion of a nonresident's income to a resident state are both constitutional. Therefore, with states looking for additional ways to increase tax revenue, taxing nonresident's income is a potential option. Since athletes are an easy target, due to their high profile and income, states continue to target this population. The two questions this paper examined are first, with so many states adopting this practice is it still profitable for states to tax this population, and second, what are the practical results to those athletes that are affected by this tax?

Using the example of baseball it is revealed that twelve of the fourteen states that impose a nonresident income tax do profit by taxing this population. Two factors account for the additional revenue created by the taxing on nonresident athletes. The first factor depends on the state's personal income tax rate with higher individual tax rates generating a greater amount of revenue. The second factor relies on the home state team's payroll, as the lower the payroll the greater the percentage of return for the state. Coincidentally, states that possess both a high personal income tax rate on individuals, as well as being home to a team with a low payroll will be the most profitable in this practice.

In reviewing the practical application to this practice on the athletes themselves it is found that although all athletes are exposed to a greater tax burden, there are three levels which cause the amount of exposure to fluctuate. First, athletes performing services within a state with no individual income tax generate the greatest amount of nonresident revenue, yet overall remain taxed the least. Second, athletes who perform services in a state that in addition includes a city tax are taxed by two separate jurisdictions without, in most cases receiving any state credit and therefore are taxed more. Third, individuals who perform services in a state with a high individual income tax rate pay lower federal tax, yet still wind up with the greatest tax burden of all athletes.

Finally, it is important for those individuals who represent these athletes to understand the potential tax consequences that their clients face. Understanding state residency issues, as well as tax rates and reciprocal agreements will limit the liability that has been exposed to their clients. In the end, the money you save your client is equal to the additional money you have generated for them.

APPENDIX

State	Tax Rate	Tax Credits for Taxes Paid to Other State	Non-resident Allocation of Income	Reciprocal Agreements	Court Cases
Arizona	Arizona Rev. Stat. Ann. §43-1011 (3) (a) & (b)	Arizona Rev. Stat. Ann. § 43-1071 (A) (1), (2) & (3)	Ariz. Admin. Code R15-2C-604	California	No
California	Cal. Rev. & Tax Cd. § 17041	Cal. Rev. & Tax Cd. §18001 (a)	Cal. Rev. & Tax Cd. 17951-5	None	Krake (1976), Partee (1976), McAnceley (1980), Foster (1984), Carroll (1987), Testaverde (1995), Jones (2003), Klee (2008)
Colorado	Colo. Rev. State. §39-22-104 (1.7)	Colo. Rev. State. §39-22-108 (1)	Colo. Rev. State. § 39-22-109	None	No
Florida	None	None	None	None	No
Georgia	Ga. Code Ann. § 48-7-20 (b) (1)	GA Comp. R. & Regs. 560-7-7-.01 (1)	GA code Ann. § 48-7-30 (b)	None	No
Illinois	ILCS Chapter 35 §5/201 (b)	ILCS Chapter 35 §5/601 (b)(3)	ILCS §5/304 subsection (a) (2) (B) (iv) (a)	Ill. Admin. Code 100.7090 Reciprocal Agreement (IITA Section 701)	"John and Angela Doe" (2001)
Maryland	Md. Code Ann. Tax-Gen. § 10-105(a)(4)(v)	Md. Code Ann. Tax-Gen. § 10-703(a)	Maryland Administrative Release No. 24, 08/31/2000	Maryland Administrative Release No. 3, 08/31/2003	No
Massachusetts	Mass. Regs. Code 62 §4(b)	Mass. Regs. Code 62 §6 (a)	Mass. Regs. Code 62.5A.2 (2)	Mass. Regs. Code 62.5A.2 (7)	No
Michigan	The Michigan Income Tax Act, MCL §206.51e	The Michigan Income Tax Act, MCL §206.255 (1)	The Michigan Income Tax Act, MCL §206.110 Michigan Revenue Administrative Bulletin No. 1988-48 9/27/1988	Michigan's Income Tax Act, MCL 206.256(3),	No
Minnesota	Minnesota Stat. §290.06 Subd. 2c(a) (1-3)	Minnesota Stat. §290.06 Subd. 22	Minnesota Stat. §290.17 Subd. 2(a)(2)	Minnesota Stat. §290.081 (a)	No
Missouri	Mo. Rev. Stat. § 143.011	Mo. Rev. Stat. § 143.081(1)	Mo. Rev. Stat. § 143.183(1)(2)	None	No
New York	NY Tax Law §601(c)	N.Y. Tax Law §620(a)	NYCRR 132.22 (a) (1)	None	White (1979), Jabbar (1982), Clark (1982), Richardson (1984), Bickett (1996)
Ohio	2006 Tax Tables for Form IT-1040 and IT-1040EZ	Ohio Rev. Code Ann. §5747.05	Ohio Rev. Code Ann. § 5747.20	Ohio Rev. Code Ann. § 5747.05	Hume (1990 & 1991)
Pennsylvania	Pa. Stat. Ann. § 7302 (a)	PA Code 61 §111.3	PA Stat. Ann. 72 § 7302 (b)	Pa. Stat. Ann. § 7356 (b)	No
Texas	None	None	None	None	No
Washington	None	None	None	None	No
Wisconsin	Wis. Stat. § 71.06 (1p) (a,b,c,d)	Wis. Stat. § 71.07	Wis. Admin. Code Tax 2.39	Wis. Stat. § 71.05 (2)	Dorsey (1989), Kern et al. (1991 & 1992), Flynn (1994), Dishman (2005)

