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Financing Professional Sports Facilities with Federal Tax Subsidies: Is it Sound Tax Policy?

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COMMENT

FINANCING PROFESSIONAL SPORTS FACILITIES WITH FEDERAL TAX SUBSIDIES: IS IT SOUND TAX POLICY?

I. INTRODUCTION

In 1997, major league baseball player David Justice earned $6.2 million from the Cleveland Indians Professional Baseball Club.[1] The Club also paid slugger Matt Williams over $7 million for his 1997 services.[2] That same year the Indians collected over $95 million in total revenues and netted $15.6 million in operating income.[3] In 1994, the Indians moved into Jacobs Field, a new stadium seating over 42,000 people and costing $177 million.[4] Like most professional sport franchises, the Indians collected and spent big-time money.

Around 1994, Jim Drinksalot was forced to pay an extra $3.00 per gallon for liquor.[5] About that same time, Jim's friend, Jane Smokestoomuch, saw the price of her cigarettes increase by 4.5 cents per pack.[6] In addition, around 1994, Bill Bringmeacoldone saw the price for a case of beer increase by thirty-two cents.[7] Neither Jim, Jane, nor Bill watches baseball, and all of the price increases on these products were due to new taxes. Like most taxpayers, Jim, Jane, and Bill were unhappy to see politicians increase taxes.

On the surface, the two situations seem totally unrelated. However, after closer investigation the truth is quite the contrary. The new taxes on Jim, Jane, and Bill's favorite treats were levied in order to pay $155.7 million of the construction costs to build Jacobs Field. In effect, taxpayers like Jim, Jane, and Bill are effectively subsidizing multimillion-dollar

1. *See Baseball Millionaires*, SEATTLE POST-INTELLIGENCER, Apr. 3, 1997, at D2.

2. *See id.*

3. *See* Kurt Badenhausen et al., *More Than a Game, An In-Depth Look at The Raging Bull Market in Sports Franchises*, FIN. WORLD, June 17, 1997, at 48, 48.

4. *See* Mandy Rafool, Playing The Stadium Game, *Financing Professional Sports Facilities in the 1990s*, LEG. FIN. PAPER 106, June 1997, at 10.

5. *See* MARTIN J. GREENBERG & JAMES T. GRAY, THE STADIUM GAME 371 (1996).

6. *See id.*

7. *See id.* Increased price per case of beer approximate based on 288 ounces per case at a tax rate of sixteen cents per gallon of beer. *See id.*

professional sporting teams by paying for the construction of new sports stadiums and arenas.[8]

A. Growth of Stadium and Arena Construction

Any person with their eye on current news has witnessed an explosion in the rate of sports stadium construction in recent years.[9] In fact, it was estimated in 1997 that of the 115 major professional sports franchises composing Major League Baseball (MLB), the National Hockey League (NHL), the National Football League (NFL), and the National Basketball Association (NBA), half had either requested new stadiums or were getting them.[10] Stadium construction has become big business.[11] The amount spent on construction and renovation for the 1990s is projected to have been somewhere between $8 billion and $11 billion dollars, a dramatic rise from the paltry $750 million spent during the 1980s.[12] While this level of spending is eye opening, it is even more alarming when you recognize who is paying the bill.

B. Historical Cost Trends and Facility Funding Patterns

For many reasons such as facility obsolescence, lack of capacity for expanding attendance, and competitive balance, professional sports franchises are requesting new stadiums at an unprecedented rate.[13] When a team wants a new stadium, the owners usually complain to local taxpayers, claiming that without a new facility the team will be unable to remain financially competitive and subsequently will be forced to field sub-par teams.[14] This is generally followed with a threatening declaration to fans and legislatures that if public money is not used to pay for

8. *See* William M. Welch, *Federal Taxpayers Shut Out of Stadium Payoff*, USA TODAY, May 31, 1996, at 1A. Welch indicates that four out of every five dollars used to finance sports stadiums comes from public sources. *See id.*

9. *See* Daniel J. Lathrope, *Federal Tax Policy, Tax Subsidies, and the Financing of Professional Sports Facilities*, 38 S. TEX. L. REV. 1147, 1148 (1997).

10. *See* Joanna Cagan & Neil DeMause, Field of Schemes, How the Great Stadium Swindle Turns Public Money into Private Profit 28 (1998).

11. One estimate places the amount spent on constructing new sports stadiums at $4.5 billion since 1990 and projects another $5 billion to be spent by the end of the year 2000 resulting in a total of almost $10 billion spent on stadiums in the past decade. *See* Welch, *supra* note 8, at 1A.

12. *See* CAGAN & DEMAUSE, *supra* note 10, at 29.

13. *See generally* Paul M. Anderson, *An Analysis of the Economic Impact of Sports Facilities on the Surrounding Community*, Midwest State Treasurers Conference, May 28, 1998; *see also* GREENBERG & GRAY, *supra* note 5, at 5-17.

14. *See* William H. Baker, *Sports Law in the 21st Century: Taxation and Professional Sports - A Look Inside the Huddle*, 9 MARQ. SPORTS L.J. 287, 298 (1999).

the facility, the team will be forced to move.[15] It is a buyers market for professional sports franchises looking for facilities.[16]

Deciding whether or not new stadiums should actually be built, however, can differ based upon who is paying the bill for construction. In recent years, that party has been primarily the taxpayer. Few stadiums are still paid for by private party financing, and most are financed with the taxpayer liable for the majority of the bill, or in some cases the entire bill.[17] For example, out of a sample of twenty-seven stadiums opened during the 1990s, an average of sixty-five percent of the costs were placed on the taxpayer.[18] Only three stadiums were entirely privately financed, while ten were at least ninety percent publicly funded.[19] With an average original cost of $175 million per stadium, the estimated "direct" taxpayer subsidy for 1997 was over $3 billion dollars.[20] This was given to professional sports franchises that brought in average revenues of $60.9 million per team during that same year.[21]

While one recuperates from the shockingly astronomic amount of direct tax subsidy, it is important to remember that this figure is not representative of the total tax subsidy. In addition to direct stadium costs, taxpayers are forced to subsidize sports facilities indirectly through tax abatements and other indirect incentives such as infrastructure costs that are incurred to pay for items like roads, water and sewer connections,

15. Stadiums built in Texas, Baltimore, Cleveland, Chicago, and Atlanta, for the Rangers, Orioles, Indians, White Sox, and Braves respectively, were built to prevent the teams from moving. *See Ballpark Figures*, ARIZ. REPUBLIC, Nov. 28, 1993, at A18. As an example, The Ballpark in Arlington, Texas was built following the Rangers threat to leave if a new stadium was not built. *See id.* The threats by teams to move if cities do not construct new stadiums for them has been so pervasive that Senator Arlen Specter has proposed legislation designed to force teams and leagues to contribute to construction and renovation funds in an attempt to stop what he has called "legalized extortion." *See Proposed Bill on Financing New Stadiums Gets Negative NFL Reviews*, PA. L. WEEKLY, June 28, 1999, at 2.

16. The "buyers market" has occurred because the supply of communities willing to build, fund or subsidize stadium construction to attract professional sports teams, exceeds the rate of league expansion and the current number of teams willing to relocate. *See* John Riley, *Fields of Green, Pricey Palaces a Bonanza for Team Owners, Players*, ARIZ. REPUBLIC, Sept. 15, 1996, at H1.

17. *See* GREENBERG & GRAY, *supra* note 5, at 357-75. Paying special attention to the percentage of public financing for stadiums opened after 1986 shows that the burden of financing these facilities is generally falling on the taxpayer. *See id.*

18. *See* Rafool, *supra* note 4, at 10.

19. *See id.*

20. *See id.*

21. *See* Badenhausen et. al., *supra* note 3, at 40 (computed by taking total revenues for all teams in the NFL, NBA, MLB, and NHL and dividing by the total number of teams).

and power lines.[22] For instance, from 1976-85 the city of Baltimore taxpayers lost an estimated $4.75 million on property tax abatements alone for Baltimore Memorial Stadium.[23]

The economics of the whole situation seem to leave one scratching their head wondering if this tax subsidy is sound policy. After all, why should the taxpayer subsidize a very profitable private entertainment industry at a time when other essential public welfare programs are being reduced or cut altogether as politicians continue to scramble for revenue to pay for items such as the national debt, the construction of schools and prisons, and new welfare programs?[24]

II. NOW IS THE TIME FOR ELIMINATION OF FEDERALLY FUNDED WELFARE TO PROFESSIONAL SPORT FRANCHISES FOR NEW STADIUMS AND ARENAS

Much has been written on the topic of public financing of professional sports stadiums and the issue has been considered from many different points of view. Some writers argue the benefits of building professional sports stadiums, while others consider the financial burden falling on taxpayers as a result of the stadium construction boom. Yet, even where many writers argue against all public tax subsidy of stadium construction, few seem to consider the differences in this tax subsidy policy from the point of view of federal taxpayers compared to state taxpayers. Furthermore, not all stadiums or arenas are financed with significant amounts of public tax monies.[25] In fact, as previously discussed, many sports facilities use very little public tax financing.[26] How-

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22. *See Stadium Financing and Franchise Relocation Act of 1999: Hearings on S. 952 Before the U.S. Senate Comm. on the Judiciary* 106th Cong. (1999) (statement of Mark S. Rosentraub, Purdue University), *available in* 1999 WL 999649 (F.D.C.H.) In his testimony concerning the proposed Stadium Financing and Franchise Relocation Act, Rosentraub indicates that virtually every new stadium, arena or ballpark requires millions of dollars in new infrastructure costs. *See id.*

23. *See* DEAN V. BAIM, THE SPORTS STADIUM AS A MUNICIPAL INVESTMENT 35 (1994).

24. *See* Leotes Marie T. Lugo et. al., *Bicameral Body Meets Today on Budget Cuts*, BUS. WORLD, Dec. 14, 1999, at 1.

25. Examples exist in which the stadiums are financed privately such as Joe Robbie Stadium in Miami, Florida, which was 100% privately financed. *See Ballpark Figures, supra* note 15, at A18.

26. *See* Harvey Berkman, *Skadden's Team Pitches Private Stadium Financing*, NAT. L. J., Aug. 26, 1996, at B1. Several recent examples exist in which stadiums were totally privately financed without the use of tax-exempt bonds. *See id.* They include the Washington Redskins new stadium in Landover, Maryland, and the MCI Center built in downtown Washington D.C. for the NHL's Capitals and the NBA's Wizards. *See id.* Altogether, these arenas came at a cost of more than a half a billion dollars. *See id.*

ever, this fact only compounds the confusion. If some stadiums do not use public tax funding, what justifies the use of federal funds for those that do; or is this simply a case of bad tax policy?

This troubling question will be considered through the course of this paper. The answer, that federal subsidy of professional sports franchises is not sound tax policy, will also be shown through the analysis provided. In Part III a basic introduction to public financing will be given, including a brief review of tax expenditures and exemptions available for construction of sports stadia. Part IV will examine the current arguments in favor of, and opposition to, this tax subsidy. Part V will show that the federal funding of stadiums and arenas must be changed, and evaluate stadium subsidy as it relates to federal tax policy. Finally, Part VI provides potential measures designed to change the current federal tax subsidy of professional sports facilities.

III. Public Financing Now Available For the Building and Construction of Professional Sports Facilities

The public financing of sports stadiums and facilities is so significant that one may question how these private companies secure public funding for their facilities. The question is not easily answered due to the numerous tax exemptions and expenditures for which a sports team may qualify. For the scope of this paper, four significant categories have been created to help the reader understand the answer to this seemingly broad question.

The first two categories deal with the split between federal and state tax benefits that play a role in public financing. Each of these two sovereignties possess taxing power and can award benefits independent of the other. The next two sections discuss the significant requirements that a sports franchise must satisfy to receive tax benefits for stadium financing. The first of these two sections discusses the specific limitations and requirements placed on private parties seeking public financing for stadium ventures. The latter of these two sections will briefly consider the judicially created "public purpose" doctrine.

A. *Federal: Tax Exempt Bond Financing*

One of the most commonly utilized forms of federal public financing comes in the form of tax-exempt bonds.[27] Upon satisfying the require-

27. *See* Dennis Walters, *Tax-Exempt Financings of Sports Arenas are Called Doable but No Slam Dunk*, Bond Buyer, Feb. 11, 1993, at 1.

ments for exemption, municipal bonds are exempt from Federal Income Tax.[28] This exemption includes qualifying bonds issued to pay for stadium construction or renovation. For the issuer, the cost to service the bond debt is reduced because an interest figure lower than the going market rate for taxable bonds can be paid while still providing a market yield to the purchaser, due to the tax exempt effect on interest earned.[29]

While on its face it appears that this is only an advantage for the bond issuing party and subsequent purchaser, in reality it creates lost tax revenues that under normal circumstances would be assessed and paid. To illustrate the effect, consider the following: for a stadium completely financed with tax-exempt bonds, costing $225 million, and built today, it is estimated that the lost federal tax revenues will total $75 million over the life of the bonds.[30] This is no small figure, especially when considering the cost and number of stadiums being constructed.

B. State: Sales Taxes, Tourist Taxes, Other New Taxes; Property, Income and Other Exemptions

Tax subsidies available on the state and local levels vary more than those available on the federal level. These tax subsidies include advantages like property tax abatements,[31] state income tax rebates, expenditures for infrastructure costs,[32] and repayment of bond debt with general funds and special taxes.[33] The most common forms of special taxes used to satisfy bond debts are tourist taxes,[34] special sales taxes,[35] and sin

28. *See* I.R.C. § 103(a) (1999).

29. *See* Todd Senkiewicz, Comment, *Stadium and Arena Financing: Who Should Pay?*, 8 SETON HALL J. SPORTS L. 575, 584 n.50, n.56 (1998).

30. *See* Dennis Zimmerman, *Tax-Exempt Bonds and the Economics of Professional Sports Stadiums*, CRS REP. FOR CONG., May 29, 1996.

31. In Colorado, the Ascent Entertainment Group, financiers of the Pepsi Center, will receive an economic development package that includes infrastructure improvements and property tax deferments. *See* Al Lewis, *Pepsi Center Financing in Place; Revenue-Backed Securities Raised Nearly $140 Million, All From Private Investors*, DENV. ROCKY MTN. NEWS, July 31, 1998, at 1B.

32. *See* Berkman, *supra* note 26, at B1.

33. *See* Andrew Gasper, *Senator Moynihan's Field of Dreams: If You Build it, They Will Come . . . But Not at the Federal Taxpayers' Expense*, 17 VA. TAX. REV. 341, 366 (1997).

34. In San Diego, the city has pledged $225 million that will come from new tourist taxes and hotel taxes to finance a new baseball stadium for the Padres. *See* Kerry M. Fraas, *"Bankers Up!" Professional Sports Facility Financing and Other Opportunities for Bank Involvement in Lucrative Professional Sports*, 3 N.C. BANKING INST. 201, 212 (1999).

35. One example of a city using special sales taxes to finance a professional sports stadium is Denver, Colorado. *See id.* at 211. The city of Denver adopted a .1% sales tax to pay for the construction of Coors Field for the Colorado Rockies. *See id.* This sales tax used to repay the

taxes.[36] Other sources such as lotteries, personal seat licenses, and ticket surcharges are also employed to satisfy bond obligations.[37]

Many states, including Georgia, Florida, Illinois, Louisiana, Missouri, and Washington, levied new lodging taxes on businesses such as hotels and motels in an attempt to subsidize sports franchises.[38] Other states, such as Wisconsin, Arizona, Colorado, and Texas, created new general sales taxes to satisfy bond obligations used for constructing stadiums and arenas.[39] Many other forms of new taxes are available to pay stadium bond obligations.[40] Though the form of new taxes created at the state level varies significantly, the fact that the taxpayer is required to subsidize multi-million dollar sport franchises does not.[41] The taxpayer bears a heavy burden to subsidize professional sports. As such, one may wonder what measures exist to provide protection.

C. *Limitations and Other Requirements for Public Funding*

Congress attempted to place limitations on the tax-exempt status of municipal bonds used to construct professional sports stadiums when it passed the Tax Reform Act of 1986.[42] To qualify for tax-exempt status, a

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debt for Coors field, will now also be used to repay $260 million of government issued bonds to construct a new football stadium for the Denver Broncos. *See id.*

36. Sin taxes include taxes on items such as cigarettes and alcohol. *See Ballpark Figures, supra* note 15, at A18.

37. *See* Senkiewicz, *supra* note 29, at 585.

38. *See* Rafool, *supra* note 4, at 11.

39. *See id.*

40. *See* Martin J. Greenberg, *The Negotiation of Stadium and Arena Leases; A Legal Review of Rental Structure, Sharing of Lease Revenues, Exclusivity, Default and Term Provisions*, National Sports Law Institute, Deloitte & Touche, Sports Venues, Revenues & Values Conference, 352, Oct. 20-21, 1994. [hereinafter Sports Venues, Revenues and Values Conference Materials]. Greenberg provides a list of twenty potential tax and quasi-tax revenue streams considered for financing stadiums: (1) Alcohol and or tobacco Tax; (2) General Retail Sales Tax; (3) Special District Taxation; (4) Tax Increment Financing; (5) Pari-mutuel Tax; (6) Insurance Premium Tax; (7) Utility Tax; (8) Permit & Licensing Tax; (9) Property Tax; (10) Mineral Tax; (11) Surplus Property Tax; (12) Property Transfer Tax; (13) Property Donation; (14) Property Sale; (15) Redirected Tax from Stadium; (16) Special Lottery; (17) Eating & Drinking Establishments, Food & Beverage Sales Tax; (18) Ticket Surcharge; (19) Parking Surcharge; (20) Room Tax. *See id.*

41. The following examples illustrate the variety of public funding tax streams: in Texas the taxpayers will be paying $135 million of the $179 million stadium through a dedicated sales tax stream; Cleveland's Jacobs Field costing $161million and opened in 1994 will be financed primarily through "sin taxes" on beer, wine, liquor and cigarettes; and the Thunderdome costing $138 million and built for the Tampa Bay Lightning will be repaid in part from tourist taxes on hotels. *See Ballpark Figures, supra* note 15, at A18.

42. Legislators debating current stadium related tax legislation readily acknowledge the intent of congress in 1986 to prevent professional sports teams from using tax-exempt bonds to finance stadiums. *See* 143 CONG. REC. S994 (Feb. 5, 1997) (statement of Senator Byrd);

bond must satisfy the Private Activity Test (PAT).[43] Under the PAT, a bond will be tax-exempt when it satisfies one of two tests.[44] The first test is called the "business use" test.[45] A bond satisfies this test when no more than ten percent of the proceeds of the issue are used for any private business.[46] Because stadiums are used almost exclusively by private businesses, this test is rarely satisfied. The second test is the "security" test.[47] Under the security test requirements, a bond will be tax exempt when no more than ten percent of the principal or interest on the bond is directly or indirectly secured by an interest in the property used for private business or payments in respect of the property.[48]

The requirements for tax-exempt bond status adopted by Congress have had an effect, but not the desired effect.[49] With the Tax Reform Act of 1986 Congress anticipated that it would reduce the level of tax-exempt bond expenditure for stadia by limiting the exemption status of Private Activity Bonds.[50] The step Congress took in this effort was to reduce or eliminate the tax-exempt status of bonds issued to benefit private business through the adoption of the PAT. The adoption of the PAT should have resulted in a reduction in the amount of tax-exempt bonds issued to pay for stadium construction where professional sports teams were the primary source of bond repayment. Bond service by professional sports teams or from revenue generated with respect to the stadium built would have caused the bond to fail the security test. The bonds would also have failed the business use test where private businesses, in this case professional sports teams, used greater than ten percent of the bond proceeds. Together, the result should have been an elimination or reduction in the ability to qualify stadium finance bonds for federal tax-exempt status. However, following the 1986 reform, proponents of public stadium financing began to recharacterize bonds in an effort to continue qualifying for federal tax-exempt status.[51]

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143 CONG. REC. S499 (Jan. 21, 1997) (Senator Moynihan stated "[o]ne of the loopholes we sought to close in 1986 was one that permitted builders of professional sports facilities to use tax-exempt bonds.").

43. *See* I.R.C. § 141 (1999).
44. *See id.*
45. I.R.C. § 141(b)(1) (1999).
46. *See id.*
47. I.R.C. § 141(b)(2) (1999).
48. *See id.*
49. *See* David Burke, *The Stop Tax-Exempt Arena Debt Issuance Act*, 23 J. LEGIS. 149, 150 (1997).
50. *See* 143 CONG. REC. S994, *supra* note 42.
51. *See* Zimmerman, *supra* note 30, at 5-6.

The number of tax-exempt municipal bonds currently issued has changed very little. Instead, where municipal bond issuers are generally unable to satisfy the "business use" test, bond security has been altered. As a result, stadium leases have become very favorable for professional teams because such a small portion of bond repayment can come from facility revenue.[52] This creates an unfortunate effect. Where municipalities are determined to issue tax-exempt bonds to finance stadium construction, congressional limitations have effectively made it almost impossible to recoup the cost of financing the stadium from revenues generated by the stadium. This has left bond issuers searching for alternate sources to satisfy principal and interest payment requirements.[53] One of the sources they found was the taxpayer.

State governments have made taxpayers the funding source for bond repayment by pledging general obligation tax funds, and special tax revenue streams toward the repayment of bond debt.[54] This effect is the result of the inability to pledge significant revenue generated by the stadium while still maintaining status as tax-exempt municipal bonds. The federal government has also placed the burden of subsidizing multi-million dollar sport franchises on state taxpayers. It did this by adopting Internal Revenue Code Section 141 and the PAT, which has effectively caused state government to look more often to the taxpayer as the source for bond repayment. The federal government also placed the financing burden on the federal taxpayer by allowing a substantial loss of federal tax revenue due to the continuing availability of tax-exempt status for bonds issued to pay for stadium construction.

In addition to the requirements for federal tax-exempt bond status, illusory protections exist to safeguard taxpayers from new state and local taxes and tax exemptions. This protection takes the form of voter referenda. Taxpayers have invoked referenda power numerous times attempting to apply popular oversight to legislative action concerning taxation for sports stadia and arenas.[55]

Often times, referenda power is granted to taxpayers in conjunction with initiative power, through a state constitution, local charter or stat-

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52. *See* Gasper, *supra* note 33, at 367. One example of the very favorable leases is the recent rent free lease that the city of St. Louis granted to the Rams in which the Rams were also given lifetime property tax abatements along with a very powerful escape clause—all at no cost. *See id.*

53. *See* Walters, *supra* note 27, at 1.

54. *See id.*

55. *See* SPORTS, JOBS AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 146 (Roger G. Noll & Andrew Zimbalist eds., 1997).

ute. Though the legal complexities of referenda power exceed the scope of this paper, suffice it to say, these governing instruments grant people the power to propose and enact laws and reject other laws previously enacted.[56] This power applies to newly enacted taxes, exemptions, and expenditures. Wielding this power, taxpayers defeated seventeen of twenty-four stadium proposals in one survey conducted from 1984 to 1995.[57] Where this power is likely to be invoked repeatedly, the effects of stadia referenda warrant consideration.[58]

With voter initiatives and referenda, the taxpayer seems to have the tools to effect local legislative decisions that would require taxpayers to pay for sports facility construction projects. However, even with this power, opponents to new taxes for stadiums often stand at a serious disadvantage to proponents of stadium proposals in terms of financing available for issue campaigning.[59] This funding inequality, along with a lack of time and common purpose, compounds what seems to be an already slanted debate.[60] Where larger wallets and deeper pockets often back proponents,[61] they also have the advantage of being the voters' primary educators on the proposals and wield significant special interest power over legislatures.[62] Where proponents are slow to acknowledge real economic impacts and total costs, including hidden or indirect costs,

56. *See* James T. Gray, *Issues Surrounding the Creation and Operation of Stadium Authorities and Stadium Voter Referenda*, Sports Venues, Revenues and Values Conference Materials, Oct. 17-19, 1996, at 56.

57. *See id.* at 53.

58. Recent examples of referenda on voter ballots included measures in Cincinnati, Ohio; Denver, Colorado and San Diego, California. *See Election Roundup*, STADIUM & ARENA FIN., Sept. 21, 1998, at 1. In Cincinnati, stadium opponents collected 40,000 signatures in a three-week period in their efforts to get a referenda measure added to the fall 1998 ballot. *See id.*

59. *See* Gray, *supra* note 56, at 75.

60. *See* Matthew J. Mitten & Bruce W. Burton, *Professional Sports Franchise Relocations From Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field*, 56 MD. L. REV. 57, 99 (1997).

61. *See* Greg Dobbs, *Honesty, Morality in the Election*, DENV. POST, Oct. 11, 1998, at H3. In one referenda campaign, the Denver Broncos poured almost a million dollars into an advertisement campaign designed to persuade the voters to approve public subsidy for a new stadium. *See id.*

62. *See* Dale F. Rubin, *Public Aid to Professional Sports Teams – A Constitutional Disgrace: The Battle to Revive Judicial Rulings and State Constitutional Enactments Prohibiting Public Subsidies to Private Corporations*, 30 U. TOL. L. REV. 393, 404 (1999). Rubin cites numerous examples of campaign contributions by professional sports teams in cities where demands were later made to the public regarding stadium construction financing. *See id.* Among the more significant contributions, Herb Simon, owner of the Indiana Pacers, gave over $70,000.00 to political campaigns in 1996, and Rich Devos, owner of the Orlando Magic, made $43,500.00 worth of political contributions in 1996. *See id.*

the taxpayer is more likely to make uninformed decisions.[63] Perhaps if opponents to taxation for sports stadia had access to more financial resources for issue campaigning, all twenty-four of the proposed referenda would have been defeated. While voter referenda has had marginally more impact in protecting the taxpayer than the federal tax-exempt bond limitations envisioned by Congress in 1986, the campaign funding power imbalance renders this type of protection open to abuse. However, the taxpayer protection envisioned with federal tax-exempt bond limitations and referenda power are by no means an exhaustive list of protections available to the taxpayer.[64] As a result, one might ask what other protective measures are available?

D. *"Public Purpose" Doctrine*

In addition to the requirements that must be satisfied to qualify for federal tax-exempt bond status and the general requirements that must be satisfied to adopt new state and local taxes, opponents of public financing for stadium construction also have the protection of the "public purpose" doctrine. In their efforts to defeat public financing for stadium projects, subsidy opponents often turn to litigation under this doctrine searching for additional protection.[65] This judicially created doctrine

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63. *See Critics Say Arena Add is Misleading*, UPI, Dec. 27, 1997, *available in* LEXIS, News, Wire Service Stories File. In a recent voter debate in Dallas, public funding proponents issued advertisements warning that a failure by the cities voters to approve new taxes to pay for a stadium would result in the Dallas Stars hockey team and Dallas Maverick basketball team leaving town. *See id.* However, what proponents did not acknowledge was that both teams were committed by contract to play at the current arena for at least five more years. *See id.* A similar situation occurred in Denver, Colorado where voters were threatened with losing the Broncos if they did not adopt a new sales tax to build a new stadium, when in fact the Broncos still had twenty years remaining on their existing lease at Mile High Stadium. *See* Dobbs, *supra* note 61, at H3.

64. In addition, specific state constitutional protections often exist that are designed to protect taxpayers. *See e.g.*, Emeline C. Acton & Mary Helen Campbell, *Public Funding of Sports Stadiums and Other Recreational Facilities: Can the Deal Be "Too Sweet"?*, 27 STETSON L. REV. 877, 878 (1998) (citing FLA. CONST. ART. VII § 10(c) which prohibits the lending of public credit to private corporations); Rubin, *supra* note 62, at 412 (citing constitutional provisions in forty-six states in which the use of public money to aid private enterprise is prohibited).

65. *See e.g.*, Poe v. Hillsborough County, 695 So. 2d 672, 679 (Fla. 1997); Libertarian Party of Wisconsin v. State, 546 N.W. 2d 424, 433 (Wis. 1996); Citizens for More Important Things v. King County, 932 P.2d 135, 137 (Wash. 1997); Clean v. State, 928 P.2d 1654, 1659 (Wash. 1996); Rice v. Ashcroft, 831 S.W.2d 206, 209 (Mo. App. 1991); Lifteau v. Metropolitan Sports Facilities Comm'n, 270 N.W.2d 749, 751 (Minn. 1978); Alan v. County of Wayne, 200 N.W.2d 628, 680 (Mich. 1972); In Re Opinion of Justices, 250 N.E. 2d 547 (Mass. 1969); Ginsberg v. Denver, 436 P.2d 685, 688 (Colo. 1968); Bazell v. Cincinnati, 233 N.E.2d 864, 870 (Ohio 1968), *cert. denied* 391 U.S. 601 (1968); Brandes v. Deerfield Beach, 186 So. 2d 6, 12 (Fla. 1966);

mandates that public monies (public funds are derived from taxes) cannot be spent for reasons other than "public purposes."[66] Under this doctrine, challengers to public financing for stadiums have succeeded only twice.[67]

In one of the two successful challenges, *In re Opinion of Justices*, the court found that the legislature is generally the body to determine whether public purposes exist.[68] However, it also found that a multipurpose stadium to be constructed for the primary benefit of professional athletic teams did not satisfy the public purpose doctrine where there was an absence of standards and protections to ensure that the athletic teams were not favored to the detriment of other civic activities.[69] In addition, the stadium enabling-act lacked guidance as to the type of lease arrangements that would be allowed and as to the resolution of usage priorities.[70] The court concluded its analysis by holding that an issuance of municipal bonds secured by tax revenue violated the state constitution provision prohibiting taxing for "non-municipal purposes."[71] In the other successful challenge, *Brandes*, the court held that the City of Deerfield Beach violated the Florida State Constitution when it issued bonds for the purpose of constructing a 5,000-seat stadium for spring training use by a professional baseball team.[72] The City violated the State's constitutional provision prohibiting municipal taxation for non-municipal purposes.[73] In its opinion, the court stated, "[t]he mere incidental advantage to the public resulting from a public aid in the promotion of private enterprise is not a public or municipal purpose. . . ."[74]

Even with these two successful challenges, the public purpose doctrinal protection is weak at best, because the test for public purpose is very easily satisfied.[75] Courts considering the doctrine generally apply one of the following two tests: (1) "public ownership" test; or (2) the "public

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Martin v. Philadelphia, 215 A.2d 894, 896 (Pa. 1966); Meyer v. Cleveland, 171 N.E. 606, 608 (Ohio Ct. App. 1930).

66. *See Libertarian Party of Wisconsin*, 546 N.W. 2d at 433.

67. *See Brandes*, 186 So. 2d at 12; *see also In re Opinion of Justices*, 250 N.E.2d at 547.

68. *See* 250 N.E. 2d at 558.

69. *See id.* at 559.

70. *See id.* at 560.

71. *See id.*

72. *See Brandes*, 186 So. 2d at 12.

73. *See id.*

74. *Id.*

75. *See e.g.*, Poe v. Hillsborough County, 695 So. 2d at 672 (former Mayor of Tampa failed in challenge seeking an injunction against the city of Tampa on claim that tax money and credits pledged by the city for the construction of a stadium for the National Football Leagues Buccaneers did not have a public purpose).

benefit" test.[76] The first is a strict interpretation, not often used, mandating that public funding can only be used for publicly owned or controlled actions.[77] The second is the more common test. Under the public benefit test, courts consider only whether the expenditure is manifestly arbitrary or unreasonable, giving great deference to legislative opinion.[78]

Courts are quick to accept the legislative touts of economic and recreational benefit as public purposes without considering the reality or empirical plausibility of such claims.[79] While it is certainly not the purpose of the judiciary to legislate, these easily satisfied tests seem to nullify any protection to the taxpayer that should result from judicial oversight of stadium subsidy legislation. Interpretation and application of state constitutional provisions to state legislative enactments seems wholly appropriate for a state judiciary. Unfortunately, the current public purpose doctrine tests seem to relieve the judicial branch of this responsibility.

Where courts give legislatures such broad deference to determine what constitutes public purpose, arguments that public tax subsidies for sports stadiums and arenas lack public benefit will almost always be more persuasive when made to the legislative branch.[80] This makes the public purpose doctrine a seemingly good protection with little realized safeguarding impact.

IV. Policy for Tax Subsidy of Private Enterprises does not Compare to Policy for Tax Subsidy for Professional Sports Teams

When considering whether the use of taxes to subsidize professional sport franchises is a sound policy, one might consider what government pays to other private companies in the form of tax subsidization. By reviewing tax subsidy to other private industries differences appear that make policy comparisons between the tax subsidy of professional sports franchises and those of private enterprises difficult.

76. *See* Dale F. Rubin, *Constitutional Aid Limitation Provisions and The Public Purpose Doctrine*, 12 St. Louis U. Publ. L. Rev. 143, 154-155 (1993).

77. *See id.*

78. *See id* at 155; *see also Libertarian Party of Wisconsin*, 546 N.W. 2d at 435.

79. *See* Rubin, *supra* note 62, at 418.

80. *See* Lifteau v. Metropolitan Sports Facilities Comm'n, 270 N.W.2d 749, 755 (Minn. 1978).

A. *The Public Funding for Private Gain Comparison*

The amazing amount of taxpayer money that politicians are handing out neither begins nor ends with professional sports franchises. Government has given out vast amounts of taxpayer money to private companies.[81] Tax subsidy flows to private industry through numerous forms. Some of the more significant corporate subsidies have included the following: $240 million paid by the state of Illinois to Sears in the form of land and cash bonuses to prevent relocation; $253 million from the state of Alabama in the form of tax exemptions to Mercedes-Benz; and $14.3 million to Exxon from Baton Rouge, Louisiana in the form of tax abatements.[82]

While corporate America is receiving large tax subsidies similar to professional sports franchises, specific distinctions make it difficult to justify the expenditure in one industry based on the expenditure in the other. The difficult comparison is due, in part, to the significant characteristics that render professional sports a unique industry. The following analysis of differences between private enterprise and professional sports, will help illustrate the difficulty in making comparisons.

The most significant distinction is found in the economic dividends that reward a city hosting a large private company such as Sears. Companies of this size often operate on a global basis.[83] When the headquarters of such a business are located in a particular state, it stands to reason that the state will derive benefits from money redirected into their economy from sales revenue in outlying chain stores and distribution outlets. Similarly, a company such as Mercedes-Benz certainly does not sell its entire product in the same location it is manufactured.[84] As a result, it is

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81. *See* Peter D. Enrich, Article, *Saving the States From Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 HARV. L. REV. 377, 388 (1996). Enrich provides several examples of corporate tax welfare. *See id.* In one example, he points out that within the past fifteen years, Indianapolis gave United Airlines a government subsidy package of $294 million to lure the Airline to locate their maintenance facility in the city, and in another example, Tennessee offered General Motors $150 million to persuade it to build a Saturn car manufacturing plant within the state. *See id.* at 389.

82. *See* CAGAN & DEMAUSE, *supra* note 10, at 31.

83. As an example, Sears operates 833 department stores in malls throughout the United States in addition to 1325 stores not located in malls and 1384 independently owned stores operated in smaller rural markets. *See 1980s – 1990s: Sears Today* (visited Dec. 29, 1999) <http://www.sears.com/jspscripts/sears/ ab...@&BV_EngineID=DGalghkedfghbgfemgcfecfli.0>. Sears also operates over 1600 stores in Canada and until recently it had interests in stores through Sears Roebuck de Mexico. *See id.*

84. Mercedes-Benz operates distributorships in the following countries: Australia, Austria, Belgium, Brazil, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece,

apparent that money is brought into a region through the form of cost to construct the facility or rent of existing facilities, worker wages, purchase of local materials and other similar diffusements. Unlike professional sport franchises, private companies like the type listed above do not divert money from the existing economy in the same geographical area, rather, private companies tend to stimulate economic growth by bringing money into the economy.[85]

The second distinction between professional sports and private enterprise is the type of work. Other than the temporary employment created for the construction of the facility, jobs created by a new stadium (assuming there are any) are usually unskilled, low end, and seasonal.[86] Comparatively, jobs created by large corporate firms are more diverse. While some of the jobs created are certainly unskilled and lower paying, many are highly skilled, highly technical, professional positions with higher wages and salaries. Furthermore, these jobs are more likely to be permanent full time positions because big business does not have an off-season.

The fact that corporate businesses are more likely to effect the development of spin-off companies creates a third distinction. A professional sport franchise uses very little resources or raw material input in order to ready their product for the market as compared to a company such as Exxon or Mercedes-Benz. Particularly in the case of manufacturing companies, smaller companies spring up in relatively close geographical proximity to the major manufacturer to provide input parts and resources. This creates spin-off benefits to the local economy as a result of the tax subsidy to the larger private corporations.

Finally, a fourth distinction is identified by considering the number of people receiving direct economic benefit from the tax subsidy. Almost all professional sport franchises are privately owned,[87] though this trend

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Hong Kong, Italy, Japan, Netherlands, Norway, Portugal, Russia, Singapore, Slovenia, Spain, Sweden, Switzerland, Taiwan, Turkey, United Kingdom, and the United States. *See Mercedes-Benz National* (visited Dec. 29, 1999) <http://www.mercedes-benz.com/e/menu/golocal/golocal.htm>.

85. Under the "diversion theory" sports teams do not generate economic growth but rather they divert money from other parts of a local economy into their private revenue stream. *See* Gasper, *supra* note 33, at 360-64.

86. *See id.* at 363.

87. In fact, with the exception of the Green Bay Packers, the NFL consists of thirty-one privately owned teams. *See* Lynn Reynolds Hartel, Comment, *Community-Based Ownership of a National Football League Franchise: The Answer to Relocation and Taxpayer Financing of NFL Teams*, 18 LOY. L.A. ENT. L.J. 589, 593 (1998). NFL bylaws prohibit public ownership of franchises with the exception of the Packers because they were publicly owned before the

is beginning to shift.[88] Unlike a company such as Exxon and Sears, absent direct employment by or ownership of the professional sport franchise, the individual taxpayer does not have the ability to derive direct economic benefit from the tax subsidy. In the case of companies such as Exxon and Sears, the individual taxpayer has the opportunity to purchase shares of the company stock to derive direct economic benefit from the companys' success.[89] Alternatively, and with very limited exception, individual taxpayers may not become shareholders in professional sport franchises through the same type of limited investment.[90] As a result, taxpayers are less likely to derive any direct economic benefit from tax subsidy to sport franchises as corporations.

These specific distinctions make it difficult to justify tax subsidy to professional sport franchises based on the amount of subsidy being paid to private corporations. This analysis is not an attempt to convince the reader that tax subsidy to corporations is good tax policy, but rather, to identify recognizable differences that make comparison of sports franchises to corporate America difficult. In other words, it might be an unsound policy to continue corporate tax subsidies, but for the scope of this paper the only issue under examination is whether it is sound federal tax policy to subsidize professional sports franchises.

Even though the level of tax subsidy paid to corporate America may be egregious, this subsidy has very little impact on the sports federal tax subsidy analysis where the differences between professional sports franchises and private enterprise weaken any comparisons. At most, existing private enterprise tax-subsidy does nothing more than provide shaky ground for a feeble argument in favor of the status quo on the basis that historical occurrence of the event itself justifies its future con-

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rule was passed. *See* Don Hunt & Brian Edwards, *Know the Score; There's Good Reason Not [to] Be a Fan of a Sports Team's Stock*, CHI. TRIB., Nov. 11, 1998, at C1.

88. *See* Hunt & Edwards, *supra* note 87, at C1. Several professional sports teams have completed initial public offerings, making their stock available to the public for purchase. *See id.* The most notable professional sports franchises selling stock to the public are the Cleveland Indians, Boston Celtics, and Florida Panthers. *See id.*

89. Sears is listed as Sears, Roebuck & Co. on the New York Stock Exchange with the symbol S. *See* Market Guide—*Snapshot Report for Sears, Roebuck & Co.* (visited Dec. 29, 1999) <http://yahoo.market guide.com/mgi/snap/7961N.html>. An individual investor could purchase Sears stock for $30.38 per share as of December 29, 1999. *See id.* Similarly, an individual shareholder may also purchase Exxon stock. Exxon is listed as Exxon Mobil Corporation on the New York Stock Exchange with the symbol XOM. *See* Market Guide—*Snapshot Report for Exxon Mobil Corporation* (visited Dec. 29, 1999) <http://yahoo.marektguide.com/mgi/snap/A2144.html>. Exxon stock traded at $83.81 per share as of December 29, 1999. *See id.*

90. *See* Hunt & Edwards, *supra* note 87, at C1.

tinuance. However, as history has shown, the status quo is not always the best position. Ultimately, the policy analysis and decision as to whether the public sports subsidy should continue must rest on the specific issues argued in favor and in opposition of this policy as it specifically relates to professional sports. For this reason, an analysis of the issues as they relate to professional sports stadium tax subsidy will be considered.

B. Public Tax Financing for Stadiums and Arenas is Neither Economically Cost Effective Nor Fair.

1. Economic Factors: Diversion Theory and Inter-City Revitalization

Without fail, proponents claim that by building a new stadium the city or region will reap significant economic benefits by bringing new revenue into the city.[91] Advocates often claim that strategic placement of the new arena will revitalize blighted inter-city areas or depressed economic parts of the region.[92] While the claim has some historical validity, proponents do not present the big picture.[93] Significant studies reveal that the projected economic benefits put forth by proponents are simply inaccurate.[94] These reports tend to support the opponents' eco-

91. *See* Zimmerman, *supra* note 30, at 13; *see also* Rafool, *supra* note 4, at 7.

92. Examples of successful revitalization stories include those of Cleveland, Ohio and Denver, Colorado. *See* Gasper, *supra* note 33, at 364.

93. *See* Welch, *supra* note 8, at 1A. Thomas Chema, developer of Cleveland's Jacobs Field, indicated that twenty-eight new businesses employing over 1200 people opened between 1994 and 1996 within a two-block area of the stadium. *See id.* In addition, he indicated that over 500 housing units were planned near the stadium. *See id.* The history of the downtown area in Denver, Colorado also provides a historical example of revitalization following the construction of a stadium. *See Antitrust Exemption for Sports Teams: Hearings before the U.S. Senate Comm. on the Judiciary,* 106th Cong (1999) (statement of Richard Horrow, President Horrow Sports Ventures), *available in* 1999 WL 416777 (F.D.C.H.). Horrow indicated that twenty-five new restaurants opened in the downtown area following the construction of Coors Field along with land value increases around Coors Field of almost $25 per square foot. *See id.* In addition, Horrow estimates that an additional $20 million was spent in the downtown Denver area in the year following the opening of Coors Field. *See id.*

94. *See* Robert Baade, *Stadiums Professional Sports & Economic Development, Assessing the Reality,* Heartland Inst. Policy Study, 62 (Apr. 4, 1994) <http://www.heartland.org/studies/sports/Baade2-sum.htm>. Not only have their not been any economic studies revealing positive impacts, in one article the author indicates that of thirty professional sports stadiums built within a ten year period none had a significant impact on per capita income and three of the thirty actually had a negative effect. *See* Adam Safir, Note, *If You Build it They Will Come: The Politics of Financing Sports Stadium Construction,* 13 J.L. & POL. 937, 953 (1997) (citing Dennis Zimmerman, CONGRESSIONAL RESEARCH SERVICE, *Tax-Exempt Bonds and the Economics of Professional Sports Stadiums* 16 (1996)). Similarly, three prominent economists, Professor Dean Baim, Professor Robert Baade and Professor Roger Noll, all indicate that

nomic diversion arguments.[95] History has also shown that the economic revitalization theory has validity, but is it worth the cost? Remember that the inner city is revitalized at the cost of foregoing improvement of the economy in other parts of the city.

Economists have theorized that what actually happens is that instead of generating economic growth, stadium projects merely divert economic resources from other parts of the city or local geographic region. New stadiums do not increase the local revenue pie; they merely change the way the pie is divided and allocated. When bonds are paid from general tax revenues, money that would be spent on other projects is diverted. If the taxpayers were not paying for the construction of new sporting venues, it is reasonable to think that more funds would be available for the construction of schools, prisons, roads, and highways. This suggests that the same construction workers would have employment in the community, but on different projects.

Even absent the economic growth, where the inter-city revitalization argument certainly has plausibility and historical support, one may argue that this revitalization alone justifies the use of tax subsidy to construct stadiums and arenas.[96] However, this argument is short sighted. Although it may be a rational decision for legislatures to adopt policy and levy specific taxes aimed at revitalizing blighted areas, the decision to accomplish this through stadium subsidization may not be the best possible decision. There are other options that may be adopted which could have the same revitalizing effect while costing the taxpayer much less. Because of the other potential economic revitalization plans that exist which could accomplish the same benefit at perhaps a lower cost, the revitalization argument should not be outcome determinative.

2. Should Taxpayers Provide a $127,000.00 Subsidy for a Seasonal, Minimum Wage Job?

Among the more popular arguments the proponents of public subsidy for stadium construction assert is that by providing tax subsidy to build stadiums the city or government is helping to revitalize or boost economic growth through job creation.[97] Specifically, proponents argue that by constructing stadiums new jobs will be created for construction

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sports stadiums generally do not have any significant positive impact on the cities or local areas in which they are constructed. *See* Gasper, *supra* note 32, at 360-64.

95. *See* Gasper, *supra* note 32, at 363.

96. The example of Cleveland, Ohio provides historical validity that stadiums may revitalize inter-cities or blighted areas. *See* Welch, *supra* note 8, at 1A.

97. *See* Zimmerman, *supra* note 30, at 13; *see also* Rafool, *supra* note 4, at 7.

workers, athletes, managers, team executives, stadium employees, and throughout the community, because of an increase in economic activity.[98]

Because of the diversion of economic resources, this suggestion is questionable. In addition, many new stadiums are being constructed in cities and areas that already have stadiums.[99] Construction in these areas amounts to nothing more than stadium replacement. These existing teams already have athletes, managers, and team executives. The only entity that can effectively create new jobs in this area is the sport league itself by adding teams. While this has happened, the rate of expansion is held fairly tightly to ensure that team revenues, athletic talent, and fans per team are not thinned.[100] Furthermore, workers are already employed at the current venues. Therefore the number of jobs directly created will have no significant increase, if any at all.

Even if one sets aside the diversion argument for a moment, and pretends that some marginal level of jobs are created by sport facility projects in areas not currently hosting professional sport franchises, the jobs created are simply not worth the cost. The cost per job created significantly outweighs the benefit of creation. For example, consider the following: the State of Maryland paid $177 million toward the construction of a stadium in Baltimore.[101] Assuming the 1394 jobs proponents claim were created were not the result of economic diversion, the publicly subsidized cost per job amounts to $127,000.00.[102] This number quickly escalates when one considers hidden and indirect costs. To add perspective, the Maryland Sunny Day Fund economic development program created jobs at an average per job cost of $6,250.00 during the same period.[103]

While the direct economic cost per job alone provides ample basis to seriously question the wisdom of expending millions of dollars to create new employment, when one considers the type of work created it quickly becomes clear that this may be an example of poor legislative judgment.

98. *See* Rafool, *supra* note 4, at 7.

99. Recent examples include Safeco Field in Seattle, Washington; Pacific Bell Park in San Francisco, California; Miller Park in Milwaukee, Wisconsin; Paul Brown Stadium in Cincinnati, Ohio; and the Pepsi Center in Denver, Colorado. *See* Kent Somers, *In The Public Arena; Sports Facilities on Taxpayers' Tab*, ARIZ. REPUBLIC, May 8, 1999, at A1.

100. *See* Thomas A. Piraino, Jr., Article, *The Antitrust Rationale for the Expansion of Professional Sports Leagues*, 57 OHIO ST. L.J. 1677, 1717 (1996).

101. *See* Zimmerman, *supra* note 30, at 15.

102. *See id.*

103. *See id.*

Not one single sport team plays the entire year.[104] Not one single stadium or arena is used every business day of the year.[105] As a result, these jobs are generally lower paying, seasonal jobs.[106] Furthermore, the type of work is generally non-technical, and requires little or no skill, unless you consider the ability to hit a fan with a bag of peanuts from several rows away or the ability to balance a tray full of beer while scaling a flight of stairs, a skill. At a time when companies are struggling to attract workers as the available labor pool shrinks,[107] it seems ludicrous that a state would pay such a large sum of money to create more low-end jobs.

One will note that this does not refute the fact that at the very least, potentially higher paying, new short-term construction jobs will be created to erect the facility. Facially this seems correct, but after more thoughtful consideration, this assertion appears hollow. If one accepts the economic diversion theory, these jobs are really not new, but rather are a result of other projects that did not occur because funding went to

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104. At one end of the spectrum, a team in the National Football League would have the fewest number of games at a home facility. NFL teams begin playing preseason games in early August and conclude the regular season schedule at the end of December. *See NFL.com 1999 NFL Schedule* (visited Jan. 1, 2000) <http://www.nfl.com>. If a team played a normal preseason schedule of five games and regular season schedule of sixteen games, the most games that it would host at home is eleven. *See id.* If the team were good enough to make the playoffs it may play an additional two games at home, bringing the total games played at home to thirteen. *See id.* At the opposite end of the spectrum, a major league baseball team would play the most games at home stadium during a given year. For example, the Chicago Cubs host eighty-one home games at Wrigley Field during a regular season. *See Chicago Cubs 2000 Season Schedule* (visited Jan. 1, 2000) <http://www.cubs.com/tickets/cal2000.htm>. Assuming Hell actually froze over and the Cubs made it to the World Series, they may host an additional eleven games at home if every playoff series were played out to its maximum number of games and the club had home field advantage for each series. This would result in a total number of home games played of ninety-two. At some point between the number of games played by a team in the NFL and MLB, fall the teams in the NHL and NBA. In the NBA, a season begins with preseason games in early October and ends with the championship series at the end of June. This may result in a team playing four preseason games at home, forty-one regular season home games and an additional fifteen home games if the team owned the home court advantage and played the maximum number of games in each playoff series on its way to a championship. *See NBA.com Basics: Complete 1999-2000 Schedule* (visited Jan. 1, 2000) <http://www.nba.com/Basics/01126850.html>. In the NHL, the season begins in September and runs through June. A team in this league may host forty-one regular season games. *See NHL.com 1999-2000 Regular Season Schedule* (visited Jan. 1, 2000) <http://www.nhl.com/schedule/presked.htm>.

105. None of the four major professional sports leagues play games the full year round.

106. Examples of the low-end jobs created, if any, may include positions such as vendors, parking lot attendants, ushers and ticket booth operators.

107. *See* Rich Miller, *The Labor Pool: Why Greenspan is Worried*, BUS. WK., Dec. 6, 1999, at 46, 46.

the stadium instead. Even if the reader is reluctant to accept the weight of the real economic studies, at most these construction jobs are temporary, and often times the workers are temporary transplants from other states.

3. Infrastructure Costs

When debate surfaces for the potential tax subsidy of stadium and arena projects, the focus is almost always on direct costs. Certainly the taxpayer and general public have an interest in the level of direct spending required of them, but frequently the debate fails to give due attention to the larger picture. Proponents of the status quo are slow to acknowledge the hidden additional costs that lay in the required construction of basic infrastructure.[108] These same parties are also hesitant to either admit or acknowledge the level of revenue that is lost to foregone tax revenue from abatements and exemptions.

The advocates for public financing cause me to reminisce about the time my dad explained to me that the cost of going to the amusement park was more than the twenty dollar price of admission. He explained how I should consider extraneous circumstances in deriving the total cost of my planned day of frolic. The price of admission was a significant concern, but it was not all. A trip would cost gas money — ten dollars — in addition to the price for games and concessions while in the park, another twenty to thirty dollars. In addition, I had to think about the amount of money that I would lose from not working that day, maybe thirty to fifty dollars. All totaled, the price of going to the amusement park was probably closer to eighty or a hundred dollars in direct and indirect costs. This was far different from the twenty dollars I thought I could afford.

Similarly, while proponents want to put tidy price tags on the cost for stadium projects, they rarely want to add the price for hidden costs that necessarily arise with the progression of construction. The level of subsidy is higher than the price tag on the stadium, which adds to the impact on taxpayers. When the issue rises to a level of debate, it is absolutely necessary to consider the full financial impact. Ironically, proponents are fast to talk of projected financial spin-off benefits, but slow to include all of the spin-off costs.

108. One prominent economist concluded that stadiums financed with municipal bonds almost always resulted in wealth transfers away from the taxpayers in the form of unrecovered construction costs. *See* Gasper, *supra* note 33, at 360. (Gasper cites Dean Baim's economic study of financial impact from sports stadiums).

4. Inequality of Funding Burden: Why Should Non-Sports Fans Fund the Teams' Stadium?

Who is paying for these stadiums anyway, and, furthermore, who is really benefiting from them? If the proponents of public financing argue that the use of tax benefits to pay for stadiums and arenas is a public purpose, and, therefore justified, why then is the public not paying for it? With the traditional methods for satisfying bond debt often being special taxes, small groups are often singled out and forced to bear the burden of paying for what legislatures tout as the public's greater benefit.[109]

Smokers, drinkers, tourists, and limited consumers bear a disproportional amount of the burden of satisfying public finance obligations for stadium projects.[110] While it can be argued that limited consumers in restricted geographic regions receive greater benefits from an operating stadium simply by juxtaposition, it is difficult to believe that smokers or drinkers necessarily derive any greater level of reward from a stadium. Moreover, opponents argue that tourists make up a very small proportion of game patrons, yet they pay an unusually high proportion of the costs through tourist taxes.

5. Ego: Preventing Team Movement and City Status

The debate over using tax funding to construct new stadia has often encompassed the argument of whether having a professional sports franchise brings qualitative benefits to a city not easily measured in terms of job creation or economic impact.[111] Proponents often take the position that a city gains some indefinable status for having a sports franchise.[112] They claim that having a major league sports franchise improves and strengthens civic reputation, and attracts expanding business and industry to their area.[113] They argue that this status pays dividends

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109. As an example, in Milwaukee, Wisconsin $160 million of the costs of the Milwaukee Brewers new Miller Park will be paid for by citizens within a five-county area through a tenth-cent sales tax increase. *See* Somers, *supra* note 99, at A1. Curiously enough, however, legislatures placed such a heavy burden on the small geographic group while declaring that the new ballpark would "serve a statewide public purpose by 'encouraging economic development and tourism, by reducing unemployment and by bringing needed capital into the state for the benefit and welfare of people throughout the state.'" *Libertarian Party of Wisconsin*, 546 N.W. 2d at 434 (citation omitted).

110. *See* GREENBERG & GRAY, *supra* note 5, at 357-75; *see also* Somers, *supra* note 99, at A1.

111. *See* Zimmerman, *supra* note 30, at 8.

112. *See id.*

113. *See id.*

to the city that are not easily quantifiable, such as the number of times the city's name appears in the media because of the sporting team.[114]

Facially this argument seems to have solid reasoning, but closer analysis reveals flaws in its foundation. The shortcomings in reasoning may give the taxpayer reason to dismiss the qualitative claims argument. Although local entertainment options are sometimes a minor consideration in business relocation, the claim that major league business is attracted by major league sporting franchises may be unrealistic from a monetary prospective. If the city is dolling out hundreds of millions of dollars to sports franchises for the construction of sporting stadiums, what amount of tax rebates and expenditures can the city afford to grant to prospective business? This question implies that the budgetary pie is only so large, and that at some point government will be unable to continue to pay out or allow such heavy tax benefits.

Although taxpayers would probably agree that having a sporting franchise brings exposure to the host-city, a second flaw may be that not all of the exposure is good. When a team consistently loses, will the city be thought a loser? When local athletes run into trouble with the law or perpetrate generally unethical behavior upon society is the exposure a benefit to player's host city? Perhaps the effects of positive and negative exposure are counteractive.[115] Where a city or region might gain some advantage from notoriety, the benefits might face counteractive forces.

Finally, assuming some immeasurable, intangible benefit exists in the pride the public feels for their team, or in the exposure the city receives because of its team, one must question whether the cost is worth the

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114. *See id.*

115. Examples are widespread of negative exposure to cities as a result of athletes associated with professional teams. Few people could forget the news coverage and association of Latrell Sprewell with the Golden State Warriors following his infamous choking of P.J. Carlesimo. *See* Todd Jones, *America's Most Hated, These Sports Figures Top the Hit List*, COLUMBUS DISPATCH, Nov. 5, 1999, at 7D. A less engrossing example, but one of equally negative association and exposure, may include Darryl Strawberry who has continually been tied with drug abuse and New York having played for both the Mets and Yankees. *See id.* Negative exposure and association with a team and its host city may even last longer than the association of the poor behavior with the actual athlete. While considering a sex-related legislative bill in Utah, State Representative Lowell Nelson indicated his desire to "have some penalty for cases like that involving players on the Portland Trailblazers." Bob Bernick Jr. & Jerry Spangler, *Legislature Considers Flurry of Sex-Related Bills*, DESERET NEWS (Salt Lake City, Utah), Feb. 10, 1997, at B2. Nelson was referring to an incident several years past making news when several members of the Portland Trailblazers basketball team picked up underage girls at a mall and had sex with them. *See id.* The negative exposure risk is also not limited to that brought only as a result of deviant behavior by the teams athletes. *See Former Nets Employee Convicted of Bank Fraud*, TAMPA TRIB., Sept. 25, 1997, at 8.

benefit. Similar to the case of the diversion argument, one should consider whether there are other investments that could generate a similar or greater level of exposure and public pride. For the sake of argument, and as an example, the construction of a local zoo may provide many of the same intangible benefits at a much lower cost. A zoo could be a civic focal point for uniting community interest and increasing civic pride. It could serve as a place for family recreation and enjoyment. Additionally, a zoo would also likely have the same attractive effect, if any, for a company considering relocation to the host community area as would a professional sports team. A zoo may also have the same ability to attract broader attention by hosting special attractions such as rare touring animal exhibits. And while it is true that a zoo animal may act unruly at times, it is likely that most, if not all of the public exposure generated by a local zoo would be positive.

Assuming that some intangible benefit exists from this type of public project, subsidization of professional sports stadiums is not justified by the mere existence of the benefit where the same advantage could be derived through alternate means. If other opportunities exist that can generate similar or even greater qualitative benefits at the same or lower level of tax subsidy, then the existing professional sport franchise subsidy based on this specific benefit becomes an unsound judgment.

The above arguments show that the tax-policy relating to the subsidy of professional sports is questionable. As a result, Legislatures should be leery of courting franchises with the charms of taxpayer subsidy.[116]

C. *Historical Lessons Relating to Stadium Construction*

The real difficulty with many of the arguments is that tax opponents are often cast as anti-stadia. Proponents place their opposition into the unfair position of arguing that stadiums should not be built, or that stadiums will not bring the qualitative and quantitative benefits claimed. While the above material demonstrates that there are significant arguments in favor and in opposition to the construction of new stadiums, the reader must not lose sight of the real issue and be lured into consideration of the benefits and detriments of new stadiums. Instead, the reader should focus on the question of whether it is sound tax policy to subsidize professional sports franchises in this manner. In other words, the

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116. Professional sports franchise owners wield much negotiating power in the struggle with politicians over public funding for stadiums which has resulted in many of the benefits of the tax subsidy being shifted to the franchise owners and away from the public. *See* Gasper, *supra* note 33, at 367.

issue is not whether stadia should be built, but rather, who should bear the financial burden of paying for them. History has shown that this should not necessarily be the taxpayer.

Consider the case of the NBA's Utah Jazz. When attendance demand outgrew the existing 12,444-seat Salt Palace, the Jazz decided to build a new home.[117] The 19,911-seat Delta Center opened in 1991.[118] The arena seemed to strike an equitable balance between the pull from tax opponents and tax proponents. The stadium was built at a very reasonable cost of $90 million dollars.[119] This figure may have been held in check because Jazz owner Larry H. Miller was able to get only minimal public financing for his stadium.[120] As a result, Miller put his own money on the line and perhaps was more cost conscious than he might otherwise have been had the Utah Legislature given him a blank check from the taxpayers' account to build his arena. Salt Lake City and the State of Utah did aid Miller by donating land and absorbing basic infrastructure costs.[121] The effects on federal taxpayers were minimal, the state and local taxpayers saw no new direct tax increases and the team received a new arena.

This case study suggests that professional sports facilities can be built without requiring the taxpayer to pay for them. Utah is concededly the smallest market in the NBA, yet the Jazz found a way to finance a new stadium with very little effect on taxpayers. The $90 million price tag was significantly lower than the current price of new venues, but consider all of the added amenities that are being included in the new parks.[122] At Bank One Ballpark, in Arizona, the baseball stadium includes a swimming pool in the left field bleachers.[123] In the Ball Park at Arlington—new home of the Texas Rangers—many describe the con-

117. *See* UPI, *Jazz Owner Wants Home Court with 18,000 Seats*, L. A. Times, June 12, 1988, at 4.

118. *See* Rafool, *supra* note 4, at 35.

119. *See* Greenberg & Gray, *supra* note 5, at 372.

120. As is typical, the exact amount of public subsidy is not completely clear. In one paper, the author indicates Miller received no public financing, and several pages later in the same article the author indicates Miller received $24 million in tax increment bonds *Compare* Rafool, *supra* note 4, at 10; *with* Rafool, *supra* note 4, at 35. *See also* Greenberg & Gray, *supra* note 5, at 373.

121. *See* Somers, *supra* note 99, at A1.

122. *See id.* Somers provides the cost of fifteen new stadiums to be opened by the end of the year 2000 with $158 million for Centennial Arena, home of the NHL Carolina Hurricanes, being the lowest price and $415 million for Safeco Field, future home of the Seattle Mariners, being the highest price. *See id.*

123. *See* Sam Howe Verhovek, *Doomed Domes of the 'Old' Diamonds*, N. Y. Times, July 13, 1999, at A14.

course as a mall like atmosphere with numerous shops and restaurants that occupy space.[124]

It is undisputed that a $90 million stadium might be unrealistic in today's market, especially in cities such as Chicago[125] and New York.[126] The point, however, remains the same. Stadiums and arenas can be built with little or no tax subsidization and those parties erecting the facilities will be more cost conscious. Where stadiums are likely to cost more in larger markets, the potential to finance them with very little or no tax subsidy remains.

Consider the case of the Chicago Bulls. The Bulls moved into the 21,711-seat United Center in 1994.[127] Partly because it was built in the larger city of Chicago, Illinois, the United Center came with a much higher price tag then the Delta Center in Salt Lake City, Utah.[128] The stadium cost $175 million.[129] The significant point of this illustration is that, even in a large city such as Chicago, and even with a price tag of $175 million, the stadium was built with less than ten percent public financing.[130] This supports the contention that stadiums and arenas can be built with little or no tax subsidy.

Consider the second historical lesson: old stadiums are not necessarily bad. Few fans would argue that a park such as Wrigley Field in Chicago should be replaced, yet the stadium is over eighty years old.[131] Stadiums are more than a facility for playing sports. Many stadiums and arenas are historical treasures, housing memories and tradition of times past. Even beyond the questionable qualitative benefits, playing in older stadiums is not necessarily financially or competitively disadvantageous to a team. Consider also the case of the San Francisco 3Com Park (formerly Candlestick Park).

3Com Park is home of the San Francisco 49ers NFL team and the San Francisco Giants MLB team. In 1998, the Giants ended the season

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124. *See* Senkiewicz, *supra* note 29, at 578 (citing Tony Grossi, *The Sprawlpark is More Like It . . . The Rangers Bring Us Mall Ball*, PLAIN DEALER REP., Mar. 31, 1994).

125. One recent estimate places the cost of only renovating Soldier Field in Chicago at $450 to $500 million. *See* John A. Holabird, Jr., *Talking Architecture: Should Soldier Field be Saved? The Answer is No*, CRAIN'S CHI. BUS., Aug. 30, 1999, at 11, 11.

126. One estimate places the cost of building a new stadium for the New York Yankees at $1.08 billion. *See* Gasper, supra note 33, at 359.

127. *See* Rafool, *supra* note 4, at 23.

128. *See id.*

129. *See id.*

130. *See id.*

131. Wrigley Field, originally named Weeghman Park, was built in 1914. *See* Fred Mitchell, *Macphail: Older Could Mean Better For Cubs*, CHI. TRIB., June 1, 1999, at N3.

tied with the Chicago Cubs for the wildcard playoff spot. In 1997, the Giants collected the seventeenth most revenue in MLB.[132] The 49ers have been a perennial playoff team, and as recent as 1998 contended for the National Football Conference Championship.[133] The 49ers collected $85.9 million in total revenue for 1997, third most in the NFL.[134] Together, these numbers tell a story that new stadium proponents do not want you to know. Teams can bring in revenue and remain competitive in older stadiums. Yet even this financial and competitive success, when the season opens in the year 2000, the Giants baseball club will be moving into the new $255 million Pacific Bell Park.[135]

V. Tax-Exempt Bond Status for Professional Sports Stadium Construction is Unjustified Federal Tax Policy

Besides the distinction that has been discussed between corporations and professional sports, the public tax subsidy issue may be narrowed further by considering the differences in tax policy from a federal versus a state perspective. The issue of whether taxes should be used to fund the construction of sports arenas takes on a slightly different perspective when consideration is undertaken on a state versus a federal level. Generally, it is more believable that taxpayers at a local level would derive greater benefit from a new sports stadium in their community than any one taxpayer on the national level would receive simply from the addition of a new sporting arena, or as is more often the case, the replacement of an existing arena within the United States. For this reason, and because the arguments by stadium subsidy proponents have not been disproved entirely, some marginal level of tax subsidy may be justified at the state and local levels. However, the same cannot be said for the federal level.

Some people have argued that federal stadium subsidy is unjustified, basing their arguments on what appears to be a lack of historical evidence to support the economic claims of stadium subsidy proponents.[136] However, the analysis of the federal stadium subsidy issue need not

132. *See* Badenhausen et al., *supra* note 3, at 47.

133. *See NFL: List of NFC Champions*, AAP Newsfeed, Jan. 10, 1998, *available in* LEXIS, News, Wire Service Stories File.

134. *See id.* at 49. Although revenue does not equal profitability, profitability in professional sports is largely tied to a teams ability to manage its greatest expense—payroll.

135. *See* Dana Gelin, *San Francisco Giants,* Sports Illustrated Presents, Mar. 11, 1998, at 110, 110.

136. *See* Burke, *supra* note 49, at 153; Gasper, *supra* note 33, at 360; Lathrope, *supra* note 9, at 1153.

reach this point. Even if the economic and other arguments by subsidy proponents are accepted or found to be true, there is still a lack of rational reasoning for subsidizing professional sports stadiums from a federal tax level. In the following paragraphs, this argument is explained and justified.

Where federal taxpayers shoulder the burden of helping to finance local stadiums through lost revenues on tax-exempt bonds, there exists an argument of disproportionality. Admittedly, the amount of the financial burden suffered by federal taxpayers is relatively small when considered on a per taxpayer basis. However, when considered aggregately, one cannot help but wonder why federal taxpayers in states such as Florida, Alabama, and Mississippi should pay anything for the Rose Garden to be constructed in Portland, Oregon.[137] It is highly doubtful that any significant number of Trailblazer fans resides in these three states, and even more unlikely that if they do that any of them will ever enjoy the benefits of visiting the Rose Garden. It is even more absurd to think that any worker in one of these three states would be willing to commute over 2500 miles to enjoy the benefit of a seasonally created, minimum wage paying, temporary job at the arena. Simply put, the arguments favoring taxpayer subsidy of stadium construction lack any validity or credibility when considered only on the federal level.

First, consider the argument of job creation. Even if the construction of a new professional sports stadium will create jobs, what benefit does the federal government receive from providing tax-exempt status to bonds used to lure a team from one location to another. Taken on a national level, the location of a new stadium should make little difference to the federal taxpayer. For example, if a new stadium creates fifteen hundred new jobs, the total number of national jobs will increase by fifteen hundred irrespective of whether those jobs are located in Miami or Atlanta. While there may be some enticement to the federal government in steering job growth towards more depressed regions of the country, the federal taxability or non-taxability of bonds does not provide national leaders with the power to effect such incentive. Bond issuance for stadium construction generally occurs on a state level. Whether a team will receive these bonds is a decision that will be made by state leaders and citizens. Thus, there really is no benefit to the federal taxpayer in terms of job creation.

137. *See* Lathrope, *supra* note 9, at 1161. As an example, Lathrope indicates that there appears to be a lack of policy justification for federal taxpayers in North Dakota or New Mexico, to be required to subsidize a move of the Oilers from Houston to Nashville. *See id.*

Second, the argument that a new stadium will stimulate economic growth, assuming it is valid, does not translate into a benefit to the federal taxpayer.[138] Similar to job creation, economic growth from the construction of a new sports stadium should occur irrespective of where the new stadium is located within the United States. The national economy is comprised of more local economies, and although there may be some slight marginal difference in total national economic growth due to the location of the stadium, such a difference should be very minimal and make little difference on a purely federal tax basis.

Likewise, any argument that a new stadium and professional sports team provide intangible benefits does not translate to the national level. Specifically, the argument that a city becomes major league by having a big-league sports franchise cannot be carried to the federal level. The nation receives no intangible benefit or status by having a sports team in Miami instead of Cleveland. Additionally, new business will not be created nationally, or attracted to the United States because a new stadium was built in Miami rather than Cleveland.

The only argument that has marginal transferability is that of inner city revitalization. The construction of a new stadium may provide a benefit in revitalizing an inner city region of the nation. However, like the job creation and economic growth argument, the ability to effect this change and specifically target such revitalization is not one that is held by federal politicians as a result of the tax-exempt status of bonds used for stadium construction. As previously mentioned, issuance of these bonds is controlled by state and local government. Consequently, the federal taxpayer seems to have little incentive to continue this subsidy based on a revitalization argument.

The economic arguments by stadium subsidy proponents advocating that this expenditure of public funds is cost-justified simply have not been historically proven to be valid. Even if all of the proponents' arguments were accepted as true, the touted benefits are limited to the state level. It does not appear that a federal taxpayer would derive the same benefits as a state taxpayer from the construction of a new stadium, assuming the claimed benefits are realized. It is also unlikely that the new trend for constructing new stadiums will significantly slow down.[139] So, where real life has proven that stadiums can be built without forcing taxpayers to assume new taxes or lose substantial tax revenues, and where the benefits of new stadiums do not translate to the federal tax-

138. *See id.* at 1159.
139. *See* Somers, *supra* note 99, at A1.

payer, perhaps the following proposals would help to strike a more equitable balance in the subsidy of professional sports facilities.

VI. TAX POLICY OPTIONS

The following subsections will present several suggestions for improving tax policy in this particular area. Recognizably, these measures would not necessarily end professional sports franchise subsidy, rather, they would help to ensure more equitable funding, with significantly lower subsidy issued under more carefully thought out basis for compensation.

A. *Eliminate Federal Tax Financing of Stadiums and Arenas*

Sports facilities and stadiums can survive without burdening federal taxpayers with their costs. Within an eight-year period spanning the late seventies and early eighties, Miami taxpayers rejected four separate proposals to pay for renovations of Joe Robbie Stadium.[140] Following the fourth rejection, the stadium owner proceeded with the renovation, funding it through the lease of clubhouse seats and luxury boxes.[141] Similar examples exist, collectively pointing to the plausibility that the IRS tax code could be amended to eliminate the tax-exempt status of bonds issued for the construction of sporting venues.

1. Internal Revenue Code Revision

As a solution to the unfair nature of requiring federal taxpayers to subsidize stadiums, Dennis Zimmerman's proposal that the IRC be amended to completely eliminate federal tax-exempt status of bonds used to pay for the construction of sports stadiums and arenas should be adopted.[142] By eliminating the federal tax-exempt status of bonds used to pay for the construction of sports stadiums and arenas, federal taxpayers would be relieved of the unfair burden requiring them to subsidize professional sport franchises.

Senator Daniel Patrick Moynihan proposed another potential amendment to the code entitled the Stop Tax-Exempt Arena Debt Issuance Act or STADIA.[143] Under this proposal, Internal Revenue Code Section 141 would be amended to provide that bond issues whose pro-

140. *See* GREENBERG & GRAY, *supra* note 5, at 362.
141. *See id.* at 362.
142. *See* Zimmerman, *supra* note 30.
143. S. 122, 105th Cong. (1997); reintroduced S. 434, 105th Cong. (1997); also introduced in the House of Representatives H.R. 2097, 105th Cong. (1997).

ceeds are used to provide professional sports facilities with the lesser of $5 million or five percent of total bond proceeds shall be included in private activity bonds, and not qualified for tax-exempt status.[144] Under the proposal, the denial of tax-exempt status would be fazed in by allowing exceptions to the amendment for bonds approved before June 14, 1996.[145] The Act, first introduced in the Senate on January 21, 1997, and in the House on February 12, 1997, has not seen significant action, having been referred to committee following each introduction.[146]

Although this bill looks like a quality remedy, it might have difficulty passing. Politicians face increasing pressure to either attract new professional sports teams or prevent the injustice of teams divorcing current cities for new locations.[147] Consequently, support of Moynihan's bill is politically unpopular. No legislator would want to be viewed by their constituents in a light that could be cast as anti-stadium, or especially as an opponent of the current professional sporting franchise. So, even though the bill makes sense, it will not easily pass. Though an affirmative vote for the bill would not mean a legislature was against the construction of stadiums ipso facto, there is the real threat that tax-paying constituents would not be able to separate the issue of whether tax subsidy should be used to build a stadium from the question of whether a stadium should be built at all.

Complete elimination of the tax-exemption would likely face the same difficulties in passage as Moynihan's proposal. Though the two are slightly different because STADIA still allows minimal tax-exempt benefits, the two proposals are not different in the respect that constituents might perceive the advocation of either as a move in opposition to current professional sport franchises location in their states. However, even though this may be true, the rationale behind the proposals is still sound and should be followed.

The adoption of either the Moynihan or Zimmerman proposal would undoubtedly cause the cost to finance the bond debt to increase because of the lost tax-exempt status, but this might not be a bad effect. Where the cost of debt service will be increased, issuers will be forced to look more closely at the economic effects of issuing these bonds. The slight increase in cost of financing should also have the effect of forcing issuing

144. *See id.* at § 2.

145. *See id.* at § 2(b).

146. *See* Bill Tracking Report, S. 122, 105th Cong. (1997); *see also* H.R. 721, 105th Cong. (1997).

147. *See* Mitten & Burton, *supra* note 60, at 98.

parties to look more closely at stadiums as investments. However, the greatest benefit that either of these two proposals would have is that federal taxpayers would no longer be paying or would be paying much less for this specific subsidy that they have almost no chance to derive any kind of benefit from.

By disallowing states to issue federal tax-exempt bonds for stadiums, teams would no longer hold the same power in the bidding war for new stadiums. A move to a different city by a professional team would not necessarily result in greater tax subsidy where no federal tax-exempt bond could be issued to pay for construction. By eliminating this federal tax-exemption and taking away this leverage, teams may have more incentive to stay at home and politicians would ultimately satisfy the popular desires of constituents.

As an additional benefit, where bond issuers are unable to qualify for tax-exempt status, legislatures could quickly shift the cost of satisfying bond obligations back to the team. Team leases of stadiums and arenas would likely become more equitable. Where bond obligations could be satisfied with stadium revenues, state and local taxpayers should also likely feel some level of relief from the bond service burden they now carry because of the adoption of either new federal tax policy proposal relating to stadium bond financing.

2. Require Greater Returns from Stadium Revenue

One potential remedy to the tax subsidy of professional sport franchises is to require better or more specific return on the dollar. Requiring a greater return can only be accomplished if federal tax-exempt bonds are either changed or eliminated. Under the present code, bonds are classified as PAT and lose tax-exempt status when over ten percent of the money used to satisfy their repayment is derived from the stadium or arena.[148] If the federal tax-exempt bond were eliminated as suggested, this would no longer be an issue. States could tap the most logical revenue stream—stadium revenue—to satisfy bond obligations. Stadiums could then pay for themselves instead of requiring taxpayers to shoulder the burden.

Furthermore, by requiring costs to be repaid with stadium revenues, leases would be more equitable as discussed above, and teams and leagues might look more closely at the costs of construction. Requiring the money to come from the investment itself, may prompt politicians to

148. *See* I.R.C. § 141 (1999).

undertake more careful analysis of the risk versus return used as a basis for deciding whether or not to construct the new stadium.

B. Limit Referenda Campaign Spending

Where stadium and tax proponents are often able to outspend opponents, the public is educated about the potential stadium subsidies through tainted lenses and taxpayers are less likely to hear both sides of the issue. By placing limits on the level of money spent to rally support for proposed stadium referenda, taxpayers would likely be placed in a position to hear both sides of the debate and make more informed decisions. This limit would have to be adopted by state legislatures on a one-by-one basis because the referenda power is unique and specific to each state. Unfortunately, a measure of this nature would likely face very difficult constitutional challenges.[149] If adopted, however, it would create the opportunity for more informed tax policy decision making.

This measure would provide sound benefits if adopted. It would provide for more informed discussion, debate and consideration of stadium proposals. These benefits would likely follow even in the case that the federal tax exemption is not eliminated. Should the federal tax-exemption continue, adoption of this measure would provide for more rational spending of tax subsidy, and perhaps even reduce the federal tax dollars lost where state taxpayers may more frequently choose to oppose subsidy for stadium construction. Even if the federal subsidy is eliminated, this campaign balancing measure would both aid state citizens in voting as informed citizens for referenda and help to bring to light all aspects of prospective stadium construction.

C. Implement League Policies Restricting Team Movement to Slow Stadium Growth and Decrease the Level of Federal Tax Dollars Lost.

One of the significant, yet generally unacknowledged reasons political forces agree to build new stadiums is that team owners have the power, subject to league rules, to relocate their franchises in an effort to

149. *See* David R. Lagasse, Note, *Undue Influence: Corporate Political Speech, Power and the Initiative Process*, 61 Brook. L. Rev. 1347 (1995); Matthew J. Geyer, Note, *Statutory Limitations on Corporate Spending in Ballot Measure Campaigns: The Case for Constitutionality*, 36 Hastings L.J. 433 (1985); Daniel H. Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment*, 29 UCLA L. Rev. 505 (1982); Elizabeth Garrett, *Money, Agenda Setting, and Direct Democracy*, 77 Tex. L. Rev. 1845 (1999).

attain better stadium deals.[150] This ability to hop cities gives teams great bargaining leverage in negotiating new facility construction contracts and stadium and arena leases.[151] If teams were relieved of this uncontrolled power, decisions to build or not to build could be made after more reasonable and thoughtful consideration. This should also prevent professional teams from extorting federal tax subsidy dollars from cities as a requirement to either retain or attract them.

This solution could only be carried out at the national level. Congress would have to regulate the movement of professional sport teams. It is unreasonable to believe that given broader power leagues would curtail the movement of franchises. Although leagues have challenged the movement of some professional sport franchises,[152] the motive is generally not to protect taxpayers or host cities.[153] Leagues have a recognizable incentive in continuing to allow teams to move to the communities in which the greatest overall potential revenue may be generated.[154] Leagues also derive great benefit from the construction of new facilities. Where a new stadium or venue can significantly increase franchise value,[155] and league exposure, sporting leagues are thrilled by the construction of new facilities.[156] It seems unlikely that leagues would strip teams of such a powerful bargaining tool for attaining new stadiums.

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150. Following the Ninth Circuit's ruling in the antitrust suit involving the move of the Raiders football team from Oakland to Los Angeles, it appears that any professional sports league may be at risk of antitrust violations for prohibiting a team from moving. *See* Lathrope, *supra* note 9, at 1149 (citing Los Angeles Mem'l Coliseum Comm. v. National Football League, 726 F.2d 1381 (9th Cir. 1984)).

151. *See* Mitten & Burton, *supra* note 60, at 60-61.

152. *See generally,* National Basketball Ass'n v. SDC Basketball Club, Inc., 815 F.2d 562 (9th Cir. 1987); Piazza v. Major League Baseball, 831 F. Supp 420 (E.D. Pa. 1993).

153. *See* Mitten & Burton, *supra* note 60, at 104 (citing personal animosity towards specific owners such as Al Davis, Bill Veeck and Charlie Finley, as a common basis for league attempts to prevent franchise relocation).

154. *See id.* at 103. The total revenue generated by location in one community versus another includes the amount that may come from favorable stadium leases and taxpayer subsidy. *See id.*

155. *See* Lathrope, *supra* note 9, at 1155 (citing John Riley, *Where The Grass is Always . . . Greener*, NEWSDAY, Aug. 18, 1996). A team's revenues may increase by as much as 40% from moving into a new stadium, thus resulting in increases to franchise values in the ranges of $30 million to $50 million or more. *See id. See also, Is the Boom Cresting?*, STADIUM & ARENA FINANCING, Sept. 21, 1998, at 1 (indicating that the difference in team franchise values often can be traced to the stadium situation).

156. *See* Hartel, *supra* note 87, at 602. Hartel points to the NFL as an example of a professional league that is very satisfied with public subsidization of new stadiums. *See id.*

Professional sport franchise relocation restrictions have been proposed in Congress, but have not been adopted.[157] Under The Professional Sports Franchise Relocation Act of 1998, Massachusetts Representative Martin T. Meehan proposed regulations that would exempt leagues from antitrust liability for restricting team movement and control the process for granting team mobility.[158] This bill, along with others such as The Sports Antitrust Reform Act of 1996, have been aimed at the same general target.[159] These proposals suggest the adoption of certain criteria to be applied and satisfied before professional sport franchises would be allowed to move.[160] These acts would have been considered minor exemptions to the antitrust laws.[161]

It would seem unduly harsh and probably unconstitutional to completely prohibit the movement of professional sport franchises, but some level of restriction would certainly help to create a more rational bargaining process between teams and host cities regarding relocation.[162] The criteria of the many bills already proposed and unadopted provide good starting points for legislative reform of relocation requirements. The most important part of any act created to solve this issue must be measures designed to provide for rational decision making, with a fair amount of time for debate, discussion and analysis.

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157. *See* Safir, *supra* note 94, at 955; *see also* Mitten & Burton, *supra* note 60, at 128. Mitten and Burton provide a plethora of examples of proposed federal legislative bills that would regulate professional team movement in some manner. *See id.* at 131-40. A partial list includes: 1) The Professional Sports Franchise Relocation Act, introduced in 1985 by Congressman Ronald V. Dellums; 2) The Professional Football Stabilization Act, introduced in 1985 by Senator Arlen Specter; 3) The Sports Community Protection and Stability Act, introduced in 1985 by Senator Dennis DeConcini; 4) The Professional Sports Team Community Protection Act, introduced in 1984 by Senator Slade Gorton; 5) The Fan Freedom and Community Protection Act, introduced in 1995 by Representative Martin R. Hoke; 6) The Fans Rights Act, initially introduced by Senators John Glen and Michael DeWine; 7) The Professional Sports Franchise Relocation Act, introduced in 1996 by Senator Arlen Specter; and 8) The Professional Sports Antitrust Clarification Act, sponsored by Senator Strom Thurmond in 1996. *See id.* at 131-39.

158. *See* H.R. 3817, 105th Cong. (1998).

159. *See* 104 S. 1767, 104th Cong. (1996).

160. *See* H.R. 3817, 105th Cong. (1998); 104 S. 1767, 104th Cong. (1996).

161. *See* Safir, *supra* note 94, at 955. Safir indicates that of seven recent Congressional bills proposed to regulate franchise movement, all provide some form of limited antitrust immunity for leagues. *See id.*

162. For a discussion on the constitutionality of restricting professional sport team movement *see* Lisa J. Tobin-Rubio, Casenote, *Eminent Domain and the Commerce Clause Defense: City of Oakland v. Oakland Raiders*, 41 U. MIAMI L. REV. 1185 (1996).

VII. CONCLUSION

Many avenues of taxation have been utilized to pay for the construction of new sporting stadiums and arenas from both the federal, and state and local levels, effectively subsidizing professional sport franchises. The arguments favoring current tax policies have lost actual credibility due to real studies debunking exacerbated economic claims. Furthermore, any argument that professional sports need subsidization is strained where teams and leagues are now a big time business, generating large revenues through media broadcasting rights revenues, ticket sales, merchandising and corporate sponsorship.

The professional sports tax subsidy debate takes on a much different flavor when federal tax policy is separated from state tax policy. Under this analysis, it is apparent that arguments in favor of public financing of sports stadiums simply do not hold true when considered on a federal level. Perhaps the states should be left to their own policy discretion in dolling out state taxpayer money to professional sports franchises. Nevertheless, it is obvious that the time has come to take steps to protect the federal taxpayers from the injustice of subsidizing multi-million dollar businesses with little or no real benefit in return.

Several measures exist that could alleviate the unfair burden placed on federal taxpayers to subsidize professional sports stadium construction. One measure seems to be better and more logical than the rest: amend the Internal Revenue Code to either restrict or eliminate the tax-exempt status of bonds used to finance stadium construction.

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