Subverting the Internal Revenue Code in the "Game" of Sports Stadium Financing

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SUBVERTING THE INTERNAL REVENUE CODE IN THE "GAME" OF SPORTS STADIUM FINANCING

I. BACKGROUND: THE BATTLEGROUNDS OF STADIUM FINANCING

In 1984, the late Edward Bennet Williams, owner of Major League Baseball's Baltimore Orioles, announced he would not renew the team's lease at Memorial Stadium in Baltimore.\(^1\) This announcement set off a flurry of activity among public officials and business leaders in and around Baltimore — a city that remembers too well the damage to the local economy and civic pride caused by the loss of Baltimore's only other professional sports team, the National Football League (NFL) Colts.\(^2\) As the story went:

In a dramatic midnight exodus, (owner) Robert Irsay moved "his" Baltimore Colts out of Baltimore and into Indianapolis. The team's departure dealt a devastating financial blow to Baltimore's economy which, in 1984 alone, lost thirty million dollars in revenues, wages and business. The deepest loss, however, was felt by the people of Baltimore for whom the Colt's were a way of life for over 30 years (footnotes omitted).\(^3\)

Accordingly, the leaders of Baltimore came up with a solution to prevent a second exodus: build the Orioles a new baseball stadium.

During the summer of 1990, the Cleveland Indians invited Baseball Commissioner Fay Vincent to a Wednesday evening game at Cleveland Stadium, not to watch baseball, but to stump for approval of a county referendum that would impose a fifteen year, two percent county tax on alcohol and cigarettes.\(^4\) The proceeds of this so called "sin tax" would support tax-exempt debt issued to build a new sports complex for the Indians and the National Basketball Association's (NBA) Cleveland Cavaliers.\(^5\) The sports complex and redevelopment district has a $280 million construction and

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2. Id.
land acquisition cost. Both teams have promised long term commitments to the City should the referendum pass.

By the end of the 1988 baseball season, the floundering Chicago White Sox were facing slumping attendance levels and declining revenues. The White Sox had not contended for a pennant since 1983, and were perhaps the only remaining team in baseball that failed to break even by 1988. Enter the City of St. Petersburg, Florida sporting the new $103 million (and counting) Suncoast Dome, $20 million in low interest loans, a radio and television package in excess of $10 million, and a warm invitation to move the White Sox to Florida.

The City of Chicago and State of Illinois eventually responded with $150 million for a new Comiskey Park and $60 million in additional concessions over the next ten years. By recent estimates, additional land acquisition costs could push the cost of a new stadium upward another $30 million. Both stadium projects, the Suncoast Dome in St. Petersburg and the new Comiskey Park in Chicago, are being paid for or supported by state or local tax revenues.

The process of financing a major sports complex has taken some dramatic turns in the past ten years. A number of high profile projects provide a tour though the elements of stadium financing, the costs born by taxpayers and municipalities, and the benefits provided to sports franchises and the communities in which they reside.

II. SOME IMPORTANT ASPECTS OF STADIUM FINANCING

A. The Anatomy of a Deal

Most large scale real estate development projects share several common elements. Because most lenders and investors seek to protect the same interest — their capital — each project must fulfill certain formalities and requirements. The initial formalities usually include a list of studies, soil samples or surveys undertaken to assess the risk of the project and any potential conflicts with the surrounding economy that could endanger the

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6. Id.
10. Id.
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The second stage may determine ownership and control of the facility as well as building design. The final preconstruction stage entails compiling financial documentation, acquiring leases from tenants, and contracting for facility management and maintenance.

The preacquisition study is typically comprised of a list of topics addressing the impact of the project on the surrounding area and community at large:

This should include a check of the zoning and restrictions of the land to be built on, expected growth in the area, access to transportation or main highway arteries, public parking, the suitability of the locale to the prospective tenants, current and prospective competing buildings in the areas, and overall personality of the vicinity.

Additionally, zoning data must be compiled to ensure the selected site can be used for the intended purpose of the facility, and to assess the potential costs of water, sewer and other utilities costs. Changes to the Internal Revenue Code in 1984 and 1986 made it nearly impossible for municipalities to directly finance sports stadiums. Therefore, most preacquisition expenses including utility charges and land studies are paid for by municipalities as direct subsidies out of short term revenues rather than proceeds from the issuance of long term debt.

Stage two entails allocating ownership and control of the facility and building design. Issues addressed at this stage include the identification of the land, the nature of the acquiring entity for the facility, building design and determination of ultimate long-term control. The simple solution to these issues would seem to necessitate having the team/developer, but there are other ways by which the land can be attained at minimum or no cost to the team/developer. [It] can option the property until the success of the project is assured.

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14. Id.
15. Id.
16. Id. at 86.
17. Id.
18. As discussed in the following paragraphs, a team or sports franchise may also be the developer who builds the stadium on a parcel of land purchased by some other entity, such as a state, municipality or corporation.
[enter] into partnership with the owner of the land, or put together a joint venture or syndicate . . . to buy or option the land.\textsuperscript{19}

One option that appears desirable in light of the Internal Revenue Code changes is the ground lease. A ground lease essentially involves a municipality acquiring and preparing a site for development, then leasing the land, for a nominal amount, to the sports franchise who privately finances construction of the stadium.\textsuperscript{20} The municipality may be able to issue municipal debt to pay the acquisition costs and then collect fees for managing the stadium, or revenues from stadium parking on the land surrounding the facility.\textsuperscript{21} The franchise receives a development ready stadium site for a fraction of a yearly mortgage and may also receive a subordination\textsuperscript{22} or guarantee from the municipality of the franchise’s debt. Prior to 1984, Dade County in southern Florida, employing a variation of this financing scheme, acquired a parcel of land from a group of local developers. The 160-acre parcel was prepared for development and leased to the NFL’s Miami Dolphins for $1 per year.\textsuperscript{23} On this land, the Dolphins constructed the $90 million Joe Robbie Stadium which opened in 1987.\textsuperscript{24}

Immediately prior to construction, a survey of the site specifications of the facility and the architect’s drawings are necessary.

The lender will want to see a complete set of plans and specifications before issuing a firm commitment letter. . . . A survey of the property owned or optioned is an important part of the package for lenders. When the long-term mortgage is funded, the take-out lender will require an ‘as built survey’.\textsuperscript{25}

The final stage of the project involves compiling financial information, leasing facility space and contracting for management and maintenance. Important financial information that a lender may include:

[F]inancial projections on the project when complete.

. . . The lender wants to know about the developer’s character, reputation and experience. . . . Many lenders will want to see a personal financial statement from the borrower to ensure that they are financially capable to overcome contingencies, since most construction

\begin{itemize}
\item \textsuperscript{19} J. Bagby, supra note 13, at 86.
\item \textsuperscript{20} See N. Steuben, Real Estate Cases and Articles 240-41, 610-27 (1989).
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Under a typical ground lease, a landowner who leases a parcel to a developer has first claim on the improvements on the land upon default of the tenant developer. A subordination entails the landowner relinquishing the claim to the lender to allow the tenant to obtain construction and permanent financing. Id.
\item \textsuperscript{23} D. Petersen, Convention Centers, Stadiums and Arenas, 45 (1989).
\item \textsuperscript{24} Id.
\item \textsuperscript{25} J. Bagby, supra note 13, at 86.
\end{itemize}
lenders require that the borrower guarantee completion. In some cases, lenders will require an even more thorough breakdown of a company's finances.

... Financial statements and other pertinent financial data on the major tenants. Having strong tenants can lower the cost of money to the developer.26

The tenants of a sports stadium usually include a major sports franchise, (if the team owns the stadium then the developer and anchor tenant may be one in the same), a second professional team, minor league or amateur franchise, restaurants, hotels, souvenir stores and food and beverage concession stands.

Each of these elements is influenced by outside forces and institutions which add external costs and create additional risks for the project. The financing aspect of a large scale real estate transaction is so interdependent and interrelated to the local, national and international economies that it must be viewed as a product of conditions external to the project, rather than a force shaping events.27 One of the major influences on such a real estate mega-project is the federal government, with its hundreds of national and regional regulatory agencies, bureaus and tax authorities.28

B. The Effects of the 1986 and 1984 Revisions to the Internal Revenue Code

Prior to 1984, to aid sports franchises in financing multimillion dollar stadium and coliseum projects, state and local governments would issue municipal debt to raise the funds necessary for construction. Most sports franchises were not financially able (or perhaps not willing), to issue debt of this size at an affordable interest rate, given investors perception of the risks associated with professional sports. However, this municipal debt was attractive to investors because it was tax-exempt. That is, an individual did not have to pay taxes on interest income from these bonds. This practice is the essence of tax-exempt financing.29

The history of tax exempt financing begins with the Tariff Act of 1913 that exempts from investors' net income the "interest upon the obligations of a state or any political subdivision thereof."30 This history became well

26. Id. at 86-87.
27. Id. at 3.
documented as tax-exempt municipal financing became a popular tool to finance urban housing projects:

The federal government through the income tax laws has provided an exemption for interest on bonds issued "by or on behalf of" state and localities since 1913 when the first income tax was enacted. Although states and localities first took advantage of this exception by issuing general obligation bonds, they later issued revenue bonds to help finance private business activities. The Internal Revenue Service explicitly legitimized this practice in 1954 (footnotes omitted).\(^3\)

Generally referred to as Industrial Development Bonds, (IDBs)\(^3\), the two most widely issued municipal financing tools are general obligation bonds and revenue bonds.\(^3\) The distinction between these two types of financing mechanisms is simple: general obligation bonds are issued by a municipality's political subdivision and are "guaranteed for repayment by a pledge of the issuing government's tax revenues and the general credit.\[Therefore\], tax revenues are available for repayment of such bonds if project revenues prove to be inadequate."\(^3\) On the other hand, revenue bonds are, "repaid solely from the revenues generated by the facilities constructed with the bond proceeds. In the issuance of this type of bond, the political subdivision acts solely as a conduit for the issuance of the bonds. It has no obligation to use its tax revenues to finance any shortfall."\(^3\) Proceeds from IDBs have been used as subsidies to overcome obstacles to economic recovery,\(^3\) redevelop blighted urban areas\(^3\) and to promote projects with outstanding public merit\(^3\) such as airports.\(^3\)

Nonetheless, IDBs have become an appealing target for tax reformers in Congress despite the large number of successful projects undertaken for the

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32. IDBs issued by states, municipalities or their political subdivisions are tax exempt to investors if the bond falls into certain categories. These include, prior to 1984, . . . I.R.C. § 103(b) (West Supp. 1986).
34. Comment, supra note 29, at 499.
35. Id.
36. Thomas, supra note 33, at 691.
38. Thomas, supra note 33, at 691.
public benefit because of the significant role federally subsidized financing plays in the financial markets and the economy:

The sharp growth in their (IDBs) volume in recent years may be seen as a metaphor for the equally sharp growth in federal budget deficits. Curtailing the volume of exempt bonds helps close the budget gap without appearing to raise anyone's taxes, since the rate that applies to the bonds that survive remains the same: zero. Other considerations lend support to those favoring restrictions on IDBs. As the volume of IDBs increases, the attractiveness of other exempt bonds diminishes, making the task of financing state and local government more expensive. (footnotes omitted).

The 1984 revisions to the Internal Revenue Code, known as the Deficit Reduction Act of 1984 (the "1984 Act"), were designed to curtail IDB issuances. However, the short term effect was to accelerate IDB activity as issuers rushed to take advantage of transitional rules.

When the 1984 Act took effect, two provisions effected municipal financing of sports facilities. The chief provision of the 1984 Act was a state-by-state limitation on the overall volume of IDBs issued within a calendar year. The second provision was a prohibition on the use of IDB proceeds

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40. Despite the characterization by some opponents of the use of tax-exempt financing as an expenditure that is outside the public purposes of private activity bonds, later sections of this analysis will point out the ongoing attempts by some local leaders to obtain tax-exempt financing for the sole purpose of building stadiums to entice a franchise to relocate or to keep an existing franchise in place. Therefore, it would seem this debate is not over the definition of a significant public purpose, but over the allocation of limited tax resources to local projects. Definitions in the Internal Revenue Code can be misleading in this respect. See GREATER MILWAUKEE COMMITTEE, BREWER TASK FORCE REPORT III (Dec. 10, 1990).

41. Thomas, supra note 33, at 691.

42. Id. Additionally, the Tax Equity and Fiscal Responsibility Act of 1982 (TETRA) was the initial attack on IDBs. It stated:

No more than 25% of the proceeds of a small issue IDB may be used to finance an auto dealership, a recreation or entertainment facility, or a facility for retailing food and beverages. No part of the proceeds of small issue IDBs may be used to finance a golf course, country club, massage parlor, tennis club, skating facility, racquet sports facility, hot tub facility, suntan facility, or race track. I.R.C. section 103 (b)(6)(O).

Id. at 691 n.10.

43. Id. at 692.

44. The 1984 Act essentially effected post 1985 issuances and those in late 1984:

Effective Date: The volume limit applies to 1984 and all subsequent calendar years. However, bonds issued in 1984 are not included if they were introduced before June 19, 1984. Since IDBs are induced on or before the date of issue, often several months before, it is reasonable to assume that less than half of the volume of bonds to be issued in 1984 by most issuers will be subject to the limit.

Thomas, supra note 33, at 694.

45. Id. at 692.
to acquire land, existing property or certain enumerated types of facilities.\textsuperscript{46} However, even though significantly restricted, tax-exempt stadium financing was still possible.

The state-by-state volume limitation effects bonds known as private activity bonds. These are bonds issued for a private purpose that the federal government appeared to have no particular interest in subsidizing.\textsuperscript{47} Under the Internal Revenue Code,\textsuperscript{48} however, sports facilities retained their exemption after the 1984 Act was passed and thus were not classified as private activity bonds.\textsuperscript{49}

The 1984 Act also greatly limited the use of municipal debt proceeds to acquire land, existing property (unless the property was to be substantially rehabilitated), and certain enumerated types of facilities.\textsuperscript{50} With respect to land acquisition, "[i]n general, no more than 25\% of the proceeds of an IDB may be used directly or indirectly to acquire land."\textsuperscript{51} When property has an existing use, "[n]one of the proceeds of an IDB may be used to acquire [an] interest in [the] property . . . ."\textsuperscript{52} The exception to this restriction allows acquisition when "the first use of such property is pursuant to such acquisition" or for the purpose of rehabilitation under generous guidelines enumerated in the Internal Revenue Code. Finally, the 1984 Act extends a 1982 prohibition on the financing of certain facilities\textsuperscript{53} to prohibit any portion of IDB proceeds to provide "any airplane, skybox, or other private luxury box, any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises." The conclusion, after passage of the 1984 Act, was that a stadium containing luxury boxes may receive tax-exempt financing if no part of the IDB proceeds were used to provide the skyboxes.\textsuperscript{54}

The Tax Reform Act of 1986 (the "1986 Act"), "raised significant new barriers to the use of tax-exempt debt for public and private purposes, and will change the face of public finance . . . ."\textsuperscript{55} The landmark provision of the 1986 Act that concerned stadium developers was the removal of sports

\textsuperscript{46} Id. at 695-96.
\textsuperscript{47} Id. at 691.
\textsuperscript{49} See Thomas, supra note 33, at 691 n.4, and I.R.C. § 103 (b) (West Supp. 1986).
\textsuperscript{50} Thomas, supra note 33, at 695-96.
\textsuperscript{51} Id. at 696.
\textsuperscript{52} Id.
\textsuperscript{53} See id. at 696 n.10.
\textsuperscript{54} Thomas, supra note 33, at 696.
\textsuperscript{55} Uhlfelder, 1986 Act Will Change the Face of Public Financing, TAX NOTES (November 1986).
facilities from an exemption list, which allowed proceeds from IDBs to be used for sports facility development and remain tax-exempt to investors. The 1986 Act's rules spelled the end of many tax-exempt bond proceeds; for example, sports facilities, convention halls and parking facilities are specifically exempted from being considered private activities eligible for tax-exempt financing.  

Moreover, the 1986 Act recognized a public use requirement on facilities to be financed by tax-exempt IDBs. Treasury department regulations required a facility to serve the general public or be available on a regular basis for general public use to qualify for financing with tax-exempt IDBs.

C. Alternative Financing Options

Among a long list of financing alternatives, a few particular and controversial methods have been widely used. One of these alternatives is the sale or lease of a facility's name. Some better known examples include well recognized professional and major college sports complexes.

In Syracuse, New York, the Carrier Dome, which seats more than 32,000 spectators, is home to the “Orangemen” of Syracuse University where the Syracuse football and basketball teams play their games. The Carrier Corporation, best known as manufacturers of residential heating and air conditioning units, secured the name of the dome with a $2.75 million donation to Syracuse University.  

Rich Stadium in Buffalo, New York is home to the Buffalo Bills of the NFL. The stadium was so named after a $1.5 million gift from the Rich Corporation and its president Bob Rich of Buffalo. The Rich corporation, also Rich Products, Inc., is the largest family owned frozen food manufacturer in the country.

Sullivan Stadium in Foxboro, Massachusetts, is the home to the NFL's New England Patriots. When originally constructed, the stadium was named Schaefer Stadium in exchange for a $1 million dollar gift from the Schaefer Beer Company. A similar transaction occurred recently in Minneapolis where Target Department Stores aided financing of the $70 mil-

56. Id.
57. See, Thomas, supra note 33.
59. Id.
The new arena has been named the Target Center. The Timberwolves' basketball arena. The new arena has been named the Target Center.

Other well known examples include the Los Angeles Forum, home of the NBA's Los Angeles Lakers, that was renamed the Great Western Forum. Great Western Financial Corp., a Beverly Hills thrift, will pay $15 million to $30 million for the privilege. In Sacramento, California, Atlantic Richfield Co., the oil firm known as Arco, already has its name on the new Arco arena, home to the NBA's Sacramento Kings. Arco will pay $25 million to $30 million to have its name on Arco Arena and the soon to be built baseball stadium, Arco Park.

Additionally, direct municipal or state subsidies, in one form or another, are something that has been considered by some states as alternative to tax-exempt financing. These subsidies can take the form of a tax “holiday” where the local government will waive its right to property taxes for a certain period. In Milwaukee, for example, a new stadium for Major League Baseball's Milwaukee Brewers is expected to cost $121 million. A plan supported by Milwaukee’s County Executive would exempt the Brewers from paying property taxes if they decide to build and own the stadium themselves. This exemption could save the club about $4.5 million per year.

A third alternative is to finance construction and the long-term operation of the stadium through the sale of luxury suites and club seat leases. Luxury suites resemble hotel rooms within a sports stadium, providing leaseholders with such amenities as parking passes, private elevators, a bathroom, wet bar, television, refrigerator, ice machine, food and beverage service, and additional outdoor seating. Some possess sliding glass enclosures to enable those in the suite to “experience the crowd.” Generally, leases for suites are for seven or ten years and can cost from around

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63. The Timberwolves are Minnesota's National Basketball Association (NBA) expansion team that began play in 1989.
66. Id.
67. Id.
68. Uhlfelder, supra note 55.
69. Id.
71. Id.
72. Id.
$50,000.00 to in excess of $200,000.00 per year, depending on the suite's size and location within the stadium or arena. Club seats, another VIP section, are usually leased for the same seven or ten year lease for considerably less money.

This financing alternative has a number of advantages. For example, if construction of a facility called for 100 luxury suites at an average cost of $100,000.00 per year and 10,000 club seats at $1,000.00 per year, with each feature requiring one year advance deposit, at 80% occupancy, the $16 million could be used to serve a number of important functions. The revenues could guarantee the short term construction financing, actually finance construction, or cover yearly operating costs of the facility.

However, this form of financing could lose some of its attractiveness as a result of congressional changes to the Internal Revenue Code that disallowed the tax deduction previously available to those who use luxury suites for business purposes. Additionally, as NFL owners continue to study ways to divide luxury suite and club seat revenues among all of the franchises, the income stream from current lease payments is less certain in the future.

A final alternative is the obvious but often over-looked issuance of taxable bonds. If the difference between interest rates on taxable and tax exempt debt is within five percent, taxable debt will be, at least, a viable source of funds. Taxable bonds also offer the advantage of not being subject to the restrictions on advanced refunding and the accounting requirements associated with tax-exempt bonds. Taxable bonds may become a particularly viable alternative too, if interest rates stay relatively low.

One place where taxable bonds can be sold is in the international marketplace. Foreign investors have already shown they are willing to invest in state and municipal governments. "Japanese banks, like the Dai-Ichi Kangyo Bank, Ltd., know the credit ratings of several thousand United States municipal governments and the Japanese have liberalized their policy toward investment in United States bonds. Some projects may even sell bonds denominated in foreign currencies."
III. THE COST AND BENEFITS

A. The Benefits to a Municipality

Economically, a government’s interests and objectives in a stadium project are typically the revitalization of an economically depressed area and an increase in the tax base as stadium construction brings new hotels, restaurants, and retail stores to the area. Significant municipal expenditures should, therefore, the theory goes, be repaid by the activity they create:

You own a pair of skies and you buy a lift ticket at Vail; you own a baseball team and you buy the best pitcher in the market; You inherit a boat and you build a boat dock; you inherit a football team and you build a stadium. Your son wants to play basketball and you spring for the best shoes available; you own the company that makes the shoe and you spring for Michael Jordan to endorse it. The infusion of money into major college and professional athletics has been significant: “athletics has become the 25th largest industry in the country, generating some $47 billion annually.” Sports franchises and urban leaders now realize what veteran tourist and convention center promoters have always known about attracting large numbers of people to urban events: “just think about what happens every time we get a convention of 10,000 or 15,000 people in here for three or four days. It’s like a snowstorm of dollar bills.”

In New Orleans, the NFL’s Saints, who play their home games at the Superdome, recently staged a turnaround from their perennial showing in the bottom of the division. By Christmas 1987, the team won nine games and would eventually make the playoffs. This pushed up revenues for local hotels, restaurants, bars, parking lots, gas stations, taxis and more. Because more wins means more fans, which generates more revenue:

Managers are busy thinking up ways to pull the fan in off the streets and away from competitors. There are dollar all-you-can-eat Saints parties; parties with free beer on tap whenever the Saints are in the lead; and, of course, Saints raffles and pools. The proprietors of local watering holes and restaurants report increased revenues of anywhere from 5% to 50% on “Saints Sunday” with the average increase in business being about 15%.

84. Nickell, Sports Talk, NEW ORLEANS CITY BUS., § 1, Aug. 29, 1988, at 1.
85. Id.
87. Veronis, Dollars March in Along with the Winning Saints, NEW ORLEANS CITY BUS., § 1, Dec. 21, 1987, at 10.
88. Id.
To most political leaders, sports facilities and professional sports teams mean money, yet they also mean acquiring and retaining a "Major League" Image.

The 'economic value a baseball team brings to a city can't be overlooked' points out Erving Kaufmann, owner of the Kansas City Royals. "We are in the smallest market in baseball, yet we bring $160 million to Kansas City every year. In addition, for six months of the year your name is in every newspaper and on every T.V. station in the country. When you take that into consideration, it's worth it to build a $100 million stadium."89

The impact a team can have on the economy and the image of a city is significant. There is, however, a third benefit — an intangible — articulated by some Milwaukee Brewer's supporters to the leaders of county government:

The Milwaukee Brewers are a very important economic asset to Milwaukee County, Southeastern Wisconsin, and the entire state. Recent studies have indicated that the Brewers generate approximately $200 million annually in direct or indirect economic activity. Perhaps the greater and more important benefit of having the Brewers in Milwaukee County, however, is that their presence here stamps Milwaukee as a "Major League" city, affecting not only the way people around the country (and in a surprisingly large part of the world) view Milwaukee, but also the way Milwaukeeans view ourselves."90

Therefore, many vocal advocates of using municipal and state subsidies to retain professional sports teams point to the economic and social benefits a team brings to a city. Advocates also point out some difficult to describe psychological benefit received by being able to identify yourself with a professional sports team. Success in professional and major college sports can be a unique positive rallying point for an entire city. These are some of the reasons municipalities and states fight so hard to keep their "major league" team in their city.

89. Christine, supra note 8, at 28.
90. Letter from Gerald Schwerm, Director, Department of Public Works and Development, and Brigid Sullivan, Director, Department of Parks, Recreation and Culture to David F. Schulz, Milwaukee County Executive and F. Thomas Ament, Chairman of the Milwaukee County Board (April 8, 1989).
B. The Cost to Taxpayers of What Teams Receive: Some Recent Examples

Professional sports, while being essentially labor intensive, can be very financially profitable.\(^9\) Therefore, it is not difficult to see why owners are reluctant to grant new franchises especially because much of the revenue is shared among the existing franchises. When expansion does take place, it can be expensive:

So you want to buy a team when Major League Baseball expands? First thing you'll need is a local ownership group with substantial wealth. Baseball's idea of substantial wealth starts around $100,000,000.00. That's a lot of zeros.

If you're still in the game, you need a commitment from state and local government. That's so you can get a favorable lease, tax breaks, and low corporate financing.

A stadium — preferably 40,000 seats, open air, grass surface, state of the art drainage system — is also part of the package.

Then be ready to spend a couple of seasons building a minor league system and don't expect the other owners to cut you in on the current TV contract.

If you have all those things, get at the back of the line.\(^9\) With expansion perhaps an unrealistic dream for some cities, the next alternative, requiring considerably less time and money, may be to lure a team away from another city.

The most well publicized move of this type began in 1978 when the Oakland Raiders and owner Al Davis announced they were considering a move to Los Angeles to make the 80,000 plus seat Los Angeles Memorial Coliseum (L.A. Coliseum) their new home as the Los Angeles Raiders. Faced with opposition from the football league and its commissioner, the Los Angeles Memorial Coliseum Commission filed an antitrust law suit against the NFL and its twenty-eight teams.\(^9\) The suit alleged the commissioner and the owners had conspired to block the Raiders move from Oakland in violation of Federal antitrust laws.\(^9\) When the Raiders actually

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91. Plume, *Five Year Plan Doesn't Call For Profit Until 1990, New Orleans City Bus.*, § 2, Aug. 15, 1988, at 5B. (Jim Finks, general manager of the NFL's New Orleans Saints, claims that owning a football team isn't profitable, but then states, "you have to consider John Mecom, Jr. started with an $8 million team (in 1966) and sold it (in 1985) for $70 million)."


93. L.A. Times, March 5, 1989, § D (Metro), at 1.

moved to Los Angeles in 1982, they joined the suit as plaintiffs against the NFL and the League's other twenty-seven teams.95

The Coliseum Commission and the Raiders eventually prevailed and were awarded $16.41 million in damages in 1983.96 After numerous appeals and years in court, the suit would settle in 1989 for approximately $20 million.97 Nonetheless, this suit established an important precedent in American professional sports, widening the rights of individual franchises to move from one place to another over league objections.98

Given these widened rights, municipalities have attempted to gain long term commitments from franchises before spending millions to keep the team.99 As previously pointed out, these commitments often come in exchange for considerable state or municipal spending on sports facilities. The following sections describe some recent examples.

1. St. Petersburg, Florida

In a bold move to induce a Major League Baseball team to relocate and to attract league attention for expansion, the City of St. Petersburg and Pinellas County, Florida constructed a $103 million (and counting) domed sports stadium complete with fifty-eight luxury boxes.100 The incentive package also included such possible perks as $20 million in low interest loans, obtained through a tax-exempt bond issuance under a grandfather provision of the Tax Reform Act of 1986, and a radio and television package of over $10 million.101 Obviously, this project is ambitious. In fact, never before has such a facility been built without at least one major sports franchise as a likely tenant.102 Consequently, the project had more than a few detractors:

Dome-building plans of the mid-1980s were certainly perceived as presumptuous by former commissioner Ueberroth, who fired off a heat seeking missile of sorts to former St. Petersburg Mayor Ed Cole. The “no-holds-barred” note advised the city against stadium construction and emphasized that such a facility would produce no franchise guarantee from Major League Baseball.

95. L.A. Times, supra note 93.
96. Los Angeles Memorial Coliseum Comm'n, 726 F.2d, at 1386.
97. L.A. Times, supra note 93.
98. Id.
99. The best example of this type of commitment is the one asked for by the City of Cleveland from the Cleveland Indians and Cleveland Cavaliers in a deal to build a new sports complex in the city of Cleveland sponsored, in part, by municipal tax dollars. Supra note 4.
100. Milwaukee J., Oct. 25 1988, at 1A.
101. Id.
102. Christine, supra note 8, at 28.
The Dome did, however, produce controversy and more than a spate of animosity - especially from up-county tourist interests, who didn’t want a chunk of bed-tax revenues pledged to Dome financing. It was attacked as fiscally irresponsible by Pinellas County commissioners, who went to the courts in an attempt to halt construction, and by three St. Petersburg City Council members who voted against it. Over the objections, construction proceeded and the stadium, today, is “just a good sprucing-up away from being baseball ready.” Though it is not likely a team would actually be on the field before the 1993 season, landing a franchise when the Major Leagues announce their expansion plans is what it will take to make the Suncoast Dome worth it.

2. Indianapolis, Indiana

The Indianapolis Hoosier Dome opened in May 1984. Construction began on the stadium and convention exposition center in the spring of 1982. Development costs totalled about $82 million by the time the facility opened. The Dome was financed through local tax initiatives, aided by $30 million in foundation grants and endorsements. Building a complex of this size without a tenant was a high risk venture, however, Indianapolis had expectation that the NFL’s Baltimore Colts might be attracted to the city. The Colts did, in fact, relocated from Baltimore by the time the facility opened. The Hoosier Dome also serves as an extension of the adjacent convention center to accommodate large conventions and trade shows. The convention center includes as many as sixty meeting rooms and houses two large ballrooms. This factor, together with grant financing, keeps the Hoosier Dome’s debt service and operating costs substantially below those of similar facilities.

103. Id.
104. Id.
105. Id. Incidentally, a number of recent articles place St. Petersburg at the top of the Leagues list as the next in line to receive a baseball franchise, along with Buffalo, New York and Denver, Colorado, id.; and Shepard, Bringing Triple-A Baseball to Memphis Would Take $25 Million, Lots of Luck, MEMPHIS BUS. J., § 1, July 9, 1990, at 3.
107. Id.
108. Id. at 83.
109. Petersen, supra note 1.
110. D. Petersen, supra note 23, at 84.
111. Id.
112. Petersen, supra note 1.
113. Id.
The Hoosier Dome has also achieved one of its major objectives - to stimulate downtown development:

The convention center project has been a major catalyst for development and redevelopment in the downtown area, complementing other area projects. Since the announcement of the second phase - the convention center/expanded Hoosier Dome project, the following developments have appeared in its vicinity: a 578-room Westin Hotel, a 1,000-car parking garage with a $6 million public park on its top floor, the Pan Am Plaza and Sports Building, and Union Station.114

Indianapolis has also seen a number of businesses from outside the city moving to — or moving back to — downtown:

'We wanted to be downtown,' said Newett (a small business owner), noting that his shop is opening in an increasingly popular entertainment area. 'Not particularly because of the bars, but for instance, this weekend 60,000 people will be coming out of the Hoosier Dome after a Colts game.

'We enjoyed a good business on the north side, but I think we'll do more business downtown.'115

As mentioned in a previous section, the success of the Indianapolis Hoosier Dome has created new development, not only in Indianapolis, but in a few other cities that are considering sports stadium projects.116

3. Milwaukee, Wisconsin

In an attempt to dispel rumors that the Milwaukee Brewers were destined to leave Milwaukee due to an inability to financially compete with teams in larger markets, a Milwaukee County Board committee recommended the Brewers build a new $121 million stadium, with the county paying the land acquisition and preparation costs.117 Luxury box revenues would provide another source of income for a team in one of baseball's smallest radio and television markets. Estimates for the county's contribution to the new stadium range from $47 million118 to $100 million.119

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114. D. Petersen, supra note 23, at 84.
115. Walsh, Country-Western Bar and Hot Tub Spa Latest Downtown Night Spots, INDIANAPOLIS BUS. J., § 1, Sept. 12, 1988, at 12A.
116. Often, the mere discussion of stadium development will send developers and investors into action seeking to acquire land in the vicinity of the proposed new stadium. The success of businesses surrounding sports stadiums in other cities can make certain land parcels very desirable in a city that does not have a major facility.
118. Id.
Brewers would also receive a local property tax exemption that would save the team $4.5 million a year.\textsuperscript{120}

Financing for the stadium is being sought by the Brewers through tax-exempt municipal bonds that would allow the team to use the City of Milwaukee as a conduit to sell the tax-exempt revenue bonds.\textsuperscript{121} However, because of recent amendments to the Internal Revenue Code that prohibit direct tax-exempt municipal financing of sports stadiums, discussed previously, a team of legislators and city leaders have begun an uphill lobbying effort aimed at persuading Congress to grant the Brewers a special tax-exemption that would effectively allow the bond issuance under the 1986 transitional rules.\textsuperscript{122} Because tax-exempt bonds can be issued at roughly a 2% lower interest rate than taxables, the $121 million Brewer project could save approximately $2.5 million a year in interest.\textsuperscript{123}

Not surprisingly, the $100 million cost to county government of the new stadium has brought forward a number of critics. One group of urban leaders makes a point that applies to most urban areas:

Those Milwaukeeans who can afford to attend baseball games may see a new stadium at partial public expense as a fine thing. Those who are struggling to make ends meet, those who are homeless, those who are the working poor, regard it as an outrage.

\ldots

\ldots $100 million could build 2,000 homes capable of housing 8,000 to 10,000 people. And $100 million could remodel 10,000 inner city homes capable of housing 40,000 to 50,000 people.\textsuperscript{124}

In addition, many business people who have not been the beneficiary of tax-exempt financing have raised concerns about this ill effects of tax-exempt financing and the current trend of tax dollar gifts to businesses, such as sports teams, as incentives to relocate or not to relocate. These criticisms stem from their own increased cost of capital: "[t]ax-exempt nongovernment bonds have an anti-competitive and distortive effect on the economy. Activities receiving tax-exempt financing have a significant advantage over their competitors, which must raise capital with higher cost taxable obligations."\textsuperscript{125}

\begin{footnotes}
\item[120] Milwaukee J., May 17, 1989, at 1C.
\item[121] Milwaukee Sentinel, May 10, 1990, at 1.
\item[122] \textit{Id} at 12.
\item[123] \textit{Id}.
\item[124] Milwaukee Sentinel, June 5, 1990, at 12.
\end{footnotes}
4. Miami, Florida

The Miami Dolphins began their 1987 season in a new $90 million open air stadium in suburban Miami, on the northern edge of Dade County.\(^{126}\) The 160 acre parcel of land on which the stadium was built was acquired by Dade County from local developers and leased to the Dolphins for $1 per year.\(^{127}\)

The stadium was privately financed, due in part, to lease deposits totaling nearly $9 million on 208 luxury boxes and 10,200 club level seats.\(^{128}\) The yearly rate for a luxury box lease ranges from a low of $27,000.00 to a high of $65,000.00 with a ten year lease.\(^{129}\) Club level seats also have a ten year lease and rent from $600.00 to $1400.00 per year.\(^{130}\)

In the initial planning stages, these lease deposits on preferred seating were intended to play a larger role in financing:

A singular aspect of the development of the Joe Robbie Stadium was the method of financing used to construct it. No public monies were used; the facility was built with private funds alone. Robbie, using the skybox and club seat deposits totaling $9 million as collateral, attempted to entice a consortium of banks to back his project. He was not entirely successful, however, until he listed the Dolphins as collateral against the project. With the banks' backing, $83 million was raised through a 30-year industrial revenue bond issue. In effect, Robbie is banking on the team’s drawing enough fans to make the stadium sufficiently profitable to prevent the loss of his team.\(^{131}\)

As a result, Dolphin ticket prices at the time the stadium opened, were the highest in the league at $26.00 per game.\(^{132}\)

5. Los Angeles, California

Following the 1988-89 season, the owner of the Los Angeles Raiders, Al Davis, and the Los Angeles Coliseum Commission had a falling out over plans to renovate the aging L. A. Coliseum.\(^{133}\) “The Raiders [had] announced plans to move to suburban Irwindale and build a stadium there, and there [had] also been recent reports that if [the] deal [fell] through,
Davis may even have considered moving back to Oakland.” When the 1990-91 season began a year and a half later, the Raiders still appeared to be a team without a home.

The Los Angeles Raiders began in Oakland, California in 1959 as part of the, now defunct, American Football League (AFL). Ironically, when the Raiders’ relationship with the Oakland-Alameda County Coliseum soured over the Raiders demand for construction of luxury boxes, Al Davis, former head coach and now owner, decided to move the team to Los Angeles. Since the Los Angeles Rams had just recently moved from Los Angeles to suburban Anaheim Stadium in Orange County, the L. A. Coliseum was eager to replace the Rams with another NFL franchise. The Raiders move to Los Angeles took place in 1982.

This latest discussion of the Raiders moving out of Los Angeles, and perhaps back to Oakland, was put to rest when the City of Los Angeles got serious about making Davis an offer he couldn’t refuse. By September, Davis had what he wanted: a plan for renovation of the L.A. Coliseum complete with luxury boxes and club seating. This plan completed the picture for Davis (who got his long awaited luxury boxes), and for Los Angeles who kept the Raiders, promising Davis more than the competition:

[T]he city (of Los Angeles) had certain natural advantages in the bidding war with Oakland, Sacramento, and Irwindale. The expected sales value alone of planned luxury boxes in the Los Angeles Coliseum could reach $12 million a year, and millions more could be realized in a renovated stadium by selling elite club seating. The prices that could be charged would be considerably higher than in smaller cities with fewer corporate headquarters or wealthy individuals.

The final deal to renovate the coliseum became a reality when a group of local politicians, including Mayor Tom Bradley, decided to relieve the Los Angeles Memorial Coliseum Commission of its responsibilities in the negotiations with Raiders owner Al Davis and “privatize” the facility:

This, they reasoned, would put the responsibility for coming up with renovation plans and the money to finance them, as well as the large cash payments Davis was demanding, on a private business

134. Id.
136. Id.
137. Id.
team that had the wherewithal to bring together what the commission could not.

Oakland, Sacramento and Irwindale all came to rely substantially on public money in making their bids. Los Angeles, using private business as it did during the 1984 Olympic effort, would avoid that necessity, and much of the political controversy that went with it.139

It appears for now, the Raiders and Al Davis have found a home in Los Angeles.

IV. THE FUTURE OF STADIUM FINANCING

The future of sports stadium financing and the use of municipal tax-revenues for construction is being forced down two different paths. One path leads to a large market urban area where sports complexes are mainly privately financed, the other path leads to a smaller market where municipal or state subsidies are necessary to make a project viable and keep a professional team in place. Therefore, larger cities are able to rely more on the business community that benefits from the presence of the franchise, while smaller cities with smaller economies rely, essentially, on the citizens of the city by utilizing tax revenues.

The best examples of large market development occurred in Miami, Florida and in Los Angeles, California. Joe Robbie Stadium in Miami was financed without the use of public money.140 Individual investors purchased $83 million in bonds backed by a group of banks. The Miami Dolphin franchise and Joe Robbie (now, the Robbie family) bear nearly all the risk and financial burden, should the stadium revenues fall short of expenses.

The local business community in Los Angeles appears receptive to the direction Mayor Tom Bradley and a few other local politicians have pointed the negotiations between the Raiders and the Los Angeles Memorial Coliseum. The vast private wealth in Southern California is seen by may as more than sufficient to renovate the Coliseum and satisfy the demands of Al Davis.141 Other large markets will most likely follow in the path of Miami and Los Angeles when the need arises to develop major sports complexes. That is, cities may find it easier to coordinate local investors with developers than to finance the project themselves and, in turn, bear all or a portion of the projects risk.

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139. Id.
140. D. Petersen, supra note 23, at 120.
In smaller markets like Charlotte, North Carolina and Milwaukee, Wisconsin, the future of the franchise may rest upon a state or municipality’s decision to participate in a project’s financing. An investor in Charlotte, discussing a new football stadium for a prospective NFL franchise commented on the feasibility of complete private financing for the stadium:

I would not want to go out and buy a franchise that might cost $75 million and then build a stadium that might cost $75 million or more and have $150 million in a project. Economically, you'd never come out of it.

To me, the best way to make things happen is to have a joint relationship with the state. It should be public and private. It's got to make sense financially.\(^\text{142}\)

The Milwaukee Brewers are currently negotiating the details of a similar project that involves Milwaukee County participating significantly in development of a new Brewer’s stadium.

The stadium projects in both of these cities at this time are in the preconstruction stages. However, both projects seem to be waiting for the same signal before the next major step can be taken: public sector leadership. While there is no need for a formal partnership between government and the private sector, public sector leadership is a critical element needed if the public sector is going to work with the better organized and more experienced private sector. Once in place, the projects leaders can better assess the needs of the project and the role the public and private sectors must play. In this setting, the future of the urban mega-project really rests upon incorporating a public/private partnership.\(^\text{143}\)

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\(^{142}\) Byers, *It's a Battle of Goliaths for NFL Team*, BUS. J. — CHARLOTTE, § 1 April 3, 1989, at 1. Charlotte Hornets principal owner George Shinn, discussing a proposal by a rival group of investors lead by Spartan Food Systems, Inc. founder Jerry Richardson. *Id.* The two groups are competing to bring an NFL expansion team to the Carolinas. *Id.*