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An Updated Consideration of a Taxing Problem: The Harmonization of State and Local Tax Laws Affecting Nonresident Professional Athletes

by

MARC YASSINGER*

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Introduction

When the 1997 Major League Baseball season commences, the San Francisco Giants will play eighty-one home games in San Francisco and eighty-one road games in seventeen different cities located in eleven states and Canada. A member of the Giants becomes subject to the income tax of most of these states, not to mention a few cities, by receiving income in exchange for performing services in these jurisdictions. Additionally, the players will attend and play spring training games at the team’s facility and other surrounding stadiums in Arizona. Some exceptional players may have the honor of being selected to play in the 1997 Major League Baseball All-Star game in Cleveland, while the team’s goal will be to enter post-season competition. Even though these scenarios contemplate the occurrence of non-regular season games, they are included for state and local tax purposes under the most widely used apportionment formula.

Professional athletes may no longer merely concern themselves with hitting the game-winning home run or scoring the driving layup and then picking up their hefty paychecks. More and more states and cities, in the collection and determination of one’s tax liabilities, are causing professional athletes tremendous headaches. Driven by growing deficits and the need to create more tax dollars without expanding their tax constituency, state and local governments, over approximately the past ten years, have made diligent efforts to focus their tax collection resources on visible individuals who earn sizable salaries in their jurisdictions.

With their big salaries, nonresident professional athletes are easily identifiable targets who justify the tax collection effort. The concept of paying taxes on money earned outside one’s state of residence could be applied to virtually anyone who travels on business,

1. SAN FRANCISCO GIANTS 1997 SCHEDULE. The term “road games” refers to games played in the home stadiums of the opposing teams across the country and in Canada.

2. Id. Athletes participating in the 1997 All-Star game in Cleveland will be required to pay additional state income tax to Ohio. Players from both the American and National Leagues, though, will not be additionally burdened by having to file an Ohio tax return. Every professional baseball team will play games in Ohio, either in Cleveland or Cincinnati, during the 1997 season.


but the costs of collection would far outweigh the benefits. The efforts involved in collecting taxes from athletes have created numerous problems, including inconsistent apportionment formulas employed by different jurisdictions which lead to double taxation, the ultimate evil in the mind of any taxpayer.

Fortunately, some relief appears to be in sight in the form of consistency and cooperation amongst the relevant states. This Note focuses on the four largest professional team sports: baseball, basketball, football, and hockey. Other team sports and individual athletes entertain tax issues which fall outside the scope of this consideration. This discussion will first examine federal tax issues. Parts II and III will look at state and local tax law issues from a historical viewpoint, and current issues that specifically affect nonresident professional athletes. Part IV will explore solutions recommended by the Federation of Tax Administrators (FTA) as most fair to the parties involved, and finally, the most viable and deserving plan for implementation in the coming years. Some states are leading the way, hoping others will follow, in the ultimate quest for fairness and efficiency. Ultimately, tax uniformity will only be achieved when each state adopts substantially similar rules.

I

Federal Taxes

The professional athlete is treated no differently than any other taxpayer for purposes of federal taxation by the Internal Revenue Service. The computation of one's federal tax liability is gross income, less deductions, which equals taxable income. Under the current progressive tax structure, one who files as an unmarried independent taxpayer will pay the maximum rate of 39.6% on every dollar of

8. Id.
9. See Weissman, supra note 4, at C1.
10. The Federation of Tax Administrators is an association based in Washington D.C. composed of state tax experts who make policy on current tax issues. It established a task force in June 1992 to focus on the taxation of nonresident professional team athletes.
12. I.R.C. § 63(a) (West 1996)(defining taxable income as “gross income minus deductions allowed”).
taxable income made over $250,000.\textsuperscript{13} With the current minimum salary in professional basketball, for example, at $225,000,\textsuperscript{14} and an average salary of $2.6 million,\textsuperscript{15} many of the approximately 3,000 professional athletes\textsuperscript{16} fall into the highest tax bracket and face a tremendous federal tax burden. Therefore, professional athletes today consider tax compliance, after salary negotiations, to be one of the most important financial issues with which they must concern themselves.\textsuperscript{17}

II
State and Local Taxes

A. State Taxation Powers

The burden of taxation for professional athletes only begins with federal compliance. The states have the power to tax the personal income of their residents, regardless of the source of that income.\textsuperscript{18} As for taxing the income of nonresidents, states constitutionally may only tax income derived from sources within the state, from property or activities that receive state benefits or protection, or from nonresident benefits from public services provided by the state.\textsuperscript{19} The extent of an individual's state income tax liability therefore turns on where a taxpayer maintains his residence. California, for example, defines a resident as "[e]very individual who is in this state for other than a temporary or transitory purpose" and "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose."\textsuperscript{20}

\begin{itemize}
  \item \textsuperscript{13} I.R.C. § 1(c) (West 1996)(stating that for taxable income over $250,000, the tax is $79,772 plus 39.6% of the excess over $250,000).
  \item \textsuperscript{14} Weissman, \textit{supra} note 4, at Cl.
  \item \textsuperscript{15} \textit{Id.} In 1995, the average player's salary in Major League Baseball was $2.468 million. Nancy Gay, \textit{Arbitration: A Wild Pitch}, S.F. CHRON., Jan. 31, 1996, at D6.
  \item \textsuperscript{16} PAUL C. WEILER & GARY R. ROBERTS, \textit{SPORTS AND THE LAW} 42 (1993).
  \item \textsuperscript{17} Weissman, \textit{supra} note 4, at Cl.
  \item \textsuperscript{18} PRENTICE-HALL ALL STATES TAX GUIDE (RIA) § 1325 (Mar. 28, 1995). Critics of source taxes complain that states unfairly determine their tax rates by looking at one's overall income, rather than merely the income derived in the given state, pushing high-income earners into the top tax brackets. Kathy M. Kristof, \textit{New Law Gives Ex-Residents a Break on Taxes}, L.A. TIMES, Jan. 11, 1996, at Dl.
  \item \textsuperscript{19} Shaffer v. Carter, 252 U.S. 37, 57 (1920).
  \item \textsuperscript{20} CAL. REV. & TAX CODE § 17014 (West 1996). Most states generally include "domicile" in their definition of resident. Domicile is defined as "[t]hat place where a man has his true, fixed, and permanent location home and principal establishment, and to which whenever he is absent
The taxation of a nonresident’s personal income by one state does not preclude its taxation by the state of the taxpayer’s residence, for the Supreme Court has established that the Due Process Clause does not preclude double taxation. Nonetheless, taxpayers need not worry. States with broad-based income taxes provide a credit for taxes paid by their residents to other states. This topic will be further discussed below.

The most widely utilized rule for attributing a nonresident's income to a state is based on the proportion of time that the nonresident works in the state relative to his overall working days. Inevitably, complications have arisen in conforming to such a rule, especially in situations involving employees working in interstate transportation. For example, nonresident transcontinental railworkers and seamen present acute problems which require rules unique to each respective line of work. Similarly, states have adopted special rules for taxing the income of nonresident athletes.

B. Professional Athletes as Nonresident Employees

Today, most states, and some cities such as Philadelphia, New York, Detroit, and Kansas City, place a tax on the compensation of nonresident professional athletes. The majority of states tax personal income on a "source basis." In other words, income is taxable where it is earned or where the services generating income were performed. While taxation of entertainers on concert tours has been a common state practice for years, such has not been the case historically for professional athletes. As salaries paid to professional athletes have risen, most significantly in the last ten years, states and municipalities have taken notice and have begun actively taxing nonresident professional athletes. State and local authorities feel justified in taxing athletes, though, as the athletes are earning money for services.

he has the intention of returning.” BLACK'S LAW DICTIONARY 484 (6th ed. 1990)(citation omitted). In 1992, nonresidents paid greater than $500 million in income taxes to California. Kristof, supra note 18, at D1.

22. See infra Part II.D.
25. Williams & Horgan, supra note 7, at A1; see Bortstein, supra note 6, at C1.
26. FTA REPORT, supra note 3, at 1.
27. Bortstein, supra note 6, at C1.
performed within their jurisdictions.\textsuperscript{28} With salaries of professional athletes escalating tremendously each year, the decision for state and local authorities to enforce compliance with existing tax laws is not a difficult one.\textsuperscript{29} There are costs involved in the administration and enforcement of such tax compliance, in terms of time and effort, but on balance, states should come out ahead financially.\textsuperscript{30}

The inconsistent application of state and local tax laws serves as cause for tremendous concern for both teams and their players. The greatest fear, of course, is multiple or incomplete taxation. As deputy director of the New Jersey Tax Division Robert Thompson sees it, the motivation for change is simplification of a jumbled system where every state independently defines the revenues that it generates.\textsuperscript{31} According to John Yee, chief financial officer of the San Francisco Giants, "[t]he current system is an administrative nightmare that needs to be solved."\textsuperscript{32} Accountants for professional athletes must fill out nearly fifteen tax returns in some circumstances; then they must compute the tax credits earned to be applied to the player's resident state. As for the players, most do not personally involve themselves in these tax law complexities. Rather they have little choice but to place greater dependence upon their agents and accountants.\textsuperscript{33} Such reliance, in turn, further extinguishes an athlete's economic resources. "It's complicated even for a real CPA," said Jim Edmonds of the California Angels.\textsuperscript{34} "There's no way I would want to try to do it myself."\textsuperscript{35}

\textbf{C. Proposed Formulas to Effectuate Consistency}

The overwhelming discontent with the inconsistent allocation methods currently used by states to apportion income serves as the impetus for the development of a consistent approach.\textsuperscript{36} The concept of every state using the same method for taxing purposes was first encouraged by Lamar Hunt, owner of the National Football League's

\begin{thebibliography}{9}
\bibitem{28} Williams & Horgan, \textit{supra} note 7, at A1.
\bibitem{29} Bortstein, \textit{supra} note 6, at C1.
\bibitem{30} \textit{Id}.
\bibitem{31} Weissman, \textit{supra} note 4, at C1.
\bibitem{32} Telephone Interview with John Yee, Chief Financial Officer, San Francisco Giants (Feb. 2, 1996).
\bibitem{33} Weissman, \textit{supra} note 4, at C1.
\bibitem{34} Bortstein, \textit{supra} note 6, at C1.
\bibitem{35} \textit{Id}.
\bibitem{36} FTA Report, \textit{supra} note 3, at 1.
\end{thebibliography}
Kansas City Chiefs, who conveyed this idea to the Federation of Tax Administrators. The compliance burden placed on professional sports teams faced with increased withholding and information reporting requirements is an additional concern. Proposed formulas for resolving the uniformity and compliance issues include the uniform apportionment formula, the home state apportionment formula, the base state model, and the partnership model. Each of these formulas will be described in detail below.

1. Uniform Apportionment Formula

The uniform apportionment formula received the highest recommendation of any of the options considered by the FTA's Task Force. As a precursor to analysis, it is necessary to define some key elements which permeate each of the formulas. First, professional athletes, both active ones and those unable to play due to injury, are not the only individuals who must concern themselves with these state and local tax issues. Others, such as those required to travel with the team and perform services on its behalf, are subject to such taxes as well. These other individuals include managers, coaches, the team's medical and health support staff, and other traveling personnel of the visiting teams. While not necessarily in the same high tax brackets as the athletes, these individuals are nearly as identifiable, and are therefore worth the compliance effort for states and municipalities.

As a general rule, most state and local tax laws reach far more than a team member's base salary. The income to be apportioned by the "duty days" method, discussed below, includes compensation received in exchange for playing in regular and pre-season games, performing required training, or otherwise performing required services. Strike benefits, severance pay, termination pay, contract or option year buy-out payments, relocation payments, and other

37. Weissman, supra note 4, at Cl.
38. FTA REPORT, supra note 3, at 2.
39. Id.
40. Id.
41. Id. at 3. State and local tax authorities are enforcing compliance with other identifiable, high-income earning persons who come into their jurisdictions for temporary work. Most notably, such individuals include entertainers and lawyers. For further discussion, see Newman v. Franchise Tax Board, 256 Cal. Rptr. 503, 506-07 (Cal. Ct. App. 1989)(holding working days were only the days Newman was called to work for actual filming as opposed to days he was obligated to perform services on an "on-call" basis).
42. FTA REPORT, supra note 3, at 4.
43. Id. at 4.
payments not related to the performance of services would not come within the grasp of income subject to apportionment.\textsuperscript{44}

The formula apportions bonuses earned as a result of play during the regular season or for participation in championship, playoff, or all-star games.\textsuperscript{45} A player's signing bonus is not subject to the apportionment formula if it is not conditional on playing a minimum number of games for his team, is payable separately from any other compensation, and is nonrefundable.\textsuperscript{46}

\textbf{a. "Duty Days" Method}

Within the uniform apportionment formula context, professional athletes currently face two different state tax allocation methods.\textsuperscript{47} The most widely accepted approach among states and the federal government, which is also the approach recommended by the FTA's Task Force, is the "duty days" method.\textsuperscript{48} It taxes the earnings of visiting professional athletes based on every day the athlete is in the state to play a game.\textsuperscript{49} In addition, "duty days" encompass practice days, pre-season visits, post-season visits, and other visits such as All-Star games or the Pro Bowl.\textsuperscript{50} Computation of an athlete's portion of tax owed to each state under this method is determined by totaling the number of days in a state as the numerator over the total number of duty days as the denominator. This creates a fraction which is then multiplied by an athlete's total income.\textsuperscript{51}

The FTA's Task Force recommends that travel days during the season be treated as duty days.\textsuperscript{52} When a travel day includes a game, required practice, meeting, or other service, the player should

\begin{itemize}
\item \textsuperscript{44} Id. An open question remains as to whether deferred compensation payments are allocable among the numerous states in which a professional athlete renders his services. This is a developing area of multi-state taxation that goes far beyond the taxation of nonresident professional athletes. Mitchell S. Halpern, \textit{Update: State Taxation of Nonresident Professional Athletes}, 22ND ANNUAL SPORTS LAWYERS CONFERENCE, 1996, at 6 (on file with Tulane Law School—CLE Program).
\item \textsuperscript{45} FTA REPORT, \textit{supra} note 3, at 3.
\item \textsuperscript{46} Id.
\item \textsuperscript{47} Weissman, \textit{supra} note 4, at C1.
\item \textsuperscript{48} FTA REPORT, \textit{supra} note 3, at C1.
\item \textsuperscript{49} Weissman, \textit{supra} note 4, at C1.
\item \textsuperscript{50} Williams & Horgan, \textit{supra} note 7, at A1.
\item \textsuperscript{51} Where "s" is an athlete's total compensation; "d" is "duty days" rendered in state A; "n" is an athlete's total "duty days;" "r" is the income tax rate of state A; and "t" is the income tax owed in state A, the duty days formula would be: \( s \left( \frac{d}{n} \right) r = t \). See FTA REPORT, \textit{supra} note 3, at 12.
\item \textsuperscript{52} FTA REPORT, \textit{supra} note 3, at 4.
\end{itemize}
apportion these activities to the state in which the game, practice, or service is conducted.\textsuperscript{53} Travel days involving no game, practice, or required service will not be apportioned to any particular state, but will be included in the total number of duty days. This increases the denominator of the fraction and, therefore, decreases the tax apportioned to each nonresident state.\textsuperscript{54} Similarly, days in which an athlete is on the disabled list and performing no services for the team will not be apportioned to any particular state, but will be included in the total number of duty days for apportionment purposes.\textsuperscript{55}

The FTA's Task Force recommended some flexibility in certain situations as well.\textsuperscript{56} As a fallback provision, a state tax agency, if it determines that the uniform apportionment formula using the duty days method does not apportion a professional athlete's income fairly, may require an athlete to use an alternative formula approved by the agency.\textsuperscript{57} Likewise, an athlete may request to use an alternative apportionment formula if the one being used produces an unjust result.\textsuperscript{58}

Boasting one of the highest state income taxes at ten percent, California was one of the first states to pursue an athlete's income and remains one of the most aggressive.\textsuperscript{59} Not surprisingly, California has some noteworthy case law in this area. The duty days concept was initially challenged in \textit{In re Appeal of Joseph Barry Carroll}.\textsuperscript{60} Carroll, at the time a basketball player for the Golden State Warriors, objected to his California-source income determination under the duty days method.\textsuperscript{61} Carroll argued that a “games played” method was proper.\textsuperscript{62} The State Board of Equalization rejected his argument and endorsed

\begin{itemize}
  \item \textsuperscript{53} Id.
  \item \textsuperscript{54} Id. The inclusion of travel days in solely the fraction's denominator effectively decreases one's tax paid to each nonresident state. Therefore, an athlete's resident state receives a greater portion of that athlete's overall state tax liability since smaller credits will be granted by the resident state.
  \item \textsuperscript{55} Id.
  \item \textsuperscript{56} Id.
  \item \textsuperscript{57} Id.
  \item \textsuperscript{58} Id.
  \item \textsuperscript{59} Bortstein, supra note 6, at C1.
  \item \textsuperscript{61} Id. at *1-*2.
  \item \textsuperscript{62} Id. at *2.
\end{itemize}
the duty days method of apportionment. The Board reasoned that players are compensated for non-game activities as well, such as days spent practicing and traveling, and, therefore, a player's income should be apportioned accordingly.

Once again, the California duty days concept was unsuccessfully challenged by then Los Angeles Raiders quarterback Marc Wilson in Wilson v. Franchise Tax Board. The court of appeal reversed the trial court's decision based on its interpretation of Audit Ruling AR-125.1, which states in relevant part that "duty days include all days from the beginning of official pre-season training through the last game in which the team competes, including post-season games occurring in the taxable year." Wilson felt unfairly treated in not being able to include off-season football activity in his duty days formulation and argued that provisions of his contract supplied support for his argument. Including such activities in Wilson's formulation would have increased the ratio's denominator, effectively decreasing his tax liability to the state of California. The appellate court's decision to not allow Wilson to include his off-season training days rested on the finding that the requirement in his contract of "maintaining good physical condition was more a condition of employment than a required service by contract."

b. "Games Played" Method

While not employed by many states, the "games played" method is another way of allocating one's tax liability in each state where games are played. This method involves calculating the ratio of

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63. Id. at *2, *7. During the 1980-81 season, one of the taxable years in dispute, Carroll played 38 of 71 games in California, thus allocating 53% of his income to California. According to the duty days formulation, Carroll spent 140 duty days in California which was 73% of his total duty days. Id. at *2.
64. Id. at *6.
66. Id. at 286.
67. Id.
68. Id. at 283.
69. See id. at 289 (citing Stemkowski v. C.I.R., 690 F.2d 40, 46 (2d Cir. 1982)(holding "there was no evidence that Stemkowski was required to follow any mandatory conditioning program or was under any club supervision during the off season").)
70. As of the end of 1994, New York, Oregon, and Pennsylvania were the only states employing the games played method. See Elizabeth Ekmejian, The Jock Tax: State and Local Income Taxation of Professional Athletes, 4 Seton Hall J. Sport L. 229, 240 n.61 (1994). Effective January 1, 1995, a new regulation, 20 NYCRR 132.22, was passed in New York with respect to professional athletes. It adopted a duty days allocation method, and included details to
regular season games played in one state to total games played. Most states have not endorsed this method because it fails to take into account that athletes are compensated not only for playing in games, but also for practices, team meetings, and making public appearances on behalf of their teams. These additional time commitments are mandatory contractual obligations of team participation. When a player fails to make a timely showing at one of these events, he is greeted by an unwanted fine. Thus, opponents of the games played formula argue that it is unrealistic and, therefore, deficient.

c. De Minimis Visit Exceptions

It should be mentioned that some states have a *de minimis* visit exception for those individuals deemed to have only minimal contacts with the taxing state. These states, such as New Jersey (if no more than thirty days) and Massachusetts (if no more than ten days), effectively exempt professional athletes from nonresident taxation. Illinois passed legislation imposing its state tax only on visiting athletes who come from states which tax athletes from Illinois professional sports franchises. After passage of the “Jordan Act,” named after Chicago Bulls’ superstar Michael Jordan, Illinois has taken an extremely aggressive stance in taxing visiting athletes, as well as nonresident athletes who play for teams based in Illinois. In contrast, Georgia has never actively pursued collecting taxes from nonresident athletes deriving income from within its borders.

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72. *Id.* at 179.

73. *Id.*


75. *Id.*


78. Bortstein, *supra* note 6, at C1. Even though many athletes avoid paying Georgia income tax, they lose a corresponding credit in their resident state as well. Therefore, an athlete, unless he is a resident of a state without income tax, is no better off because of Georgia’s relaxed stance.
2. Home State Apportionment Formula

Under the home state apportionment formula, an athlete would allocate all of his income to the state in which his team played its home games or otherwise maintained its primary facilities. The plan was originally thought to work uniquely for team sports because of the almost perfect reciprocity involved, in that nearly every game is at home for one team and away from home for another, according to Stephen W. Kidder, a lawyer who represents hockey players. Such a formula initially garnered considerable interest by the FTA's Task Force, but potential constitutional problems arose in its implementation. At the request of the Task Force, Professor Walter Hellerstein conducted a legal analysis of the formula. He determined that the concept may conflict with the Equal Protection Clause of the United States Constitution. Home state apportionment would obligate the home state to discriminatorily require a nonresident to include in his tax base income from services derived outside the state.

Due to the uncertainty of the plan's success and the desire to adopt a plan which could be implemented by the states without fear of constitutional roadblocks, the Task Force decided it was in everyone's best interest to no longer consider this formula. Rather, the "uniform apportionment" formula, which does not present such difficulties, appeared to be the better choice.

Despite the constitutional problems, the home state apportionment formula had its supporters. Andrew Friedman, tax counsel for both the National Football League and the National Hockey League, criticized the uniform apportionment formula as too complex and stated that "no state gains any revenue, and the athletes get hurt because they wind up filing 20 tax returns in a system where they have to pay tax to a lot of states." His argument ignores any potential constitutional problems and stresses simplicity and practicality. Friedman stressed:

79. FTA REPORT, supra note 3, at 2.
81. FTA REPORT, supra note 3, at 9.
83. Id.
84. FTA REPORT, supra note 3, at 9.
85. Weissman, supra note 4, at C1.
Athletes . . . could either pay their income tax to the state where they play or divide it up to all the states where they play. We said let the states tax only home-players' incomes. The tax administrators said no. And they set up this complex system where a player is now going to be taxed on duty days in his own state and in all other states. We think the whole exercise is unnecessary. Despite his criticism, Friedman added that there is "[g]rudging acceptance because at least there will be a rule every state is following."  

3. Base State Model

While the first two options focused on compliance issues and the burden of filing numerous returns, the base state model endorses simplifying the tax return requirements of nonresident athletes. Under this model, a nonresident professional athlete would only be responsible for filing a return in his team's state of domicile. The state would then be obligated to distribute the appropriate funds and information to each relevant state. This model did not receive any additional consideration by the FTA's Task Force after it was initially mentioned.

4. Partnership Model

Under this option, each athlete's tax return filing responsibilities would be satisfied by means of a composite return filed on behalf of all team members. The FTA's Task Force analogized this model to a scheme in which many states permit large multi-state partnerships to file a composite return on behalf of nonresident partners. The FTA's Task Force recommended this model for its simplicity and the model has received some endorsement amongst the teams thus far.

D. Credits for Taxes Paid to Other States

Each state grants individual taxpayers a tax credit for taxes paid to other states in order to avoid the complications of duplicative

86. *Id.*
87. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.* at 9.
94. *Id.* at 3.
taxation. Professional athletes, who reside in one state and earn income in other states, would otherwise be subject to taxation by both residence and source states if not for the tax credit. The ultimate result is that the tax reverts to the state that is the source of the taxed income. Credits may be taken only with respect to the income that is subject to tax by both states, and may not exceed the tax imposed on such income by the credit-granting, resident state.

In order to compensate for the reciprocal loss of this potential tax revenue due to the granting of the credit, states have been virtually forced to take a more active stance in collecting taxes from nonresident professional athletes. Since all states grant credits for income taxes paid in other states, an athlete theoretically should not be paying any extra state tax. Rather, he will pay this tax to the states he visited instead of his home state. Connecticut State Commissioner of Revenue Services Gene Gavin states, ""It just moves the money around, resulting in tax credits in their states of residence. . . . This should make it easier for them because the teams will be able to file composite returns for everyone." Such analysis holds true unless an athlete resides in a state with professional sports teams and no state income tax, such as Texas, Florida, and Washington. An athlete who plays for a team based in one of these states will gross more money than an athlete who plays and pays state tax in, for example, California.

As an ancillary point, baseball teams in both the National League and the American League play games in Canada, against the Montreal Expos and the Toronto Blue Jays. The United States retains the right to tax citizens and residents on their worldwide taxable income. This approach can once again result in double taxation and presents potential problems to persons from the United States, such as professional athletes, who earn income abroad. To reduce the possibility of double taxation, the United States Congress enacted the

95. Williams & Horgan, supra note 7, at A1.
96. See, e.g., CAL. REV. & TAX. CODE §§ 18001, 18002 (West 1996).
97. Williams & Horgan, supra note 7, at A1.
98. Id.
99. Id.
100. Bortstein, supra note 6, at Cl.
101. Id.
foreign tax credit provisions (FTC). Under these provisions, a qualified taxpayer is allowed a tax credit for foreign income taxes paid, which reduces one’s United States income tax liability by a proportionate amount. Thus, when a team member of the San Francisco Giants plays five games a year in Montreal against the Expos, he pays Canadian income tax, but receives an FTC for both federal and state tax purposes.

III
Concerns of Players, Teams, and Other Personnel

Players, their accountants, agents, and representatives of the teams and leagues have numerous concerns, some which they all share and others which are unique to each group. Such concerns include the inconsistent rules among the states, the compliance burden in making the requisite changes, and the cost effectiveness and effort in complying with the proposed changes. The players, if given the choice, would rather avoid the mess taxes create altogether. With this option unavailable, professional athletes must place a great deal of trust and reliance on their agents, accountants, and financial planners in determining and computing their tax liability. Player agents do not disagree that athletes should be taxed just like any other income-earning individuals. Their complaint is that since laws and enforcement vary so greatly among jurisdictions, it is nearly impossible to keep oneself completely updated and informed. “This is an absolute horror for the technicians who are responsible for keeping these players economically and financially clean,” remarks Martin Greenberg, a sports agent and director of the National Sports Law Institute at Marquette University. Implicitly, a consistent taxing formula which is predictable and avoids any possibility of double taxation would gain favor among the players.

Some states have considered retroactively applying their tax laws as part of an aggressive tax compliance strategy. The effect of

103. Id. at 11-2 to 11-9.
104. Id.
105. SAN FRANCISCO GIANTS 1997 SCHEDULE.
106. WEST’S FEDERAL TAXATION, supra note 102, at 11-2.
107. FTA REPORT, supra note 3, at 1-2, n.3.
109. Id.
110. Id.
111. Ekmekjian, supra note 70, at 243.
retroactive collection could be devastating to some professional athletes who no longer play and, therefore, do not have the financial means to pay for such bills. "Some states have been trying to collect back taxes from athletes, before those states taxed athletes in the first place. You can never tell how the rules are going to change," explained New York accountant Barry Klarberg.\footnote{112. Bortstein, supra note 6, at C1 (quoting Barry Klarberg).}

Each team's financial officers and accountants are burdened and frustrated by the state and local tax law complexities as well. Most notably, such difficulties arise in the production of multiple W-2 forms, volumes of paperwork, and in withholding taxes. "The states get away with murder," said Nancy Lohr McGohey, director of operations for the Sparta Group. "The more I see, the more it disgusts me. They are greedy and self-serving. I hope the money at least is being well spent."\footnote{113. Jim Caple, Taxation of Professional Athletes Is in Mixed-up State(s), L.A. DAILY NEWS, Apr. 17, 1994, at B9 (quoting Nancy Lohr McGohey).} The national accounting firm of Coopers & Lybrand is taking a proactive stance in trying to help in the implementation of the states' coordination efforts.\footnote{114. Williams & Horgan, supra note 7, at A1.} Briefing state tax commissioners on the benefits of standardization, the firm has created a "Team Tax" unit which would serve as a clearinghouse for information.\footnote{115. Id.} John Wagner, an expert on athletes' income taxes for Coopers & Lybrand, remarked, "[f]or us, it's been like trying to build a bridge from both ends."\footnote{116. Id. (quoting John Wagner).}

Additionally, the Task Force set up by the Federation of Tax Administrators has served as an effective umbrella organization which plays the all-important role of converting numerous ideas and proposals into a sound, workable agreement which would be supported and implemented. "We're trying to make it easier because it's a burden on the players and their accountants to deal with states when there is not a coordinated approach,' said Verenda Smith, a government affairs associate for the FTA."\footnote{117. Weissman, supra note 4, at C1 (quoting Verenda Smith).} Without the diligent effort and leadership provided by the Task Force, it is extremely unlikely that any of the current structural framework and accessible lines of communication would exist.
IV
The Outlook for the Future

Strong leadership on the national scene appears to be the best way to ensure the uniform apportionment formula, the approach suggested by the FTA's Task Force, receives full-fledged support by all relevant states. With such leadership, the uniform apportionment formula stands to be the best approach possible to accomplish the many competing goals of the different entities involved. This formula is expansive, efficient, and consistent, allowing for a high degree of predictability for states, cities, teams, players, and their accountants. With broad support for its implementation, the uniform apportionment formula should leave few questions left unanswered or unresolved. Furthermore, while few cities now impose their taxes on visiting athletes, it appears to be an emerging trend as cities face growing budget deficits. These cities, with the uniform apportionment formula, will have an accepted and stable approach by which to operate their taxing scheme.

Connecticut and Utah are setting the trend for a national effort to coordinate the assessment and collection of state and local taxes from professional athletes. Adopting the uniform rules proposed by the FTA's Task Force, these two states both passed laws using the duty days formula to determine how much money each player earns in each of these states. According to its revenue services commissioner Gene Gavin, Connecticut passed a law effective January 1, 1996, "allowing teams to file a group form for all their players instead of separate tax forms for each individual player." This state law "makes it easier for nonresident professional athletes . . . to pay state income tax on money earned in Connecticut." New Jersey is considering the implementation of a regulation using a uniform approach with a duty days formula which may be setting a new

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118. Williams & Horgan, supra note 7, at A1. Utah's regulation provides that "a player who is a Utah resident, and who has participated in his team's composite return or simplified withholding, may claim a credit for taxes paid to other states without attaching copies of the other states' returns." Halpern, supra note 44, at 12. He may do so by computing his tax liability on total income before the credit and then attaching a summary prepared by the team, or its representative, indicating the allocation of income, and income tax paid, to other states. Id.

119. Id.


121. Id.
compliance standard among states. It is looking at a proposal which would allow entire leagues to file a single New Jersey income tax return for visiting players.

Advocates of this simplified filing system feel that if it spreads to each state with both income taxes and at least one major professional sports franchise, collection would be enhanced for everybody and administrative difficulties that teams and athletes now face would be eliminated. Results of the simplified filing process thus far have been mixed. Verenda Smith of the FTA stated, "Many team owners have shown little interest in pursuing the implementation of such a system. Players need to express to the owners that this is a service that they do indeed want."

According to a survey conducted by the FTA in August 1995, of the nineteen states surveyed, sixteen states have either adopted or are in the process of adopting legislation which is consistent with the uniform apportionment rule. Also, fourteen of the nineteen states have or are in the process of developing the ability to use the simplified filing process. Subsequent to the FTA survey, North Carolina passed a statute requiring visiting teams to withhold each team member's income at a flat rate of 7.75% with no allowances. Under the North Carolina statute, which became effective November 1, 1995, if the withholding is done correctly, players are not required to file individual returns. In general, once proposed legislation is adopted, it is then the responsibility of the teams and their players to implement their use.

If the uniform apportionment formula using the duty days method and the withholding process prove successful among the states for the major professional sports, the hope is that their uses can be expanded to other sports as well. Other leagues and sports which would appear most likely to take advantage of these concepts include the Continental Basketball Association, the Arena Football League,

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122. Weissman, supra note 4, at Cl.
123. Id.
125. Telephone Interview with Verenda Smith, Government Affairs Associate, FTA (Feb. 12, 1996).
127. Id.
129. Id.
Major League Soccer (the new professional outdoor soccer league which debuted in 1996), and minor league baseball. States will have to determine if it is cost-effective for them to pursue these athletes in light of their lower salaries relative to those who play in the National Basketball Association, Major League Baseball, the National Football League, and the National Hockey League.

V

Conclusion

The looming problems associated with state and local taxation of nonresident professional athletes have surfaced within the public eye. Fortunately, it appears the concerned parties have created an adoptable system which should be for the betterment of all involved. Nonetheless, with time comes further complications. With regular season interleague play beginning in professional baseball during the 1997 season and further team expansion looming on the horizon, a greater number of games will be played on the road in more states. This should translate to a further shifting of state and local taxes to the visited states and cities.

Also in the coming years, states such as Tennessee will gain a professional sports franchise for the first time. Team owners are looking to move their clubs to cities which offer lucrative stadium deals and wide-scale fan support. Such moves will inevitably force authorities to confront the difficulties of applying state and possibly local tax laws to nonresident professional athletes for the first time on a large scale.

Rhode Island, a state with no major professional sports franchises, but which hosts the New England Patriots’ training camp at Bryant College and exhibition games of the Boston Bruins and Boston Red Sox, faces a different type of dilemma. For the last several years, it has had on its books a tax on nonresident professional athletes, which it is scheduled to apply uniformly for the first time in 1997. Leaders in sports communities throughout Rhode Island fear the tax will drive away the local pro teams who visit and events, such

130. Williams & Horgan, supra note 7, at A1.
131. The Houston Oilers are intending a move to Nashville to begin play there during the 1997 National Football League season.
133. Id.
as the ESPN X Games, to other locales which either do not enforce, or do not have, state taxes on professional athletes. "It’s ridiculous; it’s counter-productive," warns Dave Duffy, chairman of the Rhode Island Sports Council, adding, "[h]ere we are trying to recruit people and events into this state and it looks as if we're trying to drive them away."134 Rhode Island tax officials must decide whether the positive economic development sports has spurred in recent years is worth compromising in order to implement the uniform method of apportioning income.

Professional athletes, their teams, accountants, and agents, along with the FTA’s Task Force, have worked diligently together to create a more efficient and consistent taxing strategy. With continued support, the proposed method of allocation should prove beneficial for all involved parties in the coming years.

134. *Id.* (quoting Dave Duffy).