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STADIUM CONSTRUCTION FOR PROFESSIONAL SPORTS: REVERSING THE INEQUITIES THROUGH TAX INCENTIVES

ZACHARY A. PHELPS*

INTRODUCTION

There are few things in today's society that garner more attention or have a larger significance on everyday life than sports. Avid fans follow their favorite teams not only during their respective seasons, but search the Internet and sports page in the off-season to find even the slightest bit of information. Popular holidays are interwoven with various sporting events, such as football on Thanksgiving Day or baseball on the Fourth of July.¹ Some events even attract their own celebration, such as Super Bowl Sunday. If a city's local team is fortunate enough to win a championship, a large-scale parade is usually held to honor the players and coaches.² Clearly, sports permeate multiple aspects of our lives, and it is this popularity that sports franchises use to their advantage. People become so attached to

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a team that it becomes part of the identity of the city. It is this attachment that team owners seize upon and use to pressure city and state governments to expend public funds, and utilize federal tax law loopholes to build state of the art multi-million dollar stadiums.

This note will discuss the various aspects of building publicly funded stadiums for professional sports teams and potential use of federal tax laws to balance the inequities. Part I explores the history of financing professional stadiums. Part II examines the federal tax structure that allows stadium subsidization, and a proposal for change. Part III analyzes a specific legislative proposal to alter the market for professional stadiums. Part IV discusses the sports industry’s arguments for the use of public funds to build stadiums. Part V examines various justifications offered by city and state governments to subsidize stadium projects. Part VI looks at recent developments in stadium finance, specifically, alternatives to using public funds. Part VII proposes reform of the Federal Tax Code to limit federal subsidization and create incentives to use methods other than public funding to raise capital.

I. HISTORY OF STADIUM FINANCE

The current trend of using public resources for professional sports stadiums has not always been the norm. In the early
days of professional sports, publicly financed stadiums were the minority. The first professional stadium, the Baker Bowl in Philadelphia, was privately constructed and financed in 1897. Fenway Park and Wrigley Field, two of the most famous sports venues still in use today, were also privately financed. In fact, prior to 1948, only four of 28 major stadiums were built with any public funds. The first stadium to be totally publicly financed was the Los Angeles Coliseum in 1923. The Coliseum, which was built in an unsuccessful attempt to obtain the Olympics, cost

Major League Sports and Government, Cato Institute, Cato Policy Analysis No. 339, Apr. 5, 1999, at 1 (stating $14.7 million dollars out of approximately $20 million spent on major league ball-parks was government subsidized), available at http://www.cato.org/pubs/pas/pa339.pdf (last visited Feb. 3, 2004); Whoriskey, supra note 4, at B3 (observing since 1990 at least “38 major league sports venues have been built or rebuilt using nearly $7 billion in tax-exempt financing”).

6 See Keating, supra note 5, at 3 (describing government sports subsidization as “a fairly recent development”); see also Tim Chapin, Sports Facilities and Development: The Political Economy of Sports Facility Location: An End of the Century Review and Assessment, 10 MARQ. SPORTS L.J. 361, 369-70 (2002) (stating “team owners were usually financing and building the new stadium themselves, they had a very direct interest in keeping costs down while still sitting the facility in a location accessible to their core market.”). See generally STEPHEN A. RIESS, THE AMERICAN SPORTING EXPERIENCE: A HISTORICAL ANTHOLOGY OF SPORTS IN AMERICA 271-87 (Leisure Press 1984) (2000) (discussing high price buying and selling of professional baseball in Atlanta, Chicago and New York in early 20th century as dominated by urban politics).

7 See Keating, supra note 5, at 11 (Table 1) (noting there were no governmental contributions to this stadium); see also Bob Warrington, A Historical Sketch of Baker Bowl, Philadelphia Athletics Historical Society (discussing the “meager financing” of stadium leading to renting it for various city events), at http://philadelphiaathletics.org/history/baker.html (last visit Feb. 3, 2004).


9 See Keating, supra note 5, at 11–12 (showing a chart identifying amount of public funding each stadium received, listing the Los Angeles Coliseum, Soldier Field (Chicago), Municipal Stadium (Cleveland), and War Memorial Stadium (Buffalo) as only four stadiums without any direct public support); see also Andrew H. Goodman, The Public Financing of Professional Sports Stadiums: Policy and Practice, 9 Sports Law. J. 173, 180 (2002) (noting that government subsidies prior to 1950 did not raise much criticism because it was not yet common practice). See generally Chapin, supra note 6, at 376 (discussing increased influence of public sector on financing of sports facilities compared since 1950).

10 See Keating, supra note 5, at 4 (noting Los Angeles Coliseum as first government “large-scale stadium”); see also Adams, supra note 5, at 662 (discussing purpose of stadium). See generally BENJAMIN G. RADER, AMERICAN SPORTS: FROM THE AGE OF FOLK GAMES TO THE AGE OF SPECTATORS 233-34 (Prentice Hall 1983) (discussing promoters of 1932 Olympic Games in Los Angeles as “establishing a pattern of expensive and ornate facilities that would become characteristic of all the modern games.”).
taxpayers just under one million dollars. However, during this time period the publicly-funded Los Angeles Coliseum was still in the minority. Public funding did not become the norm until the early 1950's, when stadium construction began to increase dramatically. From 1953 to 1970, 30 stadiums were built, creating an average of almost two per year. In contrast, before 1953 only 28 professional sports stadiums total had been constructed. Of the 30 stadiums constructed between 1953 and 1970, 27 received financial support from taxpayers. This taxpayer support totaled over $450 million, nearly 70% of the total cost of all 30 stadiums constructed during this time period. As detailed, the use of public funds became the popular mechanism to finance these projects.

11 See Keating, supra note 5, at 4 (stating original purpose of the Coliseum was to secure the 1924 Olympics, at a cost of $954,873); see also RADER, supra note 10, at 242 (noting in a referendum voters of California approved use of 1 million dollars in state funds). See generally Chapin, supra note 6, at 369 (stating location for Coliseum was chosen because land was already leased by the city, had nearby trolley lines, and was centrally located in region).

12 See Brett Smith, If You Build It, Will They Come? The Relationship Between Public Financing of Sports Facilities and Quality of Life in America's Cities, 7 GEO. PUBLIC POL'Y REV. 45, 46 (2001) (noting start of public financing in 1950's with change in relationship between sports and government); see also Goodman, supra note 9, at 181 (stating despite increased public funding of stadium construction, level of government involvement did not raise much concern). See generally RADER, supra note 10, at 242 (noting in 1950 only forty-two major league franchises existed in all of professional sports, which increased to 101 by 1980).

13 See Keating supra note 5, at 12. Only considering new constructions, not renovations, 30 stadiums were constructed within a 17-year period beginning in 1953. Id. The 1960's began a "new era" of stadium construction, which included replacing earlier built private venues with publicly financed venues. See Goodman, supra note 9, at 181. Between 1960 and 1975, an estimated 1 billion dollars worth of municipally supported arenas were built. Consider the Coloseums, FORBES, Feb. 15, 1975, at 26.

14 See Keating supra note 5, at 11-12 (showing table listing stadium constructions during that time period); see also Chapin, supra note 6, at 369 (stating "[o]nly a handful of new facilities came online between 1925 and 1950."). See generally Goodman, supra note 9, at 181 (noting the comparative cost of stadiums between 1909 and 1915 at around 500,000 and at 5.5 million dollars in 1965).

15 See Keating supra note 5, at 12. Only Colt Stadium, The Great Western Forum, and Madison Square Garden did not receive any public money. Id. Interestingly, the tax advantages that owners receive, including municipal subsidies for the construction of stadiums, occur without the franchises being required to provide full financial information demonstrating the need for the money. RICHARD G. SHEEHAN, KEEPING SCORE: THE ECONOMICS OF BIG-TIME SPORTS 327 (Diamond Communications, Inc. 1996). The benefits reaped by the supporting cities are quite questionable. See generally ROSENTRAUB, supra note 1, at 148–51. For example, although increased restaurant and hotel patronage may experience a growth in spending, this does not necessarily mean a large benefit to the economy. Id. at 149.

16 See Keating, supra note 5, at 12 (noting cost of all stadiums between 1953 and 1970 totaled $672,059,000, of which $463,059,000 was paid by public funding, equaling 68.9% of cost); see also Consider the Coloseum, supra note 13, at 26 (explaining justifications for such high financing is often that stadium is a community asset, despite taxpayers being
The large increase in construction, beginning in the early 1950's, was due to the popularity of sports, its growing audience, and additional teams being fielded.\(^{17}\) During the 1950's the population was moving away from the industrial cities.\(^{18}\) As the country grew, new and upcoming cities wanted to compete with the more established cities of the east coast.\(^{19}\) One avenue of competition, and a status symbol of a major metropolis, was a professional sports team.\(^{20}\) To lure these teams away from their eastern roots, the new cities had to create incentives to leave their loyal fan bases.\(^{21}\) The most popular and effective incentive was the publicly funded stadium.


\(^{17}\) See Goodman, supra note 9, at 181 (stating during this time period, professional football was gaining popularity, increasing demand for stadiums); see also Smith, supra note 12, at 47 (discussing factors considered when determining whether to build facility, including economic impact on residents and job creation). See generally RADER, supra note 10, at 197 (discussing “ascendancy of the spectator” was due to an expanded market for all forms of entertainment).

\(^{18}\) See MICHAEL N. DANIELSON, HOME TEAM: PROFESSIONAL SPORTS AND THE AMERICAN METROPOLIS 25 (Princeton Univ. Press 1997) (noting declining population in mid-western and eastern baseball towns, and emerging population in the west); see also ROSENTRAUB, supra note 1, at 216 (discussing St. Louis's drastic decline in population from 1960 through 1990 and subsequent loss of professional teams). See generally RADER, supra note 10, at 242 (discussing spread of big-league franchises to “every section of the nation”).

\(^{19}\) See DANIELSON, supra note 18, at 25 (discussing shifting population to the West Coast and the need of sports to follow its fan base); Chapin, supra note 6, at 363 (concluding that sports franchises follow the middle-class fan base, which in the 1950's was expanding away from major metropolitan cities). See generally Adam Safir, If You Build It, They Will Come: The Politics of Financing Sports Stadium Construction, 13 J. L. & POLITICS 937, 937-55 (conducting case studies of why sports teams move to different cities).

\(^{20}\) See Keith Negrin, If You Build It, They Might Stay: Unconscionability in Modern Sports Stadium Leases, 30 PUB. CONT. L.J. 503, 523 (2001) (listing justifications for public expenditures as the desire to be a “big league city” or “keeping up with the Joneses”). See generally Dean V. Baim, The Rational Behavior Behind NFL Relocations, 30 U. TOL. L. REV. 443, 443 (1999) (noting that several cities have engaged in bidding wars in order to retain an NFL franchise); Smith, supra note 12, at 48-50 (debunking stated justifications for new stadiums, namely that they improve the quality of life of poor cities, as foolishly).

One of the most famous exits actually involves two teams. In 1957 New York began the year with three professional baseball teams. After the season one remained. The Brooklyn Dodgers left for Los Angeles, and San Francisco lured away the New York Giants. The Dodgers worked out a deal with Los Angeles where they traded a minor league stadium for a much more valuable piece of real estate. The city also paid over $4 million for construction preparation of the site and road improvements. The Giants fared even better in the new California market. They received the promise of a brand new stadium. In 1960, at a cost of $32 million to taxpayers, Candlestick Park opened as the new home of the Giants. This


26 See Keating, supra note 5, at 5 (referring to the City of Los Angeles's contribution to the Dodgers stadium, "The city spent $2 million to grade Chaves Ravine, and the county spent $2.74 million for road improvements.").

27 See Keating, supra note 5, at 4-5 (discussing promise of a stadium able to seat nearly 50,000 people which led Giants to move before the stadium was constructed). See generally Candlestick Park, a.k.a. 3Com Park, Baseball-statistics.com (noting that stadium capacity ranged from 42,000 to 62,000 for the years Candlestick Park was in use), at http://www.baseballstatistics.com/Ballparks /SF/Candlestick.htm (last visited Feb. 3, 2004); 1960: Christening a New Stadium, San Francisco Giants Official Site (detailing the history of that new stadium), at http://sanfrancisco.giants.mlb.com/NASApp/mlb/sf/history/sf_history_timeline_article.jsp?article=24 (last visited Feb. 3, 2004).

28 See Keating, supra note 5, at 5 (noting the costs of Candlestick Park). See generally Glenn Dickey, The Stadium Realities Giants Must Face, SAN. FRAN. CHRON., June 12, 1992, at C3 (noting that good fortune of Giants has not lasted, they are now looking to
mass exodus from New York, known for its loyal fans, was the real beginning of the current competitive atmosphere.\textsuperscript{29} It is this atmosphere that has led so many cities to spend large amounts of public funds to attract a professional franchise.\textsuperscript{30}

II. USING THE FEDERAL TAX CODE TO FINANCE A STADIUM

A. Basic Tax Framework

All stadium construction begins with a financing plan. A key component to many stadium-financing plans is the use of the tax code.\textsuperscript{31} Indirectly, the code is used to provide a subsidy, but to qualify the bond issuer has to meet certain requirements.\textsuperscript{32} These requirements pressure cities and states to take on more of the debt and promote economically unsound practices.

Internal Revenue Code § 103(a) excludes from a bondholder’s gross income any interest earned on a municipal bond.\textsuperscript{33} This


\textsuperscript{30} See Andrew Gasper, Senator Moynihan's Field of Dreams: If You Build It, They Will Come...But Not at the Federal Taxpayers' Expense, 17 VA. TAX REV. 341, 343 (1997) (noting over $9 billion will be spent on stadiums and $4 out of every $5 will be from public funds). See generally Erik Brady, Some Legislators Say Baltimore's Money Misspent, USA TODAY, Sept. 6, 1996, at 19C (detailing how funds were received for the stadium); Erik Brady and Debbie Howlett, Ballpark Construction's Booming Cost to Hit $9 Billion by Decade's End, But Who's Paying For It?, USA TODAY, Sept. 6, 1996, at 13C (analyzing costs to the public for stadiums).

\textsuperscript{31} See Gasper, supra note 30, at 350-51 (noting applicable Internal Revenue Codes); Goodman, supra note 9, at 185-83 (noting state and federal tax exceptions that are granted to sports stadiums); Matthew J. Parlow, Publicly Financed Sports Facilities: Are They Economically Justifiable? A Case Study of the Los Angeles Staples Center, 10 U. MIAMI BUS. L. REV. 483, 497-502 (2002) (noting tax provisions that apply).

\textsuperscript{32} See I.R.C. § 103 (2002) (detailing the requirements for tax code). See generally Gasper, supra note 30, at 351 (discussing the relevant provisions of the code); Goodman, supra note 9, at 216 (2002) (stating in past much of proposed legislation was designed to fill the current loopholes in tax code, which essentially subsidize stadium construction).

\textsuperscript{33} See I.R.C. § 103(a) (2002) (stating this interest is tax free); see also David S. Miller, Distinguishing Risk: The Disparate Tax Treatment Of Insurance And Financial Contracts In A Converging Marketplace, 55 TAX LAW. 481, 492 n.26 (2002) (noting that under § 103(a) of code, interest earned on bond is excluded from gross income for bondholder); Carl Ullman, New Players In The Public Borrowing Game: Tax And Sovereignty
incentive for individuals to invest in municipal bonds was created to help local governments raise capital.\textsuperscript{34} A city can easily raise capital because it can offer the bonds at a lower interest rate than the private market due to the advantageous tax treatment of the interest to bondholders.\textsuperscript{35}

One type of bond specifically excluded from § 103(a), thereby making the interest taxable income, is a "private activity bond."\textsuperscript{36} Private activity bonds are defined in § 141 as any type of bond that meets two specific tests.\textsuperscript{37} The first test is the "private business use test," which is met if, "more than 10\% of the proceeds of the issue are to be used for any private business use."\textsuperscript{38} Private business use is defined in § 141(b)(6) as "use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit."\textsuperscript{39} In the context of a stadium this test will always be met because private sports teams are the primary users of the facility.\textsuperscript{40} The second, and

\textit{Considerations As Freely Associated States And Indian Tribes Approach Wall Street}, 11 U. HAW. L. REV. 111, 118 n.49 (1989) (stating § 103(a) excludes a bondholder’s interest from gross income).

\textsuperscript{34} See Fox v. United States, 397 F.2d 119, 122 (8th Cir. 1968) (stating that legislative history of § 103 “clearly indicates” its purpose was to lower the cost of capital to local governments); American Viscose Corp. v. Commissioner, 56 F.2d 1033, 1034 (3d Cir. 1932) (reiterating Congress’ reasons for creating tax-exempt bonds).

\textsuperscript{35} See U.S. Trust Co. of New York v. Anderson, 65 F.2d 575, 578 (2d Cir. 1933) (stating, “state and municipal bonds and securities issued to borrow money, if tax exempt, will command a better price in the market than if they are subject to taxation”); \textit{American Viscose Corp.}, 56 F.2d at 1034 (noting advantages of creating tax-exempt bonds); \textit{see also} Joseph L. Bast, \textit{Sports Stadium Madness: Why it Started-How To Stop It}, Heartland Institute Report No. 85, Feb. 23, 1998, at 4 (estimating tax-exempt bonds pay a 2\% to 4.5\% lower rate of interest than private bonds and other types of loans available in the marketplace), \textit{available at} http://www.heartland.org/Article.cfm?artId=9474.

\textsuperscript{36} I.R.C. § 103(b)(1) (2002) (excluding any private activity bond which is not qualified under § 141).


\textsuperscript{39} I.R.C. § 141(b)(6) (2003).

\textsuperscript{40} \textit{See} Baker, \textit{supra} note 37, at 301 (noting difficulty of getting around business use test in the context of a stadium); Goodman, \textit{supra} note 9, at 183 (2002) (discussing the importance of the “security test” because private business use test is always met by a
more important test for a private activity bond is the "private security test." To meet the private security test, more than 10% of a bond issue must directly or indirectly be secured by an interest in property that will be used for a private business. If both of these tests are met a bond is classified as a private activity bond. Generally, once the private activity classification attaches, a bond issue cannot obtain tax-exempt status. However, a private activity bond can fall back into tax-exempt status if it is a "qualified private activity bond" under § 141(e). If the bonds are qualified, the interest to the bondholder is excludable even though it is a private activity bond. The main drawback of being classified as a qualified private activity bond, instead of a normal municipal bond, is that the bond issuer is subject to a cap. The cap is imposed by § 146, which limits the amount of qualified private activity bonds that can be issued. The cap, determined by using state population, requires the
particular bond issuer to make a choice. Among the various qualified uses in § 141(e), a government must choose which types of projects will get tax-exempt status.

It is helpful to remember that teams and local governments want to fail one of the two private activity tests. In doing so, the bonds received by the bondholder are not classified as private activity bonds, which in turn will exclude the bond interest from gross income under § 103(a). Because the private business use test is normally met, the private security test is the main focus. A closer look at the security test shows that to build a stadium, the stadium itself cannot be used to secure the bond debt. Any revenue from a stadium cannot be used to finance more than 10% of the debt, meaning that a city or state must secure 90%. By placing a limitation on stadium revenue that

48 See I.R.C. § 146(c) (stating cap is calculated according to a state's population; see also Baker, supra note 37, at 300 (discussing limit imposed by cap); Lathrope, supra note 37, at 1156 (noting state is limited to certain number of qualified bonds).

49 See I.R.C. § 141(e) (listing various qualified private activity bonds); see also Baker, supra note 37, at 300 (stating qualified bonds include various types of activity bonds, not including athletic facilities); Lathrope, supra note 37, at 1156 (commenting that qualified bonds may not be used to finance facilities).

50 I.R.C. § 103(a) (2002) (explaining interest from state or local bonds are not gross income); see also Baker, supra note 37, at 300 (stating § 103 of the I.R.C. allows bonds to produce tax free interest); Musselmann supra note 38, at 196-197 (explaining § 103 of the code excludes the interest paid on bonds).

51 See John R. Dorocak, Tax Advantages of Sports Franchises: Part I-The Stadium, 1999 L. REV. OF MICH. ST. U. DET. C. L. 579, 584-85, (1999) (explaining that a government will try to "flunk" the security test because business use test is always met in stadium context); see also Lathrope, supra note 37, at 1156-57 (stating private security test must be avoided in order to finance facility with tax-exempt bonds); Musselmann, supra note 38, at 198 (noting private security test is more important because private business test will normally be met when financing professional sports facility).

52 See Bhasin, supra note 41, at 187-88 (noting this requirement forces a city to look for outside sources of revenue to repay 90% of the bond issue); see also Musselmann, supra note 38, at 198-99 (noting state or local governments constructing a professional sports facility need to locate source of revenue "other than the facility itself, the revenue from such facility, or the team using or operating the facility" to pay at least 90% on principal and interest payments of bonds); Lathrope, supra note 37, at 1157 (stating city or state constructing a sports facility is required to find another revenue source to pay at least 90% of principal and interest on facility's financing).

53 See DENNIS ZIMMERMAN, TAX-EXEMPT BONDS AND THE ECONOMICS OF PROFESSIONAL SPORTS STADIUMS, CONG. RES. SERVICE REP. 96-460E (May 29, 1996) (explaining 1986 tax reforms caused problems with financing professional sports stadiums); see also Parlow, supra note 31, at 499 (noting how cities are "forced" to secure the bond issue); Musselmann, supra note 38, at 198 (explaining governments need to set reasonable rental terms to professional sports team to comply with statutory requirements).
can be used to pay off the bond debt at 10%, additional sources of income are necessary.54

Several cities have levied taxes on alcohol or cigarettes, known as sin taxes, as an alternative form of revenue.55 Other cities have used hotel taxes56 or rental car taxes,57 which place the burden of financing the stadium on travelers that will probably never see a game there. This is troubling because not only are non-resident’s taxed for something from which they will never benefit, but they have no representation in the local legislature to represent their interests before the tax is imposed.58 This burden shifting approach allows local politicians to display the stadium as their accomplishment while not having to raise taxes on his or her constituents.59

54 See Baker, supra note 37, at 301 (using Cleveland Browns as example of government sidestepping private activity bond rule); see also Lathrope, supra note 37, at 1157 (stating 10% essentially compels a publicly financed sports stadium to offer the host team beneficial rental terms). See generally Parlow, supra note 31, at 498 (explaining that to make sports facilities profitable, governments need to satisfy 10% threshold).


57 See Parlow, supra note 31, at 495 (noting a 2% increase in the renal car tax for Kings County, Washington to pay for Safeco Field in Seattle); see also Pat Flannery, Deal Moves Up Cards Stadium Work; Price Guarantees To Be Phased In Over Few Months, ARIZ. REPUBLIC, May 15, 2003, at 3B (discussing financing plans for a new Arizona Cardinals stadium, for which rental car and hotel-bed taxes are expected to produce $252.3 million); Terry Stutz, Stadium Bill Goes To Perry, DALLAS MORNING NEWS, May 9, 2003, at 3A (discussing a bill “authorizing higher hotel and rental car taxes in Dallas County to finance a new stadium for the Dallas Cowboys”).

58 See generally Todd Senkiewicz, Stadium and Arena Financing: Who Should Pay? 8 SETON HALL J. SPORTS L. 575, 587 (1998) (arguing that such taxes on out-of-staters, although attractive to state citizens, may actually be a detriment to the state economy because the higher cost of lodging in the state may deter tourists who would otherwise bring revenue to the state); Alan Snel, Experts: Stadium Tax Not Fair, Alternative Funding Methods Urged, DENVER POST, Sept. 14, 1997, at B1 (noting deterrent effect of high hotel taxes on visitors from out of state).

59 See Linda Grant Williams, Changing Game of Sports Finance, in NEW DEVELOPMENTS IN SECURITIZATION 1999, at 841, 846 (PLI Commercial Laws and Practice
Some have opted not to tax visitors, but rather tax everyone in a given community. In Milwaukee, for example, a five county sales tax was imposed to acquire the needed revenue. This approach will place the burden on the entire community, including those who will never attend a game. This seems to be more equitable than taxing non-residents, but there are still innocent taxpayers who never receive any benefit from their direct subsidy of the stadium.

Whatever the additional source of revenue, the burden falls on the community, and in some instances, people who derive little, if any, benefit from the stadium. These drastic and somewhat unfair measures are undertaken merely to keep the bond interest tax-free. If a city can maneuver around the private activity bond status, they can build for a lower cost. Various experts in the field have estimated the benefits of keeping a bond issue tax-free. Some believe it can add an additional 34% to the cost of

Course, Handbook Series No. A0-0033 (1999) (explaining how it is more popular to tax visitors than residents); see also Snel, supra note 58, at B1 (criticizing hotel taxes as a means of justifying use of public funds for private use). But see John Dougherty, BOB's a Bust, PHOENIX NEW TIMES, Mar. 9, 2000, at Features (discussing a Phoenix stadium tax plan shifting financing burden to tourists but also seeking to "offset the expected negative impact on tourism" by using a percentage of the tax dollars collected to promote tourism).

See Goodman, supra note 9, at 186 (discussing the financing plan for Miller Park which consisted of $160 million tax-exempt bonds financed by a 0.1% increase in the regional sales tax, $40 million from the franchise, and a $50 million loan from the state); Parlow, supra note 31, at 499 (discussing the regional sales tax imposed on the five surrounding counties to pay for the tax-exempt bond debt used to construct Miller Park). See generally State Senator Awaits Outcome Of Recall Vote, CHICAGO TRIBUNE, Oct. 22, 2003, at 18 (stating voters recalled Sen. George Petak of Racine in 1996 "after he cast the deciding vote for a regional sales tax to pay for the Miller Park baseball stadium").

See Goodman, supra note 9, at 187 (noting that a large majority of taxpayers will never even enter the stadium they have paid for); see also Snel, supra note 58, at B1 (noting the attractiveness of shifting financial burden to tourism in seeking funding for a privately-owned stadium). See generally Garth Woolsey, Lessons Learned At Public Trough, TORONTO STAR, July 22, 2003, at E08 (reflecting resistance to spending taxpayer funds on stadiums instead of other public programs where billion-dollar corporations will benefit the most from the stadiums).

See A Grenade With Seams, ST. LOUIS POST-DISPATCH, May 26, 2003, at C6 (discussing possible change in IRS rules for currently tax-free government-issued bonds, which may change since bondholders may reap too high a return on investment); see also Amy Feldman, The Tax of Unintended Consequences, MONEY, Sept. 2003, at 86 (stating "true [municipal bonds] remain tax-exempt, but private-activity bonds--those issued by a state or locality to fund private activities, such as building a sports stadium--do not").

See ZIMMERMAN, supra note 53, at 10; (noting the lower cost when debt is issued tax-free because the bonds can be issued at a lower interest rate); see also Double Play: The Economics and Financing of Stadiums for the Yankees and Mets, Independent Budget Office: City of New York [hereinafter IBO Report] (noting the sharp cost increases if municipal bonds are not used), at http://www.ibo.nyc.ny.us/iboreports/doubleplay.html (last visited, Feb. 3, 2004); Feldman, supra note 62, at 86 (noting that municipal debt funds only qualify for tax exemption if their "maximum investment in private-activity bonds is capped at 20%.").
construction to a stadium, while more conservative views are 15-20%. These estimates show how some stadium construction projects could possibly hinge on the classification of the bonds as private activity bonds. These cost figures also reveal why a city will go to great lengths and adopt economically irrational policies to fail one of the private activity bond tests.

Once a bond issue fails either the private business use or the private security test, the bond interest is tax-free to the holder. Tax-free interest is lost revenue to the federal government. If that same bondholder invested in a private bond or some other type of taxable income producing security, the

64 See IBO Report, supra note 51 (stating "This financing alternative has a disadvantage relative to tax-exempt debt because the loss of the federal tax exemption on the bonds issued can add up to 34 percent to the total cost of the bonds."); see also ZIMMERMAN, supra note 53, at 10 (explaining the cost of a project can go up if tax-exempt status is lost, but the amount of increase depends on the bond market and differential between the market rate and the rate for tax-exempt municipal bonds). See generally Ashlea Ebeling, When Tax-Exempts Aren't, FORBES, Apr. 1, 2002, at 79 (noting the possible downside to overuse of so-called "tax exempt" private activity bonds).

65 See ZIMMERMAN, supra note 53, at 10 (estimating some project's cost would only increase by 17% in a market where interest rates are low); see also Stephen Koff, Mayor, Council Deep in NFL Talks, THE PLAIN DEALER (CLEVELAND), Mar. 7, 1996, at 1A (discussing possible jump in Cleveland stadium taxes to $4.4 million annually if it were to lose its tax-exempt status); Irwin M. Stelzer, Let the Owners Pay, N.Y. POST, Aug. 29, 1996 (claiming an increase in cost of 15% to 20% for stadiums if tax-exempt bond status was lost and noting that for some projects this could add $30 million to $40 million to the cost of a stadium).

66 See Andrea Figler, Cowboy Deal in Trouble?, THE BOND BUYER, Oct. 11, 1999, at 1 (discussing difficulty in luring investors to a $120 million bond offering to finance an entertainment complex where the bonds may not qualify for tax-exempt status); see also Mike Allen, Ballpark Building Stoppage Imminent, SAN DIEGO BUS. J., Sept. 25, 2000, at 1 (stating, "Without the tax-free bond funding, the $450 million ballpark that has been under construction since late May will come to a halt next Monday."). See generally Tax Overtures Play On Municipal Bonds, CHICAGO TRIBUNE, Sept. 22, 1986, at 19 (noting that private activity bonds remain attractive with low coupon rates only because of their tax exempt status).


68 See Parlow, supra note 31, at 497 (stating, "the present value of a federal revenue loss on $225 million worth of tax-exempt bonds is between $47 million and $94 million, depending on the interest rate differential."); Yamamoto, supra note 38, at 153-54 (noting the direct federal subsidy to the state because of the foregone revenue that would have been collected by the federal government). See generally Briefs - Sports, SOUTH BEND TRIB., Mar. 28, 2001, at B4 (discussing IRS investigation of bond issue for stadium originally deemed tax exempt which could result in bond purchasers or the city of Nashville having to pay back taxes).
government would receive taxes.\textsuperscript{69} The federal government is foregoing money to benefit these stadium construction projects, which is equivalent to a cash payment.\textsuperscript{70} Obviously the federal government has more pressing issues on its agenda than making sure all of the professional sports teams have new stadiums to play in. This money could be used to fund any number of cash-deprived programs that would benefit more people than a few select franchise owners.\textsuperscript{71} Even if one agrees with this federal subsidization on the first cycle, some have argued that it will also create a second subsidy.\textsuperscript{72} The second subsidy arises when cities stop spending for other vital programs, and instead seek federal funds for these programs.\textsuperscript{73} Not only is the government subsidizing the bonds themselves, they are also paying for the programs that a city would be funding if it had not undertaken a stadium construction.\textsuperscript{74}

\textsuperscript{69} See Yamamoto, supra note 38, at 153-54 (explaining how a state gains the benefit of tax-exempt status because they do not have to pay the extra percentage due to the bonds effect on the bondholders taxable income.) For example, if a taxpayer purchases a $1000 taxable bond with a 10% interest rate and has a 40% marginal tax rate, there will be $60 profit after taxes. If a state sells the same person a bond with an interest rate of 6%, the taxpayer would have $80 of taxable income. See Whoriskey, supra note 4, at B3. See generally Bhasin, supra note 41, at 195-98 (discussing proposed legislation for federal bond taxes).

\textsuperscript{70} Goodman, supra note 9, at 182 (discussing how taxpayers are “slighted” because no revenue is collected when these bonds are issued); Peter Whoriskey, Stadiums Are Built On Federal Tax Break, WASH. POST, July 28, 2003, at A01 (noting that federal tax exemption for stadium projects costs the US Treasury millions of dollars in lost tax revenues every year); Feldman, supra note 52, at 86 (mentioning direct costs to the US Treasury, and eventually federal taxpayers, as a result of tax-exempt bonds).

\textsuperscript{71} See Jensen, supra note 55, at 428 (questioning why stadium owners need a subsidy when “essential public welfare programs” are being cut and eliminated due to budget shortfalls); see Woolsey, supra note 61, at E08 (discussing a petition opposing use of public funds that ultimately “will not benefit the local economy” as much as it would increase wealth of “billionaires”); Congressman Stokes Opposes Sin Tax; Deals Serious Blow To Issue 2, PR NEWSWIRE, Apr. 26, 1990 (noting a “question of economic priorities” where a stadium would not raise money for “health, housing or education” but instead would only “[go] into somebody's pocket”).

\textsuperscript{72} See Gasper, supra note 30, at 348-49 (discussing creation of a second subsidy on the second cycle); Socked for Stadiums, USA TODAY, June 28, 1996, at 12A (noting federal taxpayers must pay not only for tax exemptions, but also for federal aid given directly for stadiums); Taxpayers are the Losing Team, USA TODAY, Jan. 28, 2000, at 17A (commenting on communities with budgets squandered on stadiums which are then forced to apply for federal aid to fund education, and health programs).

\textsuperscript{73} See Gasper, supra note 30, at 349 (explaining second federal subsidy would be for neglected state programs applying for federal aid); How You Pay $$$ for Stadiums Far, Far Away, USA TODAY, June 5, 1997, at 14A (questioning why Cleveland should receive $100 million from federal funds to clean up neighborhoods, but spent $400 million to build stadium); Socked for Stadiums, supra note 72, at 12A (observing how communities using own money for stadium financing apply for federal aid for other needed programs).

\textsuperscript{74} See Gasper, supra note 30, at 349 (describing lost opportunities for cities by funding erection of new stadiums); Jensen, supra note 55, at 428 (noting how other local programs
The tax structure currently in effect creates two negative aspects that need to be changed. First, it is questionable whether the federal government should be supporting tax subsidies for professional sports owners who arguably, are some of the wealthiest individuals or corporations in the country. Second, even if one agrees that the subsidization aspect is acceptable, there should not be an incentive to use outside revenue streams for funding when the stadium itself could generate a large portion of the needed funds. This promotes cities to adopt fiscally unsound principles to satisfy the federal requirements for tax-exempt status.

B. Legislative Action

In 1996, Senator Patrick Moynihan of New York recognized the stadium subsidization problem with the Internal Revenue Code he helped write 10 years earlier. His proposal, known as STADIA, (Stop Tax-Exempt Arena Debt Issuance Act) attempted to close the loophole that allows city governments to issue bonds for stadiums and remain outside the private activity
classification. Moynihan's reasoning had three premises. First, he was concerned that the real beneficiaries of these federal subsidies were wealthy franchise owners. Second, he believed that allowing tax-free interest on stadium construction bonds was encouraging cities to become involved in spending well beyond their means. Third, as one of the original drafters of the 1986 Internal Revenue Code, including § 141, he felt that subsidizing stadiums was not intended. Further, he stated that the purpose of § 141 in the first instance was to stop this very

79 See 142 CONG. REC. S11103 (1996) (statement by Sen. Moynihan) ("This is why I recently introduced S. 1880 . . . to end the Federal tax subsidy for these stadium deals."); see also Gasper, supra note 30, at 343 (noting the purpose behind Moynihan's proposal was to stop utilization of tax-exempt bonds to finance new stadiums); Goodman, supra note 9, at 217 (stating purpose of STADIA was to redress harmful effects of then-current stadium subsidies).

80 See 142 CONG REC. S7205 (1996) (statement of Sen. Moynihan), providing that: This legislation is important in its own right, and would close a loophole that ultimately injures State and local governments and other issuers of tax exempt bonds, that provides an unintended federal subsidy-in fact, contravenes Congressional intent-and that contributes to the enrichment of persons who need no federal assistance whatsoever. Id. See generally 142 CONG. REC. S11103 (reiterating Moynihan's original purposes of wanting to pass 1986 bill into legislation); Gasper, supra note 30, at 349 (outlining Moynihan's objectives in having 1986 bill).

81 See 142 CONG. REC. S11103 (1996) (statement of Sen. Moynihan) ("Only team owners and players profit, while taxpayers and fans pick up the tab."). See generally Leslie Wayne, Picking Up the Tabs for Fields of Dreams: Taxpayers Build Stadiums, Owners Cash In, N.Y. TIMES, July 26, 1996, at 39 (noting wealthy owners are demanding more revenue-generating options when building new stadiums); Socked for Stadiums, supra note 72, at 12A (stating how owners reap all revenue from stadium that cities and states finance through municipal bonds).

82 See 142 CONG REC. S6305 (1996) (statement of Sen. Moynihan) ("This legislation will close a big loophole, a loophole that ultimately injures State and local governments and other issuers of tax-exempt bonds."). See Parlow, supra note 31, at 494 (stating how cities expend all their revenues that they tax all items, even those non-sports related); Wayne, supra note 81, at 39 (noting how Baltimore has tapped out lottery proceeds and raised taxes, merely to finance two new stadiums for baseball and football teams).

83 See 142 CONG REC. S6305 (1996) (statement of Sen. Moynihan), providing that: Unfortunately, Congress did not address the issue of whether stadium bonds could be issued as governmental bonds because that possibility was too remote to have occurred to us. And in our silence, a loophole was born. Innovative bond counsel have devised aggressive schemes to finance stadiums with tax-exempt, governmental purpose bonds. So this legislation is corrective. It will put an end to a practice we thought we had stopped in 1986.

He explained that this was discussed prior to the passage of the 1986 Internal Revenue Code amendments, and changes were made with the exact purpose of eliminating bonds for stadium construction from receiving tax-exempt interest classification.

Moynihan's approach would virtually end the subsidization through the federal government for bonds issued to construct stadiums. Eliminating federal subsidization would be accomplished by adding a provision to § 141 specifically classifying any bond used to finance a stadium as a private activity bond. More importantly it would end the huge incentive cities have in both issuing these bonds and finding alternative revenue sources to pay for them. When the bill was introduced, Moynihan stated, "building new professional sports facilities is fine by me. Let the new stadiums be built. But, please, do not ask the American taxpayer to pay for them." His legislation would place the financial burden on the decision maker: the city.

84 See 142 Cong. Rec. S6306 ("[I]n 1986 we fundamentally restructured the tax exempt bond rules. And one of the things we did was prohibit the issuance of tax-exempt bonds to finance sports stadiums. Or so we thought."); see also Gasper, supra note 30, at 347 (specifying bonds for building new stadiums as private activity bonds that do not qualify for exempt status in 1986 bill).

85 See 142 Cong. Rec. S6306 (citing changes Moynihan and other senators had intended upon implementation of 1986 tax bill); see also Dorocak, supra note 51, at 586 (discussing how Moynihan never intended sports stadiums to get tax-exempt status); Gasper, supra note 30, at 345-46 (outlining amendments of 1986 bill, particularly two-part test intended to make tax-exempt status difficult to achieve).

86 See S. 1880, 104th Congress (1996), providing that:

For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) to provide professional sports facilities exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000

Id. See generally Fraas, supra note 55, at 210 (outlining specific amendments to bond classification); Goodman, supra note 9, at 217 (setting forth amended terms of a private activity bond).

87 See Fraas, supra note 55, at 210 (mentioning how cities used federal revenue from other public programs to subsidize new stadiums); Gasper, supra note 30, at 347 (discussing how cities had to generate alternative revenues for at least 90% of financing debt); Goodman, supra note 9, at 218 (highlighting some benefits cities would enjoy from passing of STADIA).

Moynihan's purpose and motives are both clear and correct. It cannot be argued this will lower the burden on federal taxpayers as a whole. However, construction costs for stadiums will increase due to higher bond interest costs, which could add over 30%. This burden will ultimately be shifted back to the taxpayers in the local market to cover the extra cost. So does this really end the problem or just centralize it to the local taxpayers? The larger reason for this problem stems from one of Senator Moynihan's observations. He, along with other commentators, has suggested that the increase in stadium construction is due to the limited supply of franchises and an increased demand for professional sports. Teams demand a new taxpayer funded stadium or they will move to a city that will comply. Because most teams are important to a city's character, public officials will accept the franchise's demands and build a publicly funded stadium at any cost. Obviously,

89 See Borden, supra note 83, at 528 (stating how construction costs often exceed $500 million); ZIMMERMAN supra note 53, at 10 (discussing increase in costs for constructing stadium); see also IBO Report, supra note 63 (describing how city residents help subsidize stadiums while wealthy citizens of New York suburbs reap benefits).

90 See Fraas, supra note 55, at 207 (specifying that taxpayers in some cities contributed upwards around 90% of construction costs); Gasper, supra note 30, at 348 (noting that burden of financing stadium has shifted from those who will use it, the owners and the cities, to "non-stadium-related resources", namely federal taxpayers); Socked for Stadiums, supra note 72, at 12A (emphasizing how taxpayers pay subsidies for new stadium while owners sit back and enjoy aftermath).

91 See Lathrope, supra note 37, at 1149 (discussing a franchise owner's advantage in negotiating with a city due to the limited availability of sports franchises). See generally Daniel S. Mason, Appropriate Opportunism or Bad Business Practice? Stakeholder Theory, Ethics and the Franchise Relocation Issue, 7 MARQ. SPORTS L. J. 399, 407 (1997) (suggesting that teams threaten relocation to boost franchise value); THINK Teams With NHL, BUS. WIRE (N.Y.), Nov. 17, 1997 (noting that there are a limited number of sports franchises).

92 The real winners are the owners and professional sports teams, who are utterly proficient in blackmailing local officials:

Buy me my stadium, rent it to me for a pittance or nothing, channel the ticket and concession revenue to me, and if you don't like my deal, I'll skip town and leave you, Mr. Mayor, with egg all over your face for having lost a team.

Neal R. Peirce, Calling Time on Sports Tax Breaks, NAT'L J., July 20, 1996. See generally Michael D. Kovalik, Subsidies Unfair? Depends on Who's Dining at the Public Trough, COLUMBUS DISPATCH, Apr. 6, 2002, at 07A (which suggests that the government is too willing to provide subsidies to appease sports teams); Tammi Murphy, Misplaced Outrage; Subsidizing the NHL Would Have Been a Win-Win Situation for the Federal Government, THE RECORD (Ontario), Jan. 25, 2000 (noting that some supporters of sports franchises opine that when a team leaves a city, the local economy suffers).

93 See 145 CONG. REC. S4675 (1999) (statement of Sen. Specter) (stating that this is nothing more than "legalized extortion"); see also Stadium Financing and Franchise Relocation Act of 1999: Hearing on S. 952 Before the Senate Committee on the Judiciary,
Senator Moynihan’s legislation cannot remedy this problem, but at least it can close the federal loophole. By closing this loophole, the increased cost may dissuade a city from publicly financing a stadium.\(^{94}\) Closing the loophole could also encourage private entities to finance a portion of the debt, taking some of the burden off local taxpayers.\(^{96}\)

### III. STADIUM FINANCING AND FRANCHISE RELOCATION ACT OF 1999

The supply and demand of stadiums has unquestionably led to the relocation of several franchises in recent years.\(^{96}\) Because leagues can control how many teams can compete in their respective sport, they control the supply of the teams.\(^{97}\) This

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\(^{94}\) See Take Me Out to a Public Fleecing, ENGINEERING NEWS-RECORD, Aug. 7, 2000, at 68 (observing that cities and tax payers tire of paying to lure franchises). But see Scott Powers, Not Many Privately Built Arenas in Medium Cities, COLUMBUS DISPATCH, June 5, 1997, at 10C (noting that Columbus, Ohio decided out of necessity to build a stadium solely with private funds).

\(^{95}\) See Powers, supra note 94 (documenting a city that built a stadium with private funds exclusively). But see Leon Hickman, Let’s Build Stadium For All Sports, BIRMINGHAM EVENING MAIL, Dec. 11, 2000 at 43 (detailing disintegration of stadium building plans due to lack of private investment); Saints Boss Welcomes Stadium Plans, ST. HELENS GUARDIAN, Dec. 16, 2002 (chronicling that a major franchise was precluded from building a new stadium when unable to procure private funding).

\(^{96}\) See generally Mason, supra note 91, at 403 (asserting that even financially well-off organizations may relocate to more lucrative locations); Lathrope, supra note 37, 1150 (noting that franchises may receive multimillion dollar fees for relocation); Glen Seredynski, On Team Relocation, League Expansion and Public Policy, 4 SETON HALL J. SPORTS L. 663, 668-76 (1994) (analyzing an equation used to determine factors that make a location economically desirable).

\(^{97}\) See Stadium Financing and Franchise Relocation Act of 1999: Hearing on S. 952 Before the Senate Committee on the Judiciary, 106th Cong. 45 (1999) (statement of Dr. Mark S. ROSENTRAUB, Professor and Associate Dean, School of Public and Environment Affairs at Indiana University in Indianapolis) (commenting on power each league has in controlling supply of franchises, thereby always creating demand for their product); see also Prepared Testimony of Andrew Zimbalist Before the Senate Committee on the Judiciary Subject “Stadium Financing and Franchise Relocation Act of 1999” (noting both National Football League and Major League Ball have kept number of teams below
supply and demand problem was addressed in the Stadium Financing and Franchise Relocation Act of 1999.\textsuperscript{98}

This act was introduced by Senator Arlen Specter to remedy the problem of franchise relocation.\textsuperscript{99} In 1961, Congress passed the Sports Broadcasting Act, which allowed a sports league to sell their television rights as a whole and not violate anti-trust laws.\textsuperscript{100} Senator Specter makes this exemption conditional on an agreement that Major League Baseball and the National Football league would place 10\% of television revenue in a trust fund for stadium construction.\textsuperscript{101} Further, once a stadium was to be built, the trust fund would be responsible for no more than 50\% of the number of cities competing for a franchise to bolster demand). \textit{See generally} Sol Stern, \textit{No to Sports Stadium Madness}, CITY JOURNAL (N.Y.), Vol. 8, Fall 1998 (stating small number of teams increases competition to bring a franchise to a city).


\textsuperscript{100} \textit{See} 15 U.S.C.A. § 1291 (1997)

The antitrust laws... shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.


\textsuperscript{101} S.952 § 1(b)(1)(A) (making anti-trust exemption conditional on each league establishing "a special trust fund into which the league will deposit an amount equal to 10 percent of the amounts received under that joint agreement for the sale or transfer of the rights in sponsored telecasting of the games of the professional sport of that league in the United States."). \textit{See generally} Sherie Winston & Tom Ichniowski, \textit{Bill Asks Teams to Fund New Construction}, WASH. OBSERVER, June 21, 1999, at 9 (reporting terms of the Act); \textit{Stadium Funding Trend Under Attack}, DAYTON DAILY NEWS, May 5, 1999, at 2D (noting ten percent requirement is in exchange for antitrust exemption in certain areas).
total cost of any individual stadium. The trust fund's payment would be conditional only on a city spending $1 for every $2 that the fund contributes. The legislation would also increase the anti-trust exemption to allow a league to stop a team from relocating to a new city. Senator Specter suggests that the only way to protect local taxpayers is to limit a team's ability to relocate, while at the same time taking a majority of the cost burden off the public. His main reason for requiring leagues to pay for a percentage of the stadium is the value it adds to the franchise. It is no secret that when a team receives a new stadium, regardless of who actually owns the structure, the value of the franchise as a whole increases. If an owner is contemplating selling a team, his most profitable tactic could be

102 S.952 § 1(b)(1)(A)(iv) (making anti-trust exemption conditional on a league making available proceeds from trust fund, but limited "up to a maximum of one-half of that cost"). See generally Stopping Pro Sports Extortion, SAN FRAN. CHRON., July 5, 1999, at A19 (calling the franchises' ability to demand stadiums and facilities "legalized extortion"); Tagliabue Fights Bill to Pay For Stadiums, SUN-SENTINEL (Ft. Lauderdale), June 23, 1999, at 9C (noting NFL Commissioner's strong resistance to the 50% requirement). 


104 S. 952 § 1(a)(2)(C) (allowing a league under these agreements to deny the right to relocate a franchise). See 145 CONG. REC. S4674 (1999) (discussing enlargement of antitrust exemption to deny relocation requests). See generally Robinson, supra note 55, at 163 (analyzing different approaches to relocation regulation through antitrust immunity).

105 145 CONG. REC. S4674 (1999) (statement of Sen. Specter) One would think some of that giant revenue windfall might trickle down and be used to help finance new ballparks and stadiums, which produce greatly enhanced revenues for team owners, yet it seems the more TV money a league makes, the more its clubs demand from local taxpayers to fund the construction of new playing facilities. See generally Jensen, supra note 55, at 427 (noting in one study, tax money paid sixty-five percent of stadium costs); Greenberg, supra note 103, at 384 (acknowledging money for stadium construction comes from myriad public taxes on accommodations, beverages, tobacco, ticket charges, property taxes and other charges).

106 145 CONG. REC. 4673 (1999) (statement of Sen. Specter) (quoting Jeffrey Stein, "new stadiums in and of themselves significantly enhance the value of a team."). See generally Stadium Would Nearly Double Value of Brewers, CAPITAL TIMES (Madison), Feb. 23, 1996 at 1C (stating a new stadium would increase the value of Milwaukee Brewers by $67 million dollars); New Digs Often Adds Value, Magazine Says, USA TODAY, May 2, 1996, at 3C (noting an increase in team value is often due to stadium construction).

107 See 145 CONG. REC. 4673 (1999) (noting franchises' value increases due to stadium construction); see also Fraas, supra note 55, at 206 (stating, "professional team owners benefit from new facilities through their teams' increased value."). See generally Patriots Owner Links Staying to New Stadium, COMMERCIAL APPEAL (Memphis), May 27, 1993, at D2 (reporting a new stadium "increases value of the team to prospective buyers.").
to demand a new stadium to increase the return on his investment. This is exactly the behavior Senator Specter is trying to prevent.108

Both Senator Moynihan's and Senator Specter's bills would reduce the tax burden on citizens while possibly stopping their hometown team from leaving.109 All the intended effects would be beneficial to the public.110 If these bills benefit the general public, then why are they still just proposals that have not been passed? Senator Specter and others have noted the tremendous lobbying pressure placed on Congressional members by the respective leagues.111 The leagues realize their franchises have the advantage in this current environment and do not want to relinquish this.112 One commentator noted that the leagues, along with franchise owners and a few investment bankers, are the only real opponents to reform in stadium finance.113

108 See John Barron, United Center Lifts Bulls, Hawks in Franchise Value, CHIC. SUN-TIMES, Apr. 19, 1995, at 63 (stating "new venues have resulted in a big increase in team values and profitability"). But see Jay Weiner, Forbes: Vikings' Value Leaps 24% From Last Year, STAR TRIB. (Minn.), Sept. 7, 1999, at 4C (detailing value of the Vikings franchise increased 24% even without the construction of a desired new stadium).

109 See generally Luke Cyphers, Can't Get One By Pat: Senator Throws Curve at Owners, DAILY NEWS (N.Y.), July 1, 1997, at 64 (noting Moynihan's bill would attempt to prevent teams from relocating at lure of a new stadium in another town and that federal taxpayers should not bear burden of keeping teams from leaving town or attracting teams to town); Robinson, supra note 55, at 162-63 (stating Senator Specter's purpose in proposing bill was to prevent franchise relocation but disagreeing it will have impact of lightening tax burdens). See generally Michael D. Erickson, Note, Upon Further Review...When It Comes To Tax-Exempt, Stadium Finance Reform, Stop Cheering for the Popular Proposals and Adopt Simple Reform, 21 VA. TAX REV. 603, 613-29 (2002) (describing both pieces of potential legislation and arguing likely effects of bills).

110 See Gasper, supra note 30, at 350-51 (favoring Moynihan's rationale for STADIA legislation); see also Marc D. Oram, The Stadium Financing and Franchise Relocation Act of 1999, 2 VA. J. SPORTS & L. 184, 211 (2000) (suggesting general support for notion behind Specter's legislation if not for particular legislation itself). But see Erickson, supra note 109, at 616-24, 626-28 (arguing neither bill is beneficial and that the rationales behind them are extremely flawed).

111 145 CONG. REC. 4674 (revealing several Senators dropped out of supporting the bill after being pressured by Major League Baseball's lobbying efforts). See Eric Fisher, Bill Capping Tax Money for Stadiums Is Attacked on Capitol Hill, WASH. TIMES, June 16, 1999, at B3 (articulating heated opposition to Specter's bill and noting NFL's opposition); Greenberg, supra note 103, at 398 (pointing out that the sports lobby would actively oppose Specter's legislation).

112 See generally Bhasin, supra note 41, at 200 (including sports leagues as one of the major opponents of reform); Rodney Fort, Sports Facilities and Development: Stadiums and Public and Private Interest in Seattle, 10 MARQ. SPORTS L.J. 311, 330 (2000) (noting sports leagues' market power); Oram, supra note 110, at 204 (calling various leagues' responses in opposition to Specter's proposed changes "predictable").

113 See Stelzer, supra note 65 (characterizing objectors to stadium finance reform as, "kicking and screaming objections of the nation's politically potent mayors, its bond-issuing investment bankers and its itinerant team-owners"); see also Bhasin, supra note 41, at 200 (listing team owners, investment bankers, and sports leagues among opponents
However, these groups have the lobbying power to impede any proposed legislation.

STADIA and the Stadium Financing and Franchise Relocation Act of 1999 bring to light the problems of the current structure. Although both proposed bills were not passed, they demonstrate the kind of restraint that Congress should apply. Reform must come at the federal level, either through new legislation or amending previous bills. The fact remains that the only people benefiting are the franchise owners, who, most would agree, do not need additional wealth. To not only protect innocent taxpayers, but also sports enthusiasts who have a hometown team, Congress should intervene and reform the process.

IV. FRANCHISE OWNER'S RESPONSE

It is not surprising that franchise owners bemoan any type of change to the current structure of stadium finance. They have leverage on local city governments, which gives them power to

of STADIA); Burke, supra note 88, at 155 (recording investment banks and sports leagues as some of those lobbying against STADIA).

114 See generally Bruce Alpert, Taxpayer Financing of Arenas Targeted, TIMES-PICAYUNE (New Orleans), July 7, 1996, at A1 (repeating Moynihan’s argument in support of STADIA and against “twisted logic” of use of tax-exempt bonds to finance sports arenas); Burke, supra note 88, at 156 (calling STADIA “a logical solution to a gaping loophole in the federal tax laws”); Stadiums Are Built On Federal Tax Break, supra note 70, at A01 (observing Senator Byron Dorgan’s support for changing the tax-exempt bond financing for sports stadiums).


demand more than what is needed. They also have the advantages of the federal tax code to provide them with a subsidy. The owners’ main response to the argument that they do not need subsidization is to claim that their franchise is financially unsound. They argue that paying for a stadium will decrease revenues, creating fewer available resources to operate the team. Further, this will have a negative effect on team performance, because there is not enough available cash to meet the market demand for salaries, in turn, creating a non-competitive team. This was the basic argument in St. Louis and is used by owners today as support for the need for subsidization.

In 1988, the St. Louis Cardinals decided to relocate to Phoenix, Arizona, leaving behind a city without an NFL franchise. In 1988, the St. Louis Cardinals decided to relocate to Phoenix, Arizona, leaving behind a city without an NFL franchise.

118 See Rosentraub, supra note 117, at 137 (noting supply of franchises is controlled by league and franchise owners). Rosentraub also discusses the alternatives to this model, whereby the supply is controlled by various “nation-states.” Id. This is the structure for professional soccer in Europe, with the governing body, FIFA, controlling the leagues, but not the supply or location of the franchises. Id. This leaves private investors the opportunity to start their own team and still benefit from being part of a competitive league. Id. at 140-41. See also Burke, supra note 88, at 149 (outing team owners demands on local municipalities); Laing, supra note 117, at 23 (describing municipalities as “at the mercy of team owners”).

119 See generally I.R.C. § 141 (2003); Bhasin, supra note 41, at 185-86 (emphasizing common use of tax exempt bonds in sports stadium financing); Parlow, supra note 31, at 500 (noting nearly all stadiums are financed with tax-exempt bonds).

120 See Parlow, supra note 31, at 488-89 (arguing sports franchises cannot afford to completely fund a new stadium due to small profit margins); see also Bhasin, supra note 41, at 208 (describing the federal subsidy of financing of stadiums as “much needed”). See generally Mark Roesslein, It’s Make-or-Break Time for Baseball Here, MILWAUKEE J. SENTINEL, Apr. 7, 1996, at 4 (illustrating example from Major League Baseball of a team in financial trouble due to stadium financing difficulty).

121 See Jensen, supra note 55, at 426 (articulating argument made by owners to taxpayers that without a new stadium they “will be forced to field sub-par teams”); see also Baker, supra note 37, at 298 (expressing owners’ concern for more money to pay for rising cost of players). See generally Parlow, supra note 31, at 490-91 (linking value of sports team directly to stadium revenue).

122 See Robinson, supra note 55, at 143 (relating owners’ argument that new facilities are crucial to attraction and maintenance of quality players); see also Linda Grant Williams, Use of Securitization Techniques in Financing Sports Facilities in New DEVELOPMENTS IN SECURITIZATION 2000, at 757, 766 (PLI Commercial Law and Practice Course, Handbook Series No. A0-004U, 2000) (characterizing team owners’ notion they need new stadiums to keep best players). See generally Parlow, supra note 31, at 519 (citing St. Louis Rams as an example of a team that has improved because of profitability linked to new stadium).

123 See Franklin M. Fisher et al., The Economics of Sports Leagues and the Relocation of Teams: The Case of the St. Louis Rams, 10 MARQ. SPORTS L.J. 193, 198 (2000) (noting the move of St. Louis franchise to Phoenix); 1988 Year in Sports From Seoul To San Diego To Chicago, There Was No Shortage of Memories, CHIC. TRIB., Dec. 27, 1988, at C10 (noting league approved relocation to Phoenix of the St. Louis Cardinals); Laurel Shaper Walters, St. Louis Blues: Fans Threaten Suit as NFL Blocks Rams Exit, CHRISTIAN SCI.
1993, when the league expanded, St. Louis was not awarded a franchise, even though they had already begun construction on a stadium.\textsuperscript{124} However, in 1995 St. Louis secured an agreement with the Los Angeles Rams to relocate and begin play in St. Louis.\textsuperscript{125} The Rams franchise went to the league for approval of the relocation but was denied initially because the league wanted a relocation fee.\textsuperscript{126} Instead of continued negotiations, the city gave in and agreed to pay $20 million of a total $29 million fee.\textsuperscript{127} This is significant because not only did it add a considerable cost to the relocation effort, it later produced anti-trust litigation by the city, through its Convention and Visitors Commission (CVC).\textsuperscript{128} The CVC was assigned the lease on the

\textsuperscript{124} See St. Louis Convention & Visitors Comm'n v. National Football League, 154 F.3d 851, 853 (8th Cir. 1998) (stating, "Problems associated with control over the lease and the potential ownership group caused St. Louis to be passed over in the NFL's expansion voting"); see also Fisher et al., supra note 123, at 198 (noting the "poor bargaining position" of the city by beginning construction of a stadium before a franchise was secured to play there); Jim Salter, \textit{St. Louis Now a Football Town} (reporting St. Louis lost out on its bid for one of two NFL expansion teams in 1993 even though a stadium was already under construction), at http://espn.go.com/nfl/playoffs99/conf/s/0116ramsfans .html (last visited Feb. 3, 2004).


\textsuperscript{126} See \textit{St. Louis Convention & Visitors Comm’n}, 154 F.3d at 855 (stating "[o]wners voted down the initial application by the Rams because of disagreements between the league and the team on several of the relocation terms, including payment of a relocation fee..."); Katherine C. Leone, \textit{No Team, No Peace: Franchise Free Agency in the National Football League}, 97 COLUM. L. REV. 473, 501 (1997) (reporting NFL initially vetoed attempts of Rams to relocate until they agreed to pay a higher relocation fee); Leveling the Playing Field: Relevant Product Market Definition in Sports Franchise Relocation Cases, 2000 U. CHI. LEGAL F. 245, at 246 n.6 (2000) (suggesting real reason behind NFL’s allowance of Rams’ relocation was eventual agreement to pay relocation fee).

\textsuperscript{127} See \textit{St. Louis Convention & Visitors Comm’n}, 154 F.3d at 853 (noting Ram’s agreement to pay relocation fee and CVC’s agreement to pay $20 million of the fee which later defaulted on); Fisher et al, supra note 123, at 198-99 (discussing league’s refusal of first proposal and second agreement which included the relocation fee); \textit{St. Louis Loses Conspiracy Lawsuit Against NFL}, CBS SPORTSLINE WIRE REPORTS (Sept. 3, 1998) (noting St. Louis paid more than $70 million to acquire Rams including $20 million of $29 million relocation fee), at http://cbs.sportsline.com/u/football/nfl/1998/week01/news/stlouis90398.htm.

\textsuperscript{128} See \textit{St. Louis Convention & Visitors Commission}, 154 F.3d at 853 (noting a four week jury trial was held in which NFL won); see also Fisher, supra note 123, at 198 (explaining how "The St. Louis CVC claimed that NFL relocation policies had caused city to receive 'firesale' lease terms for its stadium or, equivalently, that NFL's relocation policies had caused city to greatly "overpay" to get Rams."); Angela Scafuri, \textit{Antitrust - Restraint On Trade - National Football League Relocation Policies do not Create an Anticompetitive Environment} - St. Louis Convention & Visitors Commission v. National
dome to sublease and manage, but they are controlled mainly by the city. Ultimately, the Rams moved into town with all moving expenses paid, 75% of advertising revenue from the dome, personal seat license revenue of $74 million, luxury suite revenue, $1.3 million per year in naming rights, and an opt-out provision if the dome is not ranked in the top 25% of all NFL stadiums. This deal allows the Rams

Football League, 9 SETON HALL J. SPORT L. 575, 577 (1999) (stating how “[CVC] brought an action against the NFL, alleging that the NFL rules for relocation violated both antitrust and tort laws.”).


See St. Louis Convention & Visitors Comm’n, 154 F.3d at 854 (noting actual terms were for 75% of first $6 million in advertising revenue and 90% beyond $6 million threshold); see also Erickson, supra note 109, at 635 (reaffirming 75% of advertising profits and naming rights fees were given to Rams to help lure them to St. Louis). See generally Parlow, supra note 31, at 518-19 (noting that 75% of stadium’s advertising revenue was given to Rams).

See St. Louis Convention & Visitors Comm’n, 154 F.3d at 854 (stating in return for relocating to St. Louis, Rams would receive all of ticket revenues from home games); see also Lisa-Michele Smith, supra note 25, at 324 n.101 (2000) (estimating PSL revenue at $75 million for St. Louis Rams); Parlow, supra note 31, at 518-19 (explaining “the agreement provide[d] for Rams to receive all $ 74 million generated by sale of PSLs.”).

See Parlow, supra note 31, at 518 (noting how team will receive all revenue from 122 luxury suites and additionally 6200 premium club seats); see also Erickson, supra note 109, at 635 (explaining that as part of city’s technique to persuade Rams to relocate, city offered all luxury box, ticket, and concession revenues). See generally St. Louis Convention & Visitors Comm’n, 154 F.3d at 854 (noting Rams would receive all ticket revenues from Rams’ home games).

See Negrin, supra note 20, at 508 (stating in addition to lack of a rental requirement, team retained $1.3 million naming rights for Trans World America (TWA) dome); see also Erickson, supra note 131, at 635 (noting Rams were offered 75% of all advertising and naming rights). See generally St. Louis Convention & Visitors Comm’n, 154 F.3d at 854 (noting Rams were to receive 75% of first $6 million in advertising revenue and 90% of remainder).

See Negrin, supra note 20, at 508 (discussing requirement of stadium being in top 25% of stadiums); see also Erickson, supra note 109, at 635 (describing escape clause stated “if the stadium fails to remain among the most lavish in football for ten years, the Rams are free to leave for greener pastures”); Jo Mannies, Rams Stay Is Tied to “Ranking” of New Stadium After 10 Years, ST. LOUIS POST-DISPATCH, Jan. 26, 1996, at 11A (questioning how one will determine or measure the top 25% of stadiums).
to keep virtually all revenue from the stadium.\footnote{See St. Louis Convention & Visitors Comm'n, 154 F.3d at 854 (explaining due to lease, Rams were to additionally obtain 100% of profit from concessions at Rams games, as well as a portion of concession profits from other events at dome); see also Parlow, supra note 31, at 518 (noting "the revenue-sharing facet of the financial agreement between the three governments and the Rams is lopsided in favor of the team"). See generally Erikson, supra note 131, at 635 (stating Rams franchise was given all ticket, luxury box, and concession revenues).} The CVC receives roughly $250,000 per year in what is deemed "rent" from ticket sales.\footnote{See St. Louis Convention & Visitors Comm'n, 154 F.3d at 854 (noting Rams agreed to pay CVC $25,000 rent per game, plus an additional half of game day expenses); see also Erikson, supra note 131, at 635 (discussing how city of St. Louis offered Rams very low rent ($250,000) for use of brand new, state-of-the-art domed stadium); Parlow, supra note 31, at 519 (discussing how St. Louis's portion of the revenue will be $250,000 rent and additionally $1 million in admission taxes and 25% of a portion of stadium revenue).} The city and state also get admissions taxes based on attendance, estimated at $1 million per year.\footnote{See St. Louis Convention & Visitors Comm'n, supra note 31, at 519 (stating in addition to annual rent, city was to receive annual admission taxes). See generally Mark S. Rosentraub, Defined Gross Revenues, the Triggering Event, and the San Diego Chargers: A Report on Economic Issues for the Citizen's Task Force on Charger's Issues, at 3 (Oct. 2002) (stating Defined Gross Revenues of NFL franchises include gate receipts minus net admission taxes and surcharges paid to stadium or municipal authorities), at http://www.sannet.gov/chargersissues/pdf/reportattachc.pdf.} It does not take a sophisticated financier to realize this lease is completely one-sided.\footnote{See Negrin, supra note 20, at 507 ("One sided leases have become the norm and are often the only way a city can keep its home team. Two prime examples come from recent franchise movements involving the St. Louis Rams...."); see also Parlow, supra note 31, at 519 (noting deal for lease cost taxpayer's hundreds of millions of dollars while providing a miniscule amount of return revenue). See generally Negrin, supra note 20, at 509 (quoting Joanna Cagan & Neil DeMause, Field of Schemes: How the Great Stadium Swindle Turns Public Money into Private Profit 1, 30 (1998)) (explaining effects of a city's desperation for a sports team, "[bly shackling themselves to these massive debts (and often massive cost overruns), cities may very well have allowed the further deterioration of local schools, roads, and public services").} It has also been widely regarded as one of the biggest sweetheart deals in sports franchise history.\footnote{David Elfin, Rams' Arrival Chases Away Those St. Louis Blues, WASH. TIMES, Dec. 17, 1995, at C1 (quoting former Philadelphia Eagles owner Norman Braman) (describing St. Louis deal as "the mother of all stadium deals"). But see Erikson, supra note 131, at 635 (stating "although the St. Louis deal could become a laughing stock, the St. Louis deal could equally probably become the best thing ever to happen to St. Louis."). See generally Parlow, supra note 31, at 519 (explaining how "[the] deal provides tremendous financial benefits for the Rams, enabling them to maximize profits and thus improve the worth of the franchise.").} But, the astonishing numbers are not what the Rams receive, but rather what the CVC loses, which ultimately falls on the city and state. The CVC paid nearly $300 million for the construction and maintenance of the stadium before any of the other costs, such as the relocation fee.\footnote{See St. Louis Convention & Visitors Comm'n, 154 F.3d at 853 (noting $258 million cost); see also Greenberg, supra note 103, at 392 (estimating cost of St. Louis's Dome to be} Taking this into account, the CVC gets back
about 10% of what they spend each year on the dome.\textsuperscript{142} This significant loss each year on the original investment is surely not what the St. Louis and Missouri legislators contemplated.

This deal shows the extremes that a city or state will reach in trying to obtain a franchise. It should be noted that part of this deal is due to the lack of bargaining power the city had.\textsuperscript{143} They already began building the stadium without a team, which was probably one cause for the extremes of the contract.\textsuperscript{144}

The reason this deal is cited by franchise owners is because it best supports their economic theory. This "sweetheart deal" allowed the Rams to increase their pay roll and attract better players,\textsuperscript{145} which subsequently led to the Rams being one of the most dominant teams in the league.\textsuperscript{146} They won the Superbowl

\textsuperscript{142} See Parlow, supra note 31, at 519 (noting how dome in St. Louis and lease with Rams has been a bad investment for local taxpayers). \textit{But see} Erikson, supra note 131, at 835 (explaining that although risks are tremendous in recent stadium deals and the dollar amounts staggering, their magnitude cannot categorically classify the deals as wrong). \textit{See generally} Negrin, supra note 20, at 508 (explaining how all in all, the "Rams' total subsidy over the 30-year term of lease will equal $1.07 billion, amounting to a public cost [to the city] of roughly $ 36 million per year").

\textsuperscript{143} See \textit{St. Louis Convention & Visitors Comm'n}, 154 F.3d at 853 (implying city's desperation when it failed to obtain an expansion franchise by stating that the result "forced the St. Louis football enthusiasts to adopt another strategy [by turning] their attention toward attracting an existing team."); \textit{see also} Erikson, supra note 131, at 835 (discussing how critics of local government stadium finance view lease as an absurd deal between city of St. Louis and NFL's Rams, where St. Louis was simply offering Rams so many rights to revenue in an attempt to coax Rams' to relocate).

\textsuperscript{144} See \textit{St. Louis Convention & Visitors Comm'n}, 154 F.3d at 853 (detailing fact stadium was constructed originally in a bid to win an expansion franchise, which later proved unsuccessful); Fisher et al., supra note 123, at 198 (noting lack of bargaining power city had in negotiations with franchise because of early construction). \textit{See generally} Scafuri, supra note 128, at 579 (discussing how CVC built Convention Center, which included a new football stadium as means for attracting one of two NFL expansion franchises).


\textsuperscript{146} See generally Dave Goldberg, \textit{The St. Louis Rams are Back as a Power in the NFC West Division} (Aug. 27, 2003) (stating St. Louis Rams dominated the NFL since 1999), at \textit{http://ca.sports.yahoo.com/030827/6/ugfg.html; St. Louis Rams History}, CBS Sportaline.com (showing since the stadium deal, the St. Louis Rams have made three playoff appearances, won two division championships, two conference championships, and one Super Bowl), at \textit{http://www.sportsline.com/nfl/teams/history/STL (last visited Feb. 3,}
in 2000, and once again advanced to the final game in 2002, where they lost to the New England Patriots. Owners argue the Rams success is due to the revenues made available by their stadium, and have allowed greater flexibility in contracting with players. This argument seems to fail because financial superiority does not always equal on-field success. Rather, it allows an owner to spend more carelessly, while still being able to make a profit.

Like the St. Louis example, there is nothing wrong with allowing a team to keep a large percentage of the revenue a stadium generates; in fact, this is probably preferred. But if a team does receive most of the stadium revenue, they should pay some of the cost to build the stadium. This solution shifts the risk of a team's failure on the franchise. When a team is allowed to take most of the stadium revenue in exchange for paying a portion of the stadium construction, they are taking the risk that the team will not be successful. The effect of fielding a losing team is that the owner can spend more carelessly, while still being able to make a profit.
team will result in lower stadium revenue because fewer people will attend the games. This will lead to the owner's profits being diminished because they have already committed resources to paying for the stadium construction over a period of time. This financing plan is preferable to the St. Louis plan. It allows a city to pay for a portion of construction, but promotes accountability in the team’s ownership, which the St. Louis Plan did not. A city should consider the stadium as an investment, and such investment requires accountability and smart financial decisions. Allowing teams to receive a large portion of stadium revenue makes these objectives possible.

V. JUSTIFICATION OF PUBLIC EXPENDITURES FOR STADIUM CONSTRUCTION

Much is made of how much a stadium costs the public, but a more basic question is why does a city or state feel compelled to
undertake such a massive project when they have limited resources? The reasons for these expenditures can be broken down into three main groups: job creation, economic stimulation, and attracting outside industries.\(^{155}\)

When stadium construction is undertaken, local politicians have to justify how public expenditures on behalf of a private organization will benefit their constituents.\(^{156}\) This is not a normal situation where a business receives property tax breaks or other incentives to move into a community.\(^{157}\) In a stadium deal there is an actual cash subsidy usually reaching the hundreds of millions of dollars.\(^{158}\) To calm worries about overspending, the first justification given is the creation of jobs.

It cannot be questioned that a stadium will create jobs.\(^{159}\) But further analysis shows that these jobs are usually very low

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\(^{155}\) See generally Jensen, supra note 55, at 438 (comparing economically diverse jobs promised by offering tax incentives to corporations that move to a city to those unskilled, low-end, seasonal jobs promised by offering tax incentives to build stadiums); Parlow, supra note 31, at 486 (stating three justifications for public funding: job creation, prestige and publicity to attract new businesses, and additional tax revenues); Robinson, supra note 55, at 158 (citing jobs and increased tax revenues as some of promised public benefits of stadium subsidies).

\(^{156}\) See Parlow, supra note 31, at 485 (explaining advocates of new sports facilities must convince the public of benefits of building new sports arenas or stadiums); Bandow, supra note 153, at B01 (describing justifications politicians offer constituents for stadiums, including municipal prestige, business development, and new jobs); Utt, supra note 154 (noting that Maryland officials justified stadium subsidies to lure the Browns from Cleveland to Baltimore by claiming that such subsidies would ultimately stimulate the local economy).

\(^{157}\) See generally Jensen, supra note 55, at 438 (discussing the differences in economic effects between corporations and professional sports franchises that receive tax subsidies to relocate or remain in specific locations); Beth Kassab, Orlando OKs Incentives to Lure Jet Blue, ORLANDO SENTINEL, Aug. 5, 2003, at C1 (reporting Jet Blue Airport's receipt of $1.7 million in incentives, including property tax rebates, to bring 150 jobs to the Orlando, Florida area); William Pack, Incentives Method OKed: Entity Created to Issue Bond for Land Toyota Needs, SAN ANTONIO EXPRESS-NEWS, Feb. 21, 2003, at 8B (describing a tax incentive package designed to lure a Toyota truck plant to San Antonio, Texas).

\(^{158}\) See Bandow, supra note 153, at B01 (observing in spite of a serious budget crisis, the Oregon legislature recently approved a $150 million subsidy to build a new baseball stadium in a bid to win the Expos from Montreal); Jensen, supra note 55, at 425 (noting Cleveland Indians received $155.7 million in subsidies to build Jacobs Field); Utt, supra note 154 (stating city of Baltimore provided $210 million in subsidies to construct Camden Yards for the Baltimore Orioles).

\(^{159}\) See generally Jensen, supra note 55, at 438 (noting stadium construction creates temporary construction jobs and unskilled, seasonal positions); Robert A. Schmoll, NAFTA Chapter 11 and Professional Sports in Canada, 36 VAND. J. TRANSNAT'L L. 1027, 1039 (2003) (stating while new stadiums can create some employment, economists label public investment in professional sports an ineffective and costly means of job creation); Sutter, supra note 154 (contrasting proponents' estimates of jobs created by stadium construction and the number of actual jobs created as reported by follow-up impact studies).
paying and low skill jobs.\textsuperscript{160} Further, if you look at the opportunity costs of stadium construction, such large expenditures could be used to create jobs directly.\textsuperscript{161} By funding various programs that develop skills and educate, the local government can realize a much higher return on its investment.\textsuperscript{162}

Stadium funds are also justified by the promise of a stimulated and vibrant economy - both locally around the stadium, and generally in the surrounding community.\textsuperscript{163} But a further look reveals how little a sports franchise can generate. Most franchises are a very small percentage of the overall economy in their local market.\textsuperscript{164} In fact, even multiple franchises in a given location cannot create an economic impact. For example, it has

\textsuperscript{160} See Susan R. Jones, Current Issues in the Changing Roles and Practices of Community Economic Development Lawyers, 2002 Wis. L. Rev. 437, 466 (2002) (noting jobs created at sports arenas are low-wage jobs insufficient to support families); Jensen, supra note 55, at 438 (explaining jobs created by stadiums are usually unskilled, low-end, and seasonal positions); Utt, supra note 154 (arguing stadiums use public money to create low wage, part-time, seasonal jobs that do little to enhance economic well-being of a city or its residents).

\textsuperscript{161} See Noll, supra note 154 (arguing that substituting spending for stadiums on recreational spending concentrates income, reduces the total number of jobs, and replaces full-time jobs with part-time low-wage jobs); Utt, supra note 154 (arguing that subsidized sports stadiums draw public funds away from other city uses and jobs such as new schools and better law enforcement); Zimmerman, supra note 53, at 15; Schmoll, supra note 159 (noting that a stadium is "ineffective and costly");

\textsuperscript{162} See generally Bast, supra note 35, (arguing stadium subsidies divert public funds from more important municipal projects); Nader, supra note 153, at B07 (suggesting funds diverted for a proposed Washington, D.C. stadium to lure the Montreal Expos will eventually negatively impact city services); Noll, supra note 154 (stating no recent stadium project that received subsidies appears to have generated reasonable return on investment).

\textsuperscript{163} See generally Paul J. Gessing, Public Funding of Sports Stadiums: Ballpark Boondoggle (Feb. 28, 2001) (noting proponents cite both economic and emotional arguments for stadium subsidies), at http://www.ntu.org/taxpayer_issues/ntuf_policy_papers/ntuf_policy_133.php3; Jensen, supra note 55, at 441 (noting those in favor of new stadium construction consistently claim stadium will bring economic benefits to the host city in form of new revenues); Noll, supra note 154 (describing economic rationale for stadium subsidies, including job creation); Allen R. Sanderson, In Defense of New Sports Stadiums, Ballparks and Arenas, 10 Marq. Sports L.J. 173, 176 (2000).

\textsuperscript{164} See Sanderson, supra note 163, at 174 (suggesting a franchise's economic impact is "simply too small to matter or to measure with sufficient precision in any econometric analysis"); see also Stadium Financing and Franchise Relocation Act of 1999: Hearing on S. 952 Before the Senate Committee on the Judiciary, 106th Cong. 21 (1999) (statement of Hon. Edith G. Prague, Connecticut State Senate) (opining a stadium has almost no impact, or even possibly a negative impact on a local economy); Thomas Kupper, A Bolt of Skepticism; Economists Question Whether Pro Sports Teams Like the Chargers Contribute Much to the Bottom Line of a Region, SAN-DIEGO UNION TRIB., July 7, 2002, at A-1 (rebuttering presumption stadiums have a positive impact on economy with academic studies finding effects to be much smaller than teams have said: "The studies have found that sports teams bring little new money into a region because they attract few out-of-town fans to games and do little if anything to raise overall incomes in a region.").
been estimated that the nine major sports teams in the New York City area only account for 0.3% of the regional economy. If this statistic is accurate, the impact of one team is virtually immeasurable. This is countered with the argument that outside jobs are created, which cannot be directly linked to a stadium's impact on the economy. While this may be true, most of these jobs are in the restaurant and tourism industries, which even the highest estimates show, only amount to 2-3% of a local economy. Even assuming there is increased spending in a particular area due to the presence of a stadium; it is possible that consumer spending is just shifting. Instead of creating new dollars coming into the local economy, the stadium is simply diverting money from other recreational activities. This

165 See Keating, supra note 5, at 18. See generally Raymond J. Keating, It's Time to Get Government Out of the Sports Business, USA TODAY, Mar. 2000 (estimating cost of Mayor Giuliani's 1999 scheme calling for new ballparks for Mets and the Yankees, new minor league stadiums in Brooklyn and Staten Island, a new domed football stadium on Manhattan's West Side and a new Madison Square Garden for the NBA Knicks and NHL Rangers at $5,000,000,000); Goodman, supra note 9, at 202 (pondering The New York City Comptroller's Offices' employment of a multiplier based on fan spending at local businesses to justify the Yankees (MLB), Mets (MLB), Rangers (NHL), Islanders (NHL), Devils (NHL), Knicks (NBA), Nets (NBA), Giants (NFL), and Jets (NFL) accounting for $1.15 billion in annual economic activity in New York City region).

166 See ROSENTRAUB, supra note 1, at 149-50 (stating of this 2% to 3% of economy tourism industries account for, actual effect of a stadium will only increase these industries' impact by a tiny fraction if at all, making this affect on overall economy minute); see also Senkiewicz, supra note 58, at 588 (citing David Lonergan's proposition that for every $1 million spent on professional sports, seventy-six jobs are created). See generally Gasper, supra note 30, at 363 (pointing to sports economists' studies noting jobs created by stadium, which include jobs to construct stadium and jobs to maintain stadium, sell concessions, etc., are generally low-paying and temporary, and consequently, do not have a large impact upon municipality's tax base).

167 See Stadium Financing and Franchise Relocation Act of 1999: Hearing on S. 952 Before the Senate Committee on the Judiciary, 106th Cong. 47 (1999) (statement of Dr. Mark S. Rosentraub, Professor and Associate Dean, School of Public and Environment Affairs at Indiana University in Indianapolis) (opining "[t]here is no evidence a team's presence generates economic development for a region. Sports facilities largely reshuffle existing spending for recreation among activities in a region."); see also Bast, supra note 35 (arguing construction of a new stadium does not suddenly expand a consumer's spending power, it simply shifts spending of entertainment money from another venue to new stadium). See generally Clayton P. Gillette, Symposium, The Law and Economics of Federalism: Business Incentives, Interstate Competition, and the Commerce Clause, 82 MINN. L. REV. 447, 477 (1997) (citing sports stadium subsidies as perfect examples of expenditures that suffer from miscalculation of benefits, susceptibility to agency costs, and deadweight losses).

168 See Stadium Financing and Franchise Relocation Act of 1999: Hearing on S. 952 Before the Senate Committee on the Judiciary, 106th Cong. 37 (1999) (statement of Dr. Andrew Zimbalist, Professor of Economics, Smith College) (explaining new sports facilities do not generate any or "new value-added" money in a region); see also Goodman, supra note 9, at 202-03 (concluding stadiums in a region, "realigns, rather than increases leisure spending."). But see Baim, supra note 20, at 448 (reasoning that [franchise]
creates little economic stimulus and a very poor return on the investment in a stadium.

The final argument espoused in favor of publicly funded stadiums is the attraction of outsiders into the community.\textsuperscript{169} This argument is advanced on two different levels. Some studies say it will attract visitors into the community which will create an increase in tourism.\textsuperscript{170} The problem with this rationale is that new stadiums are independent entertainment complexes. Even if a large portion of non-residents enter the community they are unlikely to spend more money because they have all the essential products, such as food and merchandise, at the stadium.\textsuperscript{171} Also, it has been noted that even if the hospitality industries like restaurants and hotels did benefit, they are too small a percentage of the overall economy to have any significant effect.\textsuperscript{172}

The other argument supporting the theory that a stadium will attract outsiders relates to corporate residents. Some feel that luring a professional sports team into a community will increase the community's attractiveness to industry.\textsuperscript{173} However, if this is

relocations from city core to nearby communities will reduce economic activity in vacated downtown areas, and increase economic activity in the suburbs).


\textsuperscript{170} See Adams, supra note 5, at 676 (discussing Massachusetts legislative findings that a stadium would increase tourism revenue); Goodman, supra note 9, at 195-96 (noting a number of stadiums are funded with taxes on hotels and rental cars, which can have a negative effect on tourism).

\textsuperscript{171} See Bast, supra note 35, at 10 (referring to modern stadiums as, "self-contained fortresses, with restaurants, gift shops, hotel rooms, and even night clubs"); see also \textit{Build Them and They'll Come}, ESTATE'S GAZ. (London), Aug. 19, 2000, at 50 (discussing 'superstadiums' that incorporate hotels, restaurants, and shops); \textit{Perfect Pitch}, MARKETING WEEK, Mar. 29, 2001, at 65 (pointing out most stadiums being built will have corporate entertaining facilities, including restaurants, lounges and perhaps syndicate rooms for meetings and conferences).

\textsuperscript{172} See \textit{ROSENTRAUB}, supra note 1, at 149-50.

\textsuperscript{173} See Bast, supra note 35, at 6 (discussing argument that stadiums attract business to a community); Smith, supra note 12, at 47 (noting the argument that a stadium is a "magnet" for outside business). \textit{But see} Lee Leonard, \textit{Tax-Break Deals are Discounted as Job-Makers}, COLOMBUS. DISP., Apr. 24, 1996, at 2B (quoting David Swindell, a professor of urban affairs at Wright State University) (proffering his theory that major league cities do not attract businesses because of their sports but because of their operating conditions, qualified work force, airports and transportation systems).
a goal of the local government, there are many more direct ways to attract industry than by building a sports facility. Local governments can offer property tax breaks or other special incentives that are less costly and can directly create new jobs.\textsuperscript{174} This job creation could bring new money into the economy, instead of just recycling the old.\textsuperscript{175} Additionally, the availability of a professional sports franchise will have little if any relevance in a company's decision to relocate.\textsuperscript{176} The economic factors of a community, including labor costs, will be weighted much more heavily than the availability of a professional sports franchise.\textsuperscript{177} A city could invest in giving corporate tax breaks or other incentives that would greatly


\textsuperscript{175} See Stadium Financing and Franchise Relocation Act of 1999: Hearing on S. 952 Before the Senate Committee on the Judiciary, 106th Cong. 47 (1999) (statement of Dr. Mark S. Rosentraub, Professor and Associate Dean, School of Public and Environment Affairs at Indiana University in Indianapolis); see also Oram, supra note 110, at 198 (acknowledging proponents claim public subsidization of new stadiums sets "multiplier effect" into motion, as increased local income in turn creates more new spending and more new jobs) (emphasis added).

\textsuperscript{176} See ROSENTRAUB, supra note 1, at 151 (noting that cost of labor is most important factor in a business relocation, while availability of a sports franchise is not considered relevant); see also Bast, supra note 35, at 10 (arguing it is absurd that a CEO of a Fortune 500 company would even factor in the proximity of professional sports in making a decision to relocate a business). See generally Edwin R. Render, Can Tort Law Be Used to Save Blue Collar Jobs in the United States?, 29 CAL. W. INT'L L.J. 175, 175-81 (citing improved access to raw materials, proximity to customers, and cost of labor as factors contributing to relocation decisions).

\textsuperscript{177} See Sepulveda, supra note 25, at 146-47 (noting how Maryland created jobs using special economic incentives at a much cheaper rate than a new stadium provided); see also Erickson, supra note 109, at 632-33 (examining need for a federal fix to "race for the bottom", based on fears that because of competition between local governments for scarce resources, including professional franchises, local governments will continually force one another to offer greater and greater incentives to industry, to point where local governments hurt themselves and no longer benefit from the industry they attract); Steve Massey, North Star, the Twin Cities, and Pittsburgh Are A Lot Alike. So Why Has Minneapolis-St. Paul Created Four Times As Many Jobs In the 90's?, PIT. POST-GAZETTE, May 18, 1997, at H7 (describing how a "top-notch" school system is a major factor in attracting industry).
VI. ALTERNATIVE SOURCES OF REVENUE

The tension in the stadium financing debate is centered on an owner’s lack of capital to fully fund a stadium. Due to this lack of revenue, owners seek outside contributions, which leads local governments into making their funds available. One solution to the stadium construction debate is to attract third parties to invest. One of the most significant and successful examples of this is Pacific Bell Park in San Francisco. Pac Bell

178 See Sepulveda, supra note 25, at 146-47 (discussing economic incentives used by the state of Maryland to benefit the local economy). See generally Leslie Reed, Corporate Taxes to Fill Budget Gap: Gov. Johanns and the Revenue Committee Are Working on a Surcharge or a Filing Change to Make up $35 Million, OMAHA WORLD NEWS, Mar. 12, 2002, at 1A (discussing tax credits given to corporations that expand in the state of Nebraska); Tony Munroe, Study: Corporate Tax Breaks Yield Marginal Benefits, BOS. HER., Mar. 5, 1996, at 018 (quoting Robert Tannenwald, author of a study on corporate tax incentives) (stating that “[b]usiness tax incentives are an uncertain tool of economic development.”).

179 See Parlow, supra note 31, at 488-89 (noting a franchise’s lack of capital to fully fund a stadium); see also Steven Pearlstein, Major League Baseball’s D.C. Playoffs, WASH. POST, Jun. 27, 2003 (discussing relationship between franchise price and financing of new stadiums); Mt. Clemens Needs More Answers Before Approving Ballpark, DET. NEWS, Apr. 10, 2003, at 14A (examining a financing scheme where if team failed to succeed financially, the stadium would revert back to the city).

180 See Schmoll, supra note 159, at 1027 (stating “local governments in the United States have invested heavily in professional sports franchises by building stadiums and arenas, hoping either to prevent the home team from moving out or to entice someone else’s home team to move in.”); see also Curtis Eichelberger, Filling the Emptiness: Stadiums Host Weddings, Concerts as Sports Franchises Seek Cash, HOUS. CHRON., June 22, 2003, at Sports 1 (pointing out The Cardinals under owner Bill Bidwill, the Cowboys owned by Jerry Jones and Lions owned by Bill Ford Jr., chairman of Ford Motor Co. and other family members, pitched for local governments to help pay for [stadium projects] by selling bonds or giving them grants by arguing multiple-use stadiums would generate new tax revenue and economic development); Nicholas D. Kristof, Governor Bush’s Journey: Breaking Into Baseball, N.Y. TIMES, Sept. 24, 2000, at 1 (suggesting George W. Bush and his fellow owners got local government to seize property of other landowners and, in effect, hand it over to Texas Rangers so they could make a profit on it, as well as negotiated a huge public investment in The Ballpark at Arlington).

181 See Senkiewicz, supra note 58, at 601 (opining professional sports is a very successful private industry, not in need of massive public subsidies, and as such, steps must be taken to ensure that stadium financing is accomplished through mainly private means, thus eliminating professional sports as a welfare recipient); see also Al Lewis, Pepsi Center Financing in Place; Revenue-Backed Securities Raised Nearly $140 Million, All From Private Investors, ROCKY MTN. NEWS (Denver), July 31, 1998, at 1B (illustrating benefits accorded to private investors, such as Ascent Entertainment Group, financiers of the Pepsi Center, who will receive an economic development package that includes infrastructure improvements and property tax deferments). But see Parlow, supra note 31, at 513-15 (proffering argument that if a new sports facility were not subsidized, the interest and amortization for the arena or stadium would be too expensive for any private investor to afford with the anticipation of making the investment profitable).
opened at the beginning of the 2000 season as the home field for the San Francisco Giants. This stadium was a successful private venture by China Basin Ballpark Corp., a subsidiary of the Giants and private investors. China Basin secured a loan for $170 million, and solicited Pacific Bell, a regional telephone company, for $50 million in naming rights. They also received other corporate sponsorship totaling $61 million. The city of San Francisco contributed an estimated $15-20 million indirectly through its redevelopment agency for infrastructure improvements around the park. The owners then used the Personal Seat Licensing (PSL) technique to secure another $70 million. The entire estimated cost of $306 million was raised

182 See Dan Krauss, Elster’s 3 Homers Help Dodgers Win 1st Game at Pacific Bell Park, CHIC. SUN-TIMES, Apr. 12, 2000 at 132 (noting Giants won their first game played at Pac Bell Park); Evelyn Nieves, Opening Day for Big Wallets and a New Stadium, N.Y. TIMES, Apr. 12, 2000 at A26 (rehashing previous day’s opening festivities); James Rainey, Debut of a Glittering New Diamond: Baseball: Rents Are Soaring Near Giants’ Pac Bell Park, As Is San Francisco Civic Pride, L.A. TIMES, Apr. 11, 2000, at A1 (discussing opening day around Pac Bell park). Pac Bell Park has since undergone a name change to SBC Park due to the acquisition of Pacific Bell by SBC Communications.

183 See Patrick Reusse, Pac Bell Brouhaha; Owner Needs Ego Massage, STAR TRIBUNE (Minneapolis), Oct. 23, 2002, at 1C (stating Pac Bell was first privately financed major league baseball stadium since Dodger Stadium); Larry Stone, Pac Bell’s Splendor Years From Stick’s, SEATTLE TIMES, Oct. 22, 2002, at D1 (noting stadium was built entirely with $335 million of private funds); Ballparks, Ballparks.com (discussing financing strategy of Pac Bell park), available at http://www.ballparks.com/ baseball/national/pacbel.htm (last visited Feb. 3, 2004).


185 See Carol Emert, Anheuser is $35 Million Pac Bell Sponsor, SAN FRAN. CHRON., May 23, 1997, at B1 (listing Anheuser-Bush as corporate sponsor); see also Mary Wade Burnside, Catchy Commercial Helps Stoke MasterCard, MLB Sponsorships; Auds & Arenas, AMUSEMENT BUS., Dec. 3 2001, at 10 (observing San Francisco Giants have corporate sponsorships with both MasterCard and Visa); MLB Sports Facility Reports, supra note 184 (noting various components of facility financing).

186 See Christopher Carey, Two Privately Financed Stadiums May Hold Lessons For Cardinals; Homes of Patriots and Giants Have Features That Cut Risk, Saved Money, ST. LOUIS DISPATCH, Sept. 29, 2002, at A6 (noting Bay Area voters rejected measures to provide public funding to the stadium, but city was able to contribute $15 million for structure improvements); Goodman, supra note 9, at 221 (estimating public contribution at $26 million); MLB Sports Facility Reports, supra note 184, at 13 (estimating public contribution to be $15 million).

187 See Goodman, supra note 9, at 221 (accounting for more than $70 million in funds from seat licenses and club seats); MLB Sports Facility Reports, supra note 184, at 13 (listing charter seats as part of facility funding); see also Richard Alm, The Cost of New Parks, Paying Nosebleed Prices; Fans Appear Willing to Pay More Money, SEATTLE TIMES,
through these various techniques, and more notably did not require any extra expenditure by the local government.\footnote{See Carey, supra note 186, at A6 (observing that park was built with private funds due to lack of public funds); Goodman, supra note 9, at 221 (discussing various techniques used to raise funds); Joe Holleman, Giants' Ballpark and its Eclectic Neighborhood Cover All the Bases, ST. LOUIS DISPATCH, Oct. 12, 2002, at 14 (stating $306 million projects was built almost entirely with private funds).}

Some believed this privately financed stadium would mark the end of a great baseball tradition because the team's revenue stream would be harmed. To the contrary, the team has prospered since the new stadium, with sell-outs for nearly every game, one of the league's higher payrolls, and advancing to the World Series in 2002.\footnote{See Major League Baseball Payrolls, USA TODAY, Nov. 13, 2002, at C9 (showing San Francisco Giant's payroll increasing in 2002 by 18% from 2001); see also Rafael Hermoso, Giants Make it a Wild Card World Series, N.Y. TIMES, Oct. 14, 2002, at D1 (discussing Giants making it to 2002 World Series); Giants Sign Cruz, Name him Starting Right Fielder, SEATTLE TIMES, Jan. 29, 2003, at D8 (noting Giants' payroll is at $75 million).} The Giant's organization has shown what a successful blend of private financing and team contribution can create.

A. Corporate Naming Rights

As San Francisco has proven, there are other alternatives to publicly funded stadiums. The combination of private investment and team contribution can create a successful stadium and team.\footnote{See Charles Bricker, NFL Knows About Building; Expansion Contrasts With Contraction and Ballpark Woes, SUN-SENTINEL (Fort Lauderdale), Nov. 9, 2001, at 6C (quoting NFL Commissioner Paul Tagliabue) ("We believe new stadiums in our existing cities are a good thing for everybody – teams, fans and communities."). But see Bob Weimer, A Jets Stadium Offers Suffolk No Bargain, NEWSDAY (N.Y.), Mar. 13, 2000, at A26 (concluding new stadiums do no produce economic growth in metropolitan areas). See generally Darrell Williams, State-of-the-Art Arena is Focus of Benson's Financial Strategy; He Links Projects to Revitalizing of Urban Corridor, TIMES-PICAYUNE (New Orleans), June 27, 2001, at 1 (finding even with private investment and NFL loans, securing additional money needed from public can be very difficult).} There are several alternatives emerging as alternative sources of revenue to fund a stadium construction. The San Francisco development utilized one of these profitable and growing trends in sports today, corporate naming rights.\footnote{See W.S. Miller, Sports Facilities and Development: "What Do You Mean My Facility is Obsolete!": How 21st Century Technology Could Change Sports Facility Development, 10 MARQ. SPORTS L.J. 335, 343 (2000) (observing that naming rights and sub-naming rights are lucrative ways to obtain sponsorship dollars); Media Market – Sport Plays the Naming Game, MEDIA WEEK, Dec. 17, 1999, at 8 (discussing benefits of naming rights to corporate sponsor); see also What's in a Stadium's Name?, SPORTS
The San Francisco Giants received $50 million from Pacific Bell to acquire the naming rights to the stadium.\textsuperscript{192} In more recent events, Reliant paid $300 million for naming rights of the home of the new NFL franchise in Houston to be named Reliant Park.\textsuperscript{193} In Maryland, just outside Washington D.C., the Washington Redskins entered into a contract with Federal Express for a $205 million, 27-year deal.\textsuperscript{194} These partnerships with corporations provide the essential third party to invest in such a large project.\textsuperscript{195} They also prevent local governments from expending funds they simply do not have. The team also benefits from a naming agreement.\textsuperscript{196} Instead of taking on debt to finance a stadium, which could harm revenues until the debt is paid, this is a two-way transaction. The team gets a stadium,
while the corporation receives valuable advertising to a large portion of the community. By creating this two-way system of benefits, the team can protect its existing revenue and use any increases from a new stadium to re-invest in personnel on the field.197

B. League Contribution

Another means of privately financing a stadium is through a league-sponsored program. In 1999 the NFL took a pro-active approach to stadium finance and realized that a source of capital from a third party was needed.198 The league adopted resolution G-3, which will contribute between 34% and 50% of the cost of a stadium on a case-by-case basis.199 The money will come partially from the team and partially from league revenue.200 The league’s contribution comes from the most recent $17.6 billion television contract.201 Because this is a steady source of income for the league until 2006 it can commit to this program

197 See Berger, supra note 193, at A1 (explaining under Reliant’s naming deal, the NFL franchise team will receive about 75% of $10 million Reliant will be paying yearly); Holleman, supra note 188, at 14 (stating Giants’ revenue from corporate sponsorships enables them to “afford Barry Bonds and a formidable crew to surround him.”); see also Emert, supra note 185, at B1 (articulating Anheuser-Busch will pay $35 million over ten years to be a corporate sponsor of the Giants).

198 See Oram, supra note 110, at 193 (noting NFL created a stadium financing plan to help prevent franchises from relocating by loaning them substantial money upfront); see also Cosmo Macero, Jr., Mass. Plan Worth a Good Deal More, BOSTON HERALD, Apr. 30, 1999, at 45 (asserting NFL’s stadium financing provision will enable the New England Patriots to build a new stadium for as little as $125 million out-of-pocket); see also Kevin Seifert, Extension Is Possible For Stadium Financing, STAR TRIBUNE (Minneapolis), Mar. 20, 2003, at 2C (commenting $650 million has been funded by the NFL to help build or renovate stadiums).

199 See Goodman, supra note 9, at 220 (explaining G-3 resolution takes visiting team’s revenue and places it into a fund for stadium construction that allows large market teams to use fund for a maximum of 50% of cost of stadium); see also Brian Allee-Walsh, NFL Offers Stadium Loans; Benson Could Receive up to $100 million, TIMES-PICAYUNE (New Orleans), Nov. 17, 2000, at 14 (explaining under G-3 Resolution, NFL teams can receive NFL backing capped at $150 million for stadiums in top six markets and $100 million for those below that level); Macero, supra note 198, at 45 (quoting a president of a sports financing company as stating G-3 provision is “a loan that really doesn’t ever get repaid”).


without worry of economic downturns. The G-3 program has been utilized for several stadiums, including the new football stadium in Philadelphia, which opened in the 2003 season. The Philadelphia stadium is almost 80% privately financed, due in large part to league and team contributions that totaled $310 million. This program can be a valuable asset to not only a team looking to build a stadium, but a city debating how much public money should be spent. Other professional sports leagues should consider instituting programs similar to the G-3 program, especially if a lucrative television deal is in place.

C. Personal Seating Licenses

Another third party revenue source is the fans that actually benefit from the stadium. For many recent stadium constructions, personal seating licenses (PSLs) have been sold. This license allows an individual fan to pay a fixed price to obtain the right to a seat in the stadium. For each game at the stadium, the PSL holder is notified and has a chance to purchase the tickets before anyone else. If a PSL holder no longer wants to continue purchasing these tickets they can opt out of the

202 See Rick Westhead, NFL Won't Exercise Option to Reopen Contract with TV Networks, STAR TRIB. (Minn.), Feb. 8, 2003 (noting NFL's option to opt out of current television contract, but league decided not to exercise this right causing contract to run until 2006); see also Paul Tagliabue, Remarks at the Economic Club of Washington (Dec. 11, 1996) (commenting on league's decision to retain its contract), at http://www.economicclub.org/Pages/archive/fulltext/arch-tagliabue.htm.


204 See NFL Sports Facility Reports, supra note 152, at 13 (indicating total amount of league's contribution); see also Jeff Young, Eagles Hope to be Worthy of New Home: Set to Open in 2003, Lincoln Field a Huge Improvement Over Vet, INTELLIGENCER J. (Lancaster, PA), Jul. 17, 2002, at C-1 (detailing percentage of private financing at Lincoln Financial Field). See generally Eagles and Phillies to Get New Homes, N. Y. TIMES, Dec. 21, 2000, at D7 (indicating financial underpinnings of Lincoln Financial Field).

205 See Parlow, supra note 31, at 503 (stating this type of financing started in 1971 during construction of Texas Stadium in Dallas); see also 72,000 PSLs say the NFL was wrong, ST. LOUIS POST-DISPATCH, Feb. 9, 1995, at 1D (detailing success of stadium seating licenses). See generally John Patterson, Stadium Seat Licenses a Personal Issue, CHIC. DAILY HERALD, Dec. 1, 2000, at 10 (indicating financial underpinnings of Lincoln Financial Field).

206 See Goodman, supra note 9, at 189 n.64 (discussing dynamics of Personal Seating Licenses); see also Oakland Football Marketing Association Prorates Price of Personal Seat Licenses to 60 percent of Original Cost, BUS. WIRE, Apr. 28, 2000 (commenting on relationship between seating licenses and stadium funding). See generally Mark Stewart, UW Board to Consider Seat-License Measure, MILWAUKEE J. SENTINEL, Oct. 21, 1999, at 9 (detailing effects of seating licenses on overall franchise revenue).
agreement or sell the license to a third party.\textsuperscript{207} Consequently, in some cases reselling a PSL can be very profitable.\textsuperscript{208} For teams with a strong fan base of season ticket holders this can be a very lucrative revenue source. In San Francisco, the Giants raised almost $70 million from PSL’s alone.\textsuperscript{209}

PSL’s are a fair and successful way of raising large amounts of capital. They allow the beneficiaries of the stadium, the fans, to contribute to the cost. For this contribution they receive a valuable license. This two-sided transaction is a balanced approach with both sides benefiting, unlike the one sided transaction of a city contributing money and getting little back in return.\textsuperscript{210}

D. Luxury Suites

Another form of third party investment is a luxury suite.\textsuperscript{211} Typically corporations will be the ideal consumers due to the high cost and large number of people involved. Usually a suite holds 15-20 people and has its own bathroom, living room style seating, and is enclosed from the elements by a glass window. Luxury suites in the NFL can range in price from $50,000 to well over $100,000.\textsuperscript{212} The benefit of the luxury suites is not just the large amount of revenue they generate, but that they are normally purchased for more than just one season, creating

\textsuperscript{207} See Fraas, supra note 55, at 223 (stating a PSL can be sold at any time).

\textsuperscript{208} See Ralph C. Anzivino, Reorganization of the Professional Sports Franchise, 12 MARQ. SPORTS L. REV. 9, 53 (2001) (discussing how valuable a PSL can be). See generally Stewart, supra note 206 (discussing University of Wisconsin’s plans for PSL’s).

\textsuperscript{209} See Goodman, supra note 9, at 221 (indicating use of PSL’s in San Francisco); see also Greg Gatlin, San Fran’s Pitch Pays Off, BOSTON HERALD, May 25, 1999, at 30 (detailing success of private funding in San Francisco).

\textsuperscript{210} See Anzivino, supra note 208, at 47 (indicating benefits of a balanced approach to stadium financing); see also Haudricourt, supra note 209 (detailing success of a balanced approach in San Francisco).

\textsuperscript{211} See Anzivino, supra note 208 at 48 (detailing the effects of luxury suites); see also Ben Brown, Luxury Suite: Business Tool, USA TODAY, Sept. 21, 1993, at 9C (arguing benefits of luxury suites); Christopher Lopez, Elite Seat: Luxury Boxes Where Big Bucks Are, DENVER POST, Aug. 14, 1994, at A-13 (indicating use of successful luxury suites).

stable income no matter the economic climate.\textsuperscript{213} Also, initial payments can be obtained before stadium construction is underway due to the increasing demand for these suites, thereby generating construction revenue.\textsuperscript{214}

Both luxury suites and PSL's are significant sources of fan-based revenue for most teams today.\textsuperscript{215} The advantage of both is the considerable amount of revenue that is obtained before construction even begins. Along with the fan based revenue sources, any third party, such as a corporation or professional sports league, should be considered to avoid public expenditures. By utilizing outside sources of revenue the pressure placed on local governments to contribute is decreased. Additionally, by allowing fans and other outsiders to contribute, the burden is shifted to the true beneficiaries of the stadium.

\section*{VII. Changes in Stadium Finance Through Tax Reform}

Some type of reform is needed in the area of stadium financing. One initial point to realize in developing a process of reform is that stadium financing is very unique in each occurrence. There can be no rigid rules with multiple requirements to get the optimal result in every situation. Rather, a system should be developed that creates incentives to act in a certain way. The goal is to encourage fiscal responsibility and shift the burden to those who benefit most from a stadium. Not only must the system itself be flexible, but also each individual plan must be designed to encounter changing revenue streams, and economic downturns in both the sports industry and the local or national economy. This flexibility for stadium finance can be achieved through changing the Internal Revenue Code to encourage and shape behavior, not control.

\begin{itemize}
\item \textsuperscript{213} See Bowling, \textit{supra} note 3, at 680 (characterizing PSL revenue as "money out of thin air").
\item \textsuperscript{214} See Parlow, \textit{supra} note 31, at 504 (noting how PSL and luxury suite revenue do not count against the 10\% tests to determine tax treatment of construction bonds, thereby allowing this money to help pay off the construction of a stadium). See generally Anzivino, \textit{supra} note 208, at 48 (stating luxury suites are second to only television revenue as revenue generator).
\item \textsuperscript{215} See Anzivino, \textit{supra} note 208, at 47-54 (detailing extensive use of PSLs and luxury suites); Goodman, \textit{supra} note 9, at 188-89 (acknowledging luxury suites and PSLs are a major source of revenue for owners).
\end{itemize}
Before any public money is committed to a stadium project, private sector capital sources should be utilized. As mentioned, stadium naming rights, league contribution programs, and private investment are all possible sources.\footnote{See Anzivino, supra note 208, at 47-59 (detailing various methods of financing); Goodman, supra note 9, at 224-25 (including naming rights as an important source of private stadium funding).} Once these third party sources have been exhausted, team contribution should be the next goal. By requiring a franchise owner to contribute to the cost of construction, while allowing them to keep a majority of stadium revenue, ensures a system of accountability.\footnote{See Anzivino, supra note 208, at 12-15 (indicating accountability benefits of private as opposed to public reorganization); Goodman, supra note 9, at 224-25 (recommending stadium subsidies should come from those who enjoy benefits of stadium).} The franchise owner is taking the risk that a team will not succeed on the field, by agreeing to make payments on the debt each year. To do this the owner will have more of an incentive to ensure the stadium revenue will exist to cover these expenditures. If a team struggles on the field, the stadium revenue will decline. This creates a different incentive than what currently exists today. In this scenario the team owner has an incentive to win, but also just as powerful of an incentive not to simply line his or her pockets with the value from the stadium. This pressure not to lose can place more accountability on the franchise owner’s economic decisions.\footnote{See generally Rick Horrow, Across America, Cities Dream (Lucrative) Stadium Dreams, SUN-SENTINEL (Ft. Lauderdale), Feb. 4, 1998, at 25A (explaining teams with significant stadium revenues are winning teams); Alan B. Krueger, Economic Scene; Take Me Out to the Ballgame, But Don’t Make Taxpayers Build the Ballpark. The High Cost and Low Benefit of Sports Subsidies, N.Y. TIMES, Jan. 10, 2002, at C2 (proposing owners who pay billions in players’ salaries are in better position to finance stadiums rather than utilizing public money to subsidize such facilities); David Markiewicz, Falcons’ Dome Deal No Longer So Sweet: Multiyear Lease Hasn’t Aged Well, ATL. J. AND CONST., Jan. 14, 2002, at 8A (stating Falcons need to win more games to improve attendance, thus raising revenue).}

Shifting the risk of loss due to a team’s failure to the owner is justified.\footnote{See generally Glenn Dickey, New Parks No Answer For Sagging Crowds, SAN FRAN. CHRON., Jul. 6, 2002, at C2 (stating owners are under pressure to produce winning teams for people to actually pay to see games); J. F. O’Toole, Holding Up Our End, PITT. POST-GAZETTE, Feb. 14, 1999, at D3 (expressing how public desires for franchise owners to provide winning teams when it is public funds being used to finance stadiums).} The franchise owner is the person ultimately making personnel decisions affecting the on field success. It naturally follows that there should be some consequence to a bad decision. Repositioning this risk creates a check on the ownership of a franchise and protects cities from bearing the burden of an under
performing team. A city is also protected from a franchise owner using the stadium to simply add to his or her wealth.

Once private sources and the franchise itself have contributed, a city or state will likely be the next source.220 In some instances public expenditures can be a positive investment.221 A city can give relief from property taxes, donate land, or provide funds to upgrade infrastructure.222 The key is for local leaders to realize that any expenditure is an investment, not a complete subsidy. Community leaders should restrain themselves from committing huge amounts of capital to fund a project alone. One way to encourage fiscal responsibility of this nature is to create incentives to conform to this policy.

The federal government can shape behavior through federal tax legislation.223 It is through this legislation that Congress can promote certain policies, while still maintaining a flexible system. The legislation should merely offer benefits if conformed with, but no extreme penalty for non-compliance.224 It is this

220 See Dave George, Baseball-Happy Boston Fits Fanciful Henry, WASH. TIMES, Mar. 11, 2003, at 5C (exhibiting one team's view that public funding of stadiums is necessary); Parlow, supra note 31, at 489 (noting need for outside contribution falling on local government because franchise can not afford entire cost of new facility).

221 See Goodman, supra note 9, at 207-08 (arguing in some instances stadiums can produce a positive return on a local government's investment); Parlow, supra note 31, at 507-08 (noting several circumstances that can make a stadium a profitable investment for a municipality). But see Richard P. Cole, Law, Sports, and Popular Culture: The Marriage of a Relationship Scorned, 25 W. NEW. ENG. L. REV. 431, 448 (2002) (explaining expected benefits of a stadium are either much smaller or do not materialize).

222 See MLB Sports Facility Reports, supra note 184, at 13 (noting San Francisco's small contribution to Pac Bell Stadium for infrastructure); see also Robert Bacon, Initial Public Offerings and Professional Sports Teams: The Regulations Work, But Are Owners and Investors Listening?, 10 SETON HALL J. SPORTS L. 139, 164 (2000) (explaining how Maryland provided $400 million of stadium funding for Camden Yards through sale of lottery tickets).


224 See David Conn, Section 89 Foes Glad for Delay, J. COMMERCE, Sept. 5, 1989, at 9A (showing how some sections of tax laws are so complex that costs of determining compliance may be higher than penalties for failing to comply); Planned Law Will Penalise Moral Right to Avoid Tax, EVENING POST (Wellington), Apr. 22, 1996, at Business 11 (expressing view that tax benefits should only be taken away, and no penalties imposed for non-compliance with certain new tax law being discussed). See generally Kang Beng Hoe, Call for Formal Advance Ruling System, BUS. TIMES (Malaysia), Sept. 11, 2003, at 4 (explaining proposal of advanced tax ruling system in
framework that can be used to reform the process of stadium finance.

The first thing that should be undertaken is eliminating bonds issued for stadium construction from § 141 of the Internal Revenue Code (I.R.C.). In doing so, this would eliminate the 10% private security test, which does not allow the stadium to fund itself. Exemption from § 141 would permit a local government to issue bonds, but allow stadium revenue to fund the bond repayment. If public contributions were issued for stadium construction, bonds issued for the project would have tax-exempt interest. However, Congress should not let this go completely uninhibited. A cap should be imposed on the amount of tax-exempt bonds that can be used for a particular stadium construction. This is similar to what Congress already imposes on qualified private activity bonds. I.R.C. § 146 places a cap on the amount of qualified private activity bonds that can receive tax-exempt status. Congress can create a cap especially for stadium construction bonds, which could limit the federal government’s subsidization to an amount it feels is appropriate. Congress could make things simpler and classify them as qualified activity bonds under § 146. However, this would

which taxpayers would be able to obtain advance rulings concerning complex tax laws, in which penalties for non-compliance would be minimized or avoided).

225 See Erickson, supra note 109, at 641 (advocating the elimination of the “entire private activity analysis”).

226 See I.R.C. § 141(a)(1)(B) (2003) (defining private activity bond which meets the private security or payment test of paragraph two of same section); see also Lathrope, supra note 37, at 1162-64 (expressing federal tax subsidy for professional sports facilities should be either repealed or limited); ZIMMERMAN, supra note 53, at 10 (explaining how the stadium can not finance itself under the current rules).


228 See I.R.C. § 146(d) (explaining state ceiling on tax exempt private activity bonds as the greater of $225 million or $75 multiplied by the state population); see also Robinson, supra note 55, at 140 (speaking of concerns which prompted Congress to impose such state ceilings on tax exempt private activity bonds); Yamamoto, supra note 38, at 160 (discussing purpose of the volume cap requirement under I.R.C. § 146).

229 See I.R.C. § 146 (listing enumerated qualified activity bonds falling within exception to volume caps on private activity bond). See generally Bordson, supra note 83, at 523 (discussing how Congress has not included sports facilities in its list of tax-exempt facilities in its categorization of publicly funded, tax free private activity bonds); Yamamoto, supra note 38, at 160 (explaining whether bond is qualified private activity bond depends on purpose for which its proceeds are used).
result in some important projects not being funded because the stadium construction would take its place under the ceiling.\(^{230}\)

To avoid undercutting other programs that receive tax-exempt bonds under § 146, stadium construction bonds need to be classified separately.

The most important aspect of this plan would be to place the cap or ceiling for tax-exempt status of these special stadium bonds on the team. If the cap of these specific bonds is on the local or state government, teams could simply shop around from city to city.\(^{231}\) In addition to the cap on the franchise, a time limitation will also apply to the use of tax-exempt bonds. This is similar to the time limitation placed on the seller of a home under I.R.C. § 121, limiting the exclusion to once every two years.\(^{232}\) This time limit on the franchise should extend for at least 10-15 years. By placing a time limit on the use of bonds that will receive tax-exempt interest, a team cannot leave one city that financed a stadium with tax-exempt bonds after several years for another community who will also finance a stadium in a similar fashion. This would not restrict the movement of a franchise, but would deter it due to the increased cost of a stadium.\(^{233}\)

By establishing these incentives a city also has some leverage to bargain with a franchise over the terms of a stadium, due to the fact that the cap and time restriction are on the franchise, not the government. This levels the playing field and could slow the franchise relocation problem.\(^{234}\)

\(^{230}\) See Zimmerman, supra note 53, at 14 (discussing how grouping stadium bonds with qualified private activity bonds under I.R.C. §146, would cause some needed projects to go unfunded); see also Bhasin, supra note 41, at 199 (expressing there may be some validity to view that sports stadium may not be best use of tax dollars that could be used elsewhere in community); Robinson, supra note 55, at 167 (predicting if bonds for stadiums were included under volume cap of I.R.C. § 146, bonds for other competing purposes dealing with public welfare would be “crowded out”).

\(^{231}\) See Linda Grant Williams, supra note 59, at 845 (describing franchise movement as “franchise free agency”); see also Bhasin, supra note 41, at 200 (stating use of tax-exempt bonds to finance sports stadiums attracts and keeps professional sports in state or political subdivision’s community); Gasper, supra note 30, at 350 (showing how some franchise owners threaten to relocate if they do not get modern stadiums).

\(^{232}\) See I.R.C. § 121(b)(3) (2002) (applying a 2 year waiting period to the exclusion from gross income of principle place of residence); see also Donaldson, supra note 223, at 662 (showing how this two year waiting period is applied).

\(^{233}\) See Zimmermann, supra note 53, at 10.

A final aspect to this framework is a requirement of private investment. If a city decides to construct a stadium before the imposed time limitation has expired, its cost will be significantly increased due to the higher interest rate on the bonds. To combat this, Congress should authorize the use of tax-exempt bonds before the time limitation, conditional on one additional factor, private contribution. Congress should require 1/3 of the project to be funded by private sources if the time limitation has not expired. This will protect a city that decides to undertake a project before the time limitation has passed. However, the bond issue will still be subject to the ceiling mentioned earlier.

This sets up a system that allows a certain amount of tax-exempt bonds to be issued on behalf of a franchise every 10-15 years. If a franchise wants to use the tax-exempt status before the time window has expired, then it is still available, but the team must find private capital that will equal 1/3 of the cost. This creates a disincentive to relocate if a team is close to the time limit. They can wait and get the advantage of tax-exempt bonds without having to find a private investor. Overshadowing this entire system is an overall cap on the amount of tax-exempt bonds that can be issued for a given stadium construction.

CONCLUSION

In no way does this system completely address the problem of publicly funded stadiums. Rather, it creates a system of incentives and disincentives to act a certain way. By creating this type of flexible system the goal is not to stop publicly funded stadiums, but rather to slow the process and create limits. In order for these limits to work, the use of tax-exempt bonds must be a factor. If a team and city decide to reach an agreement that doesn't utilize these bonds, then this system will have no effect.


See ZIMMERMAN, supra note 53, at 10 (stating cost to local and state taxpayers of professional sports stadiums is reduced by substantial decrease in interest expense made possible by tax exempt bonds); IBO Report, supra note 63 (noting loss of federal tax exemption on bonds issued can add up to 34% of total cost of bonds).
In this regard, there is nothing that federal tax legislation can do to give a city protection.

It is quite possible that by creating this more complex system for federal tax-exempt bonds, they will simply not be utilized. If this is the case, then there is no federal subsidization of these stadiums. By ending federal subsidization, the cost of stadiums may increase, but as Senator Moynihan noted, it will not be at the federal taxpayer's expense. Nothing requires Congress to offer this federal subsidization. If these rules are not utilized then the worst-case scenario is that federal subsidization is stopped. This may not be the optimal solution to the bigger picture, but Congress has the right to withdraw from the game at any time.
