

Owners Playing it Safe: A Law and Economics Explanation of Why Sports Franchises Relocate

Arjun Sivakumar

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INTRODUCTION

Twelve sports franchise relocations have taken place over the last twenty years in the four major North American professional sports leagues.¹ Events leading up to these relocations generally unfold according to a common pattern, beginning with a team’s stadium lease agreement expiring or nearing expiration.² The team typically asks the city in which it is currently located for public financing in order to construct a new stadium.³ Locally generated revenues are the most important source of income in the professional sports industry today, and a modern stadium is the crucial component to achieving this goal.⁴ Other cities then enter the process by bidding—that is, making their own offers of public financing. A competitive bidding process is virtually certain to occur because the supply of sports franchises is severely restricted by the leagues, creating an artificial shortage of professional sports franchises in the market.⁵

¹ Major League Baseball [hereinafter MLB], National Basketball Association [hereinafter NBA], National Football League [hereinafter NFL], National Hockey League [hereinafter NHL].

² Stadium lease agreements carry large termination fees and thus are often not broken until they are near expiration, as communities see these provisions as crucial to protect the benefits from any investment they make in the franchise. See Paul M. Anderson & W.S. Miller, *Sonic Bust: Trying to Retain Major League Franchises in Challenging Financial Times*, 21 J. LEGAL ASPECTS SPORT 117, 118 (2011). Virtually all recent sports franchise lease agreements include covenants guaranteeing that all home games will be played in the home arena for the duration of the lease. *Id.* (discussing NBA’s Miami Heat and Phoenix Suns, who have such a provision in their stadium leases).

³ *Id.* (stating that NBA franchises have reaped \$5.6 billion in public financing for arenas in the last two decades).

⁴ Andrew E. Bortock, *The Faux Fix: Why a Repeal of Major League Baseball’s Antitrust Exemption Would Not Solve its Severe Competitive Balance Problems*, 25 CARDOZO L. REV. 1069, 1096 (2004) (discussing how local revenues account for approximately 80% of team revenues on average).

⁵ Thomas A. Piraino, Jr., *The Antitrust Analysis of Joint Ventures After the Supreme Court’s Dagher Decision*, 57 EMORY L.J. 735, 789 (2008) (discussing “the effect of the leagues’ refusals to expand has been to create an artificial shortage of sports franchises”).

This type of bidding war to contribute public funds to stadium construction characterizes the current era in sports franchise relocation, described in the sports law literature as “franchise free agency.”⁶ In many cases, a strong contingent of fan-activists arises in the home city, resulting in legislation or a referendum approving public financing for a stadium.⁷ Despite these efforts, in twelve cases in the last two decades, the luring city has won the bidding war.⁸ These twelve franchises have dug up deep roots and left millions of loyal customers feeling a sense of betrayal and suffering a significant loss of tangible and intangible benefits.⁹

This article analyzes how state and local taxes can drive a franchise’s decision to relocate.¹⁰ In addition to the amount of public financing a city offers, a team deciding whether to relocate will consider tax burdens on the potential revenue streams that can accrue to them in the future.¹¹ In an upside (high revenue generation) scenario, the burden of taxation will be increased, while in a downside (low revenue generation) scenario it will be decreased.¹² A risk-averse sports franchise owner will disfavor such a gamble, even if partially offset by an additional subsidy given up-front.¹³ Thus, a jurisdiction with a lower tax burden has an inherent advantage in the bidding war.¹⁴ This article offers a revenue-neutral tax solution for high-tax cities to ‘level the playing field’ in order to compete with their teams’ lower-tax suitors.

Part II of this article discusses the tangible and intangible benefits a sports franchise provides to a community that will be lost if a team relocates due to the distortionary effects of state and local tax policy. Part III uses a numerical example to illustrate how unfavorable state and local taxes can influence relocation decision making by risk-averse team owners, provides empirical evidence from recent relocation cases, and describes how state and local taxes affect the everyday operation of a sports franchise. Part IV proposes a revenue-neutral income tax carve-out that corrects the distortionary effect of state and local taxes on sports franchises and allows high-tax cities to keep their teams in an effective and fair manner.

A. Overview

Since 1990, there have been twelve franchise relocations in the four major North American professional sports. Other than Major League Baseball, which experienced only the relocation of the Montreal Expos to Washington, D.C. in 2005, each of the other leagues has seen at least three relocations over this period.¹⁵

⁶ See, e.g., Don Nottingham, *Keeping the Home Team at Home: Antitrust and Trademark Law as Weapons in the Fight Against Professional Sports Franchise Relocation*, 75 U. COLO. L. REV. 1065, 1067-68 (2004).

⁷ See, e.g., Steve Rushin, *The Heart of a City*, SPORTS ILLUSTRATED (Dec. 4, 1995).

<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1007505/index.htm> (chronicling the Cleveland Browns’ move to Baltimore).

⁸ See Table 1 *infra* Part II.

⁹ See Bruce W. Burton and Matthew J. Mitten, *New Remedies*, 88 IOWA L. REV. 809, 817-18 (1997) (discussing how the loss of a sports franchise to relocation has unique negative consequences on a community that do not result from the loss of any other business); see also discussion of tangible and intangible benefits *infra* Part II.

¹⁰ See numerical example and discussion *infra* Part III.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ This could be a result of MLB’s unique antitrust exemption, allowing the league the theoretical free hand to block relocations. *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). However, MLB experienced relocation on par with the other leagues between 1922, when *Federal Baseball Club* was decided and 1972, the date of the most recent MLB relocation prior to the Expos’. Moreover, although

Table 1: “Big Four” Sports Franchise Relocations since 1990

Old Nickname/New Nickname (if changed)	League	Old City	New City	Year
North Stars/Stars	NHL	Bloomington, MN	Dallas, TX	1993
Nordiques/Avalanche	NHL	Quebec, QC	Denver, CO	1995
Raiders	NFL	Los Angeles, CA	Oakland, CA	1995
Browns/Ravens	NFL	Cleveland, OH	Baltimore, MD	1996
Jets/Coyotes	NHL	Winnipeg, MB	Glendale, AZ	1996
Oilers/Titans	NFL	Houston, TX	Nashville, TN	1997
Whalers/Hurricanes	NHL	Hartford, CT	Raleigh, NC	1997
Grizzlies	NBA	Vancouver, BC	Memphis, TN	2001
Hornets	NBA	Charlotte, NC	New Orleans, LA	2002
Expos/Nationals	MLB	Montreal, QC	Washington, DC	2005
Sonics/Thunder	NBA	Seattle, WA	Oklahoma City, OK	2008
Thrashers/Jets	NHL	Atlanta, GA	Winnipeg, MB	2011

SPORTS FRANCHISE RELOCATION AND ITS EFFECTS

The process underlying sports franchise relocation begins when the team’s stadium lease obligation expires or nears expiration.¹⁶ Because these leases have significant term lengths, the stadium is likely to be outdated by the end of the lease.¹⁷ As a result, the team will require a new stadium in order to remain competitive with other teams in the league with respect to generation of local revenue.¹⁸ The city that is home to the franchise will be asked for public financing to support the team, and “bid” a certain amount.¹⁹ Other cities, observing this behavior, will make their own offers of public financing to entice the team to relocate, as is characteristic of the “franchise free agency” era.²⁰ Such a bidding war is near inevitable anytime a team’s stadium lease nears expiration due to the fact that the supply of sports franchises in the market is kept artificially low, while demand is extremely high, creating an economic shortage.²¹

This section details the tangible and intangible benefits that a city stands to lose if a professional sports franchise relocates. Tangible benefits are benefits that are largely quantifiable and can be analyzed in terms of their impact on the city’s economic indicators.²² Intangible benefits, on the other hand, are

leagues have a bias towards stability, they may favor moves in certain cases if they find the moves to be economically beneficial. See John Wunderli, *Squeeze Play: The Game of Owners, Cities, Leagues, and Congress*, 5 MARQ. SPORTS L.J. 83, 90 (1994).

¹⁶ *Supra* note 2.

¹⁷ *Id.*

¹⁸ See Elizabeth Odian, *Preventing Sonicsgate: The Ongoing Problem of Franchise Relocation*, 18 SPORTS LAW J. 67, 68 (2011) (“professional sports teams cannot compete without state-of-the-art facilities, which generate significantly higher revenue rates”).

¹⁹ The term “bid” as used in this article refers to the amount of public financing a city is willing to contribute to construct a new stadium for the sports franchise.

²⁰ *Supra* note 6.

²¹ *Supra* note 5.

²² John D. Finerty, Jr., *Subverting the Internal Revenue Code in the “Game” of Sports Stadium Financing*, 1 MARQ. SPORTS L.J. 301, 312 (1991).

positive externalities that are not easily quantifiable but nonetheless important when analyzing the effect of a professional sports franchise on a community.²³

B. Tangible Benefits

The first tangible benefit a sports franchise provides is stimulus to the city's economy. This occurs because the presence of a professional sports franchise facilitates additional consumer spending that has a multiplier effect on the local economy.²⁴ According to Professor Andrew Goodman, downtown Phoenix experienced a 34% increase in sales revenues following the inception of MLB's Arizona Diamondbacks and the construction of Bank One Ballpark.²⁵ Donald Lonergan has found that \$1.75 is created in the local economy for every \$1 spent on professional sports.²⁶ This effect occurs because a sports franchise provides an additional outlet for localized consumer spending that is not available otherwise, such as purchasing the home team's gear or buying tickets to the home team's games.²⁷ In the seminal study of this issue, Professor Arthur Johnson defined the "economic impact" of a franchise to include a broad group of economic benefits such as rental income and franchise expenditure.²⁸ Johnson's study found that professional sports franchises tend to have a high "impact" on their communities.²⁹

A second tangible effect a franchise provides to a community is the creation of new jobs.³⁰ One study showed that 76 jobs are created for every \$1 million in sports expenditure, not an insignificant number in today's billion-dollar sports industry.³¹ While many of these are part-time jobs (game day concession sales, e.g.) or term limited (stadium construction work e.g.), such jobs do provide an additional source of income to locals. Also, creating these jobs will further increase the multiplier effect discussed above by increasing the income of low-wage employees who are most likely to immediately spend their earnings.³² A spillover effect is also inevitable, as the existence of a home team will lead to small business hiring.³³ For example, sports bars experiencing an increase in patronage on game days and

²³ See *infra* note 43.

²⁴ See, e.g., Priv. Ltr. Rul. 95-30-024 (July 28, 1995) (describing economic impact of the Kansas City Royals).

²⁵ Andrew H. Goodman, *The Public Financing of Professional Sports Stadiums: Policy and Practice*, 9 SPORTS LAW J. 173, 180-81 (2002).

²⁶ Frank A. Meyer, *Stadium Financing: Where We Are, How We Got Here, and Where We Are Going*, 12 VILL. SPORTS & ENT. L.J. 195, 217 (2005). See also Marc D. Oram, *The Stadium Financing and Franchise Relocation Act of 1999*, 2 VA. J. SPORTS & LAW 184, 197 (2000) (citing a Deloitte and Touche study estimating 17,000 temporary jobs and \$1.1 billion in local spending generation as a result of construction of Petco Park in San Diego).

²⁷ See e.g. Christopher B. Carbot, *The Odd Couple: Stadium Naming Rights Mitigating the Public-Private Stadium Finance Debate*, 4 FLA. INT'L. UNIV. L. REV. 515, 517 (2009).

²⁸ Arthur T. Johnson, *The Sports Franchise Relocation Issue and Public Policy Response*, in GOVERNMENT AND SPORT 229 (Arthur T. Johnson et. al. eds., 1985).

²⁹ For example, the "impact" of the Oakland Raiders was \$36 million in direct benefits and \$100 million in indirect benefits—in 1985! For a more recent application of this approach, see analysis of the economic impact of the Verizon Center, home of the Wizards and Capitals, in Washington, D.C. Garrett Johnson, *The Economic Impact of New Stadiums and Arenas on Cities*, 2011 DEN. U. SPORTS & ENT. L.J. 1, 20-21 (2011).

³⁰ See Oram, *supra* note 26; see also Johnson, *supra* note 28, Johnson, *supra* note 29.

³¹ See Goodman, *supra* note 25.

³² This is the theory behind payroll tax cuts issued by the federal government—infusing low wage earners who are likely to spend money with capital is the best way to ensure that the money is immediately spent in the marketplace and helps to ignite a multiplier effect. See, e.g., Ridgeley A. Scott, *Misuse of Public Pension Assets: White Collar Crimes and Other Offenses*, 26 IND. L. REV. 589, 621 (1993).

³³ Marc C. Oram, *The Stadium Financing and Relocation Act of 1999*, 2 VA. J. SPORTS & LAW 184, 197 (2000) (the grand opening of Jacobs Field, home of MLB's Cleveland Indians, coincided with the opening of 20 new restaurants and stores in the area).

sports apparel manufacturers will experience greater demand for merchandise, and each will need increased manpower to meet this extra demand.³⁴

A third tangible effect of a sports franchise is an influx of tourism, boosting the revenues of local hotels and restaurants.³⁵ Service businesses will experience an upswing in patrons when away games take place, as fans of other teams come to town to support their teams on the road.³⁶ This effect is particularly amplified when having a sports franchise allows a city to bid for important events in that league, such as the All-Star Game or Super Bowl.³⁷ This effect ties in strongly with other tangible benefits as well—for example, a study on the Baltimore Orioles showed that constructing Camden Yards to keep the team in town generated 450-550 new city jobs from out-of-state visitors alone.³⁸

On the flip side of the coin, it has been argued that these tangible effects are negligible because consumer spending on a sports franchise largely represents substitution of other leisure activities. Professors John Siegfried and Andrew Zimbalist argue that “the money one spends taking a family to a game typically is money that is not spent at a local bowling alley, golf course, restaurant, or theater.”³⁹ However, even if true, this line of argument does not apply to either the second or the third tangible benefit presented above. Jobs would still be created by the franchise, and though spillover effects and multipliers may be dampened, stimulus would still occur because these workers will consume other non-leisure goods and services. Also, tourism is certain to still experience an uptick, as it is unlikely that out-of-towners will travel to the city to go to a bowling alley or movie theater. In fact, the presence of a professional sports franchise can actually increase and/or improve alternative entertainment options.⁴⁰ For example, a large, multi-purpose professional sports facility can host conventions and concerts, among other events, furthering the stimulative effects discussed above.⁴¹

C. *Intangible Benefits*

In addition to the quantifiable economic benefits discussed in the previous section, a sports franchise provides intangible benefits that are either extremely difficult or impossible to quantify.⁴² Intangible benefits include both internalized benefits, defined as a fan’s happiness or pride as a result of the team’s accomplishments, and group benefits, such as unity or external prestige. There is significant overlap between internalized and group benefits.

Professor Robert Bowling has argued that significant non-economic benefit accrues to cities with professional sports franchises by virtue of viewing themselves, and being viewed by others, as “big

³⁴ *Id.*

³⁵ *See supra* note 24.

³⁶ *Id.*

³⁷ *See, e.g.,* Jerry M. Gewirtz, *An Examination of the Background, Issues, and Ramifications Surrounding the Stadium Litigation in Tampa*, 71-DEC FLA. B.J. 53, 53-54 (1997) (discussing economic benefits of hosting the Super Bowl).

³⁸ *See* Brian P. Yates, *Whether Building a New Sports Arena Will Revitalize Downtown and Make the Team a Winner*, 17 U. MIAMI BUS. L. REV. 269, 287 (2009).

³⁹ John Siegfried and Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, 14 J. OF ECON. PERSPECTIVES 95, 105 (2000).

⁴⁰ *See* Oram, *supra* note 33.

⁴¹ *Id.*

⁴² *See* Odian, *supra* note 18, at 76 (“certain intangibles cannot be compensated or replaced, including psychological benefits such as community pride and civic welfare”) for a fascinating discussion of the lawsuit that attempted to halt the relocation of the NBA’s Seattle Sonics to Oklahoma City, including an exploration of damages sustained by Seattle as a result of the team’s move. *See also* Will Hendrick, *Pay or Play?: On Specific Performance and Sports Franchise Leases*, 87 N.C. L. REV. 504, 525 (2009).

league cities.”⁴³ This can lead to greater confidence and happiness among the citizenry, and can attract new citizens who would like to live in a prestigious city.⁴⁴ Professor John Wunderli has suggested that in addition to civic pride and prestige, the franchise can be used as an educational tool.⁴⁵ The sense of civic unity that a sports franchise brings to a city is another important intangible benefit.⁴⁶ Professors Bruce Burton and Matthew Mitten argue that civic pride and unity derived from a professional sports franchise creates a “heartier social fabric.”⁴⁷ A whole is greater than the sum of its parts, and thus when citizens, workers, or neighbors are united they can achieve more social utility gains than if they are divided.⁴⁸ For example, a common interest in professional sports among negotiators can facilitate a corporate merger.⁴⁹ Additionally, it has been noted that sports franchises are a source of unity across race, ethnicity, and class lines.⁵⁰ This sort of unity is a benefit to any city; as it helps to foster reconciliation between citizens, reducing incidences of crime, particularly hate crime.⁵¹

Even scholars who ardently maintain that sports franchises do not produce any tangible benefits concede that intangible benefits do indeed exist.⁵² Intangible effects must be considered when analyzing the effects of sports franchise relocation because, as Professor Diana Williams points out, there is often a strong emotional attachment between a city and its team, and the impact of a team leaving on a city’s psyche are significant.⁵³

⁴³ See Robert Taylor Bowling, *Sports Aggravated: The Fan’s Guide to the Franchise Relocation Problem in Professional Sports*, 28 STETSON L. REV. 645, 649 (1999); see also John D. Finerty, Jr., *Subverting the Internal Revenue Code in the “Game” of Sports Stadium Financing*, 1 MARQ. SPORTS L.J. 301, 313 (1991) (quoting the view of Milwaukee’s mayor that the Brewers “change the way Milwaukeeans view [themselves]”).

⁴⁴ Howard M. Wasserman, *Fans, Free Expression, and the Wide World of Sports*, 67 U. PITT. L. REV. 525, 545 (discussing how sports franchises are key to attracting a young, affluent demographic which is deemed essential to a thriving metropolitan area). See also Matthew J. Mitten and Bruce W. Burton, *Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field*, 56 MD. L. REV. 57, 60 (1997). It is easy to see how this can tie in with tangible benefits as well as, a corporation may be looking to open a new headquarters in a location which will provide it national prestige. Professional sports franchises are a source of such prestige.

⁴⁵ See Wunderli, *supra* note 15, at 91. This can include anything from an elementary school field trip to a game to a business school project studying the franchise.

⁴⁶ See Hendrick, *supra* note 42, at 526 (discussing the “unique opportunity for group cohesion” and “fostering [of] community acceptance” that is facilitated by sport spectatorship).

⁴⁷ Bruce W. Burton and Matthew J. Mitten, *New Remedies for Breach of Sports Facility Use Agreements: Time for Marketplace Realism*, 88 IOWA L. REV. 809, 818 (2003) (discussing highly valued psychological factors that a sports franchise brings to a community).

⁴⁸ See Thomas A. Lambert, *The Roberts Court and the Limits of Antitrust*, 52 B.C. L. REV. 871, 876-77 (2011) (discussing how cooperation among independent economic actors can enhance overall output).

⁴⁹ See the American Law Institute’s Ten Commandments for Contract Negotiation, of which #2 is that successful negotiations require strong lines of communication with your counterpart and with both clients. Steven G. Eckhaus, *Emerging Trends in Executive Pay: Observations and Practical Guidance*, ST001 ALI-ABA 1139, 1149 (2011). A common interest in a local professional sports team can facilitate such communication.

⁵⁰ See Hendrick, *supra* note 42, at 526.

⁵¹ This phenomenon occurs due to Putnam’s theory of Social Capital, which argues that common bonds amongst citizens, from the micro level (bowling leagues e.g.) to the macro level (supporting a professional sports franchise) makes society more stable. Putnam states that this leads to lower crime, among numerous other benefits. See Robert D. Putnam, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

⁵² See, e.g., Roger G. Noll and Andrew Zimbalist, “*Build the Stadium—Create the Jobs*,” in *SPORTS, JOBS, AND TAXES* 25 (Roger G. Noll and Andrew Zimbalist, eds., 1997) (“the social and psychological significance of sports substantially exceeds its economic value”).

⁵³ Johnson, *supra* note 29, at 16; see also Bradley J. Stein, *How the Home Team Can Keep From Getting Sacked: A City’s Best Defense to Franchise Free Agency in Professional Football*, 5 TEX. REV. ENT. & SPORTS L. 1, 21 (2003) (discussing how “a city can never fully recover” the value of lost intangible benefits such as civic image, public perception, and vision of self worth that a professional sports franchise provided).

I. A Law and Economics Explanation for Relocation

This Part introduces a law and economics explanation as to why sports franchises choose to relocate. The first section below presents a numerical example to showcase how unfavorable state and local tax rates can distort the behavior of risk-averse owners, driving them to relocate when they otherwise would not. It also includes supporting data for this hypothesis taken from analysis of recent sports franchise relocations. The second section provides examples of specific impacts that state and local tax regimes have on sports franchises.

A. Distortionary Effects of State and Local Taxes on Sports Franchises: A Numerical Example

There have been twelve franchise relocations in the last two decades in the four major North American sports.⁵⁴ This section argues that such relocations may be caused by an effort to minimize state and local taxation. This is because on an absolute basis, taxation is particularly burdensome in an “upside scenario,” or when the team is very successful and revenues are high. The numerical example below shows how a sports franchise owner may choose to avoid this risk by relocating the team to a location with lower tax rates, even if this means declining higher explicit and implicit subsidies from the “home” city.⁵⁵

Suppose that two cities, Verona (V) and Mantua (M), are bidding for a team. V is the current city where the team’s stadium lease is expiring, and M is the city trying to lure the team to relocate. The team is in the process of weighing potential proposals for publicly financed stadiums from both V and M. Each city stands to gain \$1 in quantifiable benefit from the team’s presence. V has a state/local tax burden of 1% and M has a state/local tax burden of 0%.⁵⁶ The franchise has an equal (1/3) chance of earning \$5, \$10, or \$15 in revenues during the length of a new stadium lease. V’s offer of public stadium financing to retain the team will be \$1 (expected benefit) + .1 (expected tax revenue)=\$1.10.⁵⁷ M’s offer of public stadium financing to lure the team will be \$1 (expected benefit). The tax consequences in each scenario are shown in the table below. The rightmost column reflects the differences between the public financing received up-front by the team and the ultimate amount of tax paid on each revenue stream.

Table 2: Tax Consequences of Staying in Verona

Prob.	Public Financing (\$)	Rev (\$)	Tax (\$)	Net G/L (PF-tax)
1/3	1.1	5	0.05	1.05
1/3	1.1	10	0.10	1
1/3	1.1	15	0.15	0.95

⁵⁴ See *infra* Part II.A.

⁵⁵ A sports franchise owner, as a private actor, is likely to be risk-averse. See David A. Super, *Against Flexibility*, 96 CORNELL L. REV. 1375, 1413-14 (describing the risk-averse nature of private parties in the litigation/settlement context). This article invites further scholarship regarding risk-neutral and risk-loving team owners, and could eventually lead to a plan whereby a city can formulate an optimal combination of tax carve-outs and up-front financing to fit an owner’s risk profile.

⁵⁶ “State and local tax burden” is a metric used by the Tax Foundation to signify the percentage of gross income paid in state and local taxes. See www.taxfoundation.org.

⁵⁷ “Willingness-to-pay” reflects the city’s bid to publicly finance part of a stadium construction project. As a risk-neutral institutional actor, the city uses the expected value of the tax revenue in order to determine the amount of subsidy. See, e.g., Gregg D. Polsky, *Deterring Tax-Driven Partnership Allocations*, 64 TAX LAW. 97, 123 (2010) (analyzing this issue in the context of partnership agreements).

Table 3: Tax Consequences of Relocating to Mantua

Prob.	Public Financing (\$)	Rev (\$)	Tax (\$)	Net G/L (PF-Tax)
1/3	1	5	0	1
1/3	1	10	0	1
1/3	1	15	0	1

By keeping the team in Verona, the owner is taking a gamble. If revenues are low, the owner will experience a net gain from taking more public financing up-front. However, if revenues are high, the extra tax burden (\$0.15) exceeds the additional subsidy provided by the government of Verona (\$0.10). By moving the team to Mantua, the owner will have the certainty of an identical tax burden across the board. As the expected value is \$1 in both cases, a risk-averse owner would avoid the gamble by accepting a lower up-front subsidy in return for tax certainty.⁵⁸ This effect is further exacerbated by the “optimism bias”—human beings have a natural tendency to anticipate the upside scenario to occur with slightly higher probability than the downside scenario, even if risk analysis shows this not to be the case.⁵⁹

Empirical data from recent relocations tend to support this hypothesis. The table below lists the relocations that have taken place since 1990 between states in the United States. “S/L Tax Burden” denotes the average percentage of a taxpayer’s gross income paid in state and local taxes in the given state and year.⁶⁰ Using this metric gives a strong, uniform measure across all fifty states and through time that is very useful in analyzing sports franchise relocations.

⁵⁸ This phenomenon is the bread and butter of prospect theory, a movement that has revolutionized economics in the last thirty years. Daniel Kahneman and Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *ECONOMETRICA* 263 (1979).

⁵⁹ For a discussion of the optimism bias and how it can affect risk analysis, see Daniel B. Klaff, *Debiasing and Bidirectional Bias: Cognitive Failure in Mandatory Employment Arbitration*, 15 *HARV. NEGOT. L. REV.* 1, 12-13 (2010).

⁶⁰ *Supra* note 56.

Table 4: Sports Franchise Relocations and Tax Burdens⁶¹

Team	League	Year of Move	Former Location	Former S/L Tax Burden	New Location	New S/L Tax Burden	Better off?
North Stars/Stars	NHL	1993	Minnesota	10.9%	Texas	8.3%	Y
Browns/Ravens	NFL	1996	Ohio	10.2%	Maryland	10.4%	~N
Whalers/Hurricanes	NHL	1997	Connecticut	11.6%	North Carolina	9.5%	Y
Oilers/Titans	NFL	1997	Texas	7.7%	Tennessee	7.3%	Y
Hornets	NBA	2002	North Carolina	9.4%	Louisiana	8.3%	Y
Sonics/Thunder	NBA	2008	Washington	9.4%	Oklahoma	8.7%	Y

In four of the six cases shown in the table, the franchise's destination market had a significantly lower state and local tax burden than the former market, whereas in one case there was a slightly lower burden than the former market. The only case where there was a slight tax disadvantage to the move (Browns/Ravens) represented the smallest margin (only +0.2%), while on average the relocating teams experienced a 1.2% decrease in state and local tax burdens by moving to a new city. This difference is not insignificant when considering the analysis earlier in this section showing that even a 1% difference in taxation can have significant risk allocation effects.⁶² This phenomenon is emboldened in today's sports industry, where league revenues are measured in billions of dollars.⁶³

B. Specific Effects of State and Local Taxes on Sports Franchises

There are a number of ways in which unfavorable state and local tax regimes negatively affect sports franchises. These concerns feed the risk aversion of owners with respect to tax burdens, and play a role in teams flocking to jurisdictions with more favorable state and local tax regimes.⁶⁴ This section analyzes the income tax, sales tax, and property tax considerations that underlie a franchise's decision to relocate.

⁶¹ I have excluded relocations between cities in the same state, such as the Los Angeles Raiders return to Oakland in 1995 because the data is not available. I have also excluded relocations from Canada to the United States for the same reason. Although data regarding Canadian tax burdens are not available in this data set, it is worth noting that provincial tax rates are generally higher than U.S. state tax rates. Even adjusting for lower maximum federal tax rate in Canada, teams based north of the border see comparable tax reductions to those above by relocating to the U.S. As a rough heuristic, the fact that four teams have left Canada for the U.S. since 1990—the Quebec Nordiques in 1995, Winnipeg Jets in 1996, Vancouver Grizzlies in 2001, Montreal Expos in 2005, while only one team during the time period studied has relocated from the U.S. to Canada, the Atlanta Thrashers in 2011, tends to support the view that tax considerations can affect sports franchise relocations.

⁶² See *supra* Part III.A.

⁶³ See Brad R. Humphries and Jane E. Ruseski, *The Size and Scope of the Sports Industry in the United States*, INT'L ASS'N OF SPORTS ECONOMISTS/NORTH AMERICAN ASS'N OF SPORTS ECONOMISTS WORKING PAPER SERIES, NO. 08-11 (2008) (estimating the size of the sports industry based on aggregate supply and demand between \$44 billion and \$73 billion).

⁶⁴ See *supra* part III.A.

1. Income Taxes

There are two major ways in which state and local income tax rates can affect sports franchises. The first involves the ability to attract highly paid and highly coveted personnel. The second involves fans' disposable income.

One reason income taxes affect sports franchise is that they hamper the franchise's ability to attract top personnel.⁶⁵ Running a successful professional sports franchise that generates high revenues requires hiring the best players, coaches, and executives.⁶⁶ Any rational actor will evaluate tax considerations along with other factors when evaluating job offers in different localities, and may be discouraged from joining a team due to an unfavorable income tax regime.⁶⁷

A recent example of this phenomenon was the 2010 formation of the NBA's Miami Heat "superteam."⁶⁸ NBA stars Chris Bosh and LeBron James were drafted in 2003 by the Toronto Raptors and Cleveland Cavaliers, respectively.⁶⁹ Prior to joining the Heat, each was the cornerstone of a previously moribund franchise, leading it to the playoffs after a long absence, and each was an all-star starter during his tenure with the team that drafted him.⁷⁰ In the summer of 2010, they made a decision, along with free agent Dwyane Wade of the Miami Heat, to all sign together with the Heat.⁷¹ ESPN hosted a televised special in which LeBron James announced "The Decision," creating waves among sports fans and tax scholars alike.⁷²

In order to sign with the Heat, each of the three had to take a pay cut, as is required to fit three of the top twenty players in the NBA under one team's salary cap.⁷³ However, analysis by Professor Mitchell Engler shows that they were actually earning more than they would by taking a "max-contract" with another team.⁷⁴ This choice begs the question of whether taxation is a factor in sports decision-making—Florida has a 0% state income tax while Ohio's top rate is 6.75% and Ontario's is 5.05%.⁷⁵ This phenomenon has been observed in the past as well—for example, the Raptors were also victimized in

⁶⁵ Richard L. Doernberg, *A Workable Flat Rate Consumption Tax*, 70 IOWA L. REV. 425, 476 n.333 (1985) (reduced after-tax compensation to the employee must be made up elsewhere in order to retain and attract employees).

⁶⁶ These hires include players, coaches, "front office" personnel such as general managers and scouts, and highly specialized medical staff.

⁶⁷ See Sally Wallace, *The Effect of State Income Tax Structure on Interstate Migration*, GA. ST. UNIV. FISCAL RESEARCH PROGRAM REPORT NO. 79, 21 (2002).

⁶⁸ See ESPN.com News Services, *Heat stars sign six year deals*, July 10, 2010, accessible at <http://sports.espn.go.com/nba/news/story?id=5368003>.

⁶⁹ *Id.*

⁷⁰ The fans vote for the most popular players at each position, who receive the honor of starting the all-star game each year. This is significant because starting the all-star game is an important heuristic for the players that have the greatest marketing value to their teams—for the obvious reason that they were voted in by the very fans who are consumers of sports tickets and merchandise. Consequently, losing these players can take a toll on the team's revenues.

⁷¹ *Supra* note 70.

⁷² See, e.g., Mitchell L. Engler, *The Untaxed King of South Beach: LeBron James and the NBA Salary Cap*, 48 SAN DIEGO L. REV. 601, 620 (describing how the discrepancy in state and local taxation contributed to LeBron James' "decision" to play for the Miami Heat).

⁷³ *Id.*

⁷⁴ *Id.*; a "max contract" is the NBA collective bargaining agreement's maximum allowable player salary and contract length. James, Wade, and Bosh each received less money than they could have gotten under a max contract, but received the same number of years due to a "sign-and-trade" maneuver where they were technically signed by their old teams then traded for draft picks to Miami.

⁷⁵ Data compiled by the Tax Foundation, accessible at www.taxfoundation.org/taxdata.

1998 as star player Damon Stoudemire left the Raptors for the Portland Trail Blazers citing an onerous tax burden.⁷⁶

The second reason state and local income taxes can affect sports franchises is because they affect the amount of disposable income in the hands of fans.⁷⁷ Locally generated revenues are the primary source of capital for sports franchises, generally accounting for a far greater percentage of proceeds than national television contracts or league-wide revenue sharing programs.⁷⁸ The primary sources of local revenue are sales of tickets, concessions, merchandise, parking, and other related goods and services.⁷⁹

Consumption decreases as income decreases per the basic economic concept of the income effect.⁸⁰ In a higher tax jurisdiction, local fans will have less disposable income, and thus the demand for the team's goods and services, whose sale is vital to the team's success and profitability, will not be as robust.⁸¹ Moreover, local advertising revenue is a key source of income because sports programming on television tends to be popular among well-educated demographics with high disposable income.⁸² If fans have less disposable income, the demand for consumer goods and services in general will be lower. This leads to fewer opportunities for generation of local advertising revenue.⁸³

2. Sales Taxes

A high sales tax rate will mean a higher cost of living for players, coaches, management, and even owners themselves.⁸⁴ All of these individuals are high-income earners who will take sales taxes into account when weighing job offers, as they are likely to consume a considerable amount of goods and services in the area in which they live and work.⁸⁵ These considerations would be particularly important to the "role players" who earn the league minimum salary but are vital to the success of every team.⁸⁶ For these reasons, a high sales tax makes it more difficult to attract top talent.⁸⁷

⁷⁶ R. E. Beam, S. N. Laiken & D. A. Raoux, *The Taxation of Non-Resident US Athletes Employed By Canadian-Based Professional Sports Teams: Attracting Athletes to Canada*, 47 *CDN. TAX J.* 305, 306 (1999).

⁷⁷ See N. Gregory Mankiw, *The Savers-Spenders Theory of Fiscal Policy*, NAT'L BUREAU OF ECON. RESEARCH WORKING PAPER 7571 (2000) (accessible at www.nber.org/papers/w7571.pdf) (showing that decreased income taxes lead to greater take home pay, which increases aggregate demand for goods and services).

⁷⁸ See Borteck, *supra* note 4.

⁷⁹ *Id.*

⁸⁰ See, e.g., W. Kip Viscusi and Richard J. Zeckhauser, *Deterring and Compensating Oil-Spill Catastrophes: The Need for Strict and Two-Tier Liability*, 64 *VAND. L. REV.* 1717, 1760 n.153 (2011).

⁸¹ See Mankiw, *supra* note 77.

⁸² See John A. Fortunato, *The Advertising Ramifications of the YES Network/Cablevision Lawsuit*, 27 *RUTGERS L. REC.* 2 (2003).

⁸³ *Id.*

⁸⁴ See William F. Fox and Matthew N. Murray, *The Sales Tax and Electronic Commerce: So What's New?*, 50 *NAT'L TAX J.* (1997).

⁸⁵ See Peter Asselin, *Note: Supporting the Home Team...In More Ways Than One: An Analysis of the Public Financing of Philadelphia's New Sports Stadia*, 3 *RUTGERS J. L. & URB. POL'Y* 389 (2006) (discussing the extensive spending by players and team employees in their communities in arguing that this has a stimulative effect in itself). See also Timothy R. Hurley, *Curing the Structural Defect in State Tax Systems: Expanding the Tax Base to Include Services*, 61 *MERCER L. REV.* 491, 505 (2010) (discussing the distortive effect of a high sales tax on relocation decisions by individuals and businesses).

⁸⁶ See Wallace, *supra* note 67.

⁸⁷ See Fox and Murray, *supra* note 84.

In addition, tickets become more expensive for fans as a result of a high sales tax.⁸⁸ In today's uncertain economy, fans are often satisfied watching games on their high definition televisions, and thus their demand for game tickets has become more elastic, meaning that the team will bear a large share of the tax incidence.⁸⁹ Sales of merchandise such as jerseys will also be lower if a high sales tax is charged, which will cause revenues to shrink.⁹⁰ Hotel taxes aimed at taxing visitors can have the inadvertent effect of discouraging out-of-town fans from visiting and attending games.⁹¹

3. Property Taxes

High property tax rates can pose two unique challenges for sports franchises. First, building, owning and operating a stadium becomes more costly with a higher property tax rate.⁹² Particularly in an era where stadiums cost \$1 billion dollars or more, property tax can be a significant consideration for a franchise when deciding where to build a stadium.⁹³ Also, the team will require additional real estate such as a practice facility and office buildings. All of these acquisitions will be affected by property tax rates.

Second, a high property tax rate may force owners, management, coaches, and players to live elsewhere rather than in the city in which the team is located.⁹⁴ For example, Drew Brees of the NFL's New Orleans Saints famously lives in one of the city's districts that was ravaged by Hurricane Katrina. These types of charitable community contributions are a key part of showing a franchise's commitment to the city, and can help to build a loyal fan base that will support the team financially.⁹⁵

II. **How a Revenue Neutral Income Tax Carve-Out Can Prevent Relocation**

The first two sections below build on the numerical example from the previous Part to show how substituting an income tax carve-out for additional public financing can be effective in combating

⁸⁸ Deborah L. Paul, *The Sources of Tax Complexity: How Much Simplicity Can Fundamental Tax Reform Achieve?*, 76 N.C. L. REV. 151, 209 n.228 (1997) (for price-elastic products, the increase in consumer price caused by a sales tax will cause the quantity purchased to decline).

⁸⁹ *Id.* This phenomenon holds so long as demand is not perfectly inelastic, with increased elasticity meaning a more robust advantage for the team from reducing sales taxes.

⁹⁰ The effect on merchandise will be similar to that on ticket sales—the more elastic demand is, the greater tax incidence the team bears. See Eryk Wachnik, *Anti-Smoking Legislation: Why Strong Local Legislation & Action Better Protect the Consumer than Federal Legislation & Action*, 23 LOY. CONSUMER L. REV. 459, 485 (2011) (discussing how sales taxes on tobacco reduce its consumption). This effect is likely to be exaggerated because third party Internet outlets may provide team merchandise without charging sales tax. See Scott W. Gaylord and Andrew J. Haile, *Constitutional Threats in the E-Commerce Jungle: First Amendment and Dormant Commerce Clause Limits on Amazon Laws and Use Tax Reporting Statutes*, 89 N.C. L. REV. 2011, 2016-17 (2011) (discussing how internet retailers cannot be required to collect state and local taxes on the goods they sell).

⁹¹ See Paul, *supra* note 88.

⁹² See, e.g., Logan E. Gans, *Take Me Out to the Ball Game, But Should the Crowd's Taxes Pay For It?*, 29 VA. TAX REV. 751, 764 (2010) (discussing how the construction of the original Foxboro stadium for the NFL's New England Patriots increased the property tax bill on the land from \$628 to \$250,000).

⁹³ See Richard Lacayo, *Inside the New Dallas Cowboys Stadium*, TIME MAGAZINE, September 21, 2009, <http://www.time.com/time/magazine/article/0,9171,1924493,00.html> (noting the two newest NFL stadiums, Cowboys Stadium in Arlington, TX and MetLife Stadium in East Rutherford, NJ, and their respective costs of \$1.2 billion and \$1.6 billion, respectively).

⁹⁴ See Richard Briffault, *The Role of Local Control in School Finance Reform*, 24 CONN. L. REV. 773, 806 (1992) ("Local government finance depends heavily on the locational decisions of businesses and more affluent residents, who can relocate if they find local property taxes too high").

⁹⁵ See Martin J. Greenberg and Dennis Hughes, Jr., *Sports.Comm: It Takes a Village to Build a Sports Facility*, 22 MARQ. SPORTS L. REV. 91, 92 (2011) (mentioning charitable community contributions as one way a team can repay the public cost of a stadium).

franchise relocation without unduly burdening state and local taxpayers. The third section considers two alternative solutions—a sales tax carve-out and a property tax carve-out—and explains why they fail to meet the effectiveness and fairness criteria.

A. Why an income-tax carve out is effective

An income tax carve-out for revenues earned by the team cuts to the crux of the franchise relocation debate by addressing the strong desire to generate local revenues that is the hallmark of the franchise free agency era and causes franchise relocation to begin with.⁹⁶ A team considering whether or not to move will weigh its options based on revenue stream projections and risk allocations as well as the amount of public financing offered by the city to build a stadium.⁹⁷ This note has shown that a high tax burden can cause a risk-averse team owner to relocate, despite having to pay the transaction costs associated with relocation and potentially being offered more public financing in a high-tax jurisdiction.⁹⁸ Providing an income tax carve-out can level the tax playing field between cities with different tax regimes and increase the chances that cities with initially unfavorable tax regimes can retain their sports franchises.

Returning to the numerical example from the previous Part, suppose Verona alters its bid to match Mantua by granting an income tax carve-out for the franchise's earned revenues.⁹⁹ This would be a revenue-neutral change for the city, as the carve-out would permit V to offer a lower explicit subsidy in terms of public financing up-front for stadium construction as part of a successful bid. As a result of this shift, V has eliminated M's tax advantage. Given a choice between the now equivalent tax consequences in V and M, the team will choose to stay put because of V's implicit subsidy—the savings on transaction costs associated with moving.¹⁰⁰

By providing such a tax carve-out, the city is essentially insuring the team against the upside risk of additional taxation. This is because if the team stayed under the old tax regime, the city would have collected significantly more tax revenue in an upside scenario. In return, the team is insuring the city against downside risk if the team is not successful by the same reasoning. Thus, an incidental benefit of this plan is that it increases the owner's incentive to generate high revenues without hedging her efforts due to potential tax consequences.¹⁰¹ This incentive structure will increase the likelihood that the team will be successful on the field, providing greater tangible and intangible benefits to the city.¹⁰²

⁹⁶ See *supra* note 18.

⁹⁷ See *supra* Part III.A.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Ronald H. Ballou, *Dynamic Warehouse Location Analysis*, 5 J. MARKETING RESEARCH 274 (1968) (describing how transaction costs discourage business relocation unless an equivalent increase in profits will be realized in the new location).

¹⁰¹ See Robert Bejesky, *Geopolitics, Oil Law Reform, and Commodity Market Expectations*, 63 OKLA. L. REV. 193, 232 n.255 (2011) (describing how additional costs imposed on nationalized oil companies can lead to a diluted incentive to maximize profits).

¹⁰² See Charles D. Marvinne, *Baseball's Unilaterally Imposed Salary Cap: This Baseball Cap Doesn't Fit*, 43 U. KAN. L. REV. 625, 657 (1995) (stating that although there have been examples of teams with high payrolls who have performed poorly, and vice versa, high-revenue franchises have a greater margin for error in player evaluation, and, thus, are more likely to field winning teams).

B. *Why an income tax carve-out is fair*

One fairness concern that may be raised is an objection to the idea of giving a tax benefit to wealthy team owners.¹⁰³ However, such concerns are easily addressed by the fact that this proposal is revenue neutral.¹⁰⁴ The only change is that a tax carve-out is given instead of paying an identical amount as up-front public financing in order to win a bidding war for a franchise. At first glance, it appears that in an upside scenario, the city would stand to lose tax revenue it could have gained had the team stayed in town without the carve-out.¹⁰⁵ However, the latter is an impossible scenario because a franchise will then choose to move to a lower-tax suitor city. Once the team relocates, all tax revenue from the franchise is lost. Moreover, in such an upside revenue scenario, it is likely that the team is highly successful on the field and thus the city will reap additional intangible benefits. By offering the carve-out in place of additional up-front public financing, the city is simply reallocating the same amount of subsidy in such a way as to address owners' risk aversion.¹⁰⁶

Another fairness concern that could be raised is that if these tax carve-outs are given, the team may leave in the future without building long term tangible and intangible benefits for the city. This criticism is not unique to an income tax carve-out, as it also applies to any public financing for a professional sports stadium. One way to address this would be to trigger a ten-year commitment to stay in the city upon taking advantage of the income tax carve-out.¹⁰⁷ Similar mechanisms are regularly used in stadium lease contracts in the sports world today.¹⁰⁸

C. *Alternative Solutions*

One alternative solution to the above proposal is a property tax carve-out.¹⁰⁹ Such a solution would be effective because property taxes have a significant effect on sports franchises.¹¹⁰ A modern professional sports stadium is worth a large amount of money and thus will result in a large property tax bill in itself.¹¹¹ Additionally, the stadium likely sits on many acres of team property, particularly because large-scale parking facilities will be required for fans to attend games.¹¹² If the team undertakes a stadium

¹⁰³ See Mildred Wigfall Robinson, *Transfer Tax Reform After EGTRRA-2001: Reconstruction or Further Deconstruction*, 28 VA. TAX REV. 391, 393 n.6 (2008) (discussing the negative political implications of giving "tax cuts to the rich").

¹⁰⁴ See explanation, *supra* Part IV.

¹⁰⁵ In other words, using the numerical example from *supra* Part III.A., if the team were to remain in V with the old tax rate and generate the maximum projected revenue stream of \$15, the city would have paid 0.1 in extra public financing and reaped 0.15 in tax revenue and thus come out ahead. However, this is a moot point, as the team would have relocated to M without the income tax carve-out, leaving the city with a net gain of 0. Thus, the "phantom +\$0.05" is in fact unattainable.

¹⁰⁶ See numerical example, *supra* Part III.A.

¹⁰⁷ This would have a similar effect to clauses requiring a team to play all of its home games in the stadium, enforceable by specific performance, which exists in many recent professional sports stadium leases. In fact, such an agreement is a major reason why the NHL's Phoenix Coyotes have remained in the area. See *2009 Annual Survey: Recent Developments in Sports Law*, 20 MARQ. SPORTS L. REV. 497, 512 (2010).

¹⁰⁸ *Supra* note 2.

¹⁰⁹ One example of this is the construction of the Barclays Center in Brooklyn to house the NBA's New Jersey Nets, which included \$146 million in property tax exemptions for the stadium. Amy Lavine and Norman Oder, *Urban Redevelopment Policy, Judicial Deference to Unaccountable Agencies, and Reality in Brooklyn's Atlantic Yards Project*, 42 URB. LAW. 287 (2010).

¹¹⁰ See *supra* Part III.C.

¹¹¹ See Gans, *supra* note 92.

¹¹² *Id.*

expansion, which is especially likely to occur in an upside revenue scenario, the team's property tax burden will increase in the future.¹¹³

However, a property tax raises serious fairness concerns.¹¹⁴ Property taxes are highly localized in most areas in the United States, and thus taxes from the stadium will be used to fund schools and other public works in the area surrounding the stadium.¹¹⁵ Stadiums are often built in low-income inner city areas. Revenues from property taxes are often allocated locally. Thus there is a danger that providing a property tax carve-out may lead to an unwanted reallocation of resources within the city limits.¹¹⁶ This is because the education system in the district immediately surrounding the stadium would be forced to bear such a disproportionate burden, while all city residents reap equivalent tangible and intangible benefits.¹¹⁷

Another potential alternative solution is a sales tax carve-out, which is equivalent to an income tax carve-out in the fairness realm but whose effectiveness stands on shakier ground. Sports franchises located in jurisdictions with a sales tax collect these taxes on ticket sales, personal seat licenses, merchandise, concessions, and myriad other goods and services. Additionally, the team experiences sales tax liability on its own commercial purchases, both with respect to stadium construction costs and recurring expenses such as equipment.¹¹⁸ As for the former, this type of sales tax exemption would follow the mold of the Texas tax code's "back-to-school" exemption for school supplies.¹¹⁹ As for the latter, tax exemptions have been utilized by states to stimulate a wide variety of industries including mining, agriculture, and biotechnology.¹²⁰

When considering whether a sales tax carve-out is effective, an analysis of tax incidence is crucial. When considering either of the sales tax carve-outs discussed above, in order for the policy to work, the initial tax incidence must fall largely on the team. This would allow the team to reap sufficient benefits from such a carve-out to reduce their tax burden going forward and not trigger risk-aversion of the type discussed in the previous part. If the demand for tickets and merchandise is highly elastic, meaning that fans are willing to watch the game on television and forgo wearing their favorite player's jersey, the team will have to charge a lower price for these items and absorb more of the tax incidence. On the other hand, lower elasticity of demand would mean that the team can charge higher prices, and thus will bear less tax incidence than the purchasers of the goods.¹²¹ In this scenario, a sales tax carve-out would be effective.

¹¹³ This will surely be part of the team's risk calculation.

¹¹⁴ See Christine Kiracofe, *When State Constitutional Arguments Fail: Challenging School Finance Inequities Under the Illinois Civil Rights Act*, 273 ED. LAW REP. 479, 491 (2012) (discussing the Urban League's challenge to Illinois' state taxation system where local communities are forced to fund their own schools through property taxes, which the League believed was a violation of the Equal Taxation clause of the Illinois Constitution).

¹¹⁵ Kenneth L. Sokoloff and Eric M. Zolt, *Inequality and Taxation: Evidence from the Americas on How Inequality May Influence Tax Institutions*, 59 TAX. L. REV. 167 (2006).

¹¹⁶ See Kiracofe, *supra* note 115.

¹¹⁷ See Josephine W. Thomas, *Increasing the Homestead Tax Exemption: "Tax Relief" or Burden on Florida Homeowners and Local Governments*, 35 STETSON L. REV. 509 (2006).

¹¹⁸ See Lavine and Oder, *supra* note 70, discussing a sales tax exemption on construction materials for the Barclays Center for Brooklyn.

¹¹⁹ V.T.C.A., Tax Code § 151.327.

¹²⁰ Benjamin Keck and Reed White, *Revenue and Taxation*, 28 GA. ST. U.L. REV. 217, 228-29 (2011); Cynthia M. Ohlenforst, Jeff W. Dorrill, J. Blake Rice, and Eleanor A. Arnold, *Annual Survey of Texas Law: Taxation*, 57 SMU L. REV. 1241, 1251 (2004).

¹²¹ See Paul Samuelson, *ECONOMICS* 364-65 (11th ed. 1980).

Such an analysis strongly echoes the earlier discussion regarding the elasticity of demand for sports,¹²² which concluded that although sports viewership is at an all-time high, demand for tickets or merchandise is increasingly elastic in these uncertain economic times.¹²³ Additionally, there is a concern that many sports-related transactions escape sales tax liability through use of the Internet.¹²⁴ Sports fans can buy game tickets and team memorabilia from online stores or exchange websites that do not charge a sales tax.¹²⁵ Even if the team gets a fraction of each sale in a licensing fee, a sales tax carve-out will lose much of its effectiveness if it only has a full effect on percentage of total ticket and memorabilia sales.

CONCLUSION

This article has shown how state and local taxes can distort teams' decision-making processes with respect to relocation. A risk-averse team owner may choose to move to a city with lower state and local tax rates, despite wanting to keep the team in its historical home, and even if the home city offers a greater explicit and implicit subsidy. This is because the certainty of a lower tax rate is preferable to uncertainty with respect to the tax burden a franchise will bear in an upside scenario.

An income tax carve-out for revenues earned by the franchise is presented as a solution that cities can use to nullify the distortive effects of state and local taxes. This solution would be revenue-neutral because it would allow a lower up-front subsidy to be given to the franchise in exchange for staying in town. Moreover, such a carve-out is both effective and fair.

¹²² See Part III.B.2.

¹²³ See *Commish: 'Difficult Times' good for NFL*, January 27, 2012, accessible at http://espn.go.com/nfl/story/_id/7510219/recession-helped-build-nfl-fan-base-roger-goodell-says (NFL Commissioner Roger Goodell states that the league's "biggest challenge going forward is how do we get people to come to our stadiums because the experience is so great at home ... when you turn on a football game, you want to see a full stadium.").

¹²⁴ See Joshua Sibble, *Recent Developments in Internet Law*, 23 NO. 4 INTELL. PROP. & TECH. L.J. 12, 12 (2011).

¹²⁵ *Id.*