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Article 8

Is Canada Overstepping Its Borders? The Alberta Province Tax Specifically Targets Professional Hockey Players in order to Help Finance Its Professional Franchises

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IS CANADA OVERSTEPPING ITS BORDERS?

THE ALBERTA PROVINCE TAX SPECIFICALLY TARGETS PROFESSIONAL HOCKEY PLAYERS IN ORDER TO HELP FINANCE ITS PROFESSIONAL FRANCHISES

ALAN POGROSZEWSKI

In the fall of 2002, the Canadian province of Alberta implemented a 12.5% tax on all income earned by National Hockey League (NHL) players who play games in the province's two NHL cities of Edmonton and Calgary.[1] This first-in-Canada tax on professional hockey players is designed to help the province's struggling NHL teams, without using the province's taxpayer money.[2] The tax, which will apply only to NHL players, and will not apply to coaches, trainers, or visiting management, is expected to result in a gross revenue stream of U.S. $5,000,000.00 per year,[3] which will be made available to the teams, less the cost of administration.[4] The tax will be imposed on NHL players who perform services in the province of Alberta from August 31, 2002, until December 31, 2005.[5]

There are roughly 700 players currently playing in the NHL.[6] With nearly all NHL players scheduled to play in either Edmonton or Calgary over the next season, each one of these athletes will need guidance on how they are affected by this tax. NHL players need to be educated on the potential tax credits available to them, as well as to any double taxation issues. Professional sports are a big business, and athletes need to be aware of their current financial and tax landscape. Knowledge of how this tax affects NHL players and the

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1. Alberta Revenue, Tax and Revenue Administration, *Alberta Personal Income Tax Act - NHL Players Tax -Information Circular*, Sept. 10, 2002, *at* www.revenue.gov.ab.ca/publications/tax_rebates/nhl/nhl1.html.

2. John Cotter, *Alberta to Bring Tax on Visiting NHL Players to Help Oilers, Flames*, YAHOO! CANADA SPORTS, Mar. 5, 2002, *at* http://ca.sports.yahoo.com/020306/6/km8u.html.

3. All currency figures used in this article will be in U.S. dollars.

4. Alberta Personal Income Tax Act, R.S.A. ch. A-30, § 48.1(1)(d) (2002) (Can.), *available at* http://www.canlii.org/ab/sta/csa/20030217/r.s.a.2000c.a-30/whole.html (last visited Feb. 17, 2004).

5. *Id.* § 48.6(b).

6. NATIONAL HOCKEY LEAGUE, OFFICIAL GUIDE & RECORD BOOK/2002 338-599 (2002).

education to protect these athletes from being over taxed is just as important in the current market place as securing their next big contract.

Athletes performing services in other international leagues that have franchises based in Canada should also be aware of the Alberta NHL tax. As Alberta Premier Ralph Klein points out, "I'm sure that other provincial jurisdictions that have NHL teams will look at it as well, based on the Alberta model."[7] It is plausible that other Canadian provinces may look to implement similar taxes on other professional athletes, affecting the tax structure of athletes who perform in not only the NHL, but in addition, Major League Baseball and the National Basketball Association.

Furthermore, the Alberta NHL tax also affects U.S. tax revenue. Under 26 U.S.C. § 901(a), the U.S. provides a tax credit reducing U.S. income tax on a dollar-for-dollar basis on foreign taxes paid. Consequently, through a foreign tax credit for U.S. resident NHL players, U.S. tax revenue is reduced by the same amount of tax that has been paid to Alberta. In essence, the U.S., through 26 U.S.C. § 901(a), is aiding the Alberta Premier in collecting revenue for his struggling NHL franchises.

This article will begin with the history of financial difficulties affecting the Alberta NHL teams that led to the implementation of this provision. This will be followed by a review of the NHL Players' Association's (NHLPA) objection to the tax, along with an overview of the Alberta NHL tax. Since the Alberta NHL tax is in some respects similar to current U.S. state income tax currently subjected to NHL players, a comparison between the two taxes will follow. This section will outline who is subject to tax and how each jurisdiction apportions the percentage of compensation earned in its state or province. The article then examines the potential for double taxation, as well as the ability of U.S. residents to claim a foreign tax credit. Finally, the article concludes with a look at the potential ramifications of this tax, while reiterating the importance for NHL players to be aware of who is subject to the Alberta NHL tax and what tax credits are available to them.

SECTION II

HISTORICAL BACKGROUND

Over the past ten years, Canadian hockey teams, specifically the two teams based in Alberta, have had financial difficulty competing against the teams based in the U.S. Two major reasons behind this difficulty include the

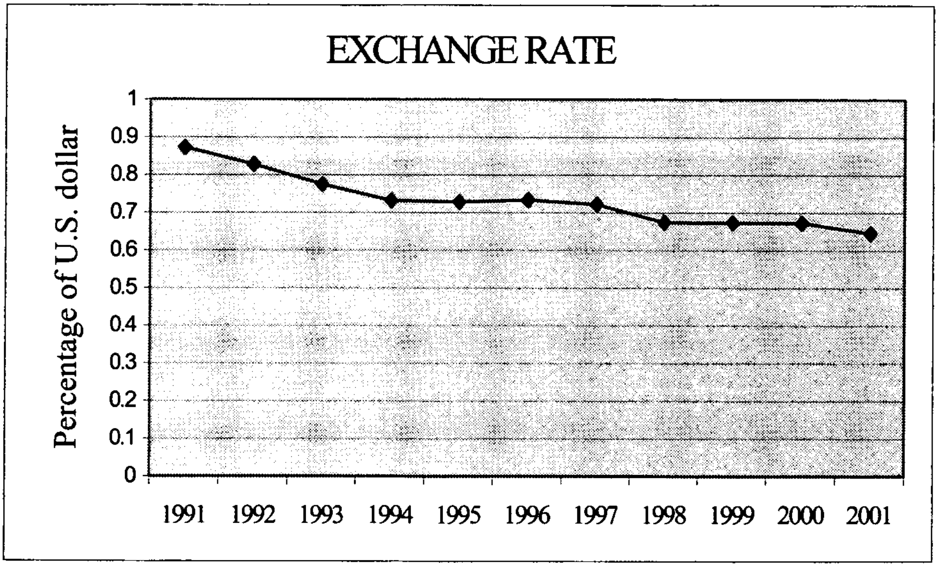
7. Cotter, *supra* note 2.

devaluation of the Canadian dollar and the increase in players' salaries.[8]

In 1991 the Canadian dollar was worth 0.87 in comparison to the U.S. dollar.[9] In the ten years since, the Canadian dollar has dropped 34% in value, with it currently (2001) worth 0.64 to the U.S. dollar (see Exhibit 1). In that same time period, NHL salaries have escalated from an average of U.S. $368,000.00 in 1991 to U.S. $1,434,885.00 for the 2000-01 NHL season (see Exhibit 2).[10] The combination of these two factors has made it increasingly difficult for Canadian teams, such as Edmonton and Calgary, to compete in the U.S.-dominated NHL.[11]

EXHIBIT 1

Canada/U.S. Exchange Rate 1991-2001[12]



8. Nat'l Hockey League v. Nat'l Hockey League Players' Ass'n 9 (Mar. 3, 2003) (Parker, Arb.) (unpublished arbitration decision) (on file with author).

9. Alberta Agriculture, Food and Rural Development, *Canada and United States Interest Rates and Exchange Rate, 1974-2002*, *at* www.agric.gov.ab.ca/economic/yearbook/interest.pdf (last visited Jan. 13, 2004).

10. NHL Players' Ass'n, *Average NHL League Salary* (unpublished manuscript, on file with author).

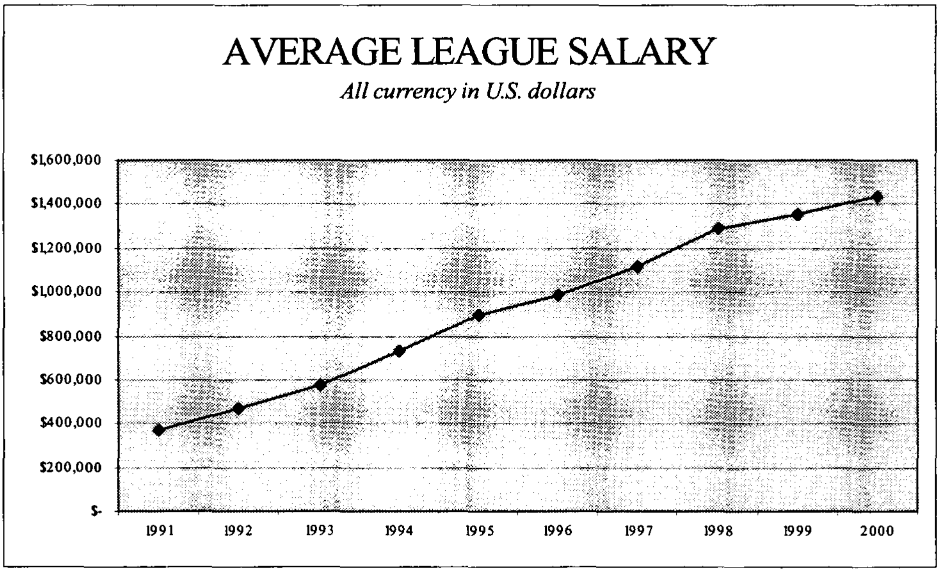
11. Twenty-four of the thirty teams currently in the NHL are based in the U.S.

12. Alberta Agriculture, Food and Rural Development, *supra*, note 9.

It is within this economic landscape that on January 18, 2000, the Canadian Federal Government proposed to subsidize the six Canadian teams out of general government funds.[13] Within three days, the proposal died following strenuous opposition from provincial government leaders and the general public. Canadian Industry Minister John Manley speculated that the death of the proposal could prompt some Canadian teams, including the Flames and Oilers, to relocate to the U.S.[14]

EXHIBIT 2

Average NHL Salary 1991-2000[15]



Following the failure of the government's proposal, the Calgary Flames and the Edmonton Oilers proposed their own "Visiting Player Tax" to the Alberta parliament.[16] Calgary Flames CFO Michael Holditch even suggested that the levy be called a "tax" rather than a "fee" to increase the likelihood that

13. *Nat'l Hockey League*, *supra* note 8, at 5.

14. *Id.*

15. NHL Players' Ass'n, *supra* note 10.

16. *Nat'l Hockey League*, *supra* note 8, at 6.

players on American teams would be entitled to a U.S. tax credit.[17] The primary element of the proposal is to impose a tax, which is the same as what all Alberta residents are subject to, on all NHL players from visiting teams that play hockey in the province. The tax would raise approximately $5,000,000.00, which would be split evenly between the Edmonton Oilers and the Calgary Flames to help cover the cost of their operation of facilities in Alberta.[18]

Alberta's idea is not a novel one. U.S. states have long looked to increase revenue through the taxation of visiting athletes performing services in their jurisdictions. Over the past decade the number of U.S. states that have required nonresident athletes to pay tax on income earned in their jurisdictions has increased dramatically.

The attraction in taxing the income of nonresident, professional athletes, specifically professional hockey players, is clear.[19] First, as Exhibit 2 indicates, the income of NHL players has increased substantially over the past decade. Second, it is usually easy to determine when these well-known individuals are present in a particular taxing jurisdiction. Third, professional athletes cannot avoid the taxing jurisdiction, since the sites at which they play are determined for them in advance and, most importantly, these nonresident athletes cannot express their displeasure in the voting booth.

In June of 2002, the NHLPA alleged the Alberta NHL tax was in violation of the NHL's Collective Bargaining Agreement (CBA) and filed a grievance against the Edmonton Oilers, Calgary Flames, and the NHL.[20] The NHLPA claimed that the two Alberta teams violated Article 26.1 of the CBA when Calgary and Edmonton entered into an agreement with each other and the Government of Alberta in connection with the Alberta NHL tax.[21]

Article 26.1 of the CBA prohibits teams from entering any agreement that is designed to circumvent the parties' intention as reflected by the CBA.[22] The NHLPA asserted that the two Alberta teams agreed between themselves to

17. *Id.* at 13.

18. *Id.* at 11.

19. Robert Plattner, *FTA Recommendations on Taxing Nonresident Athletes Could Have Wider Application*, J. MULTISTATE TAX'N & INCENTIVES, Mar./Apr. 1995.

20. Letter from Bob W. Goodenow, NHLPA Executive Director and General Councel, to William L. Daly, Senior Vice President, Legal Affairs, National Hockey League (June 3, 2002) (cc: to the Honorable Patricia L. Nelson, Minister of Finance, Province of Alberta) (on file with author) [hereinafter Goodenow Letter].

21. NATIONAL HOCKEY LEAGUE, COLLECTIVE BARGAINING AGREEMENT: NHLPA/NHL 95 (1997) (for the period of September 16, 1993 to September 15, 2004, Jan. 13, 1995, and amended effective June 26, 1997) (on file with author).

22. *Id.*

lobby for a tax on NHL players, which was designed to transfer money from the players' paychecks into the teams' pockets.[23] Therefore, the NHL and the two NHL clubs, through the use of the Alberta NHL tax, bypassed the NHLPA in precipitating a change that affected the players' terms and conditions of employment.[24]

In addition, the NHLPA claimed that no jurisdiction in the U.S. had imposed a tax like the Alberta NHL tax that, first, taxes only NHL players and, second, passes the proceeds of the tax, less administrative cost, directly to a professional sports team.[25] The NHLPA stated that most U.S. jurisdictions have taxes that apply to all nonresidents, including athletes; and, in most cases, the proceeds of the tax may be used for public purposes. Although, in some cases, some of the proceeds are directed to specific economic development purposes, including construction and maintenance of stadiums, the money is placed in the hands of public entities, not professional teams.

In conclusion, the NHLPA alleged that, to the extent that the teams did not reject the revenue created by such a tax, they should make whole every player whose net income is reduced by the tax.[26] Should the Alberta NHL teams fail to do so, the NHLPA further argued that individual players who are affected by the tax would have the option of declaring defaults under their standard player contracts and becoming unrestricted free agents.[27]

The NHLPA lost its arbitration case with the NHL due to insufficient evidence to support the claim that the league and the two Alberta teams violated the CBA.[28] In her ruling on March 3, 2003, arbitrator Joan Parker stated that, although the tax was not as fair as it might have been, the arbitrator's job is not to decide whether a tax of broader (or narrower) application should have been enacted. The arbitrator's role is limited – to determine whether there is a violation of the CBA.[29] The NHLPA's case required proof of a violation of the CBA. Based upon the totality of the evidence, the NHLPA was unable to prove that either the league or the two Alberta teams, in seeking a player tax, acted in bad faith or in circumvention of the CBA.

23. *Nat'l Hockey League*, *supra* note 8, at 17.

24. Goodenow Letter, *supra* note 20.

25. *Nat'l Hockey League*, *supra* note 8, at 21-22.

26. Goodenow Letter, *supra* note 20.

27. *Id.*

28. *Nat'l Hockey League*, *supra* note 8, at 40.

29. *Id.*

SECTION III

OVERVIEW OF ALBERTA NHL TAX

The Alberta NHL tax is part of the Alberta Personal Income Tax Act, which was amended in 2002 to include Part 1.1 and the related Alberta NHL tax.[30] The tax applies for 2002, but only to hockey services performed after August 31, 2002. The tax terminates following the 2005 calendar year.[31]

The Alberta NHL tax targets hockey players who are currently playing in the NHL.[32] A player is taxed on his "NHL hockey income," which includes any "income received directly or indirectly by or on behalf of the NHL player for performing hockey duties or services as a player for an NHL team."[33] The player must be on the roster of an NHL team, whether the player is a resident in or outside Canada.[34] The income taxed is that portion of NHL hockey income determined to be "NHL hockey income in Alberta" in accordance with the regulations under section 48.5.[35] The income apportioned to Alberta includes income earned during any game in which the player participates or "is in the facility in which an NHL game is being played for all or part of the game."[36]

The allocation of income earned in Alberta is computed, for each game played in Alberta, by dividing the player's base salary during the time period in question by the number of calendar days in a season.[37] A player's base salary is defined under the guidance of the CBA.[38] Signing bonuses, deferred compensation, and performance bonuses are not included.[39] Assume, for example, a player provides hockey duties or services to his team in a hockey facility in Alberta during the 2002-03 regular season. The season begins on October 9, 2002, and ends on April 6, 2003. Therefore, there are 180 calendar days in the 2002-03 season. The player plays a game in Calgary on December 31, 2002, and a game in Edmonton on January 2, 2003. The player's base salary is $1,000,000.00. The player's taxable salary for each game in Alberta

30. Alberta Revenue, Tax and Revenue Administration, *supra* note 1.

31. R.S.A. ch. A-30, § 48.6(b) (2002).

32. *Id.* § 48.1(1)(a).

33. *Id.* § 48.1(1)(b).

34. *Id.* § 48.1(1)(d).

35. *Id.* § 48.1(1)(c).

36. R.S.A. ch. A-30 § 48.1(2)(a)-(b).

37. *Id.* § 48.4(a)-(b).

38. NATIONAL HOCKEY LEAGUE, COLLECTIVE BARGAINING AGREEMENT, *supra* note 21, at 38.

39. *See* Alberta Revenue, Tax and Revenue Administration, *supra* note 1.

is 1,000,000/180 or $5,555.56.

Pursuant to the tax, "all NHL teams are required to withhold and remit 12.5% of the player's taxable salary for all regular season games played in Alberta."[40] Funds are to be remitted monthly and received by the fifteenth day of the following month.[41] Otherwise interest will be imposed on the late remittance from the fifteenth day until the day the funds are received.[42] Tax Revenue Alberta (TRA) may impose interest and/or penalties to any team with deficient remittances.[43] Over-remittances may be refunded, without interest, on request of the team for refunding to the corresponding player.[44] Each player is responsible for ensuring that his team has made the required remittance.[45] If the player discovers that his team did not remit the correct amount of tax, the player must advise TRA in writing of the necessary corrections.[46] Should the player discover that no tax has been withheld, the player is responsible for making remittances for the year.[47] In this instance, the player will be required to file an NHL Player Tax Return (AT255) with the TRA no later than April 30th of the following year. In addition, every player shall, on demand from the TRA's Minister of Revenue, file an NHL Player Tax Return with the Minister.[48]

Any objection or appeal on behalf of a player should be made to the TRA.[49] A player who files a Notice of Objection will need to include with it a copy of his contract for the year in question, along with a letter from his team stating that he was paid in accordance with the contract.[50] This information is to be filed with the TRA on, or before, one year after the original due date for the return, or ninety days after the date of the Notice of Assessment from the Minister of Revenue.[51] A separate Notice of Objection is to be filed for each year in dispute.[52]

40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. Alberta Revenue, Tax and Revenue Administration, *supra* note 1.
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. Alberta Revenue, Tax and Revenue Administration, *supra* note 1.
50. *Id.*
51. *Id.*
52. *Id.*

SECTION IV

COMPARISON

In comparing the Alberta NHL tax with U.S. states' taxes on nonresidents, there are three significant differences: (1) who is subject to the tax; (2) how the two entities allocate the amount of compensation earned in their jurisdictions; and (3) the Alberta NHL tax is a 12.5% flat tax, which far exceeds any U.S. state income tax rate, while simultaneously not providing for any deductions.

Who is Subject to Tax?

The Alberta NHL tax purposely targets professional hockey players, specifically those currently employed by an NHL team.[53] U.S. state nonresident taxes do not specifically target *only* professional athletes, let alone only NHL players. All nonresidents who earn income in U.S. states are subject to state income taxation. *Shaffer v. Carter*[54] is one of the earliest cases involving the taxation of nonresident state income. In it, the U.S. Supreme Court ruled, "just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character . . . upon incomes accruing to non-residents from their property or business within the State."[55] Therefore, U.S. states may subject all those associated and traveling with the team, not just the players, to state nonresident tax. This includes all team personnel, such as trainers, coaches, and broadcasters. In addition, all minor league hockey teams and their personnel are subject to state nonresident tax as well. The Alberta NHL tax, however, is specifically implemented to target professional hockey players, with its objective to take income from NHL players in the form of an income tax and return that revenue back to the struggling Alberta hockey franchises.[56] Other personnel, such as trainers, broadcasters, or personnel from other leagues, including either the professional or the junior leagues, are not subject to this tax.[57]

53. *See* R.S.A. ch. A-30, § 48.1(1)(d).

54. 252 U.S. 37 (1920).

55. *Id.* at 52.

56. Cotter, *supra* note 2.

57. *See* R.S.A. ch. A-30, § 48.1(1)(d).

Allocation of Income

Another difference between the two taxes is the allocation of compensation. State apportionment for professional hockey players in the U.S. has long followed the ruling in *Stemkowski v. C.I.R.*[58] The court in *Stemkowski* concluded that compensation under the NHL's standard player contract includes time spent in training camp, the exhibition season, the regular season and the playoffs (if any).[59] It does not include the off-season. State apportionment for NHL players is made on the basis of time.[60]

To illustrate the differences in apportionment of compensation, the Alberta NHL tax and California nonresident tax can profitably be compared. A California nonresident individual is taxable only on California-source income.[61] When a nonresident earns income from sources both within and outside California, such income must be apportioned in a reasonable manner.[62] California follows the reasoning of *Stemkowski* and uses a "duty day" allocation. In *Wilson v. Franchise Tax Board*,[63] the court ruled with regards to Mr. Wilson, a quarterback with the Los Angeles Raiders, that apportionment of compensation did not include time spent in his home state of Washington training during the off-season.[64] Under the duty day formula, income is apportioned to California according to the ratio of the number of days spent in California to the total number of duty days during the season.[65] Duty days include all days from the beginning of official preseason training through the last game in which the team competes, including any postseason games played in the same year.[66]

A California allocation example might start with a player who plays two games in three nights in California, practicing or having team meetings the third day. The player's apportioned income would be three California duty days divided by the total number of duty days in a season. As stated in *Wilson*, this would include training camp, regular season, and playoffs.[67] For the 2002 tax year, the duty day denominator could be as high as 275.[68]

58. 690 F.2d 40 (2d Cir. 1982).

59. *Id.* at 46.

60. 26 C.F.R. § 1.861-4(b)(1) (2002).

61. Cal. Rev. & Tax. Code § 17951 (2003).

62. *Id.* § 17954.

63. 25 Cal. Rptr. 2d 282 (Cal. Ct. App. 1993).

64. *Id.* at 283.

65. *Id.* at 286.

66. *Id.*

67. *Id.* at 288.

68. This would be true if the player played for either the Stanley Cup Champion Detroit Red

Therefore, a player who earns $1,000,000.00 will have earned $10,909.00 in California for the three days there during the 2002 calendar year.

The Alberta NHL tax does not follow *Stemkowski's* duty day allocation. The denominator of duty days under the Alberta NHL tax is considerably smaller. Further, a player is taxed when the player is in the facility in which an NHL game is being played for all or part of the game, even if the player is not participating in the game.[69] Therefore, a player who spent three days in Alberta having played two games in three nights, while practicing or having team meetings the third day, would be taxed only for income earned in the two games (see Exhibit 3).

Wings or the team they defeated, the Carolina Hurricanes. Each team played until the conclusion of the 2002 Stanley Cup Playoffs, which concluded, on June 13, 2002. Add to this the number of "duty days" performed in the fall, which began with the start of training camp on September 12, 2002 and the total number of days during the 2002 NHL season for players on either the Detroit Red Wings or the Carolina Hurricanes roster would be 275.

Team	Total 2002 Duty Days	Team	Total 2002 Duty Days
Anaheim	215	Montreal	244
Atlanta	215	Nashville	215
Boston	230	New Jersey	228
Buffalo	215	N.Y. Islanders	231
Calgary	215	N.Y. Rangers	215
Carolina	275	Ottawa	245
Chicago	226	Philadelphia	227
Colorado	262	Phoenix	228
Columbus	215	Pittsburgh	215
Dallas	215	San Jose	246
Detroit	275	St. Louis	242
Edmonton	215	Tampa	215
Florida	215	Toronto	259
Los Angeles	230	Vancouver	228
Minnesota	215	Washington	215

69. R.S.A. ch. A-30, § 48.1(2)(b).

EXHIBIT 3

Compensation Allocation

State/Province	Days/Games	Duty Days/ Days in Season	Pct.	Income	Income Earned in State/ Province
California	3	275	1.09%	$1,000,000	$10,909
Alberta	2	180	1.11%	$1,000,000	$11,111

Tax Rates & Deductions

The final difference between the two taxes is the tax rate and the ability to take deductions. Tax imposed in the U.S. varies from state to state for nonresident professional athletes. The range of tax imposed on an NHL player varies from as high as California's 9.3% tax rate to no state income tax in Texas, Tennessee, and Florida.[70] Unlike the Alberta NHL tax, states generally also provide deductions and exemptions on the income earned in their state that is subject to tax.[71]

In continuing with the above example, an NHL player who is single and earned $10,909.00 in California will be able to subtract prorated exemptions and prorated standard deductions against his California income.[72] This income will then be taxed at the effective California tax rate, which would be 9.12%.[73] Thus, a player who earns $1,000,000.00 and plays two games in California with a total of three duty days has a tax burden after pro-rated deductions of $721.00. The same player will have a much larger tax burden in Alberta, as Alberta's NHL tax rate is 12.5%. In addition, unlike California, Alberta does not offer any deductions.[74] In continuing with the example, the nonresident NHL player's Alberta income will be taxed at a flat 12.5% rate for a total tax burden of $1,389.00 (see Exhibit 4).

70. Federation of Tax Administrators, *State Individual Income Taxes* (Tax rates for tax year 2001 – as of January 1, 2001), *at* http://www.taxadmin.org/fta/rate/ind_inc.html (last visited Feb. 2, 2004).

71. *Id.*

72. CALIFORNIA FRANCHISE TAX BOARD, 2002 NONRESIDENT OR PART YEAR RESIDENT BOOKLET, FORMS & INSTRUCTIONS, CALIFORNIA 540NR 11-12, *available at* http://www.ftb.ca.gov/forms/02_forms/02_nrbk.pdf (last visited Feb. 2, 2004).

73. *Id.* at 56.

74. R.S.A. ch. A-30, § 48.4.

EXHIBIT 4

Income Tax Rate and Tax Owed

State/ Province	Income Earned in State/ Province	Deductions	Adjusted Income	Effective Tax Rate	Tax Owed	% of Tax On Income Earned in State/Province
California	$10,909	$3,004	$7,905	9.12%	$721	6.61%
Alberta	$11,111	$0	$11,111	12.50%	$1,389	12.50%

In conclusion, despite Alberta's original concept of replicating the U.S. state income tax on nonresident athletes, there are some distinct differences between the two taxes. While the U.S. states have the ability to tax all nonresidents who earn income in their state, Alberta has specifically targeted only NHL players.[75] NHL personnel who travel with the club are taxed as nonresidents in U.S. states, but are not taxed in the province of Alberta. Alberta's allocation of compensation includes only games played during the season, in comparison to the use in the U.S. of duty days. This provides Alberta in many, but not all, instances a larger percentage of income allocated in its province. In addition, the Alberta NHL tax is a flat tax at a higher rate than U.S. state income taxes, which permits the province to tax a larger percentage of the income earned in Alberta.

SECTION V

TAX CREDITS VS. DOUBLE TAXATION

If an NHL player is a U.S. resident, there are two ways in which he may claim a foreign tax credit.[76] He may choose to take the amount of any foreign taxes paid or accrued during the year as a foreign tax credit or as an itemized deduction. The foreign tax credit is intended to relieve double taxation burden when both the U.S. and a foreign country tax foreign source income. A foreign tax credit can only reduce U.S. taxes on foreign source income and cannot reduce U.S. taxes on U.S. source income.[77] 26 U.S.C. § 904(a) limits the credit for foreign income taxes to an amount equal to the pre-credit U.S.

75. *Id.* § 48.1(1)(d).

76. I.R.C. § 901(a) (West 2002).

77. *Id.* § 904(a).

tax on the taxpayer's foreign source income.[78] As an example, should the total foreign tax imposed on a professional athlete be at a rate of 45%, that athlete would pay $45.00 of tax on $100.00 of income earned in that foreign country. However if that athlete is in the 39.6% U.S. tax bracket, under 26 U.S.C. § 904(a), he will be limited to a foreign tax credit of only $39.60. Under 26 U.S.C. § 904(c), foreign income taxes in excess of the 26 U.S.C. § 904(a) limitation may be carried back two years or forward five years. Should the player be unable to use the foreign tax credit the previous two years, he will need to roll the credit forward until he is able to use it. Therefore, in this example, the remaining $5.40 may then be either carried back two years or forward five years to be used as a credit against foreign income.

A player currently employed by a U.S. NHL team, which only plays a limited number of games in Alberta, will be fully credited on his U.S. federal tax return under 26 U.S.C. § 901(a). This is because the Alberta NHL tax rate of 12.5%, is lower than U.S. tax rates.

U.S. residents currently employed by one of the six Canadian teams, however, will find themselves most vulnerable to a double tax. Especially susceptible will be NHL players who play on either the Edmonton or Calgary teams. Not only will these NHL players be subjected to the recently implemented Alberta NHL tax on income earned during all their home games, they will also be required to pay Canadian federal tax (29% on income over $103,000.00 Canadian) and Alberta provincial tax (10%) on their entire earned income.[79] The combination of the three taxes in nearly all instances will be greater than the player's U.S. marginal tax rate, thus limiting the player on his foreign tax credit under 26 U.S.C. § 904(a). NHL players who are employed under these circumstances for an extended period of time will never receive a full credit on their foreign taxed income.

SECTION VI

RAMIFICATIONS

There are three potential ramifications to the Alberta NHL tax. First, the U.S. will need to make up revenue lost to Alberta by other means. Second, Canadian teams, by permitting double taxation, will have a more difficult time recruiting non-Canadian hockey players. Third, additional provinces are sure

78. BORIS BITTKER & LAWRENCE LOKKEN, FUNDAMENTALS OF INTERNATIONAL TAXATION: U.S. TAXATION OF FOREIGN INCOME AND FOREIGN TAXPAYERS 72-75 (2002).

79. Canada Customs and Revenue Agency, *What are the Income Tax Rates in Canada for 2003?*, *at* http://www.ccra-adrc.gc.ca/tax/individuals/faq/2003_rate-e.html (Dec. 19, 2002).

to follow the lead of Alberta, thus making the NHL player's tax structure increasingly complex.

Through the use of foreign tax credits, the U.S. will lose tax revenue by subsidizing the Alberta hockey teams. As outlined in the previous section, U.S. resident NHL players are given a credit on their U.S. federal income tax return in the same dollar amount as their Alberta NHL tax paid.[80] As U.S. tax revenue decreases through these tax credits to U.S.-resident NHL players, the U.S. will need to replace it through other means.

The second ramification is that Edmonton and Calgary may find it more difficult to persuade foreigners to play in their province, due to the potential for double taxation of non-Canadian NHL players' earnings. The result will likely be that highly paid unrestricted free agents who are residents of a country other than Canada will shy away from these two Alberta teams. Because Calgary and Edmonton will have a more difficult time attracting star players who are from outside of Canada, they will find it harder to compete on the ice. Poor performance by the two teams could translate into low interest and attendance, in turn lowering revenue for the clubs.

In addition, other Canadian provinces with NHL teams may follow suit since taxing athletes seems to be a popular method of increasing state revenue.[81] Having additional provinces subject NHL players to such taxes will increase the complexity of the NHL players' tax structure. NHL players will find themselves burdened by yet one more tax to understand and report. Already tax collection has become unreasonably burdensome and expensive for the athletes.[82] NHL players will need to continually keep informed about how each additional tax intertwines with their current tax structure.

SECTION VII

CONCLUSION

For NHL players to protect themselves, it is important to understand the Alberta NHL Tax and its potential ramifications. Through the use of the foreign tax credit, U.S. resident NHL players currently playing for U.S. teams should be fully reimbursed by U.S. federal tax credits for any Alberta NHL tax paid. However, it is important for highly compensated free-agents to be aware of potential tax risks associated with playing in Alberta when they are

80. I.R.C. § 901(b).

81. Cotter, *supra* note 2.

82. Jeffrey Krasney, *State Income Taxation of Nonresident Professional Athletes*, 2 SPORTS LAW. J. 127 (1995).

residents of a country other than Canada.

It is important to understand the intricacies of the Alberta NHL tax, specifically the compliance issues associated with it. Although the teams are responsible in the first instance for withholding and paying the Alberta NHL tax, the duty of compliance ultimately falls on the player.[83] In addition, it is important for NHL players who are taxed to make certain that they were indeed on the team's 23-man roster for games for which they were taxed.[84] Should an NHL player be over-taxed, a refund will need to be submitted in a timely manner.[85]

With the current Alberta NHL tax set to expire after the 2005 calendar year, these tax issues may abate fairly soon. However, it is difficult to believe that other Canadian provinces will not soon implement a similar tax suggesting that these concerns are of a more long-term nature.

83. Alberta Revenue, Tax and Revenue Administration, *supra* note 1.

84. R.S.A. ch. A-30, § 48.1(2)(a)-(b).

85. Alberta Revenue, Tax and Revenue Administration, *supra* note 1.