

To: Editor
Tax Notes

Usually, I heed my wife's warning to hold my tongue. I cannot, however, let the Special Report, "State Income Taxation of Nonresident Professional Athletes," by David Hoffman (Tax Notes, November 25, 2002) pass without comment. The report is based on a fundamental misunderstanding of the nature of state income taxes. This causes a mischaracterization of the taxation of nonresident professional athletes and causes the policy analysis to be, for the large part, flawed and incorrect.

The Report characterizes state taxation of nonresident professional athletes as a special income tax imposed only on professional athletes because they make large salaries with some collateral damage in that the purported special tax is also imposed on coaches, trainers and others traveling with the team. This is simply wrong.

Nonresident athletes are subjected to income taxation under the rules generally applied to all nonresidents, i.e., income arising from services performed in the state are taxable in the state regardless of whether earned by a resident or a nonresident. There is no special category of nonresident athletes with a special taxing structure. [For further discussion see, Richard Hawkins, Terry Slay and Sally Wallace, "Play Here, Pay Here: An Analysis of the State Income Tax on Athletes," State Tax Notes, November 25, 2002.]

All states impose their income tax on nonresidents, unless a pair of states has signed a reciprocity agreement limiting taxation only to the state of residence. [Note that federal law prevents the District of Columbia from imposing its income tax on nonresidents, thus leading to reciprocity agreements with surrounding states.] In addition, many states have aggressive enforcement programs to identify nonresidents working in the state to insure that they file. As a result, broad categories of workers that may be only intermittently in a state are subject to tax in the state. Constitutional requirements, of course, limit taxation to the income earned in the state.

The policy analysis of the taxation of nonresident athletes contains four parts; only one is on-point. The first two arguments revolve around the misconception that the taxation of nonresident athletes is done under some special tax that targets athletes and those that travel with them. As shown, this misunderstands what states are doing.

In addition, Hoffman castigates the taxation of nonresident athletes as economically inefficient because "the incidence of the tax is not effectively aligned with the economic activity that produces the income being taxed," citing as evidence that professional teams generate income to pay salaries from broadcasting rights, merchandising, and other activities in the home state. This argument confuses a tax on the professional team with a tax on the athlete. A tax on nonresident athletes is perfectly aligned with the economic activity of generating income by the athlete from playing games in various states.

The analysis, however, is on target in arguing that the taxation of nonresident athletes under current rules is complex. The athlete is required to file a return in each state in which he/she plays. About 10 years ago, state tax agencies, professional teams and player associations worked together to develop rules for the fair apportionment of a nonresident athlete's income, in part to ease the complexity of compliance. [See Hawkins, et al.] Everyone involved recognized that some form of consolidated filing – in which all nonresident players on a team could file a single return with a state – was desirable. Further efforts to develop a simplified filing approach have not been taken. Such efforts will require the cooperation and involvement of the professional teams and the players' associations in withholding and/or filing. Most state rules providing for the apportionment of a nonresident athlete's income make provision for a consolidated filing. The issue is one of mechanics and implementation. The complexity of the current situation is acknowledged.

Sincerely,

Harley T. Duncan
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