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Alan Pogroszewski

Kari Smoker

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CROSS-CHECKING: AN OVERVIEW OF THE INTERNATIONAL TAX ISSUES FOR PROFESSIONAL HOCKEY PLAYERS

ALAN POGROSZEWSKI*
&
KARI SMOKER**

I. INTRODUCTION

On July 1, 2009, Brian Gionta, a U. S. citizen and New York state resident, signed a 5-year, \$25 million contract with the Montreal Canadiens.¹ Mr. Gionta, who began the 2009 income tax year as a member of the New Jersey Devils, finished the year as a member of a Canadian-based sports franchise, having earned income in twelve U.S. states, four Canadian provinces, and three additional U.S. taxing jurisdictions, all three of which impose a city income tax: Philadelphia, Pittsburgh, and the District of Columbia. The tax implications are serious and call for careful navigation of international tax laws. Otherwise, there is a distinct possibility that the income Mr. Gionta earns will be subject to tax in both the United States and Canada as a result of each country's respective tax policies.

Mr. Gionta is not alone; cross-border tax issues amongst professional hockey players are ever present. Fifty-three percent of all hockey players playing on a U.S.-based franchise were born in Canada, while just over fifteen percent of all those playing on a Canadian-based franchise were born in the United States.² In addition, many of the hockey players playing on a sports franchise in their native country travel with their team across the border to play during the regular National Hockey League (NHL) season and the playoffs.

* Alan Pogroszewski is an Assistant Professor of Sports Studies at St. John Fisher College and the President of his own tax consulting business. He received his M.B.A. from Rochester Institute of Technology in 1996 and his M.S. in Taxation from St. John Fisher in 2003.

** Kari Smoker is an Assistant Professor of Accounting at the State University of New York, College at Brockport. She received her J.D. from the Ohio State University in 2000 and her M.S. in Taxation from Golden Gate University in 2010.

1. *Habs Sign Four Day After Gomez Trade*, ESPN (July 2, 2009), <http://sports.espn.go.com/nhl/news/story?id=4300812>.

2. NATIONAL HOCKEY LEAGUE, OFFICIAL GUIDE & RECORD BOOK 352-609 (David Keon et al. eds., 2009).

Since the 1960s, the Internal Revenue Service (IRS) has litigated more than 200 cases referred to collectively as “hockey player tax refund cases.”³ More recently, the IRS has embarked on a compliance initiative targeting foreign athletes and entertainers.⁴ Given the heightened attention to foreign athletes, the potential exposure of NHL players to income tax in both the United States and Canada, and the treaty benefits they can potentially claim to minimize that tax, it is imperative for hockey players and their tax advisors to properly determine players’ citizenship and residency status in the United States and elsewhere and to understand the international tax rules that come into play.

This Article begins by outlining the United States’ and Canada’s ability to tax their citizens and residents as well as those nonresidents who earn income within their borders and reviewing each country’s income tax codes and court rulings that have shaped its respective international tax policies. The first two sections examine the cross-border income tax implications of athlete-specific issues such as off-season training, training camp, postseason playoffs, as well as the income allocations of both playing and signing bonuses. The third section addresses the U.S.-Canada Income Tax Convention and how it affects the process of taxation between the two nations, examining the issue of double taxation and the measures that are in place to help alleviate this tax burden on cross-border athletes. The Article then examines the practical consequences of these tax issues and whether those athletes who have exposure in both countries have any tax saving opportunities available to them. Research in this section indicates that they in fact do. The Article then concludes with a summary of the findings as well as a review of the potential tax savings strategies that are available to these athletes.

II. U.S. INCOME TAX REQUIREMENTS

The United States has adopted the broadest model of income taxation in the world. It imposes tax on the worldwide income of its citizens and residents⁵ and taxes U.S.—source income derived by nonresident aliens.⁶

3. See *Gill v. United States*, 1997 U.S. Claims LEXIS 228, *2 (Fed. Cl. 1997) (providing a procedural history of the so-called “hockey player tax refund cases”).

4. See *IRS Focus on Foreign Athletes and Entertainers*, INTERNAL REVENUE SERV., <http://www.irs.gov/businesses/small/international/article/0,,id=176176,00.html> (last updated Dec. 8, 2010) (announcing the launch of “an Issue Management Team focused on improving U.S. income reporting and tax payment compliance by foreign athletes and entertainers who work in the United States”).

5. “Section 1 of the Code . . . imposes an income tax on the income of every individual who is a citizen or resident of the United States The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income).” Treas. Reg. § 1.1-1(a) (2011). Section

Therefore, U.S. citizens and residents who play hockey abroad and nonresident aliens who play hockey in the United States are all subject to income taxation in the United States. In addition, Article I, Section Eight of the U.S. Constitution establishes the dual sovereignty of the states and the federal government and preserves each state's right, separate and distinct from that of the federal government, to tax individuals. Therefore, an athlete who is required to file a U.S. federal income tax return will also need to file a state income tax return for each state in which one is required, based on residency, source of income, or both.

A. United States Citizens

The United States imposes a tax on the worldwide income of its citizens, whether they reside in the United States or abroad.⁷ It preserves this right under the "saving clause," which the United States incorporates into all of its international tax treaties.⁸ Therefore, even those hockey players who are U.S.

61(a) of the Internal Revenue Code defines gross income as "all income from whatever source derived . . ." I.R.C. § 61(a) (2011).

6. "Section 1 of the Code . . . imposes an income tax . . . to the extent provided by section 871(b) or 877(b) . . . , on the income of a nonresident alien individual." Treas. Reg. § 1.1-1(a). The Sixteenth Amendment to the Constitution provides that "[t]he Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." U.S. CONST. amend. XVI. Perhaps more important than what the amendment says is what it does not say:

The *Sixteenth Amendment* does not state that Congress may only impose an income tax on U.S. citizens, and the tax laws made pursuant to the *Sixteenth Amendment* contain no such limitation. The Underwood Tariff Act of 1913 . . . imposed a tax on income "arising or accruing . . . to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof. . . ." Though the Underwood Tariff Act has long been superseded . . . today's Internal Revenue Code still "imposes an income tax on the income of every individual who is a citizen or resident of the United States."

Wright v. United States, U.S. Dist. LEXIS 20095, *5-6 (M.D. Ga. 2004) (emphasis added) (internal citations omitted).

7. See Treas. Reg. § 1.1-1; see also *Wright*, 2004 U.S. Dist. LEXIS 20095, at *5-6.

8. See, for example, Article XXIX (Miscellaneous Rules), paragraph 2(a), of the U.S.-Canada Income Tax Convention, which states: "Except to the extent provided in paragraph 3, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens and companies electing to be treated as domestic corporations." U.S.-Canada Income Tax Convention, U.S.-Can., art. XXIX, ¶ 2(a), Sept. 26, 1980, T.I.A.S. No. 11087 (amended 2007). IRS Publication 597, *Information on the United States-Canada Income Tax Treaty*, gives the following example of how the saving clause comes into play:

[A]n individual who is a U.S. citizen and a resident of Canada may have dividend income from a U.S. corporation. The treaty provides a maximum rate of 15% on

citizens but file tax returns as residents of other countries are subject to U.S. income tax and are required to file a Form 1040 U.S. Individual Income Tax Return.⁹

The term “citizen” is broadly defined for U.S. income tax purposes. It includes certain nonresident aliens who renounced their U.S. citizenship within ten years prior to the close of the taxable year.¹⁰ This definition effectively allows the United States to impose a tax on certain expatriates who renounce their citizenship in an effort to avoid U.S. taxation.¹¹ Because these expatriates are deemed U.S. citizens, they cannot claim the benefits of any U.S. tax treaty to avoid U.S. income tax; they remain subject to U.S. income tax within the meaning of the saving clause.¹²

B. United States Resident Aliens

The United States also taxes residents who are not U.S. citizens on their worldwide income.¹³ Resident aliens, like U.S. citizens, file the Form 1040 U.S. Individual Income Tax Return.¹⁴ They are subject to the same tax laws and are therefore entitled to claim the same deductions as U.S. citizens.¹⁵

For income tax purposes, there are three different tests for determining “resident alien” status. An alien is considered a resident of the United States if he holds a Green Card or elects to be treated as a U.S. resident.¹⁶ Otherwise, he is a U.S. resident if he meets the “substantial presence test.”¹⁷

Under the substantial presence test, an alien is treated as a U.S. resident for income tax purposes if (1) he is in the United States for 183 days¹⁸ or more

dividends received by a resident of Canada from sources in the United States. Even though a resident of Canada, the individual is a U.S. citizen and the saving clause overrides the treaty article that limits the U.S. tax to 15%.

I.R.S. Pub. 597, 66597M, (Aug. 2009).

In other words, a U.S. citizen cannot avoid U.S. income tax by claiming treaty benefits intended for Canadian residents who are not U.S. citizens. *See id.*

9. *See Taxation of Resident Aliens*, INTERNAL REVENUE SERV., <http://www.irs.gov/businesses/small/international/article/0,,id=96493,00.html> (last updated Dec. 7, 2010).

10. I.R.C. §§ 877(a)(1), 7701(a)(50)(A) (2011).

11. *See* I.R.C. § 877(b).

12. Rev. Rul. 79-152, 1979-1 C.B. 237.

13. *See* Treas. Reg. § 1.1-1; *see also Wright*, 2004 U.S. Dist. LEXIS 20095, at *5–6.

14. *Topic 581 – Resident and Non-Resident Aliens*, IRS, <http://www.irs.gov/taxtopics/tc851.html> (last updated Sept. 23, 2011).

15. *See* Treas. Reg. § 1.1-1; *see also Taxation of Resident Aliens*, *supra* note 9.

16. *Topic 581 – Resident and Non-Resident Aliens*, *supra* note 14; I.R.C. § 7701(b)(1)(A).

17. § 7701(b)(1)(A)(ii).

18. § 7701(b)(3)(A). Notably, 183 days is just 1 day more than half the year. An alien that is

during the calendar year, or (2) if he is in the United States less than 183 days but at least 31 days during the current calendar year and the sum of the days present in the current year plus 1/3 of the days present in the first prior year plus 1/6 of the days present in the second prior year is equal to or exceeds 183 days.¹⁹ Notwithstanding, if an alien is in the United States less than 183 days during the current calendar year, he will *not* be treated as a U.S. resident so long as he has a “tax home” in a foreign country and a closer connection to that country than to the United States.²⁰ Tax home in this context has the same meaning as it does for purposes of the business travel deduction;²¹ it effectively means the home office of the team for which the professional athlete plays.²²

Whether an alien has a closer connection to a foreign country than to the United States is determined in light of all of the relevant facts and circumstances. Factors include the location of the individual’s permanent home; the location of his family; the location of his personal belongings, such as automobiles, furniture, clothing, and jewelry owned by him or his family; the location of social, political, cultural, or religious organizations with which he has a current relationship; the location of the jurisdiction in which he holds a driver’s license; the location of the jurisdiction in which he votes; and the country of residence designated by him on various forms and documents.²³

An athlete’s country of residence, even if not the United States, is critical in determining his exposure to U.S. taxation, as illustrated in *Johansson v. United States*.²⁴ In *Johansson*, Ingemar Johansson, a professional boxer who fought Floyd Patterson in the United States on three separate occasions for the heavyweight championship of the world, argued that he was a resident of Switzerland and was therefore exempt from U.S. taxation under the U.S.-Switzerland Income Tax Convention.²⁵ The court observed, however, that in the year and a half that had elapsed from the date that he claimed to have moved to Switzerland and the last day of the period for which the IRS

present for 183 days or more during the calendar year will have been present in the United States more during the calendar year than in any other country.

19. *Id.*

20. § 7701(b)(3)(B).

21. Section 7701(b)(3)(B)(ii) of the Internal Revenue Code specifies that “tax home” is “as defined in section 911(d)(3) without regard to the second sentence thereof,” i.e., “with respect to any individual, such individual’s home for purposes of section 162(a)(2) (relating to traveling expenses while away from home).” § 911(d)(3) (2011).

22. *Horton v. Comm’r*, 86 T.C. 589, 594 (1986).

23. *See* Treas. Reg. § 301.7701(b)-2(d) (2011).

24. *See generally* 336 F.2d 809 (5th Cir. 1964).

25. *Id.* at 811-12.

claimed that he owed U.S. income tax, he had spent only 79 days of the calendar year in Switzerland but 218 days in the United States.²⁶ Moreover, he spent 120 days in Sweden, where he was a citizen, and his social and economic ties remained there.²⁷

On September 2, 1964, the Fifth Circuit Court of Appeals held that Johansson was a resident of Sweden—not Switzerland—and it was the U.S.-Sweden Income Tax Convention that was therefore applicable.²⁸ Under the terms of that treaty, Johansson was not exempt from U.S. taxation on the money he earned in the United States as a nonresident alien.

C. Nonresident Aliens

The United States taxes nonresident aliens on their U.S.-source income, including income that is effectively connected with the conduct of a trade or business in the United States.²⁹ Therefore, nonresident alien hockey players who play even a single game in the United States are subject to U.S. taxation on the portion of their income that is allocable to the United States. How much of that income is allocable to the United States is determined based on the proportion of the number of days that the player is in the United States performing services under his contract bears to the total number of days the player is performing services under his contract.³⁰ Performing services under the contract includes participating in training camp and playing during the regular season and in the playoffs.³¹ It does not include time spent conditioning during the off-season. In determining his taxable income, a player is allowed the same trade or business deductions relating to his U.S.-source income that are available to U.S. citizens and residents.³²

An interesting issue in the context of taxing international athletes is the income allocation of signing bonuses. This was one of the issues litigated in *Linseman v. Commissioner*.³³ In February 1977, Ken Linseman was an eighteen-year-old hockey player who was not eligible to be drafted in either

26. *Id.* at 812.

27. *Id.*

28. *Id.* at 812–13.

29. I.R.C. §§ 864(b), 871(b) (2011). Nonresident aliens are required to file Form 1040NR, the U.S. Nonresident Alien Income Tax Return. *Taxation of Nonresident Aliens*, INTERNAL REVENUE SERV., <http://www.irs.gov/businesses/article/0,,id=203094,00.html> (last updated Mar. 18, 2011).

30. *See generally* *Stemkowski v. Comm’r*, 690 F.2d 40 (2d Cir. 1982).

31. *Id.* at 46.

32. *See id.* at 46–48.

33. *See generally* 82 T.C. 514 (1984).

the World Hockey Association (WHA) or the NHL.³⁴ Notwithstanding, he entered into a contract with the WHA's Birmingham Bulls, and the contract included a signing bonus of \$75,000.³⁵ The precise issue litigated was whether a signing bonus paid by a U.S. sports franchise to an individual, who is both a citizen and a resident of Canada, should be allocated as either U.S. or non-U.S.-source income.³⁶

In the case, both parties agreed that the bonus was nonrefundable (its primary purpose being to induce the plaintiff to sign with the team), and, as such, it did not constitute compensation for his services.³⁷ Mr. Linseman further contended that \$40,000 of the \$75,000 signing bonus should be allocated to Canada and not the United States because that amount had been used to obtain his release of liability for a potential breach of contract with his Canadian junior team.³⁸ The IRS, citing Revenue Ruling 74-108,³⁹ argued that the entire bonus should be allocated to the United States but argued alternatively that a reasonable allocation would be on the basis of the number of games played by the Birmingham Bulls within the United States versus without (i.e., in Canada) during the 1977–78 season.⁴⁰

On March 26, 1984, the U.S. Tax Court ruled in favor of the IRS, holding that Mr. Linseman's apportionment was unrealistic and that it was reasonable to allocate the signing bonus on the basis of the number of games the team was scheduled to play in the United States versus outside the United States during the regular season.⁴¹ It is important to note that the court never addressed the issue of how the provisions of the U.S.-Canada Income Tax Convention might apply to the case.

To put the above sections into a practical perspective, consider the tax implications for a Canadian citizen and resident who was a member of the

34. *Id.* at 516.

35. *Id.*

36. *See id.* at 518.

37. *Id.* at 518, 521–22.

38. *Id.* at 518.

39. Revenue Ruling 74-108, 1974-1 C.B. 248 analyzes whether a sign-on fee paid by a domestic corporation that operates a professional soccer club to a nonresident alien player as an inducement not to negotiate with any other team is treated as income from sources within or without the United States. Revenue Ruling 74-108 cites Revenue Ruling 58-145 as authority for the conclusion that the sign-on fee is not compensation for labor or personal services and, therefore, that source is not determined under the rules in section 861(a)(3) or section 862(a)(3). Instead, Revenue Ruling 74-108 characterized the sign-on fee as a payment for a covenant not to compete both within and without the United States, with the result that the sign-on fee was attributable to sources both within and without the United States. Rev. Rul. 74-108, 1974-1 C.B. 248 (2011).

40. *Linesman*, 82 T.C. at 519.

41. *Id.* at 522.

Buffalo Sabres hockey team for the 2009 calendar year.

CHART I

*2009 Buffalo Sabres Duty Days*⁴²

Days	Spring 2009	Fall 2009	Total 2009	Pct.
Total	101	111	212	100.00%
Inside USA	93	102	195	91.98%
Outside USA	8	9	17	8.02%

As indicated in Chart I, the player in this scenario was in the United States for over 183 days during the 2009 calendar year. Therefore, under the U.S. Internal Revenue Code's substantial presence test, he would be deemed a U.S. resident alien. As such, he would be required to file a U.S. income tax return and would be subject to U.S. taxation on all of his worldwide income. To the extent he might also be deemed a resident of Canada (the elements of which are discussed below in section III), he would also be required to file an income tax return in Canada and would be subject to Canadian income tax on all of his worldwide income—hence, there is a distinct possibility that the player will be subject to the very heavy burden of double taxation.

However, as we shall see, he can elect relief under the U.S.-Canada Income Tax Convention. The treaty provides tiebreaker rules for determining the athlete's country of residence. It also provides rules for determining the income that each of the two countries are entitled to tax, as well as what relief, if any, each country is required to afford him.

III. CANADIAN INCOME TAX REQUIREMENTS

The income tax policies of Canada differ from those of the United States in two important ways. First, the United States' personal income tax system is broadly based on both citizenship and residency, whereas Canada's personal income tax policy is based solely on residency.⁴³ Second, under the Canadian Income Tax Act (the Act), the federal, provincial, and territorial governments impose taxes jointly, and Canada's various provinces and territories (other

42. The total of 212 days takes into consideration the spring portion of the 2008–09 NHL season and any playoff games that were participated in, as well as the fall portion of the 2009–10 NHL season, starting with the first day of training camp, which was September 12.

43. Income Tax Act, R.S.C. 1985, c. 1 § 2(1) (Can.).

than Quebec) are limited to direct taxation as delegated in the Act, a constraint that leaves all residual taxation power to the federal government.⁴⁴ This is in contrast to the United States' policy, which, as we have seen, establishes the dual sovereignty of the states and the federal government and preserves each state's right, separate and distinct from that of the federal government, to tax individuals. Therefore, an athlete performing services in Canada is required to file only one income tax return to the federal government, while the athlete performing services in the United States is required to file not only a federal income tax return, but also a state income tax return for each state in which one is required.

A. Determining Residency

There are two ways under the Act in which Canada can claim an individual as a resident. First, an individual may be classified as an "ordinary resident" of Canada through his factual residential ties.⁴⁵ Alternatively, he may be deemed a resident of Canada because of the length of time he has spent in the country.⁴⁶

Although Canada's taxing policy is based on an individual's residency, the term "resident" is not defined in the Act itself. Instead, "the Courts have held 'residence' to be 'a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living'"⁴⁷ In *Thomson v. Minister of National Revenue*,⁴⁸ the Supreme Court of Canada specifically held that "[o]ne is 'ordinarily resident' in the place where in the settled routine of his life he regularly, normally or customarily lives."⁴⁹

In determining whether an athlete is a resident of Canada, the government will consider both significant and secondary residential ties. Significant residential factors, such as the location of the individual's home as well as his spouse and dependents' resident statuses, will almost always be significant enough by themselves to determine an individual's residential ties to Canada.⁵⁰

44. CLARENCE BYRD & IDA CHEN, BYRD & CHEN'S CANADIAN TAX PRINCIPLES 4, § 1–12 (ed. 2009–10).

45. R.S.C. 1985, c.1 § 250(3).

46. See *id.* § 250(1)(a).

47. CAN. REVENUE AGENCY, INTERPRETATION BULL. NO. IT-221R3, INCOME TAX ACT: DETERMINATION OF AN INDIVIDUAL'S RESIDENCE STATUS ¶ 2 (2001).

48. See generally *Thomson v. Minister of Nat'l Revenue*, [1946] S.C.R. 209 (Can.).

49. *Id.* at 231. The court also provides the definition of "sojourns" as "unusually, casually or intermittently visits or stays." *Id.* at 231–32.

50. INTERPRETATION BULL. NO. IT-221R3, *supra* note 47, ¶ 5.

An individual who maintains an apartment or a home in Canada that is available to him after he has left the country will be considered a resident of Canada.⁵¹ There is an exception, however, for those individuals who lease out their apartment or home while they are out of the country. Therefore, owning a home or an apartment in Canada is not, by itself, a significant residential tie.⁵² In addition, an individual can be considered a resident should his spouse or dependents remain in Canada during the individual's absence.⁵³

Canada also considers secondary residential ties, including a Canadian passport, driver's license, and vehicle registration, as well as the individual's social ties with Canada.⁵⁴ Unlike significant residential ties, secondary ties must be looked at collectively. It would be unusual for a single, secondary, residential tie with Canada, by itself, to be sufficient in establishing that an individual is a factual resident of Canada.⁵⁵

Where an individual is not considered a factual resident of Canada, he still may qualify as a "deemed resident" under the Act if he was present in Canada for over 183 total days during the taxable year.⁵⁶ "The distinction between factual resident status and deemed resident status carries with it varying, but significant, tax consequences, due to the importance of residence status for provincial tax purposes"⁵⁷ A deemed resident of Canada will not be considered a resident of any particular province for provincial tax purposes, and, therefore, will be required to pay a 48% federal surtax in accordance with subsection 120(1) of the Act without being entitled to any provincial tax credits.⁵⁸

It should be noted that an individual who is a resident of Canada for purposes of the Act is a resident of Canada for purposes of paragraph one of the "Residence" article of any modern tax treaty between Canada and another country.⁵⁹ Where an athlete is a resident of Canada and of another country, the "Residence" article provides "tiebreaker rules" to determine in which

51. *Id.* ¶ 6.

52. *Id.*

53. *Id.* ¶ 7.

54. *Id.* ¶ 8.

55. *Id.*

56. R.S.C. 1985, c. 1 § 250(1)(a).

57. INTERPRETATION BULL. NO. IT-221R3, *supra* note 47, ¶ 19.

58. *See id.* ¶ 19(a)-(b); R.S.C. 1985, c. 1 § 120(1).

59. *See, for example, the U.S.-Canada Income Tax Convention, Article IV ("Residence"), paragraph 1, which states, in part, "the term 'resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence . . . or any other criterion of a similar nature" U.S.-Canada Income Tax Convention, supra note 8, art. IV, ¶ 1.*

country the individual will be a resident for purposes of the other provisions of the treaty.⁶⁰ If, at any time, such tiebreaker rules apply, and it is determined that an individual is a resident of another country for purposes of a tax treaty between Canada and that country, then subsection 250(5) of the Act will deem the individual to be a nonresident of Canada for purposes of the Act.⁶¹

B. Nonresidency and Salary Allocation

Generally, professional athletes, whether residents or nonresidents, are taxed no differently than other persons under the Act. “Nonresident” is defined as “not resident in Canada” and is taxed under a proration of income earned within and outside of Canada.⁶² Therefore, an athlete performing services on a Canadian-based team, who is not considered a resident, will be taxed only on the income he earns in Canada.⁶³

To determine taxable income for a nonresident athlete, Canada has accepted different approaches as to how to apportion the income.⁶⁴ Canada has generally agreed that a “per day” allocation for athletes should reflect the actual number of days an athlete was present in Canada, starting with the first day of preseason training camp and ending with the last day on which his team plays in a playoff game.⁶⁵ This method applies to regular season salary and bonuses based on performance over the entire season. Other bonuses in respect to athletic services may require the use of a different formula.⁶⁶

The Canadian courts have also addressed the proration of a nonresident-athlete’s salary. In *Austin v. The Queen*,⁶⁷ Kent Austin, a nonresident of Canada, earned income as a quarterback with the BC Lions and Toronto Argonauts during the 1994 and 1995 Canadian Football League (CFL) seasons.⁶⁸ Mr. Austin claimed that his income should be apportioned on a per game basis as opposed to the Canada Revenue Agency’s per day allocation. With an annual 18 game CFL schedule, 15 of which were played in Canada in 1994 and 14 in 1995, Mr. Austin argued that only 83.33% and 77.78% of his

60. *See id.* art. IV, ¶ 2.

61. INTERPRETATION BULL. NO. IT-221R3, *supra* note 47, ¶ 24.

62. R.S.C. 1985, c. 1 § 115(1)(a)(i).

63. *See id.* § 115(1)(a)(i).

64. Mark Jadd et al., *Performing in Canada: Taxation of Non-Resident Artists, Athletes and Other Service Providers*, 56 CAN. TAX J. 589, 610 (2008).

65. CAN. REVENUE AGENCY, DOC. NO. 9601625(E), INCOME OF NR, ACTORS AND ATHLETES (1996).

66. *Id.*

67. *See generally* [2004] D.T.C. 2181 (Can. Tax Ct.).

68. *Id.* ¶ 2.

salary, respectively, for 1994 and 1995 was subject to tax in Canada.⁶⁹ Canada, in turn, argued the per day approach and calculated a much greater apportionment figure of 96.67% (174 out of 180 days) for 1994 and 94.63% (141 out of 149 days) for 1995.⁷⁰

On December 5, 2003, the Tax Court of Canada ruled in favor of Mr. Austin's per game basis approach, holding it to be more reasonable under the circumstances.⁷¹ The court's ruling was based on the specific wording in Mr. Austin's CFL contract, in which the club promised to pay him in eighteen equal installments—suggesting the parties' intent that payment be made on a per game basis—and the club could, at any time, terminate his contract.⁷²

From a practical standpoint, consider the tax implications of a U.S. citizen and resident who was a member of the Toronto Maple Leafs hockey team for the 2009 calendar year.

CHART II

*2009 Toronto Maple Leafs Duty Days*⁷³

Days	Spring 2009	Fall 2009	Total 2009	Pct.
Total	101	111	212	100.00%
In Canada	82	87	169	79.72%
Outside Canada	19	24	43	20.28%

Chart II illustrates that, as a nonresident of Canada who performed 169 days of services in Canada, the individual would need to allocate only 79.72% of his income on a per day basis to Canada.⁷⁴

69. *See id.*

70. *See id.* ¶ 3.

71. *Id.* ¶ 14.

72. *See id.* ¶¶ 10–14.

73. The total of 212 days takes into consideration the spring portion of the 2008–09 NHL season and any playoff games that were participated in, as well as the fall portion of the 2009–10 NHL season, starting with the first day of training camp, which was September 12.

74. A piece of 2001 correspondence by the Assistant Commissioner Policy and Legislation Branch stated in part that a

non-resident athlete is [a] resident in a country with which Canada has a tax treaty, the tax treaty may affect Canada's right to tax the athlete's income from employment performed in Canada. Generally, Canada's tax treaties with other countries maintain Canada's right to tax athletes in respect of employment income earned in Canada.

C. What Constitutes Income

A nonresident athlete's taxable income that is to be apportioned to Canada includes not only salary but also performance and signing bonuses and awards, including cash, the fair market value of other property received, and payments made by the team on the individual's behalf (such as agents' fees or legal fees).⁷⁵ Where a nonresident athlete receives a signing bonus from a Canadian-based team prior to performing any services in Canada, that individual still needs to include the apportioned amount of this bonus as taxable income earned in Canada.⁷⁶

However, it should be noted that in the case of a signing bonus received by a nonresident athlete, there are two factors that allow the individual to escape proration of the bonus to Canada: (1) the bonus must be properly classified as a "true" signing bonus, and (2) the nonresident athlete must be able to properly exempt the bonus from income tax in Canada because of a provision contained in a tax convention with his resident country.⁷⁷

Canada has interpreted a true signing bonus as "an amount paid simply to induce an athlete to sign a player contract."⁷⁸ The payment of the signing bonus should not be dependent, in any way, "on the athlete actually playing for the team [nor] should [it] be subject to conditions other than the signing of the player contract."⁷⁹

The definition of a signing bonus was also addressed by the Canadian Tax Court in *Khabibulin v. The Queen*.⁸⁰ Nikolai Khabibulin was a goaltender and a nonresident of Canada who entered into a contract with the NHL's Winnipeg Jets on August 15, 1994.⁸¹ He received a signing bonus of \$104,123, which

CAN. CUST. & REVENUE AGENCY, ASSISTANT COMM'R POLICY & LEGIS. BRANCH, DOC. NO. 2001-0087644, TAXATION OF NON-RESIDENT PROFESSIONAL ATHLETES (2001).

It should also be noted that the same correspondence stated that

a non-resident athlete who is [a] resident in the United States and employed by a professional team based in that country, and who is not present in Canada for more than 183 days in the particular calendar year, will usually be exempt from Canadian tax on any of his or her income related to employment with the team pursuant to the Canada-U.S. Income Tax Convention.

Id.

75. CAN. REVENUE AGENCY, INTERPRETATION BULL. NO. IT-168R3, ATHLETES AND PLAYERS EMPLOYED BY FOOTBALL, HOCKEY AND SIMILAR CLUBS ¶ 1 (1991).

76. *See* CAN. REVENUE AGENCY, DOC. NO. 9819311(E), TAX ON SIGNING BONUS – NON-RESIDENT ATHLETE (1998).

77. *See* R.S.C. 1985, c. 1 § 110(1)(f)(i).

78. CAN. REVENUE AGENCY, DOC. NO. 9819311(E), *supra* note 76.

79. *Id.*

80. *See generally* [1999] C.T.C. 964680 (Can. Tax Ct.).

81. *Id.* ¶ 1.

was to be paid in two installments.⁸² The first installment was paid in 1994, while the second was to be paid in July 1995 and was contingent on his performing services.⁸³ Mr. Khabibulin argued that the first installment was a true signing bonus and was exempt from taxation in Canada under the guidance of the Canada-USSR Treaty.⁸⁴

On October 14, 1999, the court ruled in favor of Mr. Khabibulin and, most importantly, expanded the definition of a true signing bonus to include, as in Mr. Khabibulin's case, the receipt of a substantial lump sum at the beginning of the contract used to provide himself with a place to live and the basic amenities of his new life in North America.⁸⁵

IV. THE U.S.-CANADA INCOME TAX CONVENTION

One of the primary purposes of an income tax treaty is to help eliminate the incidence of double taxation of income. Specifically, an individual who is a citizen or resident of one country may be able to affirmatively elect relief under a treaty entered between his country of citizenship or residency and another country where he is subject to income tax.⁸⁶ The U.S.-Canada Income Tax Convention provides such relief.

Under the U.S.-Canada Income Tax Convention, the saving clause preserves the United States' right to tax its citizens and residents on their worldwide income.⁸⁷ Therefore, a hockey player who is either a citizen or resident of the United States must pay U.S. income tax on all of his worldwide income. Assuming that he is not a resident of Canada, the treaty also generally allows Canada to impose income tax on his Canada-source income.⁸⁸ However, he is exempt from taxation in Canada if he earns Canada-

82. *Id.* ¶¶ 1, 2.

83. *Id.* ¶ 2.

84. *Id.* ¶ 1; *see also* R.S.C. 1985, c. 1 § 110(1)(f)(i).

85. *Khabibulin*, [1999] C.T.C. 964680, ¶ 11.

86. Normally, in order to elect relief from double taxation in the United States, the taxpayer is required to file Form 8833, "Treaty-Based Return Position Disclosure Under section 6614 or 7701(b)." Specifically, section 6614 requires the disclosure of any return position that a U.S. treaty overrides or otherwise modifies a provision of the I.R.C. and results, or potentially results, in a reduction of tax on the taxpayer's return. However, Treasury Regulation 301.6114-1(c)(iii) specifically waives the reporting requirement pertaining to a return position that a treaty reduces or modifies the taxation of income derived by an athlete. Treas. Reg. § 301.6114-1(c)(iii) (2011). Similarly, Treasury Regulation 301.7701(b)-7 requires a dual resident taxpayer to disclose any position that he is taking that he is entitled to benefits under a U.S. treaty. *See* Treas. Reg. § 301.7701(b)-7.

87. *See* I.R.S. Pub. 597, 66597M, *supra* note 8.

88. *See* U.S.-Canada Income Tax Convention, *supra* note 8, art. XV, ¶ 1. Notably, Article XVI of the Convention does not apply to an NHL player's salary inasmuch as he is employed by a team that participates in a league with regularly scheduled games in both the United States and Canada.

source income of \$10,000 or less (measured in Canadian currency).⁸⁹ If he earns more than \$10,000 for services he performs in Canada, he is still exempt from Canadian income tax so long as (1) he is not present in Canada for more than 183 days total during any 12-month period commencing or ending in the fiscal year in question, and (2) the compensation is not paid by, or on behalf of, a Canadian resident and is not borne by a permanent establishment in Canada—in other words, he is not playing on a Canadian franchise.⁹⁰

But, what if the hockey player is a U.S. citizen or resident who earns more than \$10,000 in Canada-source income and has signed on to play with a Canadian team or is present in Canada for more than the 183 day minimum? He will now owe Canadian income tax on his Canada-source income (assuming he can establish a closer tie to his home in the United States and thereby avoid Canadian-residency status). However, to the extent that he owes Canadian income tax on the compensation he receives, he is entitled to a foreign tax credit on his U.S. income tax return.⁹¹

Signing bonuses are treated somewhat differently from the compensation rules above. If a U.S. citizen who is not a resident of Canada receives a signing bonus to play with a Canadian franchise, the United States may impose an income tax inasmuch as the saving clause preserves its right to tax the worldwide income of its citizens and residents.⁹² However, the U.S.-Canada Income Tax Convention also allows Canada to impose an income tax of up to fifteen percent on the signing bonus,⁹³ provided it is a true signing bonus—that is, it is “an inducement to sign an agreement relating to the performance of the services of an athlete,” not compensation for services,⁹⁴ and it entitles the hockey player to a foreign tax credit on his U.S. income tax return.⁹⁵

Unique issues concerning double taxation arise for U.S. citizens who are residents of Canada. Specifically, Canada will seek to impose income tax on the athlete’s total income, based on residency. The United States, on the other hand, has a dual interest: imposing a tax on him as a nonresident on the

U.S.-Canada Income Tax Convention, Article XVI, Section 3(a). Article XVI of the Convention does govern, however, signing bonuses. *See id.* art. XVI, ¶¶ 3(a), 4.

89. *Id.* art. XV, ¶ 2(a).

90. *Id.* art. XV, ¶ 2(b).

91. *Id.* art. XXIV, ¶ 1.

92. *See* I.R.S. Pub. 597, 66597M, *supra* note 8.

93. In practice, the taxpayer will include the signing bonus in his total gross income that he is reporting on his Canadian income tax return. However, he should attach a letter stating the amount of that gross income that constitutes a signing bonus and that is thus subject to a maximum tax rate of only fifteen percent.

94. *See* U.S.-Canada Income Tax Convention, *supra* note 8, art. XVI, ¶ 4.

95. *See id.* art. XXIV, ¶ 1.

portion of his income that is sourced in the United States versus imposing a tax on him as a U.S. citizen on his worldwide income (a right the United States reserves under the saving clause).⁹⁶

In this situation, the treaty allows the United States and Canada to impose income tax as follows:⁹⁷ (1) the United States may impose U.S. taxation on the player's U.S.-source income consistent with the general provisions of the treaty;⁹⁸ (2) Canada is then entitled to tax his total income, based on residency, so long as it allows him a foreign tax credit (a "deduction from the Canadian tax") for the amount of U.S. taxation paid or accrued on his U.S.-source income;⁹⁹ and (3) the United States can then tax his worldwide income, based on his U.S. citizenship, but it must afford him a foreign tax credit for the Canadian taxes that are paid or accrued (net of the foreign tax credit that Canada affords him).¹⁰⁰

What about a hockey player who is a resident of Canada and neither a resident nor a citizen of the United States? He must pay Canadian income tax on his total income based on his residency. Generally, the treaty also allows the United States to impose income tax on his U.S.-source income.¹⁰¹ However, he is exempt from taxation in the United States if he earns U.S.-source income of \$10,000 or less (measured in U.S. dollars).¹⁰² If he earns more than \$10,000 for services he performs in the United States, he is still exempt from U.S. income tax so long as (1) he is not present in the United States for more than 183 days total during any 12-month period commencing or ending in the fiscal year in question, and (2) the compensation is not paid by, or on behalf of, a U.S. resident and is not borne by a permanent establishment in the United States—in other words, he is not playing on a U.S. franchise.¹⁰³

If the hockey player is a Canadian resident who earns more than \$10,000 in U.S.-source income and signs on to play with a U.S. franchise or is present in the United States for more than the 183-day minimum,¹⁰⁴ he will now owe

96. *Id.* art. XXIX, ¶ 2(a); *see also* I.R.S. Pub. 597, 66597M, *supra* note 8.

97. Different rules may be applicable with respect to dividends and royalties. *See* U.S.-Canada Income Tax Convention, *supra* note 8, art. XXIV, ¶ 5.

98. *See id.* art. XV, ¶ 1.

99. *Id.* art. XXIV, ¶ 4(a).

100. *Id.* art. XXIV, ¶ 4(b).

101. *See id.* art. XV, ¶ 1. Notably, Article XVI does not apply to an NHL player's salary inasmuch as he is employed by a team that participates in a league with regularly scheduled games in both the United States and Canada. Article XVI of the U.S.-Canada Income Tax Convention does, however, govern signing bonuses. *See id.* art. XVI.

102. *Id.* art. XV, ¶ 2(a).

103. *Id.* art. XV, ¶ 2(b).

104. To the extent the United States might argue that he is also a U.S. resident under section 7701(b)(3)(A) of the Internal Revenue Code's 183 day rule (the "substantial presence test") and that

U.S. income tax on his U.S.-source income. However, to the extent that he owes U.S. income taxes and social security taxes on the compensation he receives, Canada provides a foreign tax credit.¹⁰⁵

If he receives a signing bonus to play with a U.S. franchise, the United States may impose an income tax of up to fifteen percent on the signing bonus, provided it is a true signing bonus.¹⁰⁶ Presumably, had the terms of the current U.S.-Canada Income Tax Convention been applicable in *Linseman*,¹⁰⁷ the United States would have been able to impose a tax of no more than fifteen percent on Ken Linseman's signing bonus as opposed to the amount determined by the U.S. Tax Court, which the court based on the proportionate number of games played in the United States. Here again, Canada provides a foreign tax credit to the extent that the player owes U.S. income taxes and social security taxes on the compensation he receives.¹⁰⁸

It is important to note the effect, if any, of the U.S.-Canada Income Tax Convention on U.S. state and Canadian provincial income taxes. Some, but not all, states honor the provisions of U.S. tax treaties.¹⁰⁹ Canadian provinces, on the other hand, follow the terms of Canadian tax treaties inasmuch as Canadian residents file one return at the federal level in which they report both federal and provincial taxes that are due.

V. PRACTICAL APPLICATION

The previous sections outlined the income tax implications for U.S. and Canadian athletes performing services in international professional sports leagues located in the United States and Canada. This section addresses the practical implications for those resident and nonresident athletes. Specifically, it addresses the federal, state, and provincial tax consequences for those individual professional athletes who perform services in the NHL, and, more specifically, those individuals who play for the Toronto Maple Leafs and Buffalo Sabres. Below is a chart that outlines the filing requirements for each of the potential scenarios regarding resident and nonresident tax filings for the example.

he thus owes U.S. income tax on his worldwide income, Article IV ("Residency"), paragraph 2 of the U.S.-Canada Income Tax Convention provides a tiebreaker rule for determining the athlete's residency. For example, under paragraph 2(a) of Article IV, he is deemed a resident of Canada (and not the United States) if he has a permanent home in Canada.

105. See U.S.-Canada Income Tax Convention, *supra* note 8, art. XXIV, ¶ 2(a).

106. See *id.* art. XXIV.

107. See generally *Linesman*, 82 T.C. 514.

108. See U.S.-Canada Income Tax Convention, *supra* note 8, art. XXIV, ¶ 2(a).

109. *United States Income Tax Treaties - A to Z*, INTERNAL REVENUE SERV., <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html> (last updated Aug. 10, 2011).

CHART III

Filing Obligations

Team	Files/ Residency	U.S. Filing	Canada Filing	US State Filing	Federal Tax Credit
Buffalo Sabres	USA	√	–	√	–
Toronto Maple Leafs	USA	√	(Yes) Nonresident	√	√
Buffalo Sabres	CANADA	(Yes) Nonresident	√	√	√
Toronto Maple Leafs	CANADA	–	√	√	√

In order to provide a fair comparison, it is assumed that each individual earned \$3 million annually, \$1 million of which is a signing bonus; that his filing status was “single”; and that he did not miss any games due to an injury that would have prevented him from traveling with his team. It is further assumed that the individual files a U.S. income tax return or a Canadian income tax return, as required, based on his country of citizenship or residency and a proper determination of his U.S. versus Canada-source income. It is also assumed that he elects the benefits of the U.S.-Canada Income Tax Convention to the extent that such benefits are available to him and that his residency is determined based on each country’s residency rules, subject to the treaty tiebreaker rules if he is deemed a resident of both countries. In addition, where the U.S. 1040 Federal Income Tax Return is filed, the only deductions that were taken on Schedule A were player dues, agent fees, trainer’s tips, and state taxes paid during the year. Chart IV illustrates the income tax consequences for the individual, based on his citizenship, residence status, or both.

CHART IV

*Comparative Analysis*¹¹⁰

Team	Files/ Residency	U.S. Tax	Canada Tax	U.S. State Tax	Federal Tax Credit	Retained Income	Difference	Percentage Retained
Buffalo Sabres	USA	\$978,378	\$0	\$268,639	\$0	\$1,752,983	\$0	58.43%
Toronto Maple Leafs	USA	\$978,344	\$873,190	\$268,636	-\$802,406	\$1,682,538	(\$70,445)	56.09%
Buffalo Sabres	CANADA	\$703,975	\$1,373,474	\$237,298	-\$813,856	\$1,499,109	(\$253,874)	49.97%
Toront Maple Leafs	CANADA	\$0	\$1,372,864	\$22,880	-\$22,880	\$1,627,136	(\$125,847)	54.24%

A. The Results

International taxation issues for professional athletes have two evident results. First, although the tax treaty between the United States and Canada helps in alleviating double taxation, it does not completely eliminate it. Therefore, those athletes who are citizens of one country but play in the other are taxed at a greater percentage than those who are citizens of the country in which they are employed. An individual who is a U.S. citizen and plays for the Toronto Maple Leafs will take home \$70,445 (or 4.02%) less than his counterpart, who is a U.S. citizen and plays for the Buffalo Sabres. The difference is even more substantial for those who are Canadian. An individual who is a Canadian citizen (or, more importantly, a *resident* of Canada) and plays for the Buffalo Sabres will take home \$128,027 (or 8.54%) less in salary than his counterpart, who is a resident of Canada and plays for the Toronto Maple Leafs. Most surprising is the fact that a Canadian resident who plays in Buffalo will retain only 49.97% of his \$3 million salary after taxes, even after claiming a foreign tax credit for taxes paid in the United States.

Second, being a resident or citizen of the United States and playing for a U.S. franchise such as the Buffalo Sabres is more desirable for income tax purposes (netting \$1,752,983 in after-tax income) than being a resident Canadian who is playing on a Canadian team such as the Toronto Maple Leafs (netting only \$1,627,136 in after-tax income). Although Canada's federal tax rate for an individual earning \$3 million is lower than the U.S. rate, those individuals filing as residents of Canada are subject to a much higher

110. It should be noted that not all states comply with federal tax treaties, and, in the examples shown in this paper, state income tax liabilities were calculated without any federal tax treaty benefits honored.

provincial tax rate. Therefore, the federal taxation on a Canadian resident as indicated in the chart above of \$1,373,474 consisted of an Ontario provincial tax of \$515,311 (or 17.21%).

B. Tax Planning Opportunities

Because Canada's income tax policy is based on residency as opposed to citizenship, and because the U.S.-Canada Income Tax Convention helps to eliminate the incidence of double taxation, there are a few tax-saving opportunities for international athletes, especially those individuals who are Canadian citizens.

One tax-saving opportunity concerns those Canadian citizens who are residents of Canada and play hockey in the United States. As Canadian residents, these individuals are exposed to the greatest amount of tax, as indicated in Chart IV above. To alleviate this burden, a Canadian citizen should establish residency in the United States, as opposed to Canada, thereby eliminating Canadian income tax and the potential for double taxation. By establishing residency in the United States, this individual would be subject solely to U.S. income tax and would realize a savings of \$253,874.¹¹¹ In fact, despite the individual's Canadian citizenship, his status as a U.S. resident would impose on him a tax burden identical to that of his counterpart who is a U.S. citizen.

CHART V

Canadian Citizen's Exposure to Double Taxation

Team	Files/ Residency	NY State Residency	U.S. Tax	Canada Tax	U.S. State Tax	Federal Tax Credit	Retained Income
Buffalo Sabres	CANADA	Nonresident	\$703,975	\$1,373,474	\$237,298	-\$813,856	\$1,499,109
Buffalo Sabres	USA	Resident	\$978,378	\$0	\$268,639	\$0	\$1,752,983
						Difference	\$253,874

Another tax-saving opportunity involves minimizing a U.S. resident-athlete's state income tax exposure. This is done by establishing an individual's residency in a state with no income tax.¹¹² As a general rule, the

111. See *infra* Chart V.

112. As indicated by the Federation of Tax Administrators' website, there are nine states that do not tax income. The nine states include, in alphabetical order, Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming. *State Individual Income*

athlete must file a nonresident income tax return in each state in which he plays. The individual in the example above may then file as a nonresident of the state of New York and thereby apportion only the income attributable to the services he performs in New York for purposes of calculating his New York state income tax.¹¹³ For example, an individual who performed services for the Buffalo Sabres during the 2009 tax year would be taxed as a nonresident in the state of New York for 83.49% (177 out of 212 days), or \$2,504,716, of his income, for a total state tax of \$224,110.

CHART VI

Exposure to New York State Resident Tax

Team	Files/ Residency	NY State Residency	U.S. Tax	NY State Tax	Nonresident State Tax	Credit State Taxes	Retained Income
Buffalo Sabres	USA	Resident	\$978,378.0	\$268,427.00	\$13,461.0	(\$13,248.00)	\$1,752,982
Buffalo Sabres	USA	Nonresident	\$989,252.0	\$224,110.00	\$13,461.0	\$0.00	\$1,773,177
						Difference	\$20,195

Because a resident of New York is able to claim tax credits for state taxes paid to other states and a nonresident is not allowed this opportunity, this strategic tax advantage of \$20,189 is minimal in regard to the allocation of the full \$3 million salary.¹¹⁴ The true advantage to establishing residency in a state with no income tax relates to the taxation of the athlete's signing bonus, which will be expanded on next.

The third and final tax-saving opportunity that this paper examines is the allocation of an athlete's signing bonus. True signing bonuses, which are not linked to performance, are fully allocated to the individual's home state of residency.¹¹⁵ By establishing residency in a state without income taxes and

Taxes, FED'N OF TAX ADMIN'RS, http://www.taxadmin.org/fta/rate/ind_inc.pdf (last accessed June 23, 2010).

113. See N.Y. COMP. CODES R. & REGS. tit. 20, § 132.22(a)(1) (2011).

114. See N.Y. TAX LAW § 620(a) (Consol. 2011).

115. For a more in-depth explanation on the allocation of signing bonuses to individual states, please refer to my previous article, Alan Pogroszewski, *When is a CPA as Important as Your ERA? A Comprehensive Evaluation and Examination of State Tax Issues on Professional Athletes*, 19 MARQ. SPORTS L. REV. 395 (2009). State court cases that have ruled on the allocation of signing bonuses include: *Clark v. New York State Tax Commission*, 86 A.D.2d 691 (N.Y. App. Div. 1982); *In re Foster*, 1984 Cal. Tax LEXIS 18 (Bd. of Equalization 1984); *Dorsey v. Wis. Dep't of Revenue*, 1989 Wis. Tax LEXIS 8 (Tax App. Comm'n 1989).

fully allocating his signing bonus to that state, an athlete may effectively lower the amount of taxable income that otherwise needs to be apportioned to all of the states in which he performed services. Continuing with the example above, if it is ensured that the terms of the individual player's contract provide that the signing bonus is not contingent on the performance of services, the individual would save an additional \$53,493 and therefore retain 60.89% of his total income:¹¹⁶

CHART VII

Exposure to Signing Bonus

Team	Files/ Residency	N.Y. State Residency	U.S. Tax	NY State Tax	Nonresident State Tax	Retained Income
Buffalo Sabres	USA	NY NR	\$989,252	\$224,110	\$13,461	\$1,773,177
Buffalo Sabres	USA	NY NR	\$1,017,214	\$147,340	\$8,776	\$1,826,670
						\$53,493

It should also be noted that although these tax strategies have been recommended to Canadian citizens playing in the United States, with proper foresight and tax planning, these strategies may also be implemented by U.S. citizens.

VI. CONCLUSION

The exposure to double taxation is a real threat for professional athletes performing services in both the United States and Canada. It is important for these individuals to understand the different taxing philosophies of both countries, their obligation to properly self-report their earnings, and their need to undertake careful tax planning. The U.S.-Canada Income Tax Convention provides relief in the form of a foreign income tax credit. However, it does not totally eliminate the incidence of double taxation.

116. It should be noted that state income taxes paid are an income tax deduction on the U.S. Federal Income Tax Return. Therefore, as the state income taxes paid are reduced, the actual U.S. Federal liability increases.

It is important for those who advise international athletes to help their clients understand the appropriate steps they can take to best avoid a heavy tax burden. In reviewing the practical application of international tax exposure between Canada and the United States, there are income tax strategies that can be implemented to significantly alleviate some of that tax burden at both the federal and state levels.