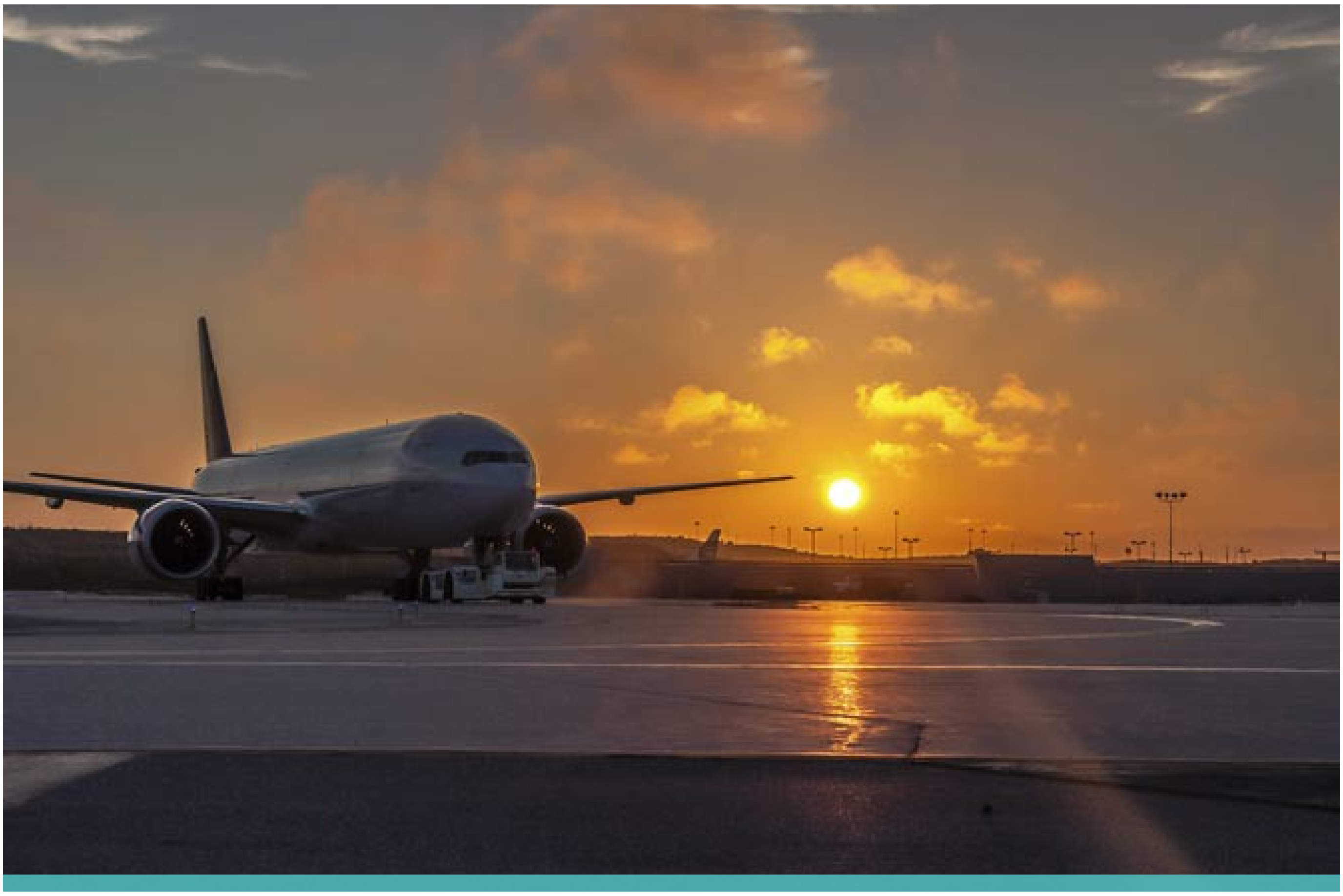
McDonald Hopkins Attorney **Insight.** Business **Foresight.**

Michigan: Detroit codifies jock tax that includes travel and practice time



David M. Kall | Thursday, March 16, 2017

“Detroit finds a way to collect more income tax from pro athletes playing here,” reads the headline from *Detroit Headline Sports* addressing the city’s new formula for collecting additional income taxes from professional athletes and others. Much is being made of the Motor City’s March 1, 2017, codification of the ordinance that increases the amount of income subject to the city’s income tax. The new formula, which takes the number of days that a player is in the city for game-related activities – “city days” – divided into a roster of “duty days,” now accounts for practice and travel days, not just the days on which games are played.

The article points out that while such jock taxes are widely used to generate extra revenue, some players will see a hefty increase, especially when the Detroit Pistons basketball team relocates to the new Little Caesars Arena, downtown. For example, Andre Drummond, the highest-paid Detroit Piston, who is projected to earn $23.8 million next season, would pay about $158,500 in Detroit city income taxes annually. Baseball player Miguel Cabrera, currently the first baseman for the Detroit Tigers, would pay an estimated city income tax of $152,899 each year.

The tax director at the sports agency Octagon Financial Services, Sean Packard, told Bloomberg that although imposition of the tax on travel days is unusual, it excludes signing-bonus income. Thus, he opined, “[o]verall I think this is a well thought out and well detailed piece of legislation…. Detroit’s method of calculating income is more fair across the board to the players and to the city.”

With a different view, the director of the Morey Fiscal Policy Initiative for the Mackinac Center for Public Policy told Bloomberg that the measure did not surprise him at all, because “[t]he city of Detroit has an insatiable appetite for other people’s money.”

We last addressed the issue of a jock tax in May 2015, when the Ohio Supreme Court concluded that the city of Cleveland’s computation was unconstitutional. Cleveland used the games-played method, which apportions income to Cleveland based upon the number of games the visiting team plays in the city divided by the total number of games in a season. After finding this apportionment method unconstitutional, the Ohio Supreme Court held that the appropriate remedy was for Cleveland to impose the duty days method. The duty days method apportions income to Cleveland based upon the number of duty days in Cleveland divided by the total number of duty days.

Statewide effort to eliminate the income tax rate fails

With respect to income taxes generally, Michigan lawmakers took a pass on House Bill 4001, introduced in mid-January, which would have completely eliminated the income tax by way of annual reductions for a 39-year period. This would have started in 2018 with a drop in the current rate of 4.25 percent to 3.9 percent, and then annual rate cuts of 0.1 percent until it reached zero. After various amendments, including one that would have left the rate at 3.9 percent, contingent upon a $1 million rainy day fund balance, the House voted against it, 52 to 55.

The *Detroit Free Press* reported that those who opposed HB 4001 did so in part because of its disproportionate benefit to the wealthy. Squabbled one lawmaker, Rep. Jeremy Moss, “I wasn’t sent here to give an astronomical tax break for millionaires and billionaires." Some would have supported a modest reduction to 3.9 percent, but many others, including Gov. Rick Snyder, “weren't prepared to blow a $1.1 billion hole in the state budget over the next four years without a plan on either how to replace the money or which parts of the budget would be cut.”

However, some are more bullish on the Great Lake State’s fiscal outlook. A *Michigan Capital Confidential* (CapCon) article argues that the state could afford an income tax cut, reasoning that “[s]ince 2010, Michigan tax and fee revenues increased by $5.8 billion, a 23 percent gain.” The piece actually goes further, asserting that “Michigan’s fiscal situation is even stronger than those numbers suggest,” due to “tricks” like giving money to other certain favored interests without having to recognize it as spending.

In the end, CapCon claims, “Michigan’s budget continues to grow. It is disappointing that lawmakers feel like they need to spend all that comes in, and more. That is the message they’ve sent to residents when they voted down the modest decrease in tax rates.”

David M. Kall

Team member bio