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The City of Cleveland Fumbles in Applying Municipal Taxes to NFL Players

On April 30, 2015, the Ohio Supreme Court issued two separate opinions, *Hillenmeyer v. Cleveland Board of Review* and *Saturday v. Cleveland Board of Review*, addressing the “games-played” method by which the City of Cleveland calculated taxes owed by nonresident professional athletes. In both cases, the City asserted that it had the authority to tax a portion of an NFL player’s annual income based upon the number of games the team played in Cleveland compared to the number of games the team played in total. For example, if a team played 20 games and one of those games occurred in Cleveland, then the player owed one twentieth, or 5%, of his annual income to the City. The Supreme Court disagreed with the City’s application of this method and ordered the City to issue refunds.

Hillenmeyer v. Cleveland Board of Review:

The “games-played” method is unconstitutional as applied to nonresident professional athletes

Hunter Hillenmeyer, a former linebacker for the Chicago Bears, challenged the City’s taxation of his 2004 through 2006 income. For each of those three years, Hillenmeyer spent two days in Cleveland and only played in one game. Hillenmeyer argued that: (1) the City should have applied the 12-day grace period rule, pursuant to R.C. § 718.011, exempting him from all tax liability; and (2) that the “games-played” method was unconstitutional.

First, the Court held that the City had a rational basis for declining to apply the 12-day grace period rule. Imposing local taxes on professional athletes is justified as a result of the costs of hosting professional sports events, e.g., need for police protection and crowd control. Second, the Court held that, although a city may tax compensation earned for work performed within the city, the allocation ratio under the “games-played” method fails to afford

due process as it was applied. The Court found that the “games–played method” is an impermissible extraterritorial tax because it reaches income performed outside of the City. NFL players are paid for more than just games played, but are also compensated for promotional activities, meetings, preseason training, and regular season practices. Because the “games–played” method only considers the number of games played in one year, it therefore imposes a tax on compensation for activities earned outside of the City.

The Court advised the City to alternatively apply the “duty–days method,” which calculates taxable income by dividing the total amount of days a player worked in Cleveland by the total number of days a player worked in the taxable year. For example, Hillenmeyer worked a total of 157 days in 2004 and spent 2 of those days in Cleveland. Thus, Cleveland should be allocated approximately 1.27% of Hillenmeyer’s income for 2004.

Saturday v. Cleveland Board of Review:

A nonresident professional athlete may not be taxed unless he is physically present

Jeffrey B. Saturday, a former center of the Indianapolis Colts, challenged the City’s taxation of his 2008 income. The City imposed its tax based on one game that the Colts played against the Browns in Cleveland to which Saturday was not present. Due to an injury, Saturday was in Indianapolis undergoing physical rehabilitation.

The City defended its position by arguing that the language of its Code permits a tax on “all qualifying wages, earned . . . by nonresidents of the City for work done or services performed or rendered within the City or *attributable to the City*.” The City further relied on its official nonresident–professional–athlete regulation permitting deduction for “games in which the athlete was *excused* from playing because of injury or illness.”

The Court rejected the City’s position and held that Saturday could only be subjected to the City’s tax if he was in Cleveland and playing in the game. The Court cited to *Hillenmeyer*, in order to

explain that Saturday was being paid by the Colts for his participation in physical therapy, which took place outside of Cleveland. Thus, Saturday's job duties in Indianapolis on game day could not be "attributable to the City." However, the Court held that had Saturday traveled to Cleveland with the team and was subsequently "excused from playing because of injury or illness" as described in the City's regulation, then the language *might support* the imposition of the tax.

Instant Replay

Municipalities imposing a tax on nonresident-professional-athletes should use the "duty-days" method of calculating taxable income and may only impose such a tax when the athlete is present and participating in the game(s). The Supreme Court punted the issue of whether a municipality may impose a tax when the athlete is excused from playing due to injury or illness, but is present with the team on game day.

How do *Hillenmeyer* and *Saturday* affect the taxation of nonresident workers and professionals?

First, municipalities are foreclosed from imposing local taxes on nonresidents who work within the municipality for 12 days or less, unless the taxing authority can rationally justify that the type of work performed imposes financial burdens upon the municipality. The individuals subject to the tax must also be identifiable with relative ease.

Second, when applying a tax to nonresidents who occasionally enter the municipality to work, the calculation used to determine taxable income must only have the effect of taxing the actual work or services performed within the City.

You can read the full text of *Hillenmeyer v. Cleveland* by clicking [here](#), and the full text of *Saturday v. Cleveland Board of Review* via [this link](#).

For more information regarding these cases or their application, please contact [Phil Hartmann](#), [Laura Leister](#), or any other attorney in Frost Brown Todd's [Government Services Practices Group](#).

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