

Administrative Release No. 24

Subject: Nonresident Professional Athletes and Entertainers

I. General

Title 10, subtitle 2, of the Tax-General Article, Annotated Code of Maryland, and chapter 03.04.02 of the Code of Maryland Regulations (COMAR) provide for the taxation of residents and nonresidents. A nonresident is an individual who is not domiciled in Maryland on the last day of the taxable year, and who did not maintain a place of abode in this State for more than six months of the taxable year and did not spend, in the aggregate, 183 or more days within this State during the taxable year.

Nonresidents are taxable on that portion of their federal adjusted gross income that is derived from: (1) tangible property, real or personal, permanently located in this State; (2) income from a business, occupation, profession or trade carried on in this State; and (3) income derived from gambling within this State. This includes any income derived from the sale or other disposition of an ownership interest in a pass-through entity where the pass-through entity owns real or personal property in Maryland or conducts a business in Maryland.

II. Nexus

A nonresident professional athlete or entertainer deriving income from performing services in this State has a sufficient nexus or connection with Maryland to require the filing of a nonresident return. Such individuals may also be subject to tax on the income earned in this State. Section 10-806 of the Tax-General Article requires a nonresident to file a return if the nonresident is required to file a federal return and has income or losses derived from a business, occupation, profession or trade carried on in this State.

III. Allocation of Nonresident Income for Professional Athletes Who Participate in Team Sports

A. Compensation received by nonresident professional athletes.

1. Nonresident athletes are subject to tax on their income derived from compensation for services rendered in Maryland. As members of a

team, they are required to allocate their income from Maryland sources based on a formula. The formula requires the individual to multiply the total compensation for services to the team by a fraction. The numerator of the fraction is the number of duty days spent in Maryland rendering services to the team for the taxable year. The denominator of the fraction is the total number of duty days spent within and without Maryland during the taxable year.

2. Special Rule. Travel days that do not involve a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in Maryland. However, such travel days shall be considered duty days spent within and without Maryland.

B. Definitions. For purposes of this section:

1. The term “professional athletic team” includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

2. The term “member of a professional athletic team” shall include those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers and trainers.

3.a. The term “duty days” shall mean all days during the taxable year from the beginning of the professional athletic team’s official pre-season training period through the last game in which the team competes or is scheduled to compete.

b. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional “caravans”). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

c. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

d. Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves a team, shall end on the day such person leaves the team. Where a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team.

e. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

f. Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in Maryland. However, such days are considered to be included in total duty days spent within and without Maryland.

g. The provisions of this paragraph can be illustrated by the following examples:

(1) **Example 1:** Player A, a member of a professional athletic team, is a nonresident of Maryland. Player A's contract with such team requires A to report to such team's training camp and to participate in all exhibition, regular season and play-off games. Player A has a contract that covers seasons that occur during years 1999/2000 and years 2000/2001. Player A's contract provides that A receives \$500,000 for the 1999/2000 season and \$600,000 for the 2000/2001 season. Assuming player A receives \$550,000 from such contract during the 2000 taxable year (\$250,000 for one-half the 1999/2000 season and \$300,000 for one-half the 2000/2001 season), the portion of such compensation received by player A for taxable year 2000, attributable to Maryland, is determined by multiplying the compensation Player A receives during the taxable year (\$550,000) by a fraction. The numerator is the total number of duty days Player A spends rendering services for the team in

Maryland during the 2000 taxable year (attributable to both the 1999/2000 season and the 2000/2001 season) and the denominator is the total number of Player A's duty days spent both within and without Maryland for the entire taxable year.

(2) **Example 2:** Player B, a member of a professional athletic team, is a nonresident of Maryland. During the season, Player B is injured and is unable to render services for Player B's team. While Player B is undergoing medical treatment at a clinic in Maryland, Player B's team travels to Maryland for a game. The number of days Player B's team spends in Maryland for practice, games, meetings, etc., while Player B is present at such clinic in Maryland shall not be considered duty days spent in Maryland for Player B for that tax year for purposes of this section, but such days are considered to be included within total duty days spent within and without Maryland.

(3) **Example 3:** Player B, a member of a professional athletic team, is a nonresident of Maryland. During the season, Player B is injured and is unable to render services for B's team. Player B performs rehabilitation exercises at the facilities of B's team in Maryland, as well as at personal facilities in Maryland. Days Player B performs rehabilitation exercises in the facilities of B's team are considered duty days spent in Maryland for Player B for that tax year for purposes of this section. However, days Player B spends in private facilities in Maryland shall not be considered duty days spent in Maryland for Player B for that tax year for purposes of this section, but such days are considered to be included within total duty days spent within and without Maryland.

(4) **Example 4:** Player C, a member of a professional athletic team, is a nonresident of Maryland. During the season, Player C travels to Maryland to participate in the annual all-star game as a representative of C's team. The number of days Player C spends in Maryland for practice, the game, meetings, etc., shall be considered duty days spent in Maryland for player C for that tax year for purposes of this section, as well as included within total duty days spent within and without Maryland.

(5) **Example 5:** Assume the same facts as given in Example 4, except that Player C is not participating in the all-star game and is not rendering services for C's team in any manner. Player C is traveling to and attending such game solely as a spectator. The number of days Player C

spends in Maryland for such game shall not be considered duty days spent in Maryland for purposes of this section.

4.a. The term “total compensation for services rendered as a member of a professional athletic team” means the total compensation received during the taxable year for services rendered:

(1) From the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to complete during that taxable year; and

(2) During the taxable year on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional “caravans”).

Such compensation shall include, but is not limited to, salaries, wages, bonuses as described in Subparagraph b.(2) below and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b. For purposes of this paragraph, “bonuses” included in “total compensation for services rendered as a member of a professional athletic team” subject to the allocation described in Subsection A of this section are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, play-off or “bowl” games played by a team, or for selection to all-star league or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

(a) The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) The signing bonus is payable separately from the salary and any other compensation; and

(c) The signing bonus is nonrefundable.

C. Apportionment.

This section is designed to apportion to Maryland, in a fair and equitable manner, a nonresident member of a professional athletic team’s total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the foregoing provisions of this section will result in a fair and equitable apportionment of such compensation. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion such compensation, the Comptroller may require such member of a professional athletic team to apportion such compensation under such method as the Comptroller prescribes, as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion such compensation, where they demonstrate that the method provided under this section does not fairly and equitably apportion such compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team’s nonresident personal income tax return for Maryland.

D. Employer Withholding Requirements.

1. General. Each team which plays any games in Maryland must withhold from the compensation paid their players and other employees for the services rendered in Maryland. The only exceptions to this rule are with respect to team players whose home of record, i.e., domicile, is in one of the following states: Pennsylvania, Washington, D.C., West Virginia, or Virginia.

2. Computing Withholding Taxes. The employer should begin by calculating the total amount of compensation paid each team player for services rendered in Maryland. The employer shall withhold Maryland income tax on the employee’s Maryland source income in accordance with the Maryland Employer Withholding Guide.

IV. Allocation of Nonresident Income for Professional Non-team Athletes and Entertainers

The nonresident non-team professional athlete or entertainer who earns a portion of his/her total federal adjusted gross income from performances rendered in Maryland or other states, may determine the income allocable to Maryland by

using separate accounting. In this instance, the individual would separately account for the income and expenses derived from Maryland sources.

The formula method described in Section II above may not be used by those athletes whose income is event-oriented such as golf, tennis, boxing, etc. These athletes shall use separate accounting to allocate income to Maryland.

V. Other Requirements

Nonresident professional athletes and entertainers whose income is not subject to withholding are required to file a Declaration of Estimated Tax based on income earned from Maryland sources. However, no withholding or return is required of a nonresident individual whose only income is derived from wages earned in Maryland and who is domiciled in Virginia, West Virginia, District of Columbia or Pennsylvania (see Administrative Release No. 3).

Nonresident professional athletes and entertainers who become subject to Maryland tax on the same income that is taxed by their state of domicile, may be eligible for a credit on the return of the state in which they are domiciled. Credit may not be taken on the Maryland nonresident return.

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