April 14, 2011

To Share Or Not To Share: Revenue Sharing Structures In Professional Sports

Justin R Hunt

Available at: https://works.bepress.com/justin_hunt/1/
To Share or Not To Share: Revenue Sharing Structures In Professional Sports

By Justin R. Hunt*

Introduction..................................................................................................................2
I. The National Football League: The Power of a “League Think”
   Philosophy ..............................................................................................................3
   A. Bridging the Gap Between Large and Small Market Teams: The NFL’s Current Revenue Sharing Model ..................................................................................4
   B. Computing the Amount Shared Among All 32 NFL Member Organizations .........................................................................................................................10
II. National Hockey League: Player Compensation Cost Redistribution System.........................................................................................................................17
   A. Current Distributions under the NHL’s Player Redistribution System .................................................................................................................................17
   B. Reported Revenue Sharing Amounts in the National Hockey League .................................................................................................................................26
III. Major League Baseball: Redistribution Through Internal Taxation and Revenue Sharing ...............................................................................................................31
   A. Clearing the Confusion in Major League Baseball: Revenue Sharing v. Luxury Tax .............................................................................................................32
   B. Computing the Amount Shared via Revenue Sharing and the Competitive Balance Tax .................................................................................................41
IV. Resolving the Bargaining Stalemate During the 2011 NFL Lockout ...............................................................................................................................47
   A. Restructure the Salary Cap Calculation as a Percentage of National Revenues, Excluding Local Revenues from the Players’ Share .................................................................................................................................47
   B. The Continuation of Supplemental Revenue Sharing via Local Revenue Streams ..............................................................................................................49
   C. The Implementation of Safeguards Designed to Ensure Proper Spending of Redistributed Revenues ........................................................................51
Conclusion ..................................................................................................................54

* B.B.A. 2006, Ohio University; J.D. 2009, Capital University Law School; M.S.A. 2010, Ohio University. I would like to thank all my family and friends, especially my mother Carol and wife Bryn, for their encouragement and support during the production of this note. To all of my friends within the NFL, MLB, and NHL that assisted me during the production of this note, I am grateful for your friendship and guidance.
INTRODUCTION

In the 2009-2010 seasons, the Big Four, which includes the National Football League (“NFL”), National Hockey League (“NHL”), Major League Baseball (“MLB”), and National Basketball Association (“NBA”), generated over $21.6 billion in revenues.\(^1\) Despite such an astounding figure, the status of professional sports remains in peril. Professional sports leagues are governed by each league’s respective collective bargaining agreement, which establishes a player compensation system and a revenue sharing model. The 2011 calendar year marks the expiration of the collective bargaining agreements in three of the four leagues.

Professional athletes received $9.7 billion for their services in the Big Four during the 2009-2010 seasons.\(^2\) However, the major point of contention between league owners and professional athletes during bargaining negotiations continues to be the amount of revenue dedicated to player salaries and benefits. Every league acknowledges that the purpose of a revenue sharing agreement is to allow a closer range of payroll spending that might otherwise not be accomplished, preventing large market teams from controlling the allocation of high-priced free agents. These revenue sharing arrangements rely on the collaborative efforts of league members to maximize revenue from specific activities. The legality of these agreements is called into question in the case of *American Needle v. NFL*, forcing the lower court to determine whether these same collaborative efforts that contribute significantly to revenue sharing models are a violation of antitrust law.

The purpose of this paper is twofold: to explain and compare the actual amount of revenue shared under the sharing structures of the NFL, NHL, and MLB, and to offer suggestions for the improvement of the NFL’s sharing model during the 2011


bargaining negotiations. While revenue sharing and the salary cap calculation are two separate, distinct concepts in professional sports, these systems are in many ways inextricably linked, which this note strives to communicate. Part I of this legal note looks at the NFL’s sharing model. Part II analyzes the amount of revenue shared under the NHL’s Player Compensation Cost Redistribution System. Part III looks at the internal taxation method employed by the MLB. Finally, Part IV considers suggestions that may help resolve the bargaining stalemate between the NFL and the NFL Players Association (“NFLPA”). Given the complexity of these agreements, Section A of each part looks at each league in the following structure: what amount is shared, where do the shared funds come from, and who is eligible for revenue sharing. Section B of each part establishes the formula used to compute the actual revenue shared in each of the three leagues.

I. THE NATIONAL FOOTBALL LEAGUE: THE POWER OF A “LEAGUE THINK” PHILOSOPHY

After remaining essentially uninterrupted for 30 years, the NFL has made significant revisions to its revenue sharing model since the creation of unshared, local revenues. The NFL’s model is highly regarded as the most successful revenue sharing model, thanks to strong national, evenly shared television contracts and extremely profitable league-driven entities. While the NFL’s revenue sharing model has an extensive history, two events primarily shaped the current revenue sharing practice of the NFL, each of which relates to the creation of unshared revenue.

First, Jerry Jones’ successful challenge of NFL Properties in 1995 as the exclusive dealer of national sponsorships and marketing deals created additional streams of local, unshared revenue.3 This ruling created the divide between local sponsorship deals and national sponsorship deals, allowing popular organizations to leverage their popularity when entering into local sponsorship and marketing deals.4 After this challenge, NFL teams

---


could negotiate local deals with certain vendors (Coke and Budweiser), while other vendors served as the official national sponsor of the NFL (Pepsi and Coors).\(^5\)

Second, incentives introduced in the 2001 Collective Bargaining Agreement (“CBA”) and continued in the 2006 CBA relating to a private-public financing strategy for the construction of new facilities led to the stadium boom, resulting in the first NFL team to surpass $400 million in annual revenue. The construction of multi-million dollar stadiums owned by NFL organizations during the stadium boom created additional unshared revenue opportunities, including luxury box revenues and club seat revenues, that might not have existed prior to their construction. These incentives also include the retention of personal seat license revenues and premium seat revenues related to stadium construction, which replaced the G-3 Program that helped subsidize stadium construction costs by allowing clubs to retain otherwise shared revenues for repayment of debt related to stadium construction.\(^6\)

A. Bridging the Gap Between Large and Small Market Teams: The NFL’s Current Revenue Sharing Model

The NFL’s revenue sharing model is the least complex of the existing models. The simplistic nature of this model is due, in large part, to the intended purpose of the model: to ensure every club receives the same amount from designated revenue sources. Contrary to other professional leagues, the NFL does not concern itself with the available revenue of its member clubs.

i. What Amount: Who Gets What in the NFL

\(^5\) Moorhead, *supra* note 3, at 650.

Delineating between general revenue sharing and Supplemental Revenue Sharing ("SRS") is the first step in understanding the NFL’s model. When considering the two aspects of revenue sharing, it is important to remember that the very actions subject to scrutiny in the case of *American Needle v. NFL* contributed significantly to the general revenue sharing model in place over the past 30 years. An adverse ruling by the lower court on remand and subsequent corrective actions by the NFL could influence the collective nature of the league owners, causing irreparable harm to the current sharing model in the NFL.

*a. Level One: Distribution of Designated Revenue Streams*

The NFL derives more revenue in a given season than any other professional sports league. Phase one of revenue sharing, which is comprised of revenue contributions from broadcasting contracts, visitors’ share of gate receipts, and national licensing activities, provides each team with a significant revenue pool to support inflated player salaries and mandatory player benefits. However, the ability of select clubs to generate substantially more unshared revenue than small market clubs raises concern among owners.

Because the League does not consider an individual team’s unshared revenues when allocating funds under its revenue sharing model, many critics are concerned that the equal distribution of shared revenue, combined with exorbitant, unshared revenue streams, will facilitate the re-emergence of a large, unworkable revenue gap. In 2007, the disparity between the highest-ranked revenue club and the lowest-ranked revenue club was an estimated $112 million. In 2010, that same revenue gap climbed to $210 million. This difference stresses the importance of SRS.

---


b. Level Two: An Additional Boost Under Supplemental Revenue Sharing in the NFL

To combat the unfavorable circumstances affiliated with an insurmountable revenue gap, the NFL created Supplemental Revenue Sharing. Specifically, this system addresses the inequities associated with a malleable salary cap and significant revenue in the hands of a select few. Outlined in the March 10, 2006, Memorandum sent to the NFLPA, the goal of this plan was to “[e]stablish a new Revenue Sharing mechanism to fund low revenue clubs...”, with an overall value of $895 million over the six-year period.9

The League designed SRS to redistribute revenue from strong, top 15 revenue clubs to weak, small market clubs. To illustrate this concern, the Dallas Cowboys generated $420 million in revenues and the Detroit Lions generated $210 million in 2009.10 Since these numbers reflect revenues and not profits, some owners assert that low revenue clubs may be more profitable than high revenue clubs given a lack of debt service and facility operational expenses. For this reason, the longevity of SRS is challenged quite frequently by ownership.

ii. Where: Revenue Streams Shared Among Organizations

a. Funding the Largest Revenue Sharing Arrangement in Professional Sports

A common misconception plaguing sports writers related to the 2006 CBA is that Total Revenue is synonymous with “shared revenue”. However, a closer look at the NFL’s CBA and Constitution clarifies the difference between the two terms.11 In

---


10 Badenhausen, supra note 8.

order to understand this concept, it is crucial to remember that the revenue used to set the salary cap is different than the revenue that is shared among the 32 organizations.\textsuperscript{12} Table 1 lists enumerated revenue streams categorized as Total Revenue for salary cap purposes, as well as establishes which Total Revenue sources are shared among the owners.

Table 1: Designation of revenues for revenue sharing and the salary cap

<table>
<thead>
<tr>
<th>Category</th>
<th>Cap Calculation</th>
<th>Revenue Sharing</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gate Receipts</td>
<td>Yes</td>
<td>Yes</td>
<td>40% Visitors</td>
</tr>
<tr>
<td>Broadcasts</td>
<td>Yes</td>
<td>Yes</td>
<td>Evenly</td>
</tr>
<tr>
<td>Concessions</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Local Advertising</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Signage</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Local Sponsors</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Parking</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Local Advertising</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Novelties</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>NFL Entities</td>
<td>Yes</td>
<td>Yes</td>
<td>Evenly</td>
</tr>
<tr>
<td>Barter Income</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>3rd Party Stadium Usage</td>
<td>Yes</td>
<td>Yes/No</td>
<td>Situational</td>
</tr>
<tr>
<td>Business Insurance</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Promotions</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Club/Luxury Box</td>
<td>Yes</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Premium Seat Revenues</td>
<td>No*</td>
<td>No</td>
<td>-</td>
</tr>
<tr>
<td>Personal Seat Licenses</td>
<td>No*</td>
<td>No</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 1 suggests that premium seat revenues and personal seat license revenues are not included in the cap calculation, but this is only true if the revenues are used to pay for the construction of a new stadium or stadium renovations and a waiver is obtained.\textsuperscript{13} Otherwise, revenues related to personal seat licenses and premium seat revenues are included in Total Revenue, and thus, included in the cap calculation.

\textsuperscript{12} Ed Bouchette: Rooney calling for more revenue sharing, \url{http://www.postgazette.com/pg/07086/772783-66.stm} (last visited January 17, 2011) (Steelers’ owner recognizes that the vast majority of local, unshared revenue is included for cap calculation purposes but not shared amongst the 32 organizations).

\textsuperscript{13} NFL Collective Bargaining Agreement, \textit{supra} note 6, at Article XXIV, Section 1(a)(x)(2) and Section 1(a)(xi)(1).
To Share or Not To Share

With such a large discrepancy between shared revenue and revenues used to calculate the salary cap, it is imperative that the revenue streams shared among the organizations make up a significant portion of Total Revenues, which they currently do. However, an unfavorable ruling for the NFL could radically alter the current sharing arrangement in professional football.\textsuperscript{14} This, in turn, would increase the League’s reliance on SRS.

\textit{b. Supplemental Revenue Sharing: Strengthening the Small Market Teams in the National Football League}

Supplemental Revenue Sharing strives to redistribute $895 million over a six-year period to low revenue clubs. In order to do so, the NFL’s Constitution establishes that:

“\[t\]he Revenue Sharing pool will be funded from three sources; (a) Amounts currently dedicated to Supplemental Revenue Sharing, (b) Direct payments from High Revenue Clubs, and (c) Distributions from new equally shared revenue streams (other than television), either from existing business categories or New Media Revenues…from shares that would otherwise go to High Revenue Clubs…”\textsuperscript{15}

In addition to these three streams, the NFL’s supplemental sharing arrangement introduced a concept of “banking”, geared towards the retention of contributed funds to satisfy future needs under SRS.\textsuperscript{16} Ideally, this supplemental system would share approximately $895 million over six years. However, since the redistributions increase significantly every year, from $100 million

\textsuperscript{14} Hunt, \textit{supra} note 11, at 32.


\textsuperscript{16} Id.
in 2006 to $210 million in 2010, the economic downturn intensified the burden placed on contributing clubs under this system. For this reason, the Management Council challenged the application of SRS in the 2010 uncapped year, but Special Master Burbank upheld SRS.17

iii. Who: Eligibility for Revenue Sharing in the NFL

The eligibility requirements of the two sharing arrangements are drastically different, but only one of the arrangements requires a detailed explanation. Every club receives the same amount under the NFL’s revenue sharing model. Despite the fact that some clubs contribute more revenue than others to the revenue pool, every club is eligible to receive the same amount. However, a restricted number of clubs are eligible for additional revenue under SRS, due to the stringent eligibility requirements in place.

First, any club ranked among the top 15 in terms of revenue contributes to SRS and, thus, does not receive additional revenue under SRS.18 In addition to expressly limiting clubs from receiving revenue, the League formed a committee of eight owners to establish performance standards for eligibility under SRS.19 In 2009, it was estimated that nine low revenue teams qualified to draw from this pool.20


20 Judy Battista, supra note 19.
B. Computing the Amount Shared Among All 32 NFL Member Organizations

According to Chris Mortensen, approximately $6.5 billion was shared in 2009, which included an estimated $100 million from SRS.\textsuperscript{21} In 2008, it was reported that of the League’s $8 billion in revenue, an estimated $4.7 billion was national, with the remaining $3.3 billion local.\textsuperscript{22} To the contrary, in an amicus brief filed with the Supreme Court by the NFL’s Players Association in the case of American Needle v. NFL, it was reported that $4.5 billion of the total $7.5 billion generated in 2008 consisted of “revenue sources whose prices were independently set by individual teams.”\textsuperscript{23} These reports confirm a high level of inconsistency with respect to the reporting of NFL revenues.

i. Totaling the Amount of Revenue Shared Under the General Revenue Sharing Plan

I tested the accuracy of the reported revenue figures by obtaining financial data from various sources, including the financial statements of the Green Bay Packers, the only publicly owned entity in the NFL. However, in order to estimate accurately the amount shared in a given year, permitted cost deductions related to the following revenue streams must be accounted for under the CBA.\textsuperscript{24} When comparing these three sources, broadcasting revenues continue to drive the NFL’s sharing model.

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{22}] Street and Smith’s Sports Business Daily, Slight gate revenue drop seen for NFL, http://www.sportsbusinessjournal.com/article/63748 (last visited February 11, 2011).
\item[\textsuperscript{23}] National Football League Players Association, in support of Petitioner’s Motion, American Needle Inc. v. Nat’l Football League, No. 08-661, slip op. at 1, 560 U.S. ____ (2010) [hereinafter NFLPA Brief].
\item[\textsuperscript{24}] NFL Collective Bargaining Agreement, supra note 6, at Article XXIV (1)(a)(xiv)(1) (enumerating specific expense deduction permitted under the
\end{itemize}
\end{footnotesize}
Broadcasting Revenues: Exempt from antitrust scrutiny under the Sports Broadcasting Act, the individual clubs recognized the importance of collectively negotiating long-term, national television contracts. The NFL’s broadcasting contracts, viewed as the backbone of revenue sharing, generate an estimated $3.74 billion in television revenues every year. Article 10.3 of the NFL’s Constitution establishes that broadcasting revenues will be distributed evenly among all member organizations. If this figure is accurate, each club should receive $116,875,000 in television revenues, as reported in various news reports. However, the Green Bay Packers reported that in 2009, the amount of revenue received from television/media equaled $94,484,631, for a total of $3.02 billion. So the question remains: what can explain the $710 million difference between the reported media figures and the information released in the Packers’ financial statements?

First, Article XXIV, Section 1(a)(i)(2) establishes that the amount included in Total Revenue for a right to broadcast an NFL game is “net of any reasonable and customary NFL expenses…” Second, the NFL retains a percentage of television revenues distributed to every member organization to cover operational


27 NFL Constitution, supra note 4, at Article 10.3.

28 Kacher, supra note 26.


30 NFL Collective Bargaining Agreement, supra note 6, at Article XXIV, Section 1(a)(i)(2).
expenses. These two aspects used to reduce revenues help explain the above disparity between reported revenue shared and actual revenue shared. A difference of $22,187,500 per club, or $710,000,000 total, intensifies the amount of concern that exists with respect to the revenue gap in the NFL.

**Gate Receipts:** Under the original 60/40 gate sharing formula, individual clubs receive a proclaimed 40% share of every away game in which they participated. Recognizing that certain teams generate significantly more revenue from away games, the League decided to create an away game revenue pool, which was then distributed evenly to all clubs. According to Forbes, the NFL generated an estimated $1.68 billion in revenue from gate receipts in 2009. However, this figure embodies both home and visitor gate receipts, which are treated entirely differently for revenue sharing purposes. According to the Green Bay Packers’ financial reports, every NFL club received $16,175,953 from road game ticket income in 2009. Thus, approximately $517,630,496 was shared among the 32 member organizations from the visitors’ ticket pool.

Article 19 of the NFL’s Constitution requires that “[t]he home club shall deliver to the League office the greater of $30,000 for each regular season and preseason game, or 40% of the gross receipts….” However, the actual distribution of this “40% share” suggests a mere 33.2% of gate receipts is shared with the visiting team. This discrepancy is best explained by a 15% reduction from gate receipts for stadium rental and costs and an additional 2% submitted to the NFL.

**Licensing Revenues:** Through the NFL’s exclusive licensing arm, NFL Properties, approximately $2.74 billion in revenue was generated from licensing activities in 2009. In order

---

31 Bowman, *supra* note 29.


to determine the actual amount distributed as a result of revenue sharing, I utilized the figures reported in the Green Bay Packers’ financials, which listed NFL Properties revenues at $36,458,755. Armed with the knowledge that revenue generated by NFL Properties is distributed equally among 31 of the 32 organizations, I was able to allocate the $1.13 billion evenly among the 31 NFL clubs. So where exactly did the additional $1.61 billion disappear to and why only 31 clubs?

The discrepancy between reported licensing revenues and shared licensing revenues can best be explained by (1) expense deductions permitted under the CBA, (2) third-party arrangements allowing clubs to pay royalties to the NFL in exchange for the retention of merchandise/licensing revenues, and (3) the commingling of revenues related to licensing activities. First, Article XXIV, Section 1(a)(xiv)(1)(C)(ii) prescribes each club’s right to deduct acknowledged expenses from shared merchandise revenues. Appendix H.3 authorizes the deduction of any “costs of goods sold” prior to the calculation of Total Revenue. These costs can be significant given the expenses associated with the manufacturing of NFL apparel and game merchandise.

Second, and perhaps the most controversial, the Dallas Cowboys were granted permission to retain their own merchandise revenues in exchange for royalty payments. After the 2008 season, it was reported that “$200 million of the Cowboys $1.6 billion worth is attributable to its brand strength….” While this particular agreement is the only one that received public attention, it likely isn’t the only separate agreement that exists. Individual clubs may petition the League for similar treatment on the premise that undertaking large debt obligations related to the construction of a new facility justifies retaining designated revenue streams to service that debt.

35 Bowman, supra note 29. See also American Needle, slip op. 08-661 at 2.

36 NFL Collective Bargaining Agreement, supra note 6, at Article XXIV, Section 1(a)(xiv)(1)(C)(ii).

Lastly, the commingling of funds categorized as “licensing activities” complicates the accurate reporting of revenues from national licensing activities. The Packers’ financial records indicate that the actual amount shared is much less than the amount reported by unreliable media sources. Table 2 reflects the differences between reported shared revenues and actual shared revenues, an understanding of which is paramount before moving on to an explanation of SRS.

<table>
<thead>
<tr>
<th>'09 Revenue Source</th>
<th>Reported Amount</th>
<th>Actual Amount</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadcasting</td>
<td>$3.74 billion</td>
<td>$3.02 billion</td>
<td>$720 million</td>
</tr>
<tr>
<td>Licensing/Merchandise</td>
<td>$2.74 billion</td>
<td>$1.13 billion</td>
<td>$1.61 billion</td>
</tr>
<tr>
<td>Gate Receipts</td>
<td>$1.68 billion</td>
<td>$517.63 million</td>
<td>$1.16 billion</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8.16 billion</strong></td>
<td><strong>$4.67 billion</strong></td>
<td><strong>$3.49 billion</strong></td>
</tr>
</tbody>
</table>

ii. Calculating Supplemental Revenue Sharing Under the NFL’s Constitution

The three supplemental funding sources, collectively known as SRS, contributed a reported $100 million in 2009. However, the League anticipated redistributing $140 million in SRS according to projected distributions.38 This discrepancy in 2009 has been a reoccurring theme since the reconfiguration of SRS in 2006, sparking allegations filed by the NFLPA.39 However, a closer look at this system indicates that the entire projected $140 million was redistributed to eligible clubs under SRS in 2009.

While sources indicate that three pools of revenue fund SRS, the 2006 Resolution MC-1 introduced a concept of “banking” providing for the retention of previously contributed funds under

---

38 See White, supra note 9. See also NFL Constitution, supra note 4, at 2006-9 (2006 Resolution MC-1).

SRS in order to satisfy future needs under the plan.\textsuperscript{40} While the parties stipulated that “banked” amounts would be returned to contributing clubs, these funds are utilized until the expiration of SRS. In 2009 alone, an estimated $40 million of these collected funds were redistributed to the nine eligible clubs under SRS. In addition to the “banked” $40 million, the three sources contributed the media reported $100 million.

First, an annual contribution of $27 million is pooled from current SRS funding sources.\textsuperscript{41} While the amount contributed and the general funding source is disclosed, this ruling is very ambiguous with respect to which revenue streams are considered “current SRS funding sources”. The contributions that fund this portion of the SRS pool have already been procured, so understanding what sources comprise this aspect is not crucial to estimating the amount shared under SRS. For this reason, this estimated $30 million was excluded from reported SRS, helping explain the discrepancy between the reported $100 million and the projected, and actually distributed, $140 million.

An additional $30 million is contributed by the top 15 revenue producing organizations in the NFL. This portion embodies three tiers of contributors, with the top five clubs distributing $3 million a piece, clubs 6-10 allocating $2 million per club, and clubs 11-15 contributing $1 million each.\textsuperscript{42} This phase of the supplemental arrangement truly embodies the intended purpose of SRS, which was to get more revenue in the hands of small market organizations at the expense of large market owners.

Lastly, this system relies significantly on pooled, equally-shared revenues that would otherwise go to high revenue clubs. Specifically, 2006 Resolution MC-1 established that phase three of SRS would include “[d]istributions from new equally shared revenue streams …, either from existing business categories or New Media revenues…”\textsuperscript{43} This category includes various streams

\textsuperscript{40} See White, supra note 9. See also NFL Constitution, supra note 4, at 2006-9 (2006 Resolution MC-1).

\textsuperscript{41} See White, supra note 9.

\textsuperscript{42} NFL Constitution, supra note 4, at 2006-9.

\textsuperscript{43} Id. at 2006-10
of revenue, the majority of which are related to the distribution of media rights, excluding television revenues. In 2009, an estimated $43 million was redistributed to the qualifying clubs under SRS. Table 3 compares the amount of reported SRS and the actual amount of supplemental revenue shared in the 2009 season, based on the analysis set forth above.

Table 3: Comparing SRS figures in 2009.

<table>
<thead>
<tr>
<th>'09 SRS Source</th>
<th>Projected Amount</th>
<th>Actual Amount</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>SRS Phase I</td>
<td>$27 million</td>
<td>$27 million</td>
<td>$0</td>
</tr>
<tr>
<td>SRS Phase II</td>
<td>$30 million</td>
<td>$30 million</td>
<td>$40</td>
</tr>
<tr>
<td>SRS Phase III</td>
<td>$83 million</td>
<td>$43 million</td>
<td>$0</td>
</tr>
<tr>
<td>Banked Funds</td>
<td>$0</td>
<td>$40 million</td>
<td>&lt;$40&gt;</td>
</tr>
<tr>
<td>Total</td>
<td>$140 million</td>
<td>$140 million</td>
<td>$0</td>
</tr>
</tbody>
</table>

iii. Understanding the Lasting Impact the Court’s Ruling Will Have on Revenue Sharing in Professional Sports

The Supreme Court of the United States recently opined in the case of American Needle v. NFL that “[d]ecisions by NFL teams to license their separately owned trademarks collectively and to only one vendor are decisions that deprive the marketplace of independent centers of decisionmaking…” 44 Since the Court categorized this conduct as concerted activity, treating the NFL as a single entity for purposes of marketing each team’s intellectual property rights is not justified under §1 of the Sherman Act. 45 The Court remanded the case to the lower court to determine whether the creation of NFL Properties and its subsequent exclusive agreement with Reebok violates §1 of the Sherman Act under a full Rule of Reason analysis.

Essentially, the lower court must weigh the circumstances justifying the codification of the Sports Broadcasting Act, shielding leagues from antitrust scrutiny with respect to television contracts, and the circumstances that reject single-entity status, subjecting collaborative efforts of the NFL members to antitrust scrutiny. An adverse ruling by the lower court in this case might change the owners’ willingness to share a large portion of

44 American Needle, slip op. 08-661 at 2.

45 Id.
merchandise/licensing revenues, since an antitrust violation could ultimately shift the responsibility for generating these revenues to the individual clubs. The additional efforts this requires would weaken the collective mentality currently shared by NFL owners, encouraging them to retain the fruits of their own labor, ultimately reducing the amount shared under the general agreement. However, the negative ramifications of such a ruling would not be isolated to the NFL, since all sports leagues, including the NHL, rely on collaborative efforts to generate revenue as a customary practice in the industry.

II. NATIONAL HOCKEY LEAGUE: PLAYER COMPENSATION COST REDISTRIBUTION SYSTEM

A. Current Distributions under the NHL’s Player Redistribution System

The NHL designed its Player Compensation Cost Redistribution System (“PCCRS”) to cause high-revenue clubs to contribute even more of their revenues towards player compensation by redistributing a certain percentage to low-revenue clubs. Specifically, the current system was designed to “enhance the ability of all clubs…to be able to spend at least twenty-five (25) percent of the Team Payroll Range…on Player Compensation.”

i. What Amount: Calculating Revenue Sharing in the NHL

Determining the amount of revenue committed under the PCCRS mandates an in-depth understanding of revenue terms used in the NHL’s CBA. The most important of these terms include Minimum Team Player Compensation (“Minimum”), Targeted Team Player Compensation (“Target”), and Available Team Player Compensation (“Available”). In its most simplistic sense, the redistribution commitment under the PCCRS is derived from the following five-step process:

To Share or Not To Share

Step 1: Obtain the Minimum and Target compensation levels.\(^{47}\)

Step 2: Calculate each club’s Available amount.

Step 3: Discard all clubs with Available > Target.

Step 4: For clubs where Minimum < Available < Target, include difference between Available and Target in PCCRS commitment.

Step 5: For clubs where Available < Minimum, include the difference between Minimum and Target in PCCRS commitment (Maximum Distribution).

While this process appears straightforward, calculating the amount for each individual club can be difficult given certain boundaries contained in the CBA. The Minimum and Target amounts set the outer boundaries and are identical for each club, while the club-specific Available amount determines what each club will receive under the NHL’s system.

**Minimum Team Player Compensation:** This figure represents the amount each team is presumed to have available to spend on player compensation in a given year. By far the simplest calculation under the PCCRS, the Minimum is calculated by multiplying Actual Hockey Related Revenues (“HRR”) by 1.15%. This amount serves as the revenue sharing floor when the Minimum exceeds a club’s Available amount.

**Target Team Player Compensation:** The ultimate goal of the PCCRS is to bring each club’s Available figure to the Target level in the NHL. The Target is the amount NHL clubs are “targeted” to have available for player salaries and bonuses, plus the club’s pro rata share of player benefits.\(^{48}\) This amount is set by the NHL at a figure (i) greater than the Lower Limit + 25% Payroll Range, and (ii) less than the Lower Limit + 50% Payroll Range.\(^{49}\)

---

\(^{47}\) Id. at Article 49.2.

\(^{48}\) Id. at Article 49.1(s).

\(^{49}\) Calculation of the Lower Limit and Payroll Range is described in Section 50.5(b) of the NHL’s CBA. The Midpoint Payroll Range is calculated by the following formula: \(((\text{Preliminary HRR} \times \text{Applicable HRR} \%) - \text{Preliminary})\)
Once the Target amount is set, the League must determine which clubs are capable of meeting this figure in the absence of the PCCRS.

**Available Team Player Compensation:** An individual club’s Available amount indicates whether a club will receive additional revenue under the PCCRS for a given league year. The Available amount is calculated by taking each club’s Gross Preseason and Regular Season Revenues and multiplying it by the Applicable HRR percentage designated as the Player Share. To the extent the Target exceeds Available funds, the club qualifies for such amount under the PCCRS. For example, if a club has $64 million Available and the Target is $69 million, they have the potential to receive an additional $5 million under the PCCRS.

The sum each Club will receive under the above calculation establishes the required revenue sharing commitment under the PCCRS. If you feel as though your head were put in a paint mixer for an hour, relax…you are not alone. Professional leagues have numerous accountants working diligently to calculate the revenue sharing figures discussed above. However, if you understand one of the most complex, convoluted revenue sharing arrangements in professional sports, it is much easier to explain what sources of funding exist to satisfy the mandatory commitment.

**ii. Where: Funding Sources for the PCCRS**

In order to satisfy this redistribution amount, the League makes an annual contribution known as the Minimum Redistribution Commitment (“League Commitment”). The League Commitment is calculated by multiplying League-wide Actual

---

Notes:

50 Under the PCCRS, the League sets a Maximum Distribution that a Club is eligible to receive in a given year. The Maximum Distribution is the difference between the Minimum Team Compensation and Targeted Team Compensation.
HRR times 4.5%.\(^{51}\) In the ’08-09 season, Hockey Related Revenues were reported at $2.62 billion, rendering the League responsible for $117,900,000 during the ’08-09 league year.\(^{52}\) Once this League Commitment is calculated, the League must determine whether this amount is below or exceeds the PCCRS required commitment.

The NHL’s CBA reserves four phases of funding, which, when combined, satisfy the redistribution commitment under the PCCRS. The four sources of funding under the NHL’s agreement include the following: (1) a portion of central revenues, (2) the escrow account, (3) designated playoff revenues, and (4) certain revenues from the ten-highest revenue clubs. The following table provides an in-depth explanation of the four funding sources.

---

\(^{51}\) The Minimum Redistribution Commitment is the amount the League allocates towards the required commitment under the PCCRS, but is not the required amount distributed to the low revenue clubs for player compensation. Excess amounts after the PCCRS redistribution is allocated towards a joint marketing campaign between the NHL and the NHLPA, but the existing amount shall not exceed $10 million. Any excess over $10 million is returned to the clubs on a pro rata basis.

\(^{52}\) Hockey Related Revenues is defined in the Collective Bargaining Agreement, but the definition is a non-exhaustive list of numerous revenue sources. This definition has universal application across the league members, and included revenue streams are net of costs and taxes recognized in the agreement.
Table 4: The four funding sources of the Player Compensation Cost Redistribution System

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Percentage of Commitment</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central League Revenues</td>
<td>Maximum of 25% the</td>
<td>If central league revenues exceed $300 million, 50% of excess may satisfy up to 25% commitment</td>
</tr>
<tr>
<td>Phase</td>
<td>redistribution requirement</td>
<td></td>
</tr>
<tr>
<td>Escrow Account</td>
<td>Up to 1/3 remaining</td>
<td>Amount from top ten revenue clubs cover up to 1/3 remaining amount</td>
</tr>
<tr>
<td></td>
<td>commitment</td>
<td></td>
</tr>
<tr>
<td>Playoffs Funding Phase</td>
<td>50% remaining commitment</td>
<td>Playoff teams contribute % of playoff tickets sold, depending on revenue ranking</td>
</tr>
<tr>
<td>Supplemental Phase</td>
<td>Remaining amount</td>
<td>Funded by top ten revenue clubs, based on their revenue compared to 11th ranked revenue club</td>
</tr>
</tbody>
</table>

NOTE: The information in this Table was obtained from the NHL’s CBA

Phase one, referred to as the central revenue phase, sets a revenue threshold that must be exceeded before this phase is triggered. Once central revenues (broadcast revenues, NHL-related entity revenues, etc.) exceed $300 million in a given year, 50% of the excess can satisfy up to 25% of the redistribution commitment. One would be inclined to think that since the NHL generated an estimated $2.819 billion in 2009, a significant portion came from central revenues. However, Taylor Brinkman points out that:

“[w]hile central league revenues steadily approached the $300 million benchmark in the last few seasons prior to the lockout; they will not reach this level in 2005-2006 and it is improbable that they will climb significantly above $300 million in the immediate future…”

This presumption appears easy to dismiss, since the NHL generated an estimated $500 million in television revenue from

---

53 NHL Collective Bargaining Agreement, supra note 46, at Section 49.5(a).

national and regional deals in 2010. However, to further complicate this assertion, local media revenues alone topped $356 million in 2008-09, allocating a mere $144 million towards central revenues.

Under the NHL’s sharing philosophy, up to 1/3 of the remaining commitment after excess central revenues are distributed is satisfied by the escrow funding phase. If an overage occurs (League-wide Player Compensation > Players’ Share), then a portion of the overage is set aside for the redistribution commitment. However, only the escrow funds attributable to the ten highest-revenue clubs with Actual Club Salaries in excess of the Midpoint Payroll Range will be redistributed under the PCCRS.

The inclusion of certain playoff revenues in the PCCRS commitment as the third source of funding is justified due to the additional revenue that playoff clubs generate by playing additional games in the postseason. Regardless of the amount of funds redistributed in the first two phases, the playoff funding phase will account for 50% of the remaining commitment under the PCCRS. The amount each playoff club contributes for each home playoff game is allotted in the following manner:


57 NHL Collective Bargaining Agreement, supra note 46, at Section 49.5(b).

58 Id.

59 Id. at Section 49.5(c).
Table 5: Calculating the amount of playoff revenues redistributed in phase three

<table>
<thead>
<tr>
<th>Revenue Ranking</th>
<th>Calculation of Playoff Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Top 10 Gross Preseason and Season Revenues</td>
<td>50% total ticket value, net taxes, for one full-priced, sold-out regular game</td>
</tr>
<tr>
<td>Middle 10 Gross Preseason and Season Revenues</td>
<td>40% total ticket value, net taxes, for one full-priced, sold-out regular game</td>
</tr>
<tr>
<td>Bottom 10 Gross Preseason and Season Revenues</td>
<td>30% total ticket value, net taxes, for one full-priced, sold-out regular game</td>
</tr>
</tbody>
</table>

**Total ticket value calculated using Rink Capacity and Pricing Scale Report.

The unique characteristic about the playoff funding phase is that even clubs designated as recipient clubs under the PCCRS may be required to allocate playoff revenues during this phase of revenue sharing. While this seems to damage what the NHL is trying to accomplish with revenue sharing, this concern is remedied in the final phase of revenue sharing.

The fourth and final source of funding is known as the supplemental funding phase. Any remaining balance under the PCCRS commitment is satisfied by the top-ten revenue clubs on a percentage basis. Each club is assessed a percentage of the remaining commitment balance according to this established formula:

Step 1: Club X’s Preseason/Season Revenues - Club 11’s Preseason/Season Revenues = Club X’s Incremental Value

Step 2: Sum of Incremental Values/Club X’s Incremental Value = Club X’s Supplemental Percentage

---

60 Id. at Section 49.5(d).
Step 3: Club X’s Supplemental Percentage * PCCRS Remaining Commitment = Club X’s Supplemental Phase Contribution

This phase ensures that the highest revenue clubs are contributing the most revenue in a given league year. However, a cap is placed that limits the amount of revenue the top ten clubs are forced to contribute through two specific restrictions. First, a club’s incremental percentage cannot exceed 20%. Any excess over 20% is dispersed on a pro rata basis to the other top ten clubs. The second restriction ensures that no club’s revenue rank will change as a result of the above-mentioned calculation. In the event a club’s rank would change, the club contribution is capped at that amount, and the remaining contribution is allocated to the next-highest revenue club to preserve the original revenue rankings.

iii. Who: Eligibility Under the NHL’s Sharing Arrangement

Eligibility is a pressing issue under the NHL’s revenue sharing structure. Under the current model, it is completely plausible that a club in the bottom five of revenue is ineligible for a distribution via revenue sharing. A club must be deemed eligible in order to receive any funds under the PCCRS. The following circumstances deem a club ineligible: (1) clubs with a revenue ranking in the top 15, (2) clubs located in a market with 2.5 million

61 Id. at Section 49.5(d)(iv).

62 Id. at Section 49.5(d)(vi).

63 Id. at Section 49.5(d)(vi)(A) (prevents a club’s supplemental phase contribution from increasing more than 10% under the application of this restriction).
households or more, or (3) clubs with Available compensation that exceeds Target compensation.\textsuperscript{64}

The 2.5 million households cap on eligibility has made it difficult for the New York Islanders and other teams to capitalize off the intended purpose of revenue sharing in the NHL.\textsuperscript{65} In 2008-2009, the Islanders finished dead last in revenues, but were precluded from participating in revenue sharing due to the size of the New York market. This shortfall is currently being considered for amendment by the League to return revenue sharing to its originally intended purpose. In addition to difficult eligibility requirements, the NHL’s CBA also limits the amount of revenue an eligible club receives under certain circumstances.

Every other club that does not fall within one of these three categories is eligible to receive a share of revenue under the PCCRS. However, whether or not a club receives the entire amount of revenue sharing that it is eligible for in a given year depends on performance incentives in the NHL’s CBA. Under Section 49.3(c), every eligible club received the full share of their redistribution amount in the ’05-06 and ’06-07 league years. In order to continue receiving a full share, eligible clubs were required to meet both specific revenue growth thresholds and paid attendance levels.\textsuperscript{66} For purposes of this section, it is important only to acknowledge that a club is not always entitled to its eligible full share under the PCCRS.

\textsuperscript{64}NHL Collective Bargaining Agreement, \textit{supra} note 46, at Section 49.3(b)(i-iii).


\textsuperscript{66}NHL Collective Bargaining Agreement, \textit{supra} note 46, at Section 49.3(d)(i)(B).
B. Reported Revenue Sharing Amounts in the National Hockey League

Similar to other professional sports leagues, various barriers exist that make it difficult to calculate, with absolute certainty, the amount of revenue shared among NHL organizations. First, owners are reluctant to publish revenue streams in order to strengthen their bargaining power against their respective player unions. Second, as reported on Forbes, revenue figures include non-hockey related revenues, meaning the revenue figures are inflated due to revenue that should not be included, calling into question the reliability of Forbes’ statistics. 67 Third, all revenue sharing models account for the costs and expenses related to the activities that generate revenue. 68 However, the limited revenue figures that are reported do not indicate whether or not these expenses/costs are deducted from the reported figures. 69 Lastly, failure to meet attendance thresholds reduces the amount organizations actually receive under the PCCRS. Despite these barriers, this note establishes an appropriate formula to calculate the amount of revenue shared in the National Hockey League.

i. Setting the Outside Parameters of the National Hockey League’s PCCRS Model

After endless nights scouring various sources for useful revenue figures, I located several articles confirming a few of my

67 Badenhausen, supra note 56.

68 NHL Collective Bargaining Agreement, supra note 46, at Section 50.1(a)(i)(B).

assumptions along the production of this note. In the ’08-09 season, “[t]he players’ share of hockey-related revenue …was 56.7 percent and reported revenue for the season was $2.62 billion…”70 In addition, this article reported that the projected HRR was $2.64 billion. Finally, with the guidance of the CBA, I was able to estimate Preliminary Benefits at $77 million ($83.5 million + $6.5 million credit).71 With the assistance of these figures, I was able to calculate the Midpoint as follows:

\[
\text{Midpoint} = (\text{Preliminary HRR} \times \text{Player Share}) - \text{Preliminary Benefit} \\
\quad \text{NHL Teams} \\
\quad (\text{($2,640,000,000 \times .567$)} - 77,000,000) \\
\quad \text{30} \\
\text{Midpoint} = $47,329,333
\]

Various sources confirmed that the Upper Limit for the 2008 – 2009 season was $56.7 million. Under Section 50.5(b)(i), this would mean the Midpoint for the ’08-09 season was $48.7 million, since the Upper and Lower Limit are calculated by adding and subtracting $8 million from the Midpoint. Although my figure is roughly $1,370,667 less than the Midpoint derived from the reported Upper Limit, the CBA indicates this difference is trivial. According to Section 50.5(b)(i), a growth factor of up to 5% adjusts the Midpoint figure in every league year.72 This

---


71 NHL Collective Bargaining Agreement, supra note 46, at Section 50.5(b)(i).

72 Id. at Section 50.5(b)(i).
discrepancy between my calculation and the reported figure can best be attributed to the growth factor and/or a slight difference in benefits.

While obtaining the Midpoint is crucial to establish the Lower Limit, which ultimately sets the Target amount, it is only the first step in a complex, systematic formula under the PCCRS. The NHL’s revenue sharing model contains two important numbers universal to every club: Target and Minimum amounts. Under the NHL’s CBA, the Target is simply the Lower Limit, plus anywhere from $4 million to $8 million, at the League’s discretion.73 Since we were able to confirm that the Lower Limit is $40.7 ($48.7 Midpoint - $8 million), the Target amount ranges from $44.7 million to $48.7 million. I set the Target amount at $48.7 million, given the amount of revenue generated in the 2008-2009 season.

The Minimum is the last figure that is applicable to all 30 organizations in the NHL. The following is the Minimum calculation:

\[
\text{Minimum} = \left(\frac{$20 \text{ million}}{$1.74 \text{ billion}}\right) \times \text{Actual HRR}
\]

\[
\text{Minimum} = 1.15\% \times $2,620,000,000
\]

\[
\text{Minimum} = $30,114,942
\]

As I mentioned, the Minimum and Target are the only two figures that must be the same for all 30 clubs. Every club’s respective Available amount needs to be calculated to determine the amount of revenue that is redistributed in the NHL. The second barrier made it difficult for me to predict accurately the amount of revenue changing hands at the end of the 2008-2009 season.

73 Id. at Section 49.1(r).
ii. Calculating Each Club’s Specific Available Amount to Compute the League’s Commitment Under PCCRS

A club’s Available amount is ascertained by taking Club Gross Preseason and Regular Season Revenues * Player Share Percentage. While this particular wording can be confusing, it is important to remember that the term Club Gross Preseason and Regular Season Revenues is the same thing as a club’s HRR. The primary source of financial data in professional sports is Forbes. Despite listing every team’s revenues and operating income, Andrew Zimbalist, a renowned sports economist, points out the shortfalls of this report. This note addresses each shortfall in an attempt to report accurately the amount of revenue shared in the 2008-2009 season.

Revenue Categories and Direct Costs: A major shortfall of Forbes’ revenue figures is the inflated values due to the inclusion of non-hockey related revenues. I was able to make the necessary adjustments by obtaining the NHL’s aggregate revenues, the NHL’s HRR, the Toronto Maple Leafs’ aggregate revenues, and the Maple Leafs’ HRR. Ironically, the difference between the two comparisons fell within six to seven percent. Based on my finding, I subtracted 7% from Forbes’ reported aggregate revenues for each club to determine HRR. Cognizant of the fact that different markets/teams have greater non-hockey related revenues, I decided to apportion a set percentage to every team in order to remain consistent with my treatment of direct costs.

After determining a valid estimate for each club’s HRR, the CBA dictates that club HRR is net of direct costs and expenses related to sources of revenue categorized as HRR. According to

---

74 Id. at Section 49.1(b).


76 NHL Collective Bargaining Agreement, supra note 46, at Section 50.1(a).
Zimbalist, the average club’s direct costs in 2007-2008 was 9.2 million.\textsuperscript{77} In fact, Zimbalist used this figure to convince the United States Bankruptcy Court that his computed transfer value of an NHL franchise was justifiable.\textsuperscript{78} Relying on the fact that a prominent sports economist proposed this amount in a legal proceeding, I used this figure, increased by $50,000 to account for rising costs in the industry, in order to determine each club’s HRR Net of Direct Costs in Appendix I.

\textbf{iii. Distribution: Eligible Amount v. Actual Amount}

The NHL places significant restrictions on the amount of revenue eligible clubs could receive under the PCCRS. First, every club must have a revenue growth rate in excess of the League average revenue growth rate. Second, an eligible club under the PCCRS had to prove an average paid attendance of at least the lesser of 13,125 per game or the average league-wide attendance (which increased in ’08-09 to 14,000 or average league-wide paid attendance).\textsuperscript{79} Failure to meet either of these performance incentives reduces the amount of revenue a club would receive under the current revenue sharing model. The amount of reduction spans from 25\% for first time non-performers to 50\% for three time, sequential non-performers.

The purpose of these reductions is to ensure that recipient clubs under the PCCRS invest the redistributed funds towards the improvement of the club’s performance on the ice. Revenue sharing exists to combat the negative consequences associated with large revenue gaps and flexible player compensation structures.

\begin{quote}
\textsuperscript{77} In re Dewey, supra note 72.

\textsuperscript{78}Id.

\textsuperscript{79}NHL Collective Bargaining Agreement, supra note 46, at Section 49.3(d)(i)(C).
\end{quote}
These performance requirements place emphasis on improvement of performance, as opposed to lining the owners’ pockets with additional profits. As a result of these performance conditions, the revenue sharing figures in Appendix II are inflated, primarily due to unaccounted for sharing receipt reductions. The NHL is the first sports league to implement these performance conditions, and the other professional clubs, including the MLB, must do so to accomplish the intended benefits of revenue sharing.

### III. **Major League Baseball: Redistribution Through Internal Taxation and Revenue Sharing**

Revenue sharing and the Competitive Balance Tax (“CBT”) were foreign concepts in professional baseball prior to the 1996 Collective Bargaining Agreement. In fact, clubs took it upon themselves to share gate receipts as the only source of revenue sharing, which totaled a mere $20 million. Since the introduction of these redistribution measures, the league has faced harsh criticism and acrimonious feedback for the concepts these mechanisms were designed to address. Critics focused on the lack of competitive balance in 1990’s to undermine the exclaimed progress achieved as a result of these measures.

Perennial powerhouses, such as the New York Yankees and Atlanta Braves, served as catalysts for the implementation of redistributive measures in professional baseball. Significant revisions were made to the MLB’s CBA between 1996 and 2006 in order to accomplish the desired competitive balance in league play. As a result of these revisions, eight different teams won the World Series in the 2000’s, strengthening the hypothesis that revenue sharing, and not a salary cap, achieves parity in professional sports.

---

The MLB designed the 2007 CBA to embody the same sharing techniques used over the past decade.

A. Clearing the Confusion in Major League Baseball: Revenue Sharing v. Luxury Tax

The MLB continues to focus on the demarcation of revenue sharing and the CBT. While revenue sharing does not take into consideration player spending, the CBT was designed to discourage excessive spending. However, one author points out that with respect to the distinction between revenue sharing and the CBT, “even your most avid baseball fan doesn’t generally know or understand the difference…” This note helps bring a bit of clarity to all this confusion by explaining separately each arrangement under the 2007 CBA.

i. What Amount: Sharing the Wealth in Professional Baseball

a. Batter Up! Taking a Closer Look at the MLB’s Revenue Sharing Plan

Major League Baseball’s revenue sharing model made significant strides over the past 15 years. Section XXIV of the 2007 CBA covers the specifics of revenue sharing in professional baseball. This system was redesigned in 2007 with the intent “to transfer...the amount of revenue that would have been transferred in that Year by a 48% straight pool plan, plus such transfers as may

result from distributions of the Commissioner’s Discretionary Fund.”

This provision of the MLB’s CBA suggests that two sources of redistribution exist within the general revenue sharing model: (1) a 48% straight pool plan, and (2) a Commissioner’s Discretionary Fund. Although both sources function to redistribute revenues among member organizations, the latter of the two is an elective pool, requiring clubs to submit a written request to the Commissioner. This targeted 48% straight pool redistributes the majority of the revenues under the MLB’s plan through two components.

The Base Plan. This component of revenue sharing was designed to make sure each club contributes 31% of Net Local Revenues to a “putative pool”, which is then divided equally among all clubs. While determining a club’s Net Local Revenues can be complex under the CBA, one author points out that “Net Local Revenue is Local Revenue (gross revenue from all revenue areas like ticket sales, concessions, etc. minus Central Revenue, which is national television and radio, etc.) minus Actual Stadium Expenses…” This component is very similar to the NFL’s visitors’ gate receipts sharing contribution, where each club contributes a set percentage of revenues and receives an equal share under the plan.

Central Fund Component. Similar to every other professional league, the MLB classifies particular revenue streams that are administered by the Office of the Commissioner. While the

---


83 Id. at Article XXIV(A)(13)(b)(i).

84 Id. at Article XXIV(A)(9).

85 Dosh, supra note 81.
CBA provides a non-exhaustive list of central revenues, the driving forces behind this component include broadcasting revenues, licensing revenues, and media-related revenues. While distributions from this fund are very difficult to calculate, each club’s distribution/contribution depends on each club’s assigned Performance Factor. The allocation made under the Central Fund is the amount necessary, when combined with the Base Plan 31% distribution, to accomplish the same revenue redistribution that would occur under a 48% straight base plan.

**Commissioner’s Discretionary Fund.** The last aspect of the MLB’s revenue sharing plan bestows upon the Commissioner significant discretion with respect to requested disbursements. Under this supplemental component, the Commissioner has the authority to distribute “no more than $10 million in Major League Central Fund money that is raised equally from all Clubs for each Revenue Sharing Year...” As previously mentioned, this component of revenue sharing functions in an elective capacity, since clubs must request additional funding via this revenue pool.

This elective pool is maintained yearly, and any funds not distributed in a given year are returned on a pro rata basis to all clubs. While the Commissioner is not required to satisfy distribution requests, he is prohibited from allocating more than $3 million to any individual club in a given year. The configuration of this sharing component makes it difficult to pinpoint accurately the amount of revenue shared in a given year.

**b. Internal Taxation in Professional Baseball: Deterring Excessive Spending via the Competitive Balance Tax**

---


87 Id. at Article XXIV(A)(13).

88 Id. at Article XXIV(A)(13)(b)(iii).
This concept of the CBT is relatively simple, but the calculation of this tax in a given year is incredibly complex. The CBA establishes that “a Club with a Final Club Payroll that exceeds the Tax Threshold…shall be assessed a Competitive Balance Tax on the difference between its final Actual Club Payroll and the Tax Threshold…”89 Thus, the amount contributed by a particular club is dictated entirely by its spending habits, and exclusively within its control. The complex nature of the CBT arises when calculating a club’s Actual Club Payroll. While this note does not undertake this difficult task, other authors have done so in the past.90

Aside from the calculation of Actual Club Payroll, the 2007 CBA introduced minimal changes to the highly controversial CBT. The 2007 CBA proposed the following Tax Thresholds:

<table>
<thead>
<tr>
<th>League Year</th>
<th>Tax Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$148 million</td>
</tr>
<tr>
<td>2008</td>
<td>$155 million</td>
</tr>
<tr>
<td>2009</td>
<td>$162 million</td>
</tr>
<tr>
<td>2010</td>
<td>$170 million</td>
</tr>
<tr>
<td>2011</td>
<td>$178 million</td>
</tr>
</tbody>
</table>

In 2009, any club spending in excess of $162 million in Actual Club Payroll was assessed a tax, depending on the extent to which the threshold was exceeded and the particular club’s spending habits in previous years. A better understanding of the funding sources under this Agreement will help clarify the difference between revenue sharing and the CBT.

89 MLB Collective Bargaining Agreement, supra note 82, at Article XXIII(B)(1).

90 Dosh, supra note 80, at 20-25.
ii. Where: Funding the Sharing Measures Under the MLB’s 2007 Collective Bargaining Agreement

a. *Funding Revenue Sharing Distributions Under the 2007 Collective Bargaining Agreement*

Major League Baseball, consistent with other professional leagues, differentiates between local revenues and national revenues. However, this distinction is made to determine the specific component of revenue sharing in which particular streams of revenue will be included. Breaking down each component of this plan helps the reader understand which sources comprise the different categories of revenue in professional baseball.

**Base Plan.** This component is designed to share 31% of each club’s Net Local Revenues. In order to calculate a particular club’s Net Local Revenues, the CBA establishes a universal formula to ensure consistent financial reporting by league members. This formula is defined as:

\[
\text{Local Revenues} = \text{Defined Gross Revenues} - \text{Share of Central Revenues}
\]

\[
\text{Net Local Revenues} = \text{Local Revenues} - \text{Actual Stadium Expenses}
\]

Similar to the those of the NFL and NHL, the MLB’s agreement permits clubs to deduct expenses related to specific activities that generate revenue. Additionally, every club excludes their share of Central Revenues, since this amount is accounted for under the Central Fund component of revenue sharing. The primary streams of revenue categorized as “Local Revenue” include concessions, ticket sales, parking, and local sponsorships and licensing activities.\(^\text{91}\) Once expenses are deducted and central revenues are removed, each club contributes 31% to a putative pool, which is then distributed evenly among all 30 clubs. While this component

\(^{91}\) See Dosh, *supra* note 81.
takes care of Net Local Revenues, the Central Fund component controls the allocation of revenues generated by the efforts of the league office.

**Central Fund Component.** While the MLB’s CBA is surprisingly mum with respect to which streams comprise local revenues, this agreement specifically mentions various sources labeled “Central Revenues”. Specifically, the term “Central Revenue” embodies revenue from the following activities and entities: national and international broadcasting agreements, MLB Baseball Properties Inc., Baseball Television Inc., Major League Baseball Enterprises, Major League Baseball Advanced Media Inc., the Copyright Arbitration Royalty Panel, superstation agreements, the All-Star Game, and national marketing and licensing agreements. The revenue streams that fund the central component are self-explanatory. Unfortunately, the CBT requires significant effort to determine which clubs are penalized under this internal taxation method.

b. **Taxing Those Who Choose to Spend: Funding the Competitive Balance Tax in Professional Baseball**

Consistent with its intended purpose of punishing lavish spending by wealthy clubs, the CBT is funded by clubs that spend in excess of the Tax Thresholds enumerated in the CBA. However, the applicable tax for each club depends on each club’s past spending habits. In fact, this system was designed to inflict a more severe punishment on clubs that intentionally fail to conform to these idealistic spending limitations.

The three applicable tax rates under the 2007 CBA are 22.5%, 30%, and 40%. The basic provision under the MLB’s agreement establishes that the applicable tax rate depends on the number of consecutive years a club’s Actual Club Payroll exceeds

---

the designated Tax Threshold. As a general rule, a club’s applicable CBT tax increases one level for each consecutive year its Actual Club Payroll is above the Tax Threshold. However, the applicable tax rate is capped at 40% after three consecutive years of excessive spending.

The CBT structure recognizes a club’s reduction in spending habits by reducing the applicable tax by one level for every year that the Actual Club Payroll is less than the Tax Threshold, until the CBT is no longer assessed. The CBA explicitly states that “A Club with an Actual Club Payroll below the Tax Threshold is subject, during the following Contract Year, to a Competitive Balance Tax rate that is one level lower….” While certain exceptions to this rule apply, understanding the basic reduction of the CBT is satisfactory for purposes of this legal note.

iii. Who: Eligibility Under the Sharing Mechanisms in Professional Baseball

a. Ascertaining Payor/Payee and Contributor/Recipient Status Under the 2007 Sharing Model

Under the MLB’s revenue sharing model, a club’s eligibility status hinges on receipts and distributions made under the Base Plan and the Central Fund. It is plausible that a single club could receive payments under the Base Plan, while making contributions to the revenue sharing plan under the Central Fund.

93 Id. at Article XXIII(B)(3)(b).
94 Id.
95 Id. at Article XXIII(B)(3)(c)
96 Id.
Component. Thus, determining which clubs are eligible under each component of the MLB’s revenue sharing plan is necessary.

The Base Plan. As mentioned above, the Base Plan was designed to redistribute Net Local Revenues in order to achieve competitive balance in professional baseball. Specifically, each club contributes 31% of its Net Local Revenues to a putative pool, which is subsequently distributed evenly to all 30 organizations. The following table uses hypothetical numbers of four clubs to explain the distribution method and club characterization process under the Base Plan.

<table>
<thead>
<tr>
<th>Club</th>
<th>31% Contribution</th>
<th>Distribution</th>
<th>Club Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York Yankees</td>
<td>$62,800,000</td>
<td>$42,075,000</td>
<td>Payor</td>
</tr>
<tr>
<td>Florida Marlins</td>
<td>$27,000,000</td>
<td>$42,075,000</td>
<td>Payee</td>
</tr>
<tr>
<td>Cleveland Indians</td>
<td>$31,000,000</td>
<td>$42,075,000</td>
<td>Payee</td>
</tr>
<tr>
<td>San Diego Padres</td>
<td>$47,500,000</td>
<td>$42,075,000</td>
<td>Payor</td>
</tr>
<tr>
<td>Total</td>
<td>$168,300,000</td>
<td>$168,300,000</td>
<td></td>
</tr>
</tbody>
</table>

A club receiving a distribution greater than its 31% contribution is categorized as a Payee Club, indicating the club’s receipt of additional funds under the Base Plan. Any club contributing an amount in excess of its receipt under the Base Plan is a Payor Club. Once a club’s status under the Base Plan is determined, the next step is determining each club’s position under the Central Fund Component.

Central Fund Component. The allocation of revenues, and thus eligibility, under the Central Fund is determined based on the individual club’s Performance Factor. Each club’s status as a Contributor or a Recipient is predetermined under the CBA. Any club with a positive Performance Factor is deemed a Contributor, while any club with a negative Performance Factor is classified as a Recipient. Under the initial classifications, 12 clubs were designated as Contributors, and the remaining 18 clubs were Recipients, and thus, “eligible” to receive additional funds from the Contributors.
However, this does not mean that Contributor clubs do not receive a distribution from the Central Fund. What it does mean is that Contributors under this component must reallocate a portion of the money that they receive from central fund activities to Recipients under this plan. With respect to the Central Fund Component, it is important to mention that a club’s Performance Factor is subject to adjustment, and thus, the Performance Factors in Attachment 26 of the MLB’s CBA might be misleading. Two scenarios triggering a Performance Factor adjustment include the construction of a new stadium or an increase/decrease in a club’s Net Local Revenues in excess of the industry average.

b. Distribution of Taxes Levied Under the Competitive Balance Tax

The proceeds collected from the operation of the CBT are distributed in a specific manner instructed under Article XXIII, Section H of the MLB’s CBA. Unlike revenue sharing, this system is not designed to compensate weaker teams in an attempt to ameliorate the risks associated with a large revenue gap. Rather, it was designed to remedy any improper calculations of Actual Club Payroll in previous seasons due to the improper treatment of salary terms.

First, $2.5 million to $5 million is distributed to clubs that were improperly charged for option buyouts when calculating their Actual Club Payrolls in a previous year. Second, 75% of the

---


98 MLB Collective Bargaining Agreement, supra note 82, at Article XXIV(A)(12)(c)(i) – (ii)

99 Id.

100 Id. at Article XXIII(H)(1).
remaining proceeds collected under the CBT fund the benefits available to professional baseball players. This provision is rather contradictory, since the reason these funds are available is excessive player compensation. Lastly, the remaining 25% is contributed to the Industry Growth Fund, which was designed “to promote the growth of baseball in the United States and Canada, as well as throughout the world…”\(^{101}\)

**B. Computing the Amount Shared via Revenue Sharing and the Competitive Balance Tax**

Similar to the NFL and NHL, professional baseball also has numerous factors complicating the accurate reporting of revenue sharing in a particular league year. First, sources indicate that the MLB ceased releasing financial information related to revenue sharing between 2003 and 2005.\(^{102}\) Second, the CBA permits clubs to deduct expenses related to revenue generating activities, making it difficult to ascertain a club’s Net Local Revenues. Lastly, inconsistent financial reporting terms made it difficult to construct distinct boundaries between Central Fund revenues and Base Plan revenues.\(^{103}\) Breaking apart the two components under the general

\(^{101}\) Id. at Article XXV(A).


To Share or Not To Share

revenue sharing plan is the first step to explaining accurately revenue sharing in professional baseball.

i. Calculating the Amount of Revenue Shared Under the General Revenue Sharing Plan

An estimated $6.6 billion in Total Revenue was generated during the 2009 season. In that same year, approximately $433 million was redistributed via revenue sharing. In order to calculate the amount of revenue redistributed under the different components, it is important to remember that the purpose of the MLB’s revenue sharing plan is to “transfer among the Clubs…the amount of revenue that would have been transferred in that Year by a 48% straight pool plan….” Thus, the reported $433 million represents the amount of revenue redistributed, or transferred, among organizations, and not the amount of revenue shared via the Base Plan and Central Fund. This concept is explained in greater detail under each component of this revenue sharing model.

a. The Base Plan: The Initial Contribution Under the MLB’s General Revenue Sharing Plan


While the 2007 CBA explicitly states that the goal is to share the equivalent of a 48% straight pool plan, it is relatively ambiguous with respect to what amounts are included in that straight pool. In fact, the current formula under the 2007 CBA makes this calculation almost impossible due to the limited financial information that is released to the public. However, the Baseball Prospectus, along with other sources, exclaims that this sharing arrangement moves what would be distributed under a 48% base plan. Accordingly, the reported $433 million represents the amount of revenue switching hands, but does not represent 48% of Net Local Revenues, a common misconception related to the MLB’s sharing plan. This distinction between redistributed revenues and shared revenues is fundamental to understanding the MLB’s sharing philosophy.

Table 7 above helps articulate the difference between the amount of revenue shared and the total amount redistributed as reported in the media. For purposes of this note, pretend the New York Yankees shared a fictional $62,800,000 under the 31% Base Plan contribution and received $42,075,000. According to the above distinction, $62,800,000 is considered shared revenue, while the $20,725,000 represents redistributed revenues (revenue switching hands among the 30 organizations). Thus, only $20,725,000 would have counted towards the media reported $433 million. What this note is concerned about is the amount of revenue shared, and that number unquestionably exceeds this $433 million reported figure.

---

b. Distribution of Designated Central Revenues Under the Central Fund Component

Determining the exact distribution under the Central Fund is difficult given the lack of public information and more importantly, the inability to calculate the total amount shared under the Base Plan. Conflicting reports suggesting how to compute the amount of revenue shared under the Central Fund exacerbated the difficulties I encountered during the production of this note. One author suggests that “[o]nce you have the value that would have been moved that year in a 48 percent base plan, you multiply it by the performance factor to get the amount each club will either pay into or receive out of the central fund…”\textsuperscript{107} However, the aggregate percentage of the Performance Factors equates to 100%, so this computation would share the intended 48% under the Central Fund alone, failing to take into account the 31% shared under the Base Plan.

To the contrary, my research suggests that the Central Fund amount is computed by taking the total distributions under the 31% Base Plan and subtracting that amount from what would be distributed under a 48% straight pool plan. This analysis most closely resembles the explanation under the CBA, which focuses on the Net Transfer Values necessary to accomplish a 48% sharing plan. Under the provisions in the CBA, the “Net Transfer Value of the Revenue Sharing Plan …shall mean the aggregate of the net amounts paid under the combination of the Base Plan and the Central Fund Component by those Clubs that pay more than they receive under the combination…”\textsuperscript{108} Based on this information, I concluded that the reported $433 million redistribution represents the Net Transfer Value under the CBA, or the amount of money “switching hands”.

\textsuperscript{107} Dosh, supra note 106.

\textsuperscript{108} MLB Collective Bargaining Agreement, supra note 82, at Article XXIV(A)(11).
In 2009, it was reported that each club received a check for $30 million from Central Fund activities. Thus, reports indicate that central revenues are distributed among the 30 clubs, with a subsequent reallocation according to each club’s Performance Factor necessary to effectuate a 48% straight pool plan. The leaked financial documents confirmed that every club receives a distribution under the Central Fund, and that a subsequent reallocation occurs depending on the club’s applicable Performance Factor. While a lack of information prevented me from calculating the amount of revenue shared under the Central Fund, I was able to develop the formula for obtaining this figure in the event financial information is provided.

ii. Collecting from the Rich: Assessing the Competitive Balance Tax During the 2009 Season

The limited number of teams assessed a tax under the CBT made this distribution very easy to calculate. In fact, only four teams have been penalized under this system since 2003, with only


two teams fined in successive seasons.\textsuperscript{112} To simplify matters further, only one team has been assessed a tax in consecutive seasons since the implementation of the 2007 CBA.\textsuperscript{113} The following table breaks down every CBT payment made since the 2006 season.

Table 8 figures were retrieved from the Biz of Baseball’s website.

<table>
<thead>
<tr>
<th>Team</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yankees</td>
<td>$26,009,039</td>
<td>$23,881,386</td>
<td>$26,862,702</td>
<td>$25,689,173</td>
<td>$102,442,300</td>
</tr>
<tr>
<td>Red Sox</td>
<td>$497,549</td>
<td>$6,064,287</td>
<td>-</td>
<td>-</td>
<td>$6,561,836</td>
</tr>
<tr>
<td>Tigers</td>
<td>-</td>
<td>-</td>
<td>$1,305,220</td>
<td>-</td>
<td>$1,305,220</td>
</tr>
<tr>
<td>Total</td>
<td>$26,506,588</td>
<td>$29,945,673</td>
<td>$28,167,922</td>
<td>$25,689,173</td>
<td>$110,309,356</td>
</tr>
</tbody>
</table>

Since the CBT was put into place, the New York Yankees have been responsible for roughly 92% of total tax proceeds collected, contributing $174,183,419 of the $190,275,477.\textsuperscript{114} Comparatively, only 7.1% of the total CBT collected since 2006 stemmed from organizations other than the New York Yankees. The above 2009 figure, combined with the amounts redistributed under the Base Plan, Central Fund, and Commissioner’s Discretionary Fund, embodies the total amount of revenue shared in Major League Baseball during the 2009 season, contrary to the misleading $433 million reported redistribution.


\textsuperscript{113} Id.

\textsuperscript{114} Id.
IV. RESOLVING THE BARGAINING STALEMATE DURING THE 2011 NFL LOCKOUT

The concept of revenue sharing and its correlation to competitive balance is an issue that has been highly debated since its creation in professional sports. Critics of revenue sharing argue that the redistribution of funds does not facilitate parity in competition among member organizations, suggesting that this merely boosts the overall profits of less-popular organizations.\textsuperscript{115} In addition, critics caution that the continued existence of revenue sharing destroys any incentives owners have to improve the organization’s product. In order to preserve the original ideals supporting revenue sharing, I suggest the following three changes to the NFL’s model during the 2011 negotiations.

A. Restructure the Salary Cap Calculation as a Percentage of National Revenues, Excluding Local Revenues from the Players’ Share

The NFL currently calculates the players’ share of revenues via the salary cap calculation based on Total Revenues under the 2006 CBA. This poses a significant problem, since the majority of revenue streams, including local revenues retained by the clubs, are categorized as Total Revenue. Thus, players receive a share of revenues that are wholly unrelated to their performance on the field, which includes revenue from parking, concessions, and local sponsorship/licensing agreements. While an argument can be made that everything relates to the product of professional football, the reality is that the owners’ efforts drive these revenue streams. As

such, excluding these local revenue streams from the salary cap calculation is necessary to incentivize performance by the individual owners, reducing their reliance on revenue sharing.

The revenue streams in professional football are commonly referred to as national revenues and local revenues in the media, with the former representing revenue streams shared evenly among the organizations, and the latter characterizing revenue streams retained by the individual clubs. Under the expired 2006 CBA, the players received a percentage of Total Revenue ranging from 57.5% - 58%, with Total Revenue including both national and local revenue streams. Based on this percentage, the salary cap ceiling was set at $128 million in 2009.

In this same season, an estimated $4.67 billion was distributed evenly among the 32 clubs from activities related to professional football and categorized as national revenues, including broadcasting revenues, visitors’ gate receipts, and national licensing activities. Accordingly, an estimated $145,937,500 was allocated to each club’s financial position during the 2009 season. Basic algebra suggests that the clubs received sufficient national revenues alone in 2009 to satisfy player expenses restricted under the hard salary cap. Thus, the inclusion of local revenue streams in the salary cap formula is not necessary to ensure players are being compensated adequately.

As opposed to the players receiving an estimated 57.5% of Total Revenues, this proposed model would restructure the calculation to ensure that the players receive a negotiable 91.5% of national revenues and 0% of local revenues. Based on the 2009 figures, the players would receive approximately $4.27 billion, or $133,533,000 per club. Whether or not this percentage is subject to some type of growth factor would be a matter of negotiation, but the first year alone would represent a 4.32% increase from the 2009 cap ceiling.

116 Bowman, supra note 29.
A topic of significant debate during the futile 2011 negotiations relates to the implementation of an 18-game schedule. While the players are adamantly opposed to this concept, this would present additional opportunities to increase the amount they receive under the proposed players’ share. First, the addition of two more regular season games will significantly increase the amounts received via broadcasting contracts. Since the proposed calculation is based solely on national revenue, the players would be the primary economic beneficiaries of an 18-game schedule. Second, increasing the schedule to 18 games would reduce the number of preseason games. Since individual clubs are in charge of preseason television contracts, reducing this amount retained by the clubs and expanding the pot of revenues split evenly among the organizations will help minimize the emerging revenue gap in the NFL.

In addition to broadcasting revenues from two additional regular season games, the owners would benefit from the inclusion of one more home game per club. This additional game presents the opportunity to generate additional local revenues excluded from this proposed players’ share calculation. In order for the players to accept an 18-game schedule, they demand to see the majority of the economic benefits, which this model would accomplish. While the players’ compensation increases, the owners would retain 100% of the local revenues generated during the league year. In the end, the players receive more, and the owners have greater potential to earn more.

B. The Continuation of Supplemental Revenue Sharing via Local Revenue Streams

I covet the day when capitalism prevails and all teams are able to compete on an even financial playing field without the assistance of other member clubs. Until this day arrives, Supplemental Revenue Sharing must persevere to the dismay of many owners in order to counter-balance the negative effects of a malleable salary cap and large revenue gaps. Owner disdain related
to the SRS system predominately relates to the lack of incentives encouraging less-popular organizations to pursue local revenue opportunities. Ralph Wilson and Mike Brown refrain from selling the naming rights to their stadiums, electing to name their stadiums after family members instead of generating additional revenue from naming rights. This decision served to ignite tension between these owners and other owners forced to share their revenues generated via naming rights.

Regardless of the profession, the American culture is driven by incentives designed to boost performance and reward benchmarked achievements. However, until the implementation of the NHL’s 2005 CBA, revenue sharing models did very little to incentivize and reward boosting local revenue streams. In an effort to encourage underperforming clubs to derive greater revenue streams, the NHL implemented performance conditions that must be satisfied in order for a club to continue receiving its full, eligible distribution. Rewarding local revenue benchmark achievements will eliminate lackadaisical efforts on the part of the owners currently poisoning the current SRS system in the NFL.

By adopting similar performance conditions under the NFL’s supplemental arrangement, organizations will be forced to designate substantial resources towards local revenue producing activities. The enactment of performance conditions in the NFL presents a difficult task, since stadium capacities and market forces prevent some clubs from procuring reliable local revenue streams necessary to establish a plausible performance condition. For this recommendation to succeed, these proposed performance conditions must include a percentage increase in attendance and local revenue growth rates, taking into consideration varying market conditions.

The interrelatedness of these two performance conditions will serve to increase both local and national revenues, inflating the revenue streams available to players and owners. An increase in attendance will increase the 40% visitors’ gate receipts pool allocated to the players via national revenues, as well as increase each club’s share of home gate receipts retained by the owners.
Additionally, an increase in attendance will inevitably lead to an increase in local revenues through parking, concessions, local advertising, and stadium club and luxury box income. A significant drop off in attendance in professional baseball has raised concerns with respect to the current sharing system, illustrating the need to boost attendance in order to increase total revenues.  

Under the proposed 2011 CBA modification, every eligible club would receive 100% of their SRS share in the 2011 season. Subsequently, a club would be entitled to the full share under SRS only if the performance conditions were met. These performance conditions should be designed to reward positive performance, as opposed to punish team shortfalls in specific revenue areas. As such, the reduction in a club’s eligible share should diminish proportionate to the extent the performance condition is not met. The club would then be able to recoup the percentage reduction in a subsequent season if it remains eligible under SRS and to the extent it exceeds the performance condition percentage.

Alternatively, the NFL could choose to reward clubs dedicated to generating additional revenues, as opposed to punishing clubs experiencing stagnant revenue streams. Under this strategy, the League would allow individual clubs that increase their revenues by a certain percentage to retain a significant percentage of this increase. These performance conditions will incentivize revenue maximization, as opposed to allowing complacency, which is a common assertion supporting the termination of SRS under the 2011 CBA.

C. The Implementation of Safeguards Designed to Ensure Proper Spending of Redistributed Revenues

While the current revenue sharing system creates the appearance of a narrowing revenue gap, the way this money is spent raises serious issues.\textsuperscript{118} To complicate matters, the lack of spending restrictions placed on redistributed funds has resulted in increasing profit margins in the MLB and NHL, indicating that club owners across the board are retaining these funds, as opposed to reinvesting the funds in the club’s operations and overall product.\textsuperscript{119} If the purpose of revenue sharing is to preserve every club’s ability to field a competitive payroll, wouldn’t the ability to retain these distributions completely eviscerate revenue sharing? The continuation of revenue sharing in professional sports relies on the implementation of spending restriction designed to improve the overall product, as well as improve each eligible organization’s ability to generate substantial local revenue streams.\textsuperscript{120}

The MLB’s CBA explicitly states that “each Club shall use its revenue sharing receipts…in an effort to improve its performance on the field…”\textsuperscript{121} The Commissioner is equipped with the power to impose penalties on any club in violation of this

\textsuperscript{118} Andrew Brandt, Owners pull revenue-sharing plan, \url{http://www.nationalfootballpost.com/Owners-pull-revenuesharing-plan.html} (last visited March 31, 2011).


\textsuperscript{121} MLB Collective Bargaining Agreement, \textit{supra} note 82, at Article XXIV(B)(5)(a).
obligation. Similar to this language, the NFL should impose penalties on member organizations for the improper spending of SRS funds under the 2011 CBA. Although it is important that all redistributed funds be allocated properly under the NFL’s sharing model, the nature of this proposed general revenue sharing system compels organizations to spend their share of national revenues on player compensation. Since the total pool of national revenues will be used to set the salary cap ceiling, restrictions are necessary only with respect to the funds distributed under SRS.

Local revenues are excluded entirely under my proposed salary cap calculation, making it possible for owners to retain 100% of local revenues, minus each club’s distribution requirement under the supplemental plan. For this reason, an increase in a club’s local revenues will directly remedy the problems associated with the emerging revenue gap. Under this sharing philosophy, the top 20 clubs would be ineligible to receive additional revenues via SRS. Similar to the current SRS plan, a designated amount would be redistributed each league year, with the top 20-25 clubs satisfying the predetermined amount. Based on a particular club’s revenue rank, it would contribute a certain percentage to the overall SRS pool, similar to the supplemental phase of revenue sharing under the NHL’s PCCRS model. This would ensure that the wealthiest clubs contribute the most and the poorest clubs receive the most. The general revenue sharing plan would allow each club to field a competitive payroll, so the CBA needs to mandate only the spending of these SRS funds on activities that would improve a club’s local revenue position. Improperly allocated funds would be returned to the contributing clubs based on their contribution percentage under the SRS plan.

Lastly, the problems affiliated with excessive revenue gaps between large market and small market teams are intensified by lax incentive restrictions and liberal salary cap proration guidelines. Under the expired 2006 CBA, these provisions made it possible for these high-revenue clubs to utilize their superior revenue positions to the detriment of small market teams. This agreement made it
possible to exceed the salary cap ceiling, despite the perception of a hard salary cap. With these provisions in place, the threats associated with significant revenue gaps were very real. In order to ameliorate these threats under the 2011 CBA, the proration of signing bonuses and treatment of incentives must be restricted in order to neutralize the negative implications of a large revenue gap.\textsuperscript{122} After all, the inability to use these excessive revenue streams negates the threats affiliated with the use of these funds.

\textbf{CONCLUSION}

Revenue sharing models, if equipped with the proper spending restrictions and performance incentives, should continue to exist in professional sports. Much to the consternation of many owners, statistics tend to support the assertion that revenue sharing accomplishes competitive balance in professional sports if allocated properly. The existing revenue sharing models in the Big Four are structured very differently, but each model strives to share sufficient revenues in order to compensate adequately professional athletes. These sharing arrangements help less popular, smaller market organizations satisfy the harsh salary demands associated with professional sports.

The original purpose of this note was to compare which professional sports league shares the most revenue among its owners. However, limited public financial figures and a lack of universal reporting measures across the leagues made this very difficult to accomplish. What this note did accomplish was a clear, systematic approach to computing the amount of revenue shared in the NFL, NHL, and MLB when provided with the necessary financial information. This legal note also demonstrates the extent to which media sources exaggerate the amount of revenue shared in a particular season. Based on my analysis, the NFL shared

\textsuperscript{122} Hunt, \textit{supra} note 11, at 34-40.
approximately $4.81 billion of its $8 billion aggregate revenues, an astounding 61% of total aggregate revenues in 2009. This figure undoubtedly exceeds the amount of revenue shared in the NHL and MLB.

Despite sharing the most revenue of any sports league and providing compensation in the range of $3.4 billion for player salaries alone, the NFL is faced with its first potential labor stoppage since 1987. While a labor stoppage proved beneficial for the NHL, such an occurrence would be an absolute disaster for the NFL. The proposed revenue sharing model in this note proves both feasible and logical, despite anticipated resistance from professional athletes. The congruency of a player compensation formula and a general revenue sharing model will ensure players are being compensated in accordance with the revenue shared among owners, while leaving additional, excluded revenue outlets for organizational achievements and financial accomplishments.

This proposed calculation would provide both parties with an incentive to perform in order to increase their share of revenues. A lockout would provide the athletes time to spend with their families and the expiration of one league year in their self-proclaimed “short careers”, a tactic used to justify inflated salary demands. The ultimate decision lies with the players, and to show their gratitude towards their fans, this decision seems like a no brainer, at least to one fan.

---

APPENDIX I: 08 – 09 NHL HOCKEY-RELATED REVENUES TABLE

<table>
<thead>
<tr>
<th>TEAM</th>
<th>AGG. REV</th>
<th>ACTUAL HRR</th>
<th>REVENUE NET COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>TORONTO MAPLE LEAFS</td>
<td>$168</td>
<td>$158.50</td>
<td>$149.25</td>
</tr>
<tr>
<td>NEW YORK RANGERS</td>
<td>$139</td>
<td>$127.19</td>
<td>$119.94</td>
</tr>
<tr>
<td>MONTREAL CANADIENS</td>
<td>$130</td>
<td>$120.82</td>
<td>$111.57</td>
</tr>
<tr>
<td>DETROIT RED WINGS</td>
<td>$130</td>
<td>$120.82</td>
<td>$111.57</td>
</tr>
<tr>
<td>VANCOUVER CANUCKS</td>
<td>$109</td>
<td>$101.30</td>
<td>$92.05</td>
</tr>
<tr>
<td>BOSTON BRUINS</td>
<td>$108</td>
<td>$100.38</td>
<td>$91.13</td>
</tr>
<tr>
<td>CHICAGO BLACKHAWKS</td>
<td>$108</td>
<td>$100.38</td>
<td>$91.13</td>
</tr>
<tr>
<td>PHILADELPHIA FLYERS</td>
<td>$101</td>
<td>$93.87</td>
<td>$84.62</td>
</tr>
<tr>
<td>DALLAS STARS</td>
<td>$97</td>
<td>$90.15</td>
<td>$80.90</td>
</tr>
<tr>
<td>NEW JERSEY DEVILS</td>
<td>$97</td>
<td>$90.15</td>
<td>$80.90</td>
</tr>
<tr>
<td>MINNESOTA WILD</td>
<td>$95</td>
<td>$88.29</td>
<td>$79.04</td>
</tr>
<tr>
<td>CALGARY FLAMES</td>
<td>$95</td>
<td>$88.29</td>
<td>$79.04</td>
</tr>
<tr>
<td>ANAHEIM DUCKS</td>
<td>$94</td>
<td>$87.36</td>
<td>$78.11</td>
</tr>
<tr>
<td>PITTSBURGH PENGUINS</td>
<td>$93</td>
<td>$86.43</td>
<td>$77.18</td>
</tr>
<tr>
<td>LOS ANGELES KINGS</td>
<td>$92</td>
<td>$85.50</td>
<td>$76.25</td>
</tr>
<tr>
<td>OTTAWA SENATORS</td>
<td>$90</td>
<td>$83.65</td>
<td>$74.40</td>
</tr>
<tr>
<td>COLORADO AVALANCHE</td>
<td>$84</td>
<td>$78.07</td>
<td>$68.82</td>
</tr>
<tr>
<td>SAN JOSE SHARKS</td>
<td>$84</td>
<td>$78.07</td>
<td>$68.82</td>
</tr>
<tr>
<td>WASHINGTON CAPITALS</td>
<td>$83</td>
<td>$77.14</td>
<td>$67.89</td>
</tr>
<tr>
<td>EDMONTON OILERS</td>
<td>$83</td>
<td>$77.14</td>
<td>$67.89</td>
</tr>
<tr>
<td>CAROLINA HURRICANES</td>
<td>$82</td>
<td>$76.21</td>
<td>$66.96</td>
</tr>
<tr>
<td>TAMPA BAY LIGHTENING</td>
<td>$80</td>
<td>$74.35</td>
<td>$65.10</td>
</tr>
<tr>
<td>SAINT LOUIS BLUES</td>
<td>$80</td>
<td>$74.35</td>
<td>$65.10</td>
</tr>
<tr>
<td>BUFFALO SABRES</td>
<td>$79</td>
<td>$73.42</td>
<td>$64.17</td>
</tr>
<tr>
<td>COLUMBUS BLUE JACK</td>
<td>$77</td>
<td>$71.56</td>
<td>$62.31</td>
</tr>
<tr>
<td>FLORIDA PANTHERS</td>
<td>$76</td>
<td>$68.78</td>
<td>$59.53</td>
</tr>
<tr>
<td>NASHVILLE PREDATORS</td>
<td>$71</td>
<td>$65.99</td>
<td>$56.74</td>
</tr>
<tr>
<td>ATLANTA THRASHERS</td>
<td>$68</td>
<td>$63.20</td>
<td>$53.95</td>
</tr>
<tr>
<td>PHOENIX COYOTES</td>
<td>$66</td>
<td>$61.00</td>
<td>$52.09</td>
</tr>
<tr>
<td>NEW YORK ISLANDERS</td>
<td>$62</td>
<td>$57.62</td>
<td>$48.37</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$2,819.00</td>
<td>$2,620.00</td>
<td>$2,342.50</td>
</tr>
</tbody>
</table>
### APPENDIX II: 2008 - 2009 NHL PCCRS Redistribution Table

<table>
<thead>
<tr>
<th>TEAM</th>
<th>ACTUAL HRR</th>
<th>MINIMUM</th>
<th>AVAILABLE</th>
<th>TARGET</th>
<th>REDIST.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toronto Maple Leafs</td>
<td>$149.25</td>
<td>$30.11</td>
<td>$84.62</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>New York Rangers</td>
<td>$119.94</td>
<td>$30.11</td>
<td>$68.00</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Montreal Canadiens</td>
<td>$111.57</td>
<td>$30.11</td>
<td>$63.26</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Detroit Red Wings</td>
<td>$111.57</td>
<td>$30.11</td>
<td>$63.26</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Vancouver Canucks</td>
<td>$92.05</td>
<td>$30.11</td>
<td>$52.19</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Boston Bruins</td>
<td>$91.13</td>
<td>$30.11</td>
<td>$51.67</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Chicago Blackhawks</td>
<td>$91.13</td>
<td>$30.11</td>
<td>$51.67</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Philadelphia Flyers</td>
<td>$84.62</td>
<td>$30.11</td>
<td>$47.98</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Dallas Stars</td>
<td>$80.90</td>
<td>$30.11</td>
<td>$45.87</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>New Jersey Devils</td>
<td>$80.90</td>
<td>$30.11</td>
<td>$45.87</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Minnesota Wild</td>
<td>$79.04</td>
<td>$30.11</td>
<td>$44.82</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Calgary Flames</td>
<td>$79.04</td>
<td>$30.11</td>
<td>$44.82</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Anaheim Ducks</td>
<td>$78.11</td>
<td>$30.11</td>
<td>$44.29</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Pittsburgh Penguins</td>
<td>$77.18</td>
<td>$30.11</td>
<td>$43.76</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Los Angeles Kings</td>
<td>$76.25</td>
<td>$30.11</td>
<td>$43.23</td>
<td>$48.70</td>
<td>-</td>
</tr>
<tr>
<td>Ottawa Senators</td>
<td>$74.40</td>
<td>$30.11</td>
<td>$42.18</td>
<td>$48.70</td>
<td>$6.52</td>
</tr>
<tr>
<td>Colorado Avalanche</td>
<td>$68.82</td>
<td>$30.11</td>
<td>$39.02</td>
<td>$48.70</td>
<td>$9.68</td>
</tr>
<tr>
<td>San Jose Sharks</td>
<td>$68.82</td>
<td>$30.11</td>
<td>$39.02</td>
<td>$48.70</td>
<td>$9.68</td>
</tr>
<tr>
<td>Washington Capitals</td>
<td>$67.89</td>
<td>$30.11</td>
<td>$38.49</td>
<td>$48.70</td>
<td>$10.21</td>
</tr>
<tr>
<td>Edmonton Oilers</td>
<td>$67.89</td>
<td>$30.11</td>
<td>$38.49</td>
<td>$48.70</td>
<td>$10.21</td>
</tr>
<tr>
<td>Carolina Hurricanes</td>
<td>$66.96</td>
<td>$30.11</td>
<td>$37.97</td>
<td>$48.70</td>
<td>$10.73</td>
</tr>
<tr>
<td>Tampa Bay Lightning</td>
<td>$65.10</td>
<td>$30.11</td>
<td>$36.91</td>
<td>$48.70</td>
<td>$11.79</td>
</tr>
<tr>
<td>Saint Louis Blues</td>
<td>$65.10</td>
<td>$30.11</td>
<td>$36.91</td>
<td>$48.70</td>
<td>$11.79</td>
</tr>
<tr>
<td>Buffalo Sabres</td>
<td>$64.17</td>
<td>$30.11</td>
<td>$36.38</td>
<td>$48.70</td>
<td>$12.32</td>
</tr>
<tr>
<td>Columbus Blue Jackets</td>
<td>$62.31</td>
<td>$30.11</td>
<td>$35.33</td>
<td>$48.70</td>
<td>$13.37</td>
</tr>
<tr>
<td>Florida Panthers</td>
<td>$59.53</td>
<td>$30.11</td>
<td>$33.75</td>
<td>$48.70</td>
<td>$14.95</td>
</tr>
<tr>
<td>Nashville Predators</td>
<td>$56.74</td>
<td>$30.11</td>
<td>$32.17</td>
<td>$48.70</td>
<td>$16.53</td>
</tr>
<tr>
<td>Atlanta Thrashers</td>
<td>$53.95</td>
<td>$30.11</td>
<td>$30.59</td>
<td>$48.70</td>
<td>$18.11</td>
</tr>
<tr>
<td>Phoenix Coyotes</td>
<td>$52.09</td>
<td>$30.11</td>
<td>$29.54</td>
<td>$48.70</td>
<td>$18.59</td>
</tr>
<tr>
<td>New York Islanders</td>
<td>$48.37</td>
<td>$30.11</td>
<td>$27.43</td>
<td>$48.70</td>
<td>-</td>
</tr>
</tbody>
</table>
To Share or Not To Share