

Home Sweet Home: The Problem of Tax-Exempt Municipal Bonds and Sports Stadium Financing

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I. INTRODUCTION

Cathedrals across Europe draw in hundreds of thousands of tourists a year with some, like St. Paul's Cathedral in London, totaling more than one million visitors per year.¹ These structures are hundreds of years old but are still magnificent spectacles. Cathedrals were the apex of medieval architecture; the Lincoln Cathedral replaced the Great Pyramid of Giza as the tallest building at the time and was only surpassed by the Washington Monument more than 500 years later.²

Today, sports stadiums are often compared to the medieval cathedrals of Europe.³ Over time, cathedrals constantly grew in size and in beauty; sports stadiums are no different. When one stadium is built, the next one will be more luxurious and superior than the last. Present-day stadiums must compete with televisions in homes and all the commodities that follow in today's technologically advanced world.

As sports stadiums get bigger and better, the price tag follows in size. The tenth most expensive stadium in the National Football League ("NFL") is NRG Stadium,

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1. Anna MacSwan, *Slump in Tourist Visitor Numbers to Canterbury Cathedral Blamed on Terror Attacks*, KENTONLINE (Apr. 26, 2018, 8:28 AM), <https://www.kentonline.co.uk/canterbury/news/terror-attacks-behind-cathedral-visitor-slump-182020/>; Tim Wyatt, *Visit England Report: Sharp Drop in Visitor Numbers to Churches and Cathedrals*, CHURCH TIMES (Aug. 18, 2017), <https://www.churchtimes.co.uk/articles/2017/18-august/news/uk/visit-england-report-sharp-drop-in-visitor-numbers-to-churches-and-cathedrals>.

2. Kevin Muldoon, *A History of the World's Tallest Structures*, KEVIN MULDOON (Apr. 29, 2013), <https://www.kevinmuldoon.com/tallest-structures-world-history/>.

3. Ty Schalter, *Why NFL Stadiums Are the Modern Day Cathedral*, BLEACHER REPORT (Apr. 26, 2012), <https://bleacherreport.com/articles/1159057-why-nfl-stadiums-are-the-modern-day-cathedral>.

home to the Houston Texans. The total price tag for the construction of this stadium in 2002 was \$474 million.⁴ NRG Stadium became the first retractable-roof stadium in the NFL.⁵ As of 2018, Mercedes-Benz Stadium in Atlanta is the newest stadium in the NFL. The stadium, home to the Falcons, hosted its first game in 2017, and cost \$1.5 billion to build.⁶ Mercedes-Benz Stadium has an oval scoreboard located below a cutting-edge retractable roof to create a unique visual experience unlike anything else in the world.⁷

In a matter of 15 years, there is a difference of about \$1 billion in the cost of NRG Stadium and Mercedes-Benz Stadium, with notable differences in appearance and amenities. As mentioned above, sports franchises must compete with the average fan's home, as well as cities contending with each other for the limited amount of professional sports franchises in the United States. Providing the best deal to determine the location of the team is the motivation of sports franchises and cities. The methods used to finance the construction of modern sports stadiums vary, but for the most part, they have stayed the same throughout the last two decades. This leads to the question: where does all this money come from?

In general, funding for sports stadiums can come in many forms. The most problematic method is the tax-exempt municipal bond, which is primarily responsible for

4. Jason Notte, *10 of the Most Expensive NFL Stadiums Your Precious Tax Dollars Paid For*, STREET (Aug. 18, 2017, 2:08 PM), <https://www.thestreet.com/slideshow/14272534/1/these-are-the-10-most-expensive-nfl-stadiums-your-precious-tax-dollars-paid-for.html>.

5. Kevin Reichard, *NFL Stadiums, Listed Oldest to Newest*, FOOTBALL STADIUM DIG. (Sept. 15, 2017), <https://footballstadiumdigest.com/2017/09/nfl-stadiums-listed-oldest-to-newest/>.

6. Notte, *supra* note 4.

7. Reichard, *supra* note 5.

a large portion of funding sports stadiums.⁸ Of the roughly \$1.5 billion cost to build Mercedes-Benz Stadium, tax-exempt bonds financed \$200 million of the construction.⁹

Essentially, the federal government is subsidizing portions of sports stadiums across the country by exempting municipal bonds from federal taxation.¹⁰ The general argument for the use of tax-exempt municipal bonds to finance stadium construction is the positive economic impact of the stadium in the city they are located.¹¹ However, there is no conclusive evidence to support the economic impact. Therefore, the funds should be reallocated to address the needs of the respective city, or other beneficial projects within the community.

There have been legislative attempts to curb the use of tax-exempt municipal bonds thanks to the large amount of public funds being used in the financing of sports stadiums. The Tax Reform Act of 1986¹² dealt with the issue of tax-exempt bond financing by attempting to eliminate tax exemptions for bonds financing sports

8. See Jimmie Jackson, *8 Ways Your Readers May be Paying for Their Football Stadium*, DONALD W. REYNOLDS NAT'L CTR. FOR BUS. JOURNALISM (Sept. 13, 2017), <https://businessjournalism.org/2017/09/8-ways-your-readers-may-be-paying-for-their-football-stadium/>.

9. Sarah Kunst, *Tax Cuts for Stadiums, Tax Cuts for Owners, Tax Cuts for Those Who Don't Need it*, FORBES (Nov. 28, 2017, 10:59 PM), <https://www.forbes.com/sites/sarahkunst/2017/11/28/tax-cuts-for-stadiums-tax-cuts-for-owners-tax-cuts-for-those-who-dont-need-it/#1ef1f6893bf6>; Dan Klepal, *Report: Tax-Free Stadiums Bonds Cost Taxpayers \$3.7 Billion*, ATLANTA J.-CONST. (Sept. 12, 2016), <https://www.myajc.com/blog/investigations/report-tax-free-stadium-bonds-cost-taxpayers-billion/E6ucCkBEi6LyWdu30aKIPJ/>.

10. Richard Auxier et al., *Tax Policy Center Briefing Book: What Are Municipal Bonds And How Are They Used?*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/what-are-municipal-bonds-and-how-are-they-used> (last visited Mar. 13, 2019).

11. See generally Allen R. Sanderson, *In Defense of New Sports Stadiums, Ballparks and Arenas*, 10 MARQ. SPORTS L. J. 173 (2000).

12. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) (codified as amended at I.R.C. § 141 (2005)).

stadiums.¹³ However, this attempt failed as cities found a loophole to continue the practice.¹⁴ The use of tax-exempt municipal bonds for the financing of sports stadiums is a flawed method used by state and local governmental entities; as such, the provisions created by the Tax Reform Act of 1986 needs examination and reformation to save the economy from a misappropriation of funds.

II. TAX-EXEMPT MUNICIPAL BONDS UNDER THE TAX REFORM ACT OF 1986

In its simplest form, a bond is a debt obligation; and therefore, it is a form of borrowing.¹⁵ Corporations and governments at any level can issue bonds to receive large sums of money, generally used to fund large expensive projects.¹⁶ Buyers purchase bonds because they receive interest in addition to the principal amount of the bond, which ultimately leads to a profit for the holder.¹⁷

State or local governments issue what are known as “municipal bonds.”¹⁸ Generally, the interest payments on municipal bonds are exempt from federal taxation.¹⁹ As a result, state and local governments can borrow more cheaply compared to corporations and other bond issuers.²⁰ Consequently, the exemption “function[s] as a federal subsidy to state and local public infrastructure investment.”²¹

13. Ted Gayer, Austin J. Drukker & Alexander K. Gold, *Tax-Exempt Municipal Bonds and the Financing of Professional Sports Stadiums*, BROOKINGS 2, 6 (Sept. 2016), https://www.brookings.edu/wp-content/uploads/2016/09/gayerdrukkergold_stadiumsubsidies_090816.pdf.

14. DENNIS ZIMMERMAN, CONG. RES. SERV., RL96-460, TAX-EXEMPT BONDS AND THE ECONS. OF PROF. SPORTS STADIUMS 6 (1996).

15. Adam Hayes, *Bond Basics: What Are Bonds?*, INVESTOPEDIA, <https://www.investopedia.com/university/bonds/> (last updated Mar. 27, 2017, 2:29 PM).

16. *Id.*

17. *Id.*

18. Auxier et al., *supra* note 10.

19. *Id.*

20. *Id.*

21. *Id.*

The first real changes to the tax treatment of municipal bonds came in 1968. The Revenue and Expenditure Control Act of 1968 declared state and local municipal bonds to be taxable if more than 25% of the bond proceeds were used by a nongovernmental entity and if more than 25% of the debt service was secured by property used directly or indirectly in a private business.²² This created the first two-prong test to determine the taxability of municipal bonds.²³ However, Congress also created a list of facilities that are exempt from having to meet this two-prong test in order to be eligible for tax-exempt municipal bond funding—a list which includes sports facilities.²⁴

Today, the Tax Reform Act of 1986 is the prevailing law regarding municipal bonds and tax exemptions.²⁵ The Act was an attempt by Congress to affect private-use bonds, and it ultimately changed the landscape for how these bonds are taxed.²⁶ The law created a new two-prong test to determine whether a bond is private or governmental for tax purposes.²⁷ In order for a bond to be public and tax-exempt, less than 10% of the bond proceeds must be used by a nongovernmental entity,²⁸ and less than 10% of the debt obligation must be secured by property used in a private business.²⁹

If either of these conditions in the new two-prong test is not met, then the bond is considered private, and thus not eligible for tax-exemption.³⁰ The first condition is referred to as the “private business use test;” while “the second condition is known as the

22. Revenue and Expenditure Control Act of 1968, Pub. L. No. 90-364, § 103, 82 Stat. 251, 260, 266 (1968).

23. DENNIS ZIMMERMAN, CONG. RES. SERV., RL96-460, TAX-EXEMPT BONDS AND THE ECONS. OF PROF. SPORTS STADIUMS 4–5 (1996).

24. *Id.*

25. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) (codified as amended at I.R.C. § 141 (2005)).

26. *Id.*

27. I.R.C. § 141(a)(1), (2) (West 2005).

28. *Id.* at § 141(b)(1).

29. *Id.* at § 141(c)(1)(A), (B).

30. DENNIS ZIMMERMAN, CONG. RES. SERV., RL96-460, TAX-EXEMPT BONDS AND THE ECONS. OF PROF. SPORTS STADIUMS 5 (1996).

‘private payment test.’”³¹ Similar to the 1968 Act, Congress created another list of facilities that would still be eligible for tax-exemption despite their use of bonds for non-public projects, but stadiums are now excluded.³² Bonds issued for stadium financing will almost always pass the private business use test because sports franchises will consume more than 10% of the stadium’s use.³³ Consequently, the issue of tax-exemption on municipal bonds used for stadium construction falls primarily on the private payment test.³⁴

The new two-prong test was established to eliminate the use of municipal bonds to fund huge sports stadium projects.³⁵ It was presumed that forcing state and local governments to finance at least 90% of the debt service would put a financial burden on cities large enough to stop the issuance of tax-exempt municipal bonds to sports franchises.³⁶ However, this has not been the case across the U.S., as owners continue to use municipal bonds to fund stadium construction, using economic growth (and many other external factors) to justify their use of public funds.³⁷

III. FLAWED JUSTIFICATIONS IN USING MUNICIPAL BONDS TO FINANCE SPORTS STADIUMS

Since 2000, \$3.7 billion of public funds have been used to construct and renovate sports stadiums in the U.S.³⁸ Between 1990 and 2010, taxpayers contributed an

31. Gayer, Drukker & Gold, *supra* note 13, at 7.

32. RL96-460 at 5.

33. Gayer, Drukker, & Gold, *supra* note 13, at 7.

34. *Id.*

35. Anoop K. Bhasin, *Tax-Exempt Bond Financing of Sports Stadium: Is the Price Right*, 7 JEFFREY S. MOORAD SPORTS L. J. 181, 184 (2000).

36. *Id.*

37. *Id.* at 184–185.

38. Alexander K. Gold, Austin J. Drukker & Ted Gayer *Why the Federal Government Should Stop Spending Billions on Private Sports Stadiums*, BROOKINGS (Sept. 8, 2016), <https://www.brookings.edu/research/why-the-federal-government-should-stop-spending-billions-on-private-sports-stadiums/>.

average of \$262 million to each NFL stadium constructed during that time period.³⁹ Major League Baseball (“MLB”) was not far behind the NFL, with the average stadium receiving \$203 million from taxpayers.⁴⁰

The arguments made to justify contributions of public funds to sports stadiums often consist of a projection of economic growth in a city as a result of the stadium usually in the form of increased income and new jobs.⁴¹ The increase of income and jobs is reliant on an increase of spending.⁴² The process starts with:

estimating direct spending on goods and services by the team, the fans, and the players. This direct spending appears as income received by businesses; the businesses and their employees spend a fraction of this income on other goods and services; this second-round spending in turn appears as income received by businesses; these businesses and their employees in turn spend a fraction of this third-round income on other goods and services; and on and on with smaller amounts spent in each successive round. All of this second, third, and subsequent round spending is referred to as indirect spending.⁴³

39. Travis Waldron, *Taxpayers Have Spent A ‘Staggering’ Amount Of Money On NFL Stadiums*, HUFFINGTON POST (Sept. 10, 2015, 10:51 AM), https://www.huffingtonpost.com/entry/taxpayers-nfl-stadiums_us_55f08313e4b002d5c077b8ac.

40. *The Cost to Keep the Home Team at Home May Not Be Worth It*, NPR (Dec. 20, 2013, 5:00 PM), <https://www.npr.org/2013/12/13/250846969/the-cost-to-keep-the-home-team-at-home-may-not-be-worth-it>.

41. DENNIS ZIMMERMAN, CONG. RES. SERV., RL96-460, TAX-EXEMPT BONDS AND THE ECONS. OF PROF. SPORTS STADIUMS 14 (1996).

42. *Id.*

43. *Id.*

The process continues by estimating direct spending and applying a “multiplier” to determine an estimate of indirect spending.⁴⁴ The combination of direct and indirect spending creates a basis for determining a sports stadium’s “impact on the city’s economy, usually in terms of tax receipts and jobs created.”⁴⁵

The spending estimation procedures above have two flaws.⁴⁶ The first flaw is that the estimation creates unrealistic assumptions.⁴⁷ The direct spending does not accurately represent an increase in either income or jobs.⁴⁸ The money spent by people attending the game from the area is most likely money that would have been spent on other things in the area including restaurants, movie theaters, or other entertainment options available.⁴⁹ Income and jobs created by this spending is offset by lost income and jobs in other areas; therefore, the spending should not be considered as an increase of direct spending.⁵⁰

The second flaw is that establishing positive economic benefits from a sports stadium, while important, may not be sufficient in justifying a subsidy on economic grounds.⁵¹ If an alternate project will generate more benefits than a proposed stadium, then a comparison of the two projects is needed. For example, if a stadium generates \$1.5 million of benefits and an alternate project would generate \$2 million, the stadium can be viewed as a \$0.5 million loss, not a \$1.5 million benefit.⁵²

Using the information above, it is very difficult to predict the actual economic benefits of a sports franchise’s stadium in a particular area. Therefore, the small amount

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 15.

52. *Id.*

of evidence available is subject to uncertainty and inaccuracy.⁵³ With no certainty in respect to the economic impact of a sports stadium in the surrounding areas, and potentially better options available for the use of public funds, how does stadium financing actually affect the cities which allocate taxes and funds to finance professional stadiums?

IV. OUTWEIGHING ANY JUSTIFICATIONS

The tax-exempt municipal bonds used for Mercedes-Benz Stadium were secured through a 7% hotel-motel tax.⁵⁴ In the stadium agreement, there is a clause establishing a “waterfall fund.”⁵⁵ This fund is made up of money collected through the hotel tax in excess of the \$200 million given for stadium construction.⁵⁶ This fund is for the Falcons to use in any “future maintenance, operation and improvement” of the stadium.⁵⁷ Taxpayers will, in essence, pay the bills on any renovations needed in the future for Mercedes-Benz Stadium; ordinarily, the team would be responsible for the payments.⁵⁸

The revenue from the hotel-tax used to secure bonds for Mercedes-Benz Stadium’s construction could be used on any number of public projects, like constructing or

53. Gold, Drukker & Gayer, *supra* note 38.

54. Elaine S. Povich, *Amid Building Boom, Debate over Publicly Funded Stadiums Goes On*, PEW (July 11, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/07/11/amid-building-boom-debate-over-publicly-funded-stadiums-goes-on>.

55. Neil DeMause, *Why are Georgia Taxpayers Paying \$700m for a New NFL Stadium?*, GUARDIAN (Sept. 29, 2017), <https://www.theguardian.com/sport/2017/sep/29/why-are-georgia-taxpayers-paying-700m-for-a-new-nfl-stadium>.

56. *Id.*

57. *Id.*

58. *Id.*

maintaining roads and bridges, building airports, or improving education facilities.⁵⁹ Instead, the revenue from these taxes secure the bonds issued by state and local governments.⁶⁰ This is the typical situation for most cities that successfully lure professional sports franchises to their location.⁶¹ These taxes are either raised or reallocated to the bonds' repayments, helping those bonds pass the private payment test and ultimately receive tax-exemption treatment.⁶²

When municipal bonds are issued, the respective city undertakes a determination of how to allocate these public funds.⁶³ Consider, for example, the city of Atlanta and its notorious traffic problem. Atlanta's motorists deal with the most gruesome rush hour traffic in the country.⁶⁴ On average, metro Atlantans spend 52.91 minutes in their cars when on the road after 4:00 p.m.⁶⁵ There are tentative plans to build a new interchange in Atlanta to ease traffic congestion.⁶⁶ A massive overhaul of roadways and improvements to transit infrastructure in Atlanta could help ease travel problems for Atlanta's metro population and commuters. In fact, huge projects, like those trying to alleviate traffic problems, are exactly why municipal bonds exist.⁶⁷ The bonds issued for Mercedes-Benz Stadium could have been issued for infrastructure projects in Atlanta to address the rush hour problem.

59. Scott A. Wolla, *The Economics of Subsidizing Sports Stadiums*, ECON. RES. FED. RES. BANK ST. LOUIS (May 2017), <https://research.stlouisfed.org/publications/page1-econ/2017-05-01/the-economics-of-subsidizing-sports-stadiums/>.

60. *Id.*

61. *Id.*

62. DENNIS ZIMMERMAN, CONG. RES. SERV., RL96-460, TAX-EXEMPT BONDS AND THE ECONS. OF PROF. SPORTS STADIUMS 5 (1996).

63. Auxier et al., *supra* note 10.

64. Sean Keenan, *Study: Atlantans Suffer Some of the Nation's Most Time-Consuming Commutes*, CURBED (June 22, 2018, 11:40 AM), <https://atlanta.curbed.com/2018/6/22/17492552/atlanta-traffic-commutes-nation-study>.

65. *Id.*

66. *Id.*

67. Auxier et al., *supra* note 10.

The traffic problem in Atlanta is just one example that highlights the problem of municipal bonds being issued to construct stadiums instead of improving infrastructure. A larger set of problems exist on the West Coast, as the NFL's Oakland Raiders are set to vacate the city (and their stadium) and relocate to Las Vegas.⁶⁸ In 1994, the renovation of the Raiders' home stadium, the Oakland-Alameda County Coliseum, was part of a plan to lure the Raiders to Oakland.⁶⁹ The renovation came at a cost of \$350 million, which is set to be paid off in 2025—five years after the Raiders move to Las Vegas!⁷⁰ City officials admitted that the deal was a bad one, but emotions clouded logic as residents wanted the Raiders to stay in Oakland.⁷¹ The stadium deal was supposed to cost \$200 million, but interest payments on the debt of the issued municipal bonds has risen the total to \$350 million.⁷² In total, the financing arrangement to keep the Raiders in Oakland will take the city about 30 years to finally pay off, with the Raiders calling the Coliseum home for only 25 of those years.

This is not the only crisis facing the city of Oakland. The city is home to some of the worst roads in the country, the Oakland Unified School District may be cutting up to 340 jobs for the 2019-20 school year to stay financially solvent, and outside spending is relied upon to provide shelter to the homeless population.⁷³ Money used to service the debt created by the Coliseum renovations over the last 30 years could have been saved to help the problems now facing Oakland. Ultimately, there are often real problems facing

68. Rick Paulas, *Sports Stadiums are a Bad Deal for Cities*, ATLANTIC (Nov. 21, 2018), <https://www.theatlantic.com/technology/archive/2018/11/sports-stadiums-can-be-bad-cities/576334/>.

69. *Id.*

70. *Id.*

71. Patrick Redford, *Oakland Taxpayers Will Still Be on the Hook for \$163 Million After the Raiders and Warriors Leave*, DEADSPIN (Mar. 29, 2017, 8:23 PM), <https://deadspin.com/oakland-taxpayers-will-still-be-on-the-hook-for-163-million-1793801493>.

72. Paulas, *supra* note 68.

73. *Id.*

cities, illustrated by Atlanta and Oakland, and therefore money from the financing of sports stadiums must be reallocated and applied to help alleviate the problems.

V. SOLUTIONS

Correcting the issue of using municipal bonds to finance stadiums will be complex and contain many difficulties, but recently, there have been attempts to do just that. In 2017, Senators Cory Booker from New Jersey and James Lankford from Oklahoma introduced legislation that would end federal subsidies and allow public funding to come from taxes on anything related to purchases inside the stadium.⁷⁴ The bill would not prevent public funding for sports stadiums, but it would have ended federal subsidies in the form of tax-exemptions for bonds financing stadiums.⁷⁵ However, this bill has not gone very far like most attempts.⁷⁶

The U.S. House of Representatives' version of the newly passed Tax Cuts and Jobs Act⁷⁷ included the elimination of federal subsidies for the financing of stadium construction.⁷⁸ The language to achieve this result was removed by Nevada Senator Dean Heller, who used the Raiders' stadium project in Las Vegas to defend the tax-exemption on municipal bonds.⁷⁹ President Barack Obama, in his 2016 budget, proposed the

74. Press Release, Sen. Cory Booker, Lankford Introduce Bipartisan Bill to End Federal Subsidies for Sports Stadiums (June 13, 2017), https://www.booker.senate.gov/?p=press_release&id=612.

75. *Id.*

76. S. 1342, 115th Cong. (2017–2018).

77. Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

78. Curtis Kalin & Adam Kazda, *Sports Stadium Subsidies Continue Unabated Despite No Good Justification*, WASH. EXAMINER (July 22, 2018, 12:00 AM), <https://www.washingtonexaminer.com/opinion/sports-stadium-subsidies-continue-unabated-despite-no-good-justification>.

79. *Id.*

removal of the private payment test to eliminate the tax-exemption of municipal bonds, but like many of the items in the budget, the proposal was not enacted.⁸⁰

Dennis Zimmerman, a former analyst for the Congressional Budget Office and Congressional Research Service, and longtime critic of the public financing of sports stadiums, agrees with the idea to eliminate the use of municipal bonds.⁸¹ Zimmerman suggests two possibilities for reducing federal revenue loss from tax-exempt bonds to finance stadium construction: elimination or limitation.⁸² The elimination approach is similar to the proposal in Obama's budget, and would stop the use of municipal bonds for financing stadiums.⁸³ The limitation approach would classify the typical bonds used to finance stadiums as tax-exempt private-activity bonds.⁸⁴ These private activity bonds would be subject to a volume cap.⁸⁵ One of the biggest benefits of this move is that the bonds would be secured by revenue resulting from the finished project, and could be used to service the debt on the bonds.⁸⁶ The main idea of limitation would be to make the municipal bonds immune to the current treatment of revenue servicing bond debt, and allow stadium-related revenue to be used in debt servicing, which is currently not allowed.⁸⁷

A benefit of the limitation approach would be forcing states to allocate municipal bond funding more carefully in response to the volume cap imposed.⁸⁸ The hope

80. Gayer, Drukker & Gold, *supra* note 13, at 14.

81. Elaine S. Povich, *Is Obama Proposal the End of Taxpayer-Subsidized Sports Stadiums?*, PEW (Mar. 16, 2015), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/3/16/is-obama-proposal-the-end-of-taxpayer-subsidized-sports-stadiums>; Povich, *supra* note 54.

82. DENNIS ZIMMERMAN, CONG. RES. SERV., RL96-460, TAX-EXEMPT BONDS AND THE ECONS. OF PROF. SPORTS STADIUMS 19 (1996).

83. *Id.* at 19–20.

84. *Id.* at 20, 21.

85. *Id.* at 21.

86. *Id.*

87. *Id.*

88. Gayer, Drukker & Gold, *supra* note 13, at 14.

would be to put more pressure on elected officials to make wiser choices when issuing bonds.⁸⁹ Officials may have emotional sports fans pushing for financing a new stadium, but a volume cap may not allow influence in officials' decisions when other projects may be more valuable, or when the cap is reached.

As a part of the limitation approach, having the bonds secured by alternative revenue streams like concessions, personal seat license sales, and other sources would reduce the risk placed on cities financing the debt resulting from the private payment test. While this would not solve the issue of sports team owners using tax-exempt federal funds, it would solve the issue of state and local governments having to create steady revenues to back the debt of issued municipal bonds. This change would reduce the risk on cities and use revenue produced by the product of the municipal bonds to finance the principal and interest of the municipal bonds. It would be a reallocation of funds received by the teams towards the debt created in the financing of the stadium. The stadium would be self-funding in regard to servicing the debt created by it. The harm created by the treatment of municipal bonds would at least be limited if alternative revenues generated from stadiums were used.

Another solution, apart from Zimmerman's, could be the recent trend among some sports team owners to commercially develop areas surround their stadiums. The owner of the New England Patriots, Robert Kraft, decided to use the land surrounding Gillette Stadium for a large outdoor mall and entertainment district.⁹⁰ Stan Kroenke, owner of the Los Angeles Rams, has "900,000 square feet of retail space, 800,000 square feet of office space, and 2,500 new residential units" built into the Hollywood Park

89. *Id.*

90. Mike Ozanian, *How New England Patriots Owner Robert Kraft Thinks*, FORBES (Mar. 5, 2015, 12:55 PM), <https://www.forbes.com/sites/mikeozanian/2015/03/05/how-new-england-patriots-owner-robert-kraft-turned-a-540-million-investment-into-2-6-billion/#7befc0437474>.

project, including the Rams' new stadium in Inglewood, California.⁹¹ These development projects in the areas surrounding stadiums (in theory) would make up for negative economic effects of using public funds to build those stadiums.

Creating a development project is not for every situation, but as a compromise it seems to be a logical and beneficial idea. The owner and/or developer would have their own interests in mind as business owners, but success for them in the surrounding area also means success in the community. The benefits would exist throughout the year, as surrounding office and retail space would be in operation for more than just gameday and used by more than just the sports team. Obviously, as with any business opportunity, the risk for the city is not eliminated; failure can still occur, and the development could end up being a bust. However, developing the area surrounding a stadium is usually a better option than filling the area with parking lots, which typically means a steady (but not lucrative) revenue stream with no direct benefits to community.

The federal government and taxpayers nationwide should not be behind sports franchises in order to achieve newer, superior stadiums. There are infrastructure and other programs that could better use the allocated funds. The elimination, and especially the limitation, of financing sports stadiums with tax-exempt municipal bonds would solve more problems than it would create.

VI. CONCLUSION

Tax-exempt municipal bonds are used to finance almost every stadium construction. It was never intended to be a common thing, but a loophole in the Tax Reform Act of 1986 kept municipal bonds alive as a potential funding option for sports stadiums.

91. Vincent Frank, *New Los Angeles Rams Stadium Project Now Expected To Cost \$5 Billion To Build*, FORBES (Mar. 27, 2018), <https://www.forbes.com/sites/vincentfrank/2018/03/27/new-los-angeles-rams-stadium-project-now-expected-to-cost-5-billion-to-build/#2f93d2ed13b2>.

This loophole has allowed the federal government to lose a large amount of revenue from taxes over the years and has put extraordinary risk on state and local governments, who have continuously chosen to issue the bonds. Owners of sports franchises, in general, have an immense amount of wealth at their disposal and do not typically need municipal bonds in order to construct their modern-day cathedrals.⁹² In almost every case, a stadium built using public money will serve as a temporary home to a sports team before they eventually build a new one. It is difficult to see any economic benefits in allowing this funding method to continue, especially in the face of serious infrastructure needs across the country, which often go unaddressed.⁹³ The elimination or limitation of municipal bond funding for sports stadiums must be seriously considered.

92. Schalter, *supra* note 3.

93. James McBride, *The State of U.S. Infrastructure*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/backgrounders/state-us-infrastructure> (last updated Jan. 12, 2018).