

**ATHLETES & ENTERTAINERS
WITHHOLDING TAX
IN MISSOURI AND OTHER STATES**

BY

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HISTORY

The State of Missouri, like most states, applies income tax to amounts earned by athletes and entertainers like all other professions. However, the taxation of non-resident athletes and entertainers presents a challenge for state governments.

These non-resident athletes or entertainers spend a very short amount of time in the state and have no financial incentive to file or pay income taxes in the state. In fact, many entertainers use accounting tactics that allow the money they earn in states other than their home state to be paid to a corporation that is not subject to tax in the state, thereby avoiding state taxes.

In 1991, the State of California responded with a unique idea: apply withholding tax to the amounts paid to non-resident athletes and entertainers. The athletes and entertainers were allowed to recover any income taxes collected in excess of their actual tax liability by simply filing a California income tax return.

This idea soon caught on in other states that were losing income tax revenue to these non-resident entertainers and athletes. Missouri implemented a similar program in 1994.

TAX TREATMENT OF ATHLETES AND ENTERTAINERS IN OTHER STATES

The way states decide to ensure their income tax is collected from athletes and entertainers that do not reside in their states differs from state to state. The withholding tax process may be different for these taxpayers than for other taxpayers.

Connecticut withholds 5% of the amount paid to the non-resident athlete or entertainer which is equal to the maximum income tax rate in Connecticut. California withholds 7% which is less than the California maximum income tax rate of 9.3%. Minnesota withholds 2%, which is less than the lowest income tax rate of 5.35% in Minnesota.

In other states, a more graduated system is applied. For example, Nebraska withholds 4% if the amount paid is less than \$28,000 and 6% if more than \$28,000.

TAX TREATMENT OF ATHLETES AND ENTERTAINERS IN MISSOURI

In Missouri, non-resident athletes, including those that play for Missouri-based teams, are subject to Missouri withholding tax in the same manner as all other non-residents. The income is taxed on a sliding scale if regular payments of salary are established and taxed at 6% if lump sum payments are made to the athlete. The team is responsible for withholding the tax from the amount paid to the athlete and remitting that amount to the Missouri Department of Revenue.

The Missouri withholding tax for non-resident entertainers is different from regular withholding tax. Section 143.183, RSMo, requires persons paying entertainers more than \$300 to withhold 2% of the amount paid to them and remit those collections to the State of Missouri. The entertainer may be an individual, corporation, or other entity. The venue hosting the entertainer is responsible for reducing the amount paid to the entertainer by 2% and remitting that amount to the Missouri Department of Revenue. The amounts collected are specifically designated a "prepayment" of taxes due from the entertainers. If the entertainer's sole Missouri income is from events for which the venue has properly withheld 2% of the amount paid, the entertainer is under no obligation to file a Missouri income tax return.

Non-resident athletes and entertainers may claim any excess taxes withheld by filing a Missouri income tax return showing their actual tax liability. If a return is filed, credit is given for the amount withheld and the entertainer may obtain a refund of any excess withholding or must pay any additional amount due. If no return is filed, the state does not refund any money to the entertainer.

The proceeds of income taxes from athletes and entertainers are estimated by the Office of Administration each year and paid to the following:

- 60% to the Missouri Arts Council Trust Fund;
- 10% to the Missouri Humanities Council Trust Fund;
- 10% to the Missouri State Library Networking Fund;
- 10% to the Missouri Public Television Broadcasting Corporation Special Fund (25% of which is further dedicated to public radio stations); and,
- 10% to the Missouri Historic Preservation Revolving Fund.

According to the Missouri Department of Revenue, the withholding produced the following total collections:

Fiscal Year	Entertainers	Athletes
FY 2001	\$1,176,524	\$17,882,524
FY 2002	\$1,260,310	\$19,243,189
FY 2003	\$1,298,914	\$22,485,383
FY 2004	\$1,859,020	\$21,764,303
FY 2005	\$1,671,046	\$19,141,680

CONCLUSION AND CONSTITUTIONAL CONSIDERATIONS

The athletes and entertainers “tax” is not a separate tax and should more properly be described as an insurance policy, making it more likely a state will receive some income tax on the event. Without such withholding, athletes and entertainers would likely escape tax in states other than the one in which they reside and could escape tax on amounts earned while performing or playing in other states altogether.

While the withholding scheme serves a valuable purpose for states, states must be careful to observe constitutional equal protection and commerce clause provisions when designing such withholding systems, ensuring the athletes and entertainers are not subject to a discriminatory tax scheme and that the withholding requirement does not place an undue burden on interstate commerce. The current withholding system in Missouri complies with these constitutional requirements and serves to provide taxes to the state that would otherwise be forfeited.