

# IT'S A BRAND NEW BALLGAME: HOW TO BEQUEST SEASON TICKETS FOR YOUR FAVORITE SPORTS TEAM'S GAMES

*"Gods do not answer letters." – John Updike<sup>1</sup>*

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## I. INTRODUCTION

It all started with the Greek Olympic Games. According to written records, the history of sporting events dates back to when the first Olympic games were held in 776 B.C.<sup>2</sup> At that time, the sole event was the stade: an approximately 210-yard run.<sup>3</sup> For nearly 1,200 years, the Olympic games expanded, and athletes continually competed every four years.<sup>4</sup> However, in 393 C.E., Roman emperor Theodosius I abolished the Olympic games because

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1. See David Whitley, *Teddy Ballgame Made Fenway Memories*, ESPN.COM, <http://espn.go.com/sportscentury/features/00016638.html> (last visited Mar. 10, 2012) (referencing John Updike's article that commemorates Ted Williams's final game by showing how unwavering fans are despite the lack of returned sentiment from the players).

2. See Jennifer Rosenberg, *History of the Olympics: Creating the Modern Olympics*, ABOUT.COM, <http://history1900s.about.com/od/fadsfashion/a/olympicshistory.htm> (last visited Mar. 10, 2012).

3. See *id.*

4. *Id.*

of their pagan influences.<sup>5</sup> Fortunately, Pierre de Coubertin helped revive the Olympic games in 1896.<sup>6</sup>

About the same time that the Olympic games were making their way into the sports arena, football was beginning to develop in America.<sup>7</sup> In 1876, members from Harvard, and various other universities in the United States, met to formalize the rules for their new game, which they based somewhat on rugby; they called the game “football.”<sup>8</sup> While these institutions and their scholars were just beginning to develop football in the northeastern United States, athletes had already been playing baseball in the United States for almost a century.<sup>9</sup> Baseball, America’s pastime, “has given our people rest and recreation, myths and memories, heroes, history and hope.”<sup>10</sup> Basketball, like football and baseball, is another sport invented in the 19<sup>th</sup> century.<sup>11</sup> Dr. James Naismith created basketball in Springfield, Massachusetts in 1891.<sup>12</sup>

A century after their creation, these various sports evolved into a symbol of American life. Most day-to-day conversations and water cooler talk revolve around sports topics. As a result of this American obsession with sports entertainment, more professional team organizations are capitalizing upon this by marketing season tickets and seat licenses to fans as the business of the sports industry expands.<sup>13</sup> Regardless of a fan’s reason for liking or disliking a team, that allegiance will always be there, in life and in death. This is why many fans with valuable season tickets to various sporting events want to be able to pass on their interest to their friends and family members when they pass.

Whether it is baseball, football, or basketball, sports in America are an integral part of everyday life. Many people even identify themselves based on their allegiance to various sports teams.<sup>14</sup> Baseball fans of the New York Yankees automatically dislike Boston Red Sox fans and vice versa.<sup>15</sup>

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5. *Id.*

6. See ALLEN GUTTMAN, *THE OLYMPICS: A HISTORY OF THE MODERN GAMES* 17 (University of Illinois Press, 2d ed. 1992); Rosenberg, *supra* note 2.

7. See DIANA STAR HELMER & TOM OWENS, *THE HISTORY OF FOOTBALL* 6 (The Rosen Publishing Group 2000).

8. *Id.*

9. See *History of Baseball*, iSPORT, <http://baseball.isport.com/baseball-history/> (last visited Apr. 19, 2012); see also *Pittsfield’s 1791 Baseball Bylaw*, BERKSHIRE ATHENAEUM, <http://www.pittsfieldlibrary.org/baseball.html> (last updated Aug. 2006).

10. *Id.*

11. See George Laughead, Jr., *History of Basketball*, KANSAS HERITAGE GROUP, <http://www.kansasheritage.org/people/naismith.html> (last updated Jan. 5, 2005).

12. *See id.*

13. See generally Danette Davis, *The Myth & Mystery of Personal Seat Licenses and Season Tickets: Licenses or More?*, 51 ST. LOUIS U. L.J. 241, 242 (2006).

14. See Beth Dietz-Uhler & Jason R. Lanter, *The Consequences of Sports Fan Identification*, MCFARLAND PUBLISHING, <http://www.mcfarlandpub.com/excerpts/0-7864-3726-X.Chapter7.pdf> (last visited Mar. 10, 2012).

15. See, e.g., Joseph Browne, *New York Yankees’, Boston Red Sox’ Rivalry: Can’t We All Just Get Along?*, BLEACHER REPORT (Sept. 19, 2009), <http://bleacherreport.com/articles/853583-yankees-red-sox-rivalry-cant-we-all-just-get-along>.

Unfortunately, violent crimes have even resulted from these rivalries.<sup>16</sup> Roughly 70% of the population identifies themselves with some sports team.<sup>17</sup> Some devoted fans have gone so far as vomiting out of anxiety before every kickoff, skipping weddings for games, and even giving up their spot on transplant lists to avoid missing a game.<sup>18</sup> Fans like this have been around forever: “In the Iliad, Homer described spectators at a chariot race peering through the dust and trying to see who was winning. Arguments ensued, bets were made, and a fight almost erupted before Achilles told everyone to chill.”<sup>19</sup>

Many teams, such as the New York Yankees, Boston Red Sox, New England Patriots, Green Bay Packers, and the Duke University Blue Devils, have decade-long waiting lists and can have anywhere from 30,000–60,000 people waiting for a chance to purchase these highly coveted season tickets.<sup>20</sup>

Regardless of the economic climate looming outside the gates, Americans have always spent countless dollars on sporting events and the activities and

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16. See, e.g., *31-year-old arrested for beating S.F. Giants fan*, CBS NEWS (May 22, 2011), <http://www.cbsnews.com/stories/2011/05/22/sportsline/main20065161.shtml> (demonstrating fan violence when a rival Los Angeles Dodgers fans beat a San Francisco Giants fan into a coma after the Giants opening game against the Dodgers).

17. See Beth Gillin, *Fantastic v. fanatical The devoted. The Johnny-come-latelies. And, ahem, the other extreme*. PHILLY.COM (Jan. 30, 2005), [http://articles.philly.com/2005-01-30/news/25435854\\_1\\_christian-end-fan-behavior-sport-fans](http://articles.philly.com/2005-01-30/news/25435854_1_christian-end-fan-behavior-sport-fans).

18. *Id.*

19. *Id.*

20. See James Reese et. al., *National Football League Ticket Transfer Policies: Legal and Policy Issues*, 14 J. LEGAL ASPECTS SPORTS 163, 166 (2004). Below is a table of the estimated waitlist for all of the teams in the NFL and some MLB teams:

Team	Estimated Waitlist
Washington Redskins	135,000
Chicago Cubs	100,000
Green Bay Packers	57,000
Tampa Bay Buccaneers	45,000
New England Patriots	35,000
Tennessee Titans	30,000
Denver Broncos	20,000
New York Giants	20,000
Pittsburgh Steelers	18,000
New York Jets	15,000
Chicago Bears	14,000
Philadelphia Eagles	8,000
Boston Red Sox	7,000
Kansas City Chiefs	4,000
Minnesota Vikings	2,000
Cleveland Browns	1,800
Houston Texans	1,500
Detroit Lions	1,200
Atlanta Hawks	900
Miami Dolphins	200
San Francisco 49ers	N/A; 1–3 years
Remaining NFL Teams	0

costs that come with them.<sup>21</sup> Fans will wait day and night for tickets to some of sport's most coveted events like the Super Bowl and NCAA March Madness.<sup>22</sup> Some fans, however, will wait a lifetime or more for coveted season tickets to America's most elite teams' games. Many sports teams, such as the Green Bay Packers, have their own guidelines and forms for passing on season tickets at death.<sup>23</sup> These forms are usually available through the organization and are meant to help settle most disputes that could potentially arise, but many disputes do arise if the decedent dies intestate.

This comment explains how individuals can pass on the right to purchase coveted season tickets in their will, if there is a fee associated with the transfer, and if there is a tax or transfer fee associated with the transfer. It will also propose a solution to the varying transfer policies among the sports organizations.

Part I of this comment introduced the history of sporting events and the integral part those events play in everyday American lives.<sup>24</sup> Part II discusses various teams that already have forms that provide current season ticket owners with the opportunity to transfer tickets and if there is a property interest created by owning season tickets.<sup>25</sup> Part III discusses if there are any transfer fees and if Congress may tax the transfer or purchase of tickets as an inheritance tax or part of the estate tax.<sup>26</sup> Part IV uses a hypothetical situation of a man who has season tickets to multiple teams' events, and it discusses the difficulties the season ticket holder, lawyers, and courts may face because of the varying team policies.<sup>27</sup> Finally, Part V proposes a solution to the problem with varying transfer policies by implementing a uniform transfer policy among all sports organizations.<sup>28</sup> This can be achieved either by Congress passing a statute that applies to all organizations, each individual state's congress adopting a statute that applies to the teams within that state, or creating a vested property right with the season ticket holder when he or she purchases the tickets.

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21. See, e.g., *Want To Go To Super Bowl? It'll Cost You!*, WTAE PITTSBURGH, <http://www.wtae.com/r/26591500/detail.html> (last updated Jan. 24, 2011). In 2011, when the United States was still in the midst of a recession, fans were spending anywhere from \$9,000 to \$38,000 for two tickets to the game, two airline tickets, and two nights stay in a hotel near the 2011 Super Bowl Game between the Pittsburgh Steelers and Green Bay Packers. See *id.*

22. See, e.g., Sara Foley, *Ticket window No. 'ate': Student puts Cotton Bowl ticket waiting list in mouth to secure place in line*, THE BATTALION ONLINE (Dec. 10, 2004) <http://www.thebatt.com/2.8485/ticket-window-no-ate-1.1202447>. After camping out for days, a student ate a piece of paper that other students placed their names on to secure a spot in line to purchase tickets for Texas A&M's game against The University of Tennessee Volunteers at the Cotton Bowl. See *id.*

23. See, e.g., *Green Bay Packers Season Ticket Transfer Form*, PACKERS, [http://prod.static.packers.clubs.nfl.com/assets/docs/season\\_ticket\\_transfer.pdf](http://prod.static.packers.clubs.nfl.com/assets/docs/season_ticket_transfer.pdf) (last visited Mar. 10, 2012) [hereinafter *Green Bay Transfer Form*].

24. See *supra* pp. 369–72.

25. See *infra* Part II.

26. See *infra* Part III.

27. See *infra* Part IV.

28. See *infra* Part V.

## II. TEAM POLICIES AND PROPERTY RIGHTS

Many teams have already adopted policies for transferring season tickets.<sup>29</sup> The policies of the organizations that already have transfer policies in place are usually available on teams' websites or through teams' ticket offices.<sup>30</sup> Also, some organizations have vested property rights in season ticket holders by selling personal seat licenses to fund building new stadiums.<sup>31</sup> Either the season ticket or the organization's website has a clause that grants season ticket holders a personal seat license.<sup>32</sup> Courts have held this personal seat license to vest a property right in the season ticket holder.<sup>33</sup>

### A. Teams with Transfer Policies Already in Place

“An open NFL season ticket transfer is executed when a season ticket holder of record transfers the name on their ticket account to a third party. Typically, this process occurs in the off-season when season-ticket renewals take place.”<sup>34</sup> As a result of the confusing nature of transfers and the possibility of significant monetary gains by transfers, many teams have limited the transferability of season tickets.<sup>35</sup> Some teams, such as the New England Patriots, only allow season ticket holders to transfer tickets to a family member in the event of death.<sup>36</sup> This policy shows that many teams are recognizing the difficulties inherent in trying to manage the ownership rights of a season ticket holder who has passed away, and determining who is eventually entitled to the tickets posthumously.

Many other teams are starting to recognize this difficulty as well, such as the Green Bay Packers.<sup>37</sup> The following is the Green Bay Packers Organization's official policy on ticket transfer at death:

- a) Upon death of ticket holder
  - 1) To surviving spouse; or if no spouse, the surviving children of a deceased ticket holder without authorization. (If children do not agree - no transfer.)

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29. *Green Bay Transfer Form*, *supra* note 23.

30. *Id.*

31. Davis, *supra* note 13.

32. *Id.*

33. *Id.*

34. Reese et. al., *supra* note 20, at 165.

35. *Id.* at 164 (chart noting that the Arizona Cardinals, Chicago Bears, Detroit Lions, Indianapolis Colts, Jacksonville Jaguars, Kansas City Chiefs, New Orleans Saints, New York Jets, Philadelphia Eagles, San Francisco 49ers, and Seattle Seahawks have open transfers without limitations; whereas the Atlanta Hawks, Denver Broncos, Green Bay Packers, Houston Texans, Minnesota Vikings, New York Giants, and Tampa Bay Buccaneers only allow transfers to immediate family).

36. *Id.*

37. *Green Bay Transfer Form*, *supra* note 23.

- 2) If direction by deceased under will or specific writing to family devisees defined in (b) but not to devisees who are not defined in (b), even with direction.
- b) To family, defined as, spouse and 'blood' relatives who are not more than first cousins, on direction of ticket holder in writing during his or her life-time. (Excludes, for example, transfer to friends.)<sup>38</sup>

Green Bay's policy of transferring the tickets to the decedent's children requires that the children agree on the transfer; if there is not an agreement, the organization will not transfer the tickets.<sup>39</sup> The Green Bay Packers have one of the more detailed explanations of the different NFL organizations' transfer policies.<sup>40</sup> Green Bay's policy is probably so detailed because the Packers have one of the largest waiting lists of all sports organizations.<sup>41</sup> The Green Bay Packers are unlike many other organizations such as the Boston Red Sox, Dallas Cowboys, Oakland Raiders, Pittsburgh Steelers, and San Diego Chargers, who refuse to allow the transfer of season tickets.<sup>42</sup> The St. Louis Cardinals have created a marketplace in which current season ticket holders can transfer season tickets; however, the Cardinals do not have a specific policy in place for when a season ticket holder dies and wants to transfer the tickets.<sup>43</sup>

Duke University basketball tickets are usually nontransferable upon death, but for a \$50,000 fee and an annual contribution of \$6,000, one man, John Dorton, made it possible.<sup>44</sup> Duke's policy, similar to Green Bay's, is to first transfer the tickets to family members when a season ticket holder dies.<sup>45</sup> However, Duke's policy does not require the agreement between siblings like the Green Bay Packer's policy, and as a result, Dorton's daughter, who did not receive the tickets, filed a lawsuit, which has not yet been adjudicated.<sup>46</sup> The University of Texas only allows two kinds of transfers: students can transfer

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38. *Official Policy on Transfer of Packers Season Tickets*, PACKERS, <http://www.packers.com/tickets/season-tickets.html> (last visited Mar. 10, 2012).

39. *Id.*

40. *Compare Green Bay Packers Season Ticket Transfer Form*, PACKERS, [http://prod.static.packers.clubs.nfl.com/assets/docs/season\\_ticket\\_transfer.pdf](http://prod.static.packers.clubs.nfl.com/assets/docs/season_ticket_transfer.pdf) (last visited Mar. 10, 2012), with *St. Louis Rams PSL Transfer Form*, ST. LOUIS RAMS, [http://www.stlouisrams.com/assets/docs/PSL\\_Transfer\\_Form\\_2\\_2\\_11.pdf](http://www.stlouisrams.com/assets/docs/PSL_Transfer_Form_2_2_11.pdf) (last visited Mar. 10, 2012).

41. *See Frequently Asked Questions*, PACKERS, <http://www.packers.com/fan-zone/faq.html> (last visited Mar. 10, 2012) (showing that the Green Bay Packers have approximately 81,000 people on a waitlist for season tickets; this is approximately a 30-year wait).

42. Reese et. al., *supra* note 20, at 164.

43. *See, e.g., Ballpark Founders Marketplace*, CARDINALS, <http://stlcardinals.seasonticketrights.com/Ballpark-Founders-Seats/Sellers.aspx> (last visited Mar. 10, 2012).

44. *See* Simon Brown, *Fire Lawsuit Over Duke Basketball Tickets*, SPORTS HR (July 18, 2011), <http://sportshrdept.blogspot.com/2011/07/fire-lawsuit-over-duke-basketball.html>. *See also* Aaron Beard, *Duke Basketball Tickets Lawsuit: Katina Dorton Sues Sister Over Season Tickets*, HUFFINGTON POST (July 15, 2011), [http://www.huffingtonpost.com/2011/07/15/duke-basketball-tickets-lawsuit-katina-dorton\\_n\\_900091.html](http://www.huffingtonpost.com/2011/07/15/duke-basketball-tickets-lawsuit-katina-dorton_n_900091.html).

45. Beard, *supra* note 44.

46. *Id.*

their season tickets to fellow classmates and patrons can transfer ticket accounts to a surviving spouse.<sup>47</sup> These discrepancies among sports organizations have lead to confusion, undue hassles, and unnecessary litigation when trying to bequest season tickets in one's will.<sup>48</sup> For these sports organizations, a uniform season ticket transfer policy upon death would aid lawyers and current ticket holders to bequest season tickets.

*B. Is There a Property Right Established When Purchasing Season Tickets?*

“On the most basic level, the purchase of a season ticket package entitles one to a specified seat for all home games played by a respective franchise at their home stadium.”<sup>49</sup> Traditionally, the sports organization that sold the respective tickets and seat licenses classified them together as a “license.”<sup>50</sup> “However, careful analysis reveals that holders of personal seat licenses and season tickets have greater interests in these properties than a traditional licensee.”<sup>51</sup> According to the Carolina Panthers Media Guide, the Carolina Panthers were the first team to create a permanent seat license, which gives the current ticket holder the right to continually purchase that seat.<sup>52</sup> Thus, the license grants a vested property right to the ticket holder.<sup>53</sup>

The purchase of a personal seat license (PSL), in addition to the season tickets, often gives the purchaser the right to transfer the PSL.<sup>54</sup> Usually, a personal seat license comes at a much higher cost than a regular license, but it comes with a much greater interest as well.<sup>55</sup> A personal seat license gives the owner the exclusive right to purchase season tickets for that exact same seat or set of seats every season; the exclusive right to purchase playoff tickets; the ability to purchase parking passes; the exclusive right to tickets to other events held at that team's venue; and financing for the high additional costs.<sup>56</sup> A regular license, obtained when just purchasing a season ticket, is a restricted interest in an object or land.<sup>57</sup> The difference between the two is that “a classic license is personal to the licensee, and thus, nontransferable and terminable

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47. *Season Tickets*, LONGHORN SPORTS, <http://www.texassports.com/tickets/m-footbl-ticket-info.html#transferring> (last visited Mar. 10, 2012).

48. See *supra* notes 34–47 and accompanying text.

49. See, e.g., Mark Levengood, *Unregistered Securities in the National Football League: Can the Securities Act of 1933 Protect Season Ticket Holders and Personal Seat License Holders?*, 11 VILL. SPORTS & ENT. L.J. 411, 414 (2004).

50. Davis, *supra* note 13.

51. *Id.*

52. CAROLINA PANTHERS MEDIA GUIDE (Electric City Printing 1998).

53. See Davis, *supra* note 13; *In re Liebman*, 208 B.R. 38, 41 (Bankr. N.D. Ill. 1997); *In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 502 (Bankr. W.D. Pa. 1992).

54. Davis, *supra* note 13, at 258.

55. *Id.* at 242.

56. *Dallas Cowboys PSL*, PSL SOURCE, [http://www.pslsource.com/dallas\\_cowboys\\_psl#When\\_can\\_Cowboys\\_PSLs\\_be\\_transferred?](http://www.pslsource.com/dallas_cowboys_psl#When_can_Cowboys_PSLs_be_transferred?) (last visited Mar. 10, 2012).

57. Davis, *supra* note 13.

upon the licensee's death."<sup>58</sup> This creates further confusion for those individuals hoping to transfer their season tickets in their will. If the season ticket is just a classic license and terminable upon the licensee's death, then that might be the end of the road for the heirs. However, employing a uniform sports-wide transfer policy would clear up this confusion among sports fans.

Earlier bankruptcy cases found that a property interest did not exist when purchasing season tickets.<sup>59</sup> In *In re Liebman*, the court found "that a Bulls' season ticket holder [had] nothing more than a license to purchase tickets, which the Bulls [could] revoke at any time."<sup>60</sup> The trustee in this case placed a substantial amount of weight on the team's practice of renewing season tickets automatically as long as the account was current.<sup>61</sup> The court reasoned, however, that "[t]he expectation that the tickets would be renewed, however realistic, does not ripen into a property interest."<sup>62</sup> The court reviewed the written policy pertaining to the transfer of season tickets, which provided, "NEW CONTRACTS ARE NOT TAKEN FOR PERSONAL ACCOUNTS. WE DO NOT CHANGE NAMES, ADD NAMES, NOR DO WE TAKE 'CARE OF' NAMES AND ADDRESSES. SEASON TICKETS ARE NOT TRANSFERABLE AND THEY ARE A REVOKABLE (sic) LICENSE. SEASON TICKETS ARE OFFERED ON A ONE-YEAR BASIS ONLY. (Emphasis in original)."<sup>63</sup> After reviewing the season ticket transfer policy, the court ultimately concluded that there was no property interest based on the "right to renew."<sup>64</sup>

However, many courts now find a property interest in season tickets.<sup>65</sup> In *In re I.D. Craig Service Corp.*, the United States Bankruptcy Court for the Western District of Pennsylvania found a property interest existed in the renewal rights of a season ticket holder.<sup>66</sup> The court argued that because the seller's annual handbook referred to the season ticket holder as the "owner" twice in the handbook and even contained a section entitled "Season Ticket Ownership," this created a property interest in owning the season tickets.<sup>67</sup> Additionally, the court concluded that "the ticket seller's policies and practices regarding season tickets created an expectancy interest in the renewal rights of season ticket holders . . . [a]s a result, the season ticket holder reasonably expected that the right to renew season tickets would continue indefinitely."<sup>68</sup>

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58. *Id.* at 245.

59. *In re Liebman*, 208 B.R. 38, 39 (Bankr. N.D. Ill. 1997).

60. *Id.* at 41.

61. *Id.*

62. *Id.*

63. *Id.* at 40 (quoting the Chicago Bulls' transfer policy).

64. *Id.* at 41.

65. *See, e.g., In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 502 (Bankr. W.D. Pa. 1992); *In re Platt*, 292 B.R. 12, 17 (Bankr. D. Mass. 2003).

66. *See In re I.D. Craig Serv. Corp.*, 138 B.R. at 502.

67. *Id.* at 498. *See also* Davis, *supra* note 13, at 249-50.

68. Davis, *supra* note 13, at 250.



The court concluded that there was “a property interest in the season ticket holder’s right to renew the season tickets.”<sup>69</sup>

In the more recent case, *In re Platt*, the United States Bankruptcy Court in Massachusetts considered the ownership interest of Boston Red Sox season tickets.<sup>70</sup> The court agreed with the trustee in the case that past practices by the Red Sox, which allowed parties to transfer season tickets, had created a reasonable expectation of a property interest.<sup>71</sup> The court ultimately held “that the practice of automatically renewing season tickets and arbitrarily allowing the transfer of tickets created a property interest in the season ticket holder.”<sup>72</sup> Many teams are structuring the season ticket contract as a license, but as these cases demonstrate, the courts are following the legal trend of establishing property rights for the season ticket holders.<sup>73</sup>

If, as many of these courts have demonstrated, there is a property interest vested in the season ticket holder by purchasing these season tickets, does that “property” automatically transfer in the decedent’s estate upon death? If so, how does that affect the estate tax levied against the estate? If it does not, and the decedent filled out a transfer form before death, can the organization through which the decedent held season tickets impose a transfer fee upon transferring the tickets?

### III. ESTATE TAXES AND TRANSFER FEES

Chapter 11 of the Internal Revenue Code (I.R.C.) specifies what is taxed when a decedent passes his or her estate upon death.<sup>74</sup> Section 2101 of the I.R.C. establishes the imposition and rate of tax; it states:

(a) Imposition

. . . [a] tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of -

(1) a tentative tax computed under subsection (c) on the sum of -

(A) the amount of the taxable estate,

(B) the amount of the adjusted taxable gifts, over

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69. *Id.*

70. *In re Platt*, 292 B.R. at 17.

71. *Id.* at 14.

72. Davis, *supra* note 13, at 251.

73. *Id.*

74. 26 U.S.C. § 2101 (2006).

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.<sup>75</sup>

Is the amount of the season ticket included in the amount of the taxable estate? If so, how is the amount calculated? Is the amount calculated at face value or at what the season ticket owner first paid for the tickets?

If the tickets are not passed through the decedent's will and instead are passed through a transfer form provided by the team and filled out before decedent's death, can the team impose a transfer fee? If the team can, should Congress treat this transfer fee similar to an inheritance tax levied against the heir by the sports team organization?

#### A. Estate Taxes and the Option to Purchase Season Tickets

According to Michael Hatfield, a tax professor at the Texas Tech University School of Law, an option to buy the season tickets would essentially be similar to an option to buy stocks that have been left in one's will.<sup>76</sup> When you "receive an option to buy stock, you may have income when you receive the option, when you exercise the option, or when you dispose of the option."<sup>77</sup> The same rules would apply when an heir receives an option to buy the season tickets.<sup>78</sup> Section 2703 of the I.R.C. deals with special valuation rules and addresses how to value an option.<sup>79</sup> The code states that "the value of any property shall be determined without regard to—(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property."<sup>80</sup> However, § 2705 of the I.R.C. only applies if the issue purchases the season ticket at the rate at which the previous season ticket holder purchased the tickets, almost like a rent-control type situation.

To avoid this conflict, many estate plans contain a clause that allows the issues to sell the tickets and split the proceeds from the sale.<sup>81</sup> However, this does not help attorneys in determining the estate tax levied against the estate when an issue decides to exercise the option and purchase the season tickets.

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75. *Id.*

76. Interview with Michael Hatfield, Professor of Law, Tex. Tech Univ. Sch. of Law, in Lubbock, Tex. (Oct. 25, 2011).

77. *Topic 427- Stock Options*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/taxtopics/tc427.html> (last updated Dec. 22, 2011).

78. Interview with Michael Hatfield, *supra* note 76.

79. 26 U.S.C. § 2703 (2006).

80. *Id.* at (a)(1).

81. *See, e.g.*, Cheryl K. David, *Example of How an Estate Plan Can Contain Very Specific Clauses for Heirs, as in Green Bay Packers Tickets!*, LAW OFFICES OF CHERYL DAVID (Aug. 22, 2011), <http://www.cheryldavid.com/blog/2011/08/estate-plan-specific-clauses-heirs-green-bay-packers-tickets/>.

The estate tax is a tax on the right to transfer property at death.<sup>82</sup> The estate tax “consists of an accounting of everything [the decedent] own[s] or ha[s] certain interests in at the date of death. The fair market value of these items is used, not necessarily what [was] paid for them or what their values were when [the decedent] acquired them.”<sup>83</sup> Therefore, the testator calculates the present fair market value of the season tickets at the time of the decedent’s death and includes that amount in the value of the estate.<sup>84</sup> Generally, most estates do not have to pay an estate tax.<sup>85</sup> However, “[a] filing is required for estates with combined gross assets and prior taxable gifts exceeding \$1,500,000 in 2004 - 2005; \$2,000,000 in 2006 - 2008; \$3,500,000 for decedents dying in 2009; and \$5,000,000 or more for decedent’s dying in 2010 or later.”<sup>86</sup> As a result of this high dollar value, most heirs inheriting season tickets would not have to worry about the IRS levying an estate tax against the estate; however, in certain cases where the decedent owned several sets of season tickets in desirable locations, there is a greater risk of an estate tax.<sup>87</sup>

### B. Sports Team Organizations’ Transfer Fees

As a result of many team organizations implementing their own guidelines for passing on season tickets upon death, many of them have also started to include transfer fees as well.<sup>88</sup> In 2005, the New England Patriots implemented a new “Pass It On” transfer program that imposed a \$2,000 to \$5,000 transfer fee per ticket transferred.<sup>89</sup> Under this new transfer program, the Patriots only allow 1,000 season ticket transfers per year.<sup>90</sup> The Patriots organization implemented this new program because it previously did not allow transferring of season tickets at all.<sup>91</sup> In accordance with the Pass It On transfer program, “[t]he cost per transfer for each ticket [was] \$5,000 for lower-level sideline seats, \$3,500 for lower-level end zone and all second-level seats, and \$2,000

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82. See *Estate Tax*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/businesses/small/article/0,,id=164871,00.html> (last updated Feb. 1, 2012).

83. See *Frequently Asked Questions on Estate Taxes*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/businesses/small/article/0,,id=108143,00.html> (last visited Mar. 10, 2012).

84. *Estate Tax*, *supra* note 82.

85. *Id.*

86. *Id.*

87. See, e.g., Andy Nelesen, *Brother Sues Brother Over Packers Tickets*, HANDLE ON THE LAW (May 28, 2009), [http://www.handleonthelaw.com/home/news\\_details.aspx?News=6943](http://www.handleonthelaw.com/home/news_details.aspx?News=6943). Decedent, Walter Christman, left thirteen season tickets in trust to his sons who sold the tickets for \$300 per game per ticket (approximately \$62,400 total). *Id.* Gain from the sale of the tickets alone would be applicable to the estate. See *id.*

88. See Bruce Mohl, *Season ticket transfer fees irk fans: Patriots relax rule, but move could cost up to \$5,000 per seat*, THE BOSTON GLOBE (Feb. 25, 2005), [http://www.boston.com/business/articles/2005/02/25/season\\_ticket\\_transfer\\_fees\\_irk\\_fans/](http://www.boston.com/business/articles/2005/02/25/season_ticket_transfer_fees_irk_fans/).

89. *Id.*

90. *Id.*

91. *Id.*

for all upper-level seats.”<sup>92</sup> The transfer fee is unique to the Patriots in that they are the only team in the National Football League to impose a transfer fee at the time.<sup>93</sup> Many fans expressed their outrage at the high cost of the transfer; one fan even went so far as to call it a “seat tax.”<sup>94</sup> As a result of the outcry over the high costs in transfer fees, the Patriots revoked their transfer fee and no longer charges upwards of \$5,000 to transfer tickets that are only valued at \$1,000-\$2,000.<sup>95</sup> Under the new Pass It On transfer program, season ticket holders can transfer their tickets, for free, only to immediate family members.<sup>96</sup>

Additionally, only accounts held for a decade or longer are eligible.<sup>97</sup> After the Patriots abolished its transfer fee under the Pass It On program, the Denver Broncos remained the only team with a transfer fee.<sup>98</sup> Although the Broncos impose a transfer fee, it is nowhere near the amount the Patriots were originally charging.<sup>99</sup> The Broncos only charge a \$100 fee to transfer season tickets.<sup>100</sup> Although not a set fee, the University of Nebraska requires a donation for the transfer of season tickets regardless of whether the original ticket owner made a donation towards the university or not.<sup>101</sup> The New York Mets require a \$4 transaction fee for the transfer of tickets.<sup>102</sup> Either the transferor or the transferee can pay this fee.<sup>103</sup> Pennsylvania State University (Penn State) has a transfer fee similar to the one the New England Patriots originally had in place.<sup>104</sup> Penn State allows donors to transfer six season tickets to a new account holder.<sup>105</sup> The transfer fee accompanying these transfers ranges from \$500 to \$2,000 depending on the ticket seat location.<sup>106</sup>

As evidenced by the multitude of organizations that implement transfer fees, the transfer fees are allowed; however, fan outrage might lead teams to eliminate these fees, making it easier for decedents to pass on the tickets in their

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92. *Id.*

93. *Id.*

94. *Id.*

95. *See Pass It On Program*, PATRIOTS, <http://www.patriots.com/tickets/season-tickets-amenities.html#tix> (last visited Mar. 10, 2012). *See also* Mohl, *supra* note 88.

96. *See Pass It On Program*, *supra* note 95.

97. *Id.*

98. *See id.* *See also* Mohl, *supra* note 88.

99. *Compare Pass It On Program*, *supra* note 95 with *2011 Transfer Check List*, DENVER BRONCOS, <http://www.denverbroncos.com/tickets-and-stadium/season-tickets/season-ticket-transfer.html> (last visited Mar. 10, 2012).

100. *2011 Transfer Check List*, *supra* note 99.

101. *2011 Nebraska Football Ticket Information*, HUSKERS, [http://www.huskies.com/ViewArticle.dbml?DB\\_OEM\\_ID=100&ATCLID=1210822](http://www.huskies.com/ViewArticle.dbml?DB_OEM_ID=100&ATCLID=1210822) (last visited Mar. 10, 2012).

102. *Mets Ticket Transfer*, NEW YORK METS, [http://newyork.mets.mlb.com/nym/ticketing/ticket\\_transfer.jsp](http://newyork.mets.mlb.com/nym/ticketing/ticket_transfer.jsp) (last visited Mar. 10, 2012).

103. *Id.*

104. *Compare Football Season Ticket & Parking Transfer Guidelines*, GO PSU SPORTS, <http://www.gopsusports.com/sports/c-lionclub/step-transfer-policy.html> (last visited Mar. 10, 2012) *with* Mohl, *supra* note 88.

105. *Football Season Ticket & Parking Transfer Guidelines*, *supra* note 104.

106. *Id.*

wills.<sup>107</sup> Even with the majority of transfer fees being low cost, decedents have the choice of transferring the season tickets through the team policies or their will without much cost to their heirs. For example, a pair of two season tickets to the Denver Broncos costs a maximum of \$2,220.<sup>108</sup> Leaving these season tickets in one's will would unlikely trigger an estate tax, and transferring these tickets, instead of leaving them in the will, would only cost \$200.<sup>109</sup> Either method would be of little cost to the decedent, his or her estate, or the recipient of the ticket(s). Consequently, there is no reason why decedents could not, and should not, transfer the season tickets to a family member or friend of their choice.

#### IV. MR. EWING LOVES HIS TEAMS

Confusion and problems are not as anticipated or commonplace when the ticket holder only holds season tickets to one organization; however, when a ticket holder owns season tickets to multiple organizations with differing transfer policies, confusion arises. While many teams have very similar policies for transferring tickets,<sup>110</sup> there would be a lot less confusion if either all the organizations implemented the same policy, either by Congressional statute or of their own will, or the courts and Congress automatically established the season tickets as a piece of property that become a part of the estate at the time of the ticket holder's death.

Imagine Mr. John Ross Ewing, an amoral oil baron from Dallas, Texas, who had a Texas-size passion for his sports teams. Mr. Ewing has season tickets to many different organizations' games. He has season tickets to the notorious Dallas Cowboys, the University of Texas Longhorns, the San Antonio Spurs, the Texas Rangers, and naturally the Green Bay Packers, considering they are America's team.<sup>111</sup> If J. R. Ewing is one thing, he's a proud American.

Each of Mr. Ewing's favorite teams has a different transfer policy.<sup>112</sup> Mr. Ewing wants to be certain that upon his death, his sons James Richard Beaumont, John Ross Ewing III, and Terrance Harper, as well as his grandson Jimmy Beaumont, will inherit his tickets. Unfortunately, Mr. Ewing is too busy

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107. See, e.g., *Pass It On Program*, *supra* note 95. See also Mohl, *supra* note 88; *2011 Transfer Check List*, *supra* note 99; *Mets Ticket Transfer*, *supra* note 102; *Football Season Ticket & Parking Transfer Guidelines*, *supra* note 104 [hereinafter *Team Policy Comparisons*].

108. See *Season Tickets*, DENVER BRONCOS, <http://www.denverbroncos.com/tickets-and-stadium/season-tickets.html> (last visited Oct. 27, 2011).

109. See *Estate Tax*, *supra* note 82. See also *2011 Transfer Check List*, *supra* note 99.

110. See *Team Policy Comparisons*, *supra* note 107.

111. Tim MacMahon, *A new America: Poll picks Packers*, ESPN DALLAS/FORT WORTH, [http://espn.go.com/dallas/nfl/story/\\_/id/7377467/dallas-cowboys-second-green-bay-packers-america-team-poll-landslide](http://espn.go.com/dallas/nfl/story/_/id/7377467/dallas-cowboys-second-green-bay-packers-america-team-poll-landslide) (last visited Mar. 10, 2012).

112. See *infra* Part IV.A-E.

running the Ewing Oil Company and does not have time to worry about all the differences between the teams' transfer policies.

#### A. *The Dallas Cowboys*

The Dallas Cowboys are one of the many organizations that offer the option to purchase a PSL when purchasing season tickets.<sup>113</sup> Under their PSL policy, a season ticket holder is able to transfer the PSL; however, it does not state if the season ticket holder is also allowed to transfer the season ticket as well.<sup>114</sup> A season ticket holder who did not purchase the PSL does not have the option to transfer the season tickets at all.<sup>115</sup> Unfortunately for Mr. Ewing and his sons, he did not purchase the PSL option, so his season tickets are non-transferrable at the time of death.

#### B. *The University of Texas Longhorns*

Mr. Ewing also has season tickets to his favorite college football team, the University of Texas Longhorns. The University of Texas provides two avenues for ticket holders to transfer or sell tickets to sporting events.<sup>116</sup> The marketplace is a place for ticket holders to sell individual football and basketball tickets for games they are unable to attend.<sup>117</sup> Ticket transferring works a little differently: season ticket holders are unable to transfer individual tickets for a particular football game, or transfer season tickets at all unless to a surviving spouse.<sup>118</sup> Here is another instance where Mr. Ewing is unable to pass on his tickets, something he purchased, to his family.

#### C. *The San Antonio Spurs*

The San Antonio Spurs do not have the option of a PSL like the Dallas Cowboys; however, the organization does have a similar option called "Charter Seat Membership."<sup>119</sup> The Charter Seat Membership gives the purchaser the same rights that a PSL holder receives.<sup>120</sup> Funds from The Charter Seat Membership helped build the Spurs' new AT&T Center and require members to pay a one-time charge, dependent upon seat location, which ranges between

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113. *Dallas Cowboys PSL*, *supra* note 56.

114. *Id.*

115. *Id.*

116. *Ticket Marketplace and StubHub*, TEXAS SPORTS, <http://www.texassports.com/sports/foundation/spec-rel/benefits-chart.html#marketplace> (last visited Mar. 10, 2012).

117. *Id.*

118. *Id.*

119. *AT&T Center FAQs*, NBA, [http://www.nba.com/spurs/news/att\\_faq\\_010702.html#3-3](http://www.nba.com/spurs/news/att_faq_010702.html#3-3) (last visited Mar. 10, 2012).

120. *Id.*

\$4,000 and \$7,500 per seat.<sup>121</sup> Like the Dallas Cowboys, the San Antonio Spurs only allow the transferring of season tickets when purchased in conjunction with a PSL or Charter Seat Membership.<sup>122</sup> Fortunately for Mr. Ewing, he decided to make the wise investment and purchase the Charter Seat Membership along with his San Antonio Spurs season tickets, so he is able to transfer his season tickets to his sons at death, or any other time.

#### *D. The Texas Rangers*

The Texas Rangers followed a similar scheme to the PSL and Charter Seat Membership that the Dallas Cowboys and San Antonio Spurs implement.<sup>123</sup> The Texas Rangers funded the building of the Rangers Ballpark in Arlington through bonded seats.<sup>124</sup> The Texas Rangers organization wanted to keep the upgrade process fair, so “season ticket purchasing privileges are non-transferable.”<sup>125</sup> However, if an “option holder wishes to sell or transfer their seat to another individual or company, a transfer fee equal to 20% of each seat option being sold is required.”<sup>126</sup> Again, Mr. Ewing did not purchase a bond to help build Rangers Ballpark, so therefore he is unable to transfer his season tickets to his sons.

#### *E. The Green Bay Packers*

Considering it is “America’s team,” the Green Bay Packers have one of the most thorough and extensive transfer policies of all sports organizations in the United States.<sup>127</sup> Under the current policy the Packers have in place, the season ticket holder may permanently relinquish any and all privileges as a ticket holder by filling out a form that transfers the season tickets at the present time or upon death.<sup>128</sup>

Additionally, the Packers organization allows for an executor of the estate to transfer the season tickets to a relative in the event that the season ticket holder died without previously filling out the form to transfer the tickets upon death.<sup>129</sup> This provides a comprehensive way to almost certainly guarantee that the season tickets will be passed down upon the death of the season ticket holder. The only time this poses a problem is when the season ticket holder

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121. *Id.*

122. *See id.* *See also Dallas Cowboys PSL*, *supra* note 56.

123. *See Season Ticket Holder Handbook*, TEXAS RANGERS, [http://texas.rangers.mlb.com/tex/ticketing/sth\\_handbook.jsp](http://texas.rangers.mlb.com/tex/ticketing/sth_handbook.jsp) (last visited Mar. 10, 2012); *AT&T Center FAQs*, *supra* note 119; *Dallas Cowboys PSL*, *supra* note 56.

124. *See Season Ticket Holder Handbook*, *supra* note 123.

125. *Id.*

126. *Id.*

127. *See Green Bay Transfer Form*, *supra* note 23.

128. *Id.*

129. *Id.*

wished to bequest the tickets to a friend and not a family member.<sup>130</sup> However, this is not a problem for the Ewing family, because Mr. Ewing hopes his sons will receive his season tickets.

Of the five teams that Mr. Ewing holds season tickets to, only two of them allow for him to pass down his season tickets to his sons. If he had not purchased a bond and his sons do not pay the 20% transfer fee, they would only inherit the season tickets from the Green Bay Packers. This is illustrative of how comprehensive the Green Bay Packers' transfer policy is. After all, if Mr. Ewing is shot, his sons will not have the time or ability to try to figure out the policies of all the various teams. They will be too busy trying to figure out "who shot J.R.?"

As this hypothetical situation illustrates, there are many problems inherent with the various PSL/Charter Seat Membership/Bond schemes that teams employ to allow transfers. Additionally, there is more confusion as to which teams allow transfers of the season tickets and how to go about transferring the tickets. Therefore, there should either be an automatic property right vested in the purchaser of the tickets so the tickets pass to heirs like regular property would, or there should be a uniform policy among all the teams when it comes to transferring season tickets.

#### V. IT ISN'T THE ANSWER TO "WHO SHOT J.R.," BUT IT HELPS

The problems that Mr. Ewing and his sons will face in the future are some that many season ticket holders could potentially encounter. There are a few ways to prevent these kinds of problems. One potential solution is for season ticket holders to receive a vested property interest in the season tickets upon purchase. Another potential solution is for Congress to pass a statute under its Commerce Clause authority that creates a uniform season ticket transfer policy for all sports organizations.

##### A. *Vested Property Interest*

A property interest is not automatically created when a season ticket holder purchases a season ticket.<sup>131</sup> Usually, if a season ticket holder pays an additional fee for a PSL, or something similar, a property interest is created.<sup>132</sup> However, if the states pass a statute that vests a property right with the season ticket holders, it will clear up the confusion that arises when trying to bequest season tickets in one's will. Each state creates its property law; therefore, each

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130. *See id.*

131. *See Davis, supra* note 13, at 252.

132. *Id.*



state's legislature would have to adopt a statute that creates the property right.<sup>133</sup>

If the states create a property right for the season ticket holder, the tickets will pass to the ticket holder's heirs regardless of whether there is a will or not. If the ticket holder dies intestate, then the estate will pass to the spouse and surviving issues.<sup>134</sup> Many bankruptcy courts have already established a property right in season tickets because teams' policies have allowed tickets to be transferred and, therefore, created a reasonable expectancy interest of a property right.<sup>135</sup> This could potentially pose a problem for teams that do not allow the transfer of season tickets. If a statute establishes the season tickets as "property," a will or intestate law would transfer the tickets, regardless of the organizations' transfer policies. A team could lobby against a statute that would vest a property right with the season ticket holders and argue that because they never intended to allow the transfer, there was not an expectancy interest.

Therefore, although this could potentially rectify the problems inherent in trying to pass season tickets to one's heirs, it would not entirely remedy the situation.

### B. Each State's Transfer Policy

If a vested property right cannot fix the innate problems with trying to transfer one's season tickets, a uniform state transfer policy based on the Green Bay Packers transfer policy possibly could. Similar to the hypothetical with Mr. Ewing, most season ticket holders have an allegiance to the teams within their own state, even if it is with multiple teams.<sup>136</sup> Like property law, the state's statutes and codes govern probate law.<sup>137</sup> Most of the confusion about who to pass on one's season tickets stems from the difference between each team's policies. If the state passes a uniform transfer policy for within that state, there will be less confusion and can lead to less litigation. In the hypothetical involving Mr. Ewing, if the Dallas Cowboys, Texas Rangers, San Antonio Spurs, and University of Texas Longhorns all employed the same uniform transfer policy, it would clear up the confusion at the time of Mr. Ewing's death.

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133. See, e.g., *Property-State Statutes*, CORNELL UNIVERSITY LAW SCHOOL, [http://www.law.cornell.edu/wex/table\\_property](http://www.law.cornell.edu/wex/table_property) (last visited Mar. 10, 2012).

134. See *Intestacy-Dying Without a Will*, WILLS-ONLINE, <http://www.wills-online.com/willsguide/intestacy.asp> (last visited Mar. 10, 2012).

135. See, e.g., *In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 502 (Bankr. W.D. Pa. 1992); *In re Platt*, 292 B.R. 12, 17 (Bankr. D. Mass. 2003).

136. See discussion *supra* Part IV.

137. See, e.g., *Your Estate Under Texas Law*, WINDOW ON STATE GOVERNMENT, [http://www.window.state.tx.us/taxinfo/taxpubs/tx96\\_127.html](http://www.window.state.tx.us/taxinfo/taxpubs/tx96_127.html) (last visited Mar. 10, 2012).

The Green Bay Packers policy should set the model for the state to adopt because it is clear, concise, and thorough.<sup>138</sup> The policy allows for season ticket holders to fill out the form while still alive, which is available on the Packers' website, to transfer the tickets currently or upon death. The policy also allows for the executor of the estate, or an individual with a power of attorney, to have the tickets transferred if the season ticket holder died without transferring the tickets.<sup>139</sup>

If the holder only has tickets within one state, this would eliminate a vast amount of confusion and litigation arising from conflicts regarding the passage of one's season tickets. However, with the global world we live in today, there are season ticket holders who have season tickets to teams in multiple states. Therefore, this would not be the best solution.

### C. Nationwide Universal Transfer Policy

The best solution to the inheritance problems with passing on one's season tickets at death would be for the United States Congress, under its Commerce Clause authority, to pass a statute that creates a nationwide universal transfer policy.

Under its Commerce Clause authority, the United States Congress has the authority to pass laws and statutes that substantially affect interstate commerce.<sup>140</sup> For example, purchasing season tickets to a team in New York when one resides in New Jersey substantially affects interstate commerce, because the season ticket holder could choose to no longer purchase those season tickets based on unfavorable probate law in New York.

The nationwide uniform transfer policy should reflect the transfer policy of the Green Bay Packers. The exact same rights would be granted to the season ticket holder, and the executor of an estate would have the ability to transfer the season tickets if the season ticket holder were to die without completing a transfer form with each team prior to death.<sup>141</sup>

With a uniform nationwide transfer policy, there would be a decrease in litigation arising from the transfer of the season tickets. The only potential litigation would be that which generally arises when dealing with estates. Furthermore, the sports team organization would no longer itself be a party to the litigation. Therefore, the best possible solution to solving the confusion for season ticket holders is to create a uniform transfer policy for all sports team organizations in the United States.

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138. *Green Bay Transfer Form*, *supra* note 23.

139. *Id.*

140. *See* United States v. Lopez, 514 U.S. 549, 558–59 (1995) (stating the three categories that Congress can regulate under the Commerce Clause: 1) the channels of interstate commerce, 2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce,” and 3) activities that substantially affect or substantially relate to interstate commerce).

141. *Intestacy-Dying Without a Will*, *supra* note 134.

## VI. CONCLUSION

When it comes to sports fans and their allegiances to their teams, there will always be disagreements. However, those disagreements should not arise between a season ticket holder and the team that he or she loves so dearly. Fans should no longer have to worry about the confusion that arises from a certain team's transfer policy. Nor should fans have to worry about transfer fees being imposed by the already money hungry team franchise. These problems could vanish with the adoption of a uniform nationwide transfer policy.

Regardless of what is looming outside the gates of the Coliseum or a ballpark, fans will always come support their teams. To insure that the fans and their families continue the tradition and rivalries, it is best that there be a uniform season ticket transfer policy that helps make that possible. If the teams will not implement a uniform transfer policy, Congress should. Gods may not answer letters, but Congressmen do.

*by Rachael Rustmann*