

Tax Trick: Why the New York Rangers Will Be the Away Team for the 2018 Winter Classic at Citi Field

By Daniel S. Greene

I. Introduction: There's no place like home?

New Year's Day 2018 will mark the tenth rendition of the National Hockey League's (NHL) Winter Classic, a nostalgic hockey spectacle that pits two NHL teams against each other in an outdoor stadium. The game returns to the Empire State for the first time since the inaugural Winter Classic that took place in snowy Orchard Park, where the Buffalo Sabres hosted the Pittsburgh Penguins in front of a crowd of more than 71,000 fans.¹ Citi Field, home of Major League Baseball's (MLB) New York Mets, will welcome hockey fans for an all-New York matchup between the Sabres and the Manhattan-based New York Rangers.

"Since New York City is the only city in New York State with a population of one million or more, the law in practice states that an arena located in New York City that is home to both NHL and National Basketball Association (NBA) teams is exempt from property taxation if both teams play all of their home games at the facility."

While this will be the Sabres' second outdoor game experience, the 2018 Winter Classic will be the Rangers' fourth in the past seven years.² Along with the announcement for the outdoor game, NHL Commissioner Gary Bettman announced that the Sabres, which is based almost 400 miles from Citi Field, which is located in Queens, will be the designated "home team," despite the Rangers being the logical geographic choice.³ This was a surprising revelation until it was reported that the Rangers were also the "away team" for the 2014 Stadium Series games at Yankee Stadium against the New York Islanders and New Jersey Devils.⁴ Perhaps some thought that the NHL was just being nice to the less popular Islanders and Devils, but in fact the NHL was doing itself and the owners of the Rangers a favor:

II. The Tax Trick

The "mystery" behind the Rangers not being the 2018 Winter Classic home team can be traced back to 1982 when Article 4, §429 of the New York Real Property Tax Law was enacted. This statute states:

Real property within a city having a population of one million or more, used

by both a professional major league hockey team which is a member of the National Hockey League and a professional major league basketball team which is a member of the National Basketball Association to play their home games *shall be exempt from taxation* to the extent said taxes are the obligation by lease or otherwise of the owners of franchises for such teams, provided that such owners enter into a written agreement with the chief executive officer of the municipality in which such property is located *to play their home games within such municipality for a period of at least ten consecutive years.* The tax exemption provided herein shall be granted to real property being used, in whole or in part, for the aforesaid purposes on the date such agreement is executed and shall apply to taxes which become due and payable after the aforesaid agreement is executed and shall continue with respect to such property *as long as both of said teams play their home games therein and no longer.* Such exemption shall not apply with respect to any improvement to such property made after the date such agreement is executed which improvement is not used for the provision of facilities or services related to sports, entertainment, expositions, conventions or trade shows. *If one or both of said teams shall cease to play their home games in said property at any time, the tax exemption provided herein shall cease immediately and such property shall immediately be restored to the tax rolls and thereupon become subject to taxation and shall be taxed pro rata for the unexpired portion of the taxable year.*⁵

Since New York City is the only city in New York State with a population of one million or more, the law in practice states that an arena located in New York City that is home to both NHL and National Basketball Association (NBA) teams is exempt from property taxation if both teams play all of their home games at the facility. If either the NHL or NBA team plays even one home game elsewhere, the tax exemption will cease and the arena owners will be subject to taxation and taxed pro rata for that taxable year. Further, the owners must have entered into a

written agreement with the city to play their home games for a period of at least 10 consecutive years. Madison Square Garden (MSG or the Garden), where the Rangers play alongside the NBA's New York Knicks, clearly fits these requirements. In fact, MSG is the only current indisputable fit⁶ since the law was specifically created for the arena.

"The bill was drafted during a perfect storm for MSG with a disadvantageous economic climate for the city, the newly built Byrne Meadowlands Arena across the river in New Jersey seeking an NHL team, and desperation to keep the Rangers and Knicks in the city."

III. Legislative History: Koch's Botch

Back in the early 1980s, New York City was still regrouping after the fiscal crisis of the mid-1970s and the Rangers and Knicks owners, Gulf and Western Industries, Inc. (who then owned The Madison Square Garden Corporation (MSG Co.)), were threatening to move the Knicks to Long Island and the Rangers to New Jersey due to high taxes and the cost of unionized labor.⁷ State lawmakers took this as a serious threat, stating at the time "that unless action is taken, including real property tax relief and the provision of economical power and energy, the loss of the teams is likely."⁸ Thus, the tax break was an incentive for the local teams to stay put and bring economic growth to the city.⁹ It was reported that the law was intended to give the MSG owners a \$5 million annual tax break per for 10 years.¹⁰ The agreement seemed like a good deal for both parties, as the city's monetary loss on the tax abatement would cost much less than having the Garden abandoned with the city responsible for operating it.¹¹

However, the lawyers creating this section of the New York Real Property Tax Law drafted the legislation without a "sunset provision."¹² Without a "sunset date" inserted to provide an end date for the tax exemption, the abatement is read as lasting forever.¹³ On the one hand, former New York City Mayor Edward I. Koch said that the law was only intended to apply for 10 years.¹⁴ On the other hand, Hadley W. Gold, New York City's First Assistant Corporation Counsel at the time, helped draft the law and later stated that the exemption was not written to last only 10 years.¹⁵ Either way, the exemption endured for 35 years, and New York State lost approximately \$450 to \$500 million in property taxes over this period. When the Rangers played at Yankee Stadium in 2014 the exemption was worth \$17.3 million, and this year it is valued at approximately \$42 million.¹⁶

IV. Dropping the Gloves: Lawmakers Attempt to Repeal the Law

The fact that a multi-billion dollar corporate entity, MSG Co., which owns the Rangers, Knicks, MSG, and Radio City Music Hall, among other things, receives such a large tax exemption has upset many local politicians, leading to efforts in the New York State legislature to repeal the law.¹⁷ Current New York City Mayor Bill de Blasio supports repealing the exemption, stating, "[W]e can't ask the taxpayers to look the other way while a very well-endowed corporation, a profitable corporation, receives a tax cut for a piece of land that is among the most valuable on earth."¹⁸

However, despite a committee in the state Assembly favorably reporting a bill to revoke the law in 2014,¹⁹ New York State Governor Andrew Cuomo appears to have no interest in doing so.²⁰ This may be due to Cuomo's ties with Cablevision,²¹ whose CEO before its sale in June 2016 was James Dolan, the Executive Chairman of MSG Co. who also oversees the Knicks' and Rangers' daily operations. There is also the argument that elimination of the tax exemption would be unfair, since the new homes of the Mets (Citi Field), Yankees (Yankee Stadium), and Nets (Barclays Center) received large subsidies.²²

The NHL is also saving itself some money by having the Sabres as the home team. As part of the Winter Classic, the NHL promises to reimburse the "host team" for the lost date at its home arena.²³ While the Rangers and Sabres each draw approximately 18,000 fans per game,²⁴ the Sabres charge much less for tickets and thus require a significantly reduced reimbursement compared with what the Rangers would command.²⁵

V. Conclusion: Will the Sun Ever Set?

Obviously there are conflicting opinions as to whether the law was intended to last this long. The bill was drafted during a perfect storm for MSG with a disadvantageous economic climate for the city, the newly built Byrne Meadowlands Arena across the river in New Jersey seeking an NHL team, and desperation to keep the Rangers and Knicks in the city. The deadline imposed on the Rangers to inform the Meadowlands if they planned on moving to New Jersey no doubt put pressure on both sides to reach an acceptable agreement quickly.²⁶ Clearly some of today's key public officials, including the Mayor of New York, wish that a sunset provision had been included in the enacted legislation. If such a provision had been incorporated, the matter would now be moot or, at the very least, the legislature would have had to reauthorize the tax benefit for a specified number of years each time it "sunsetted" and could choose not to reauthorize the law at its discretion.

The tax benefit seemingly accomplished its objectives for both sides as the Rangers and Knicks stayed in New York, and MSG Co. saved millions of dollars. Whether

the teams would have vacated the arena and city by now without the perpetual tax benefit is unknown. However, there is an argument to be made that the law ran its course and should be repealed. As of 2017, the Rangers are the most valuable team in the NHL at \$1.25 billion,²⁷ and the Knicks are the most valuable team in the NBA at \$3.3 billion,²⁸ demonstrating that MSG Co. may not need such tax benefits. Further, it is highly doubtful that either team would move out of the refurbished arena and to another city, since the league-leading value of each franchise would likely drop if it was not located in Manhattan.²⁹ Still, while it is a fair argument that the city could use this extra money for “more important” fiscal purposes, the economic benefit that MSG Co. and its tenants bring to the city’s economy is significant.³⁰ Policymakers must weigh the value of those benefits and whether the property tax law plays a key role in keeping those benefits accruing to the city, against other potential uses for those funds.

While it does not appear that the tax exemption will be lifted anytime soon, do not expect the fight to end.

Endnotes

1. See Matt Higgins, *Winter Wonderland for Crosby and N.H.L.*, N.Y. TIMES, Jan. 2, 2008, available at <http://www.nytimes.com/2008/01/02/sports/hockey/02hockey.html?mcubz=1>.
2. The Rangers played the 2012 Winter Classic against the Philadelphia Flyers at Citizens Bank Park, home of MLB’s Philadelphia Phillies, and played the New York Islanders and New Jersey Devils in two separate games during the 2014 Stadium Series at Yankee Stadium, home of the New York Yankees. See Arthur Staple, *2018 NHL Winter Classic likely to be held at Citi Field with Rangers vs. Sabres*, sources say, NEWSDAY, Mar. 15, 2017, available at <http://www.newsday.com/sports/hockey/rangers/2018-nhl-winter-classic-likely-to-be-held-at-citi-field-with-rangers-vs-sabres-sources-say-1.13268887>.
3. The NHL said that the Sabres were named the home team for “a variety of factors.” See Jon Campbell, *Tax break for MSG means Buffalo Sabres will be Winter Classic home team*, DEMOCRAT & CHRONICLE, May 10, 2017, available at <http://www.democratandchronicle.com/story/news/politics/albany/2017/05/10/winter-classic-tax-breaks-madison-square-garden-new-york-rangers-buffalo-sabres/101509324/>.
4. See Jeff Z. Klein, *Rangers on Road in the Bronx? Money May Be Why*, N.Y. TIMES, Jan. 24, 2014, available at <https://www.nytimes.com/2014/01/25/sports/hockey/rangers-on-road-in-the-bronx-money-may-be-why.html>.
5. RPTL § 429 (emphasis added).
6. It is unclear as to whether this law would apply to the Barclays Center, home to the NHL’s New York Islanders and the NBA’s Brooklyn Nets. Specifically, it is unclear as to whether there is an agreement between the arena owners and the city to play in the city for at least 10 years. The Islanders signed a 25-year deal with the Barclays Center, but there is clause that allows either party to opt out of the agreement by January 1, 2018. Thus, the Islanders’ tenure in Brooklyn could be less than 10 years. See Jim Baumbach and Robert Brodsky, *Barclays Center starts process toward possible opt-out of Islanders*, sources say, NEWSDAY, May 8, 2017, available at <http://www.newsday.com/sports/hockey/islanders/barclays-center-starts-process-toward-possible-opt-out-of-islanders-sources-say-1.13583598>. While the Brooklyn-based arena is one of the top tax exempt properties in the United States, it does not appear that the exemption is due to RPTL § 429. See Roxana Poenar, *NYC Takes 15 Spots in the Top 20 Exempt Properties in the US*, PROPERTY SHARK (Sept. 13, 2017), available at <https://www.propertyshark.com/Real-Estate-Reports/2017/09/13/nyc-tax-exempt-properties-us/>. Further complicating the issue is the fact that Mikhail Prokhorov owns the Nets and Barclays Center, and the Islanders is separately owned by Jon Ledecky and Scott Malkin, while the Rangers, Knicks, and MSG are all owned by The Madison Square Garden Company. See Jim Baumbach, Paul LaRocco and Michael Gormley, *Islanders, Mets owners in talks with MSG-backed group to build at Belmont*, sources say, NEWSDAY, Feb. 24, 2015, available at <http://www.newsday.com/sports/hockey/islanders/islanders-mets-owners-in-talks-with-msg-backed-group-to-build-at-belmont-sources-say-1.13174962>; see also Josh Kosman, *Islanders owners looking to sell 15% stake, can’t find any takers*, N.Y. POST, June 19, 2017, available at <http://nypost.com/2017/06/19/islanders-owners-looking-to-sell-15-stake-cant-find-any-takers/>.
7. Allen G. Schwartz, who represented New York City Mayor Edward I. Koch during the negotiations, stated: “It didn’t matter if the teams played in Madison Square Garden or across the river or in Nassau. When all was said and done, the consensus was, we had to keep them in the Garden.” See Joyce Purnick, *Metro Matters, No Taxes, No Foul at the Garden*, N.Y. TIMES, Nov. 21, 2002, available at <http://www.nytimes.com/2002/11/21/nyregion/metro-matters-no-taxes-no-foul-at-the-garden.html?mcubz=1>; see also Gerald Eskenazi, *2 N.H.L. Owners Say Rangers May Move to New Jersey in ‘82*, N.Y. TIMES, Nov. 7, 1981, available at <http://www.nytimes.com/1981/11/07/sports/2-nhl-owners-say-rangers-may-move-to-new-jersey-in-82.html>. The NHL’s Colorado Rockies eventually moved to the Byrne Meadowlands Arena in New Jersey in 1982 and was renamed the New Jersey Devils. See Gerald Eskenazi, *Sports of the Times; Devils Move in at Meadowlands*, N.Y. TIMES, July 31, 1982, available at <http://www.nytimes.com/1982/07/31/sports/sports-of-the-times-devils-move-in-at-meadowlands.html?mcubz=1>.
8. See New York City Independent Budget Office, *Budget Options for New York City* (March 2017), available at http://www.ibo.nyc.ny.us/iboreports/budget_options_march_2017.pdf, at p. 57. Further, at the time, MSG officials believed that the Rangers could move and still generate a large income due to the growing importance of cable revenue. See Eskenazi, *2 N.H.L. Owners Say*, *supra* note 7. This was especially important, since Gulf and Western reportedly lost \$5 million on the two teams in 1981. See George Vecsey, *Sports of the Times; The Mayor and the Ghost*, N.Y. TIMES, Feb. 17, 1982, available at <http://www.nytimes.com/1982/02/17/sports/sports-of-the-times-the-mayor-and-the-ghost.html>.
9. New York City officials wanted Madison Square Garden to remain in the city for two basic reasons: “Fear of the psychological impact in losing two more major-league teams [after baseball’s Giants and Dodgers, and football’s Giants left the state] and concern over the loss of business in hotels, garages, restaurants and other services that the arena generates.” See Maurice Carroll, *Deal Emerging to Keep Garden From Closing*, N.Y. TIMES, Apr. 3, 1982, available at <http://www.nytimes.com/1982/04/03/nyregion/deal-emerging-to-keep-garden-from-closing.html?mcubz=1>.
10. See E.J. Dionne Jr., *Madison Square Garden Given State Tax Breaks*, N.Y. TIMES, July 3, 1982, available at <http://www.nytimes.com/1982/07/03/nyregion/madison-square-garden-given-state-tax-breaks.html?mcubz=1>.
11. See Randall V. Berlage, *Knicks, Rangers to stay at Garden with City tax break*, UNITED PRESS INTERNATIONAL, Apr. 23, 1982, available at <http://www.upi.com/Archives/1982/04/23/Knicks-Rangers-to-stay-at-Garden-with-City-tax-break/3353388386000/>.
12. “Sunset Provision” is defined as a “provision or condition in law that designates a point in time when that law will no longer be in effect.” See BLACK’S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2d ed.), available at <http://thelawdictionary.org/sunset-provision/>.

13. Interestingly enough, George Vecsey, the legendary long-time sports columnist for the *New York Times*, suggested at the time that a hypothetical agreement between Gulf and Western and the city should have a guarantee that the Knicks and Rangers would not leave New York City for about 99 years. See Vecsey, *supra* note 8.
14. Koch, who was mayor from 1978 to 1989, later stated, “[i]t was not only my intent—I went to bed at night believing it was a 10-year abatement.” See Furnick, *supra* note 7. While Koch claims that “something happened on the way to the forum that [he] was unaware of,” he has taken responsibility for the agreement since it occurred during his tenure as mayor. *Id.*
15. Not only did Gold believe that agreement accurately reflected the city’s intent, but Richard H. Zahnd, who was then general counsel to Madison Square Garden, also understood the law to be applied for as long as both teams played in the city. *Id.*
16. The value of the exemption grew due to the recent renovations to the arena. See Campbell, *supra* note 3.
17. See Christian Red, *Madison Square Garden still exempt from property tax*, N.Y. DAILY NEWS, May 11, 2016, available at <http://www.nydailynews.com/sports/basketball/knicks/madison-square-garden-exempt-property-tax-article-1.2634080>; see also Weprin, *End Madison Square Garden \$17M Tax Exemption*, QUEENS GAZETTE, Oct. 2, 2013, http://www.qgazette.com/news/2013-10-02/Features/Weprin_End_Madison_Square_Garden_17M_Tax_Exemption.html; see also N.Y. S. B. S7362 (N.Y. 2010), available at <https://www.nysenate.gov/legislation/bills/2009/S7362>; see also N.Y. H.R. B. A3081 (N.Y. 2016), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A3081&term=2017&Memo=Y.
18. See Mitch Abramson, *Analysis: Bill passes to revoke lucrative tax breaks for Madison Square Garden Company*, N.Y. DAILY NEWS, May 29, 2014, available at <http://www.nydailynews.com/sports/basketball/analysis-bill-passes-revoke-lucrative-tax-breaks-madison-square-garden-company-article-1.1810750>.
19. *Id.*
20. *Id.*; see also Nathaniel Vinton and Christian Red, *Tax break saves MSG chairman Dolan \$48.5M this fiscal year*, N.Y. DAILY NEWS, available at <http://www.nydailynews.com/sports/basketball/knicks/tax-exemption-saves-msg-chairman-dolan-48-5m-fiscal-yr-article-1.2589753>.
21. As of 2013, Cuomo was the top individual recipient of Cablevision donations, receiving \$359,150 as governor and \$50,100 as attorney general. See Ken Lovett, *Gov. Cuomo Opposes Revoking Madison Square Garden Property Tax Credit*, N.Y. DAILY NEWS, Apr. 16, 2013, available at <http://www.nydailynews.com/blogs/dailypolitics/gov-cuomo-opposes-revoking-madison-square-garden-property-tax-credit-blog-entry-1.1694293>. Further, State Assemblyman David Weprin alleged that MSG “paid more lobbyists than taxes” to bolster its interests in this issue. See Vinton and Red, *supra* note 20.
22. See Vinton and Red, *supra* note 20; see also Jim Dwyer, *32-Year Streak at the Garden: No Taxes Paid*, N.Y. TIMES, May 20, 2014, available at <https://www.nytimes.com/2014/05/21/nyregion/32-year-streak-at-the-garden-no-taxes-paid.html>.
23. See Campbell, *supra* note 3.
24. *Id.*
25. In 2013, the average price for a Rangers ticket was \$232.93, while the average price for a Sabres ticket was \$139.53. See *Most Expensive NHL Teams in 2013*, FORBES, available at <https://www.forbes.com/pictures/fjlg45mhf/14-buffalo-sabres-avg-price-139-53/#4cb719325c69>. In 2014, it was estimated that the NHL saved more than \$1 million by having the Rangers be the away team in both Stadium Series games at Yankee Stadium against the Devils and Islanders. See Klein, *supra* note 4.
26. The Rangers had to commit to playing at the Meadowlands by April 22, 1982. See *City Tax Breaks for Rangers Expected*, N.Y. TIMES, Feb. 25, 1982, available at <http://www.nytimes.com/1982/02/25/sports/city-tax-breaks-for-rangers-expected.html?mcubz=1>.
27. See Bernie Augustine, *Rangers top Forbes’ list of most valuable NHL franchises*, N.Y. DAILY NEWS, Nov. 30, 2016, available at <http://www.nydailynews.com/sports/hockey/rangers/rangers-top-forbes-list-valuable-nhl-franchises-article-1.2892930>.
28. See Kurt Badenhausen, *The Knicks and Lakers Top the NBA’s Most Valuable Teams 2017*, FORBES, Feb. 15, 2017, available at <https://www.forbes.com/sites/kurtbadenhausen/2017/02/15/the-knicks-and-lakers-head-the-nbas-most-valuable-teams-2017/#228c80857966>.
29. While the New York City Council told MSG Co. that it needs to vacate the arena by 2023 so the redevelopment of Pennsylvania Station, which sits underneath the arena, can begin, MSG should be able to find a new home within the city if need be. See Charles V. Bagli, *Madison Square Garden Is Told to Move*, N.Y. TIMES, July 24, 2013, available at <http://www.nytimes.com/2013/07/25/nyregion/madison-square-garden-is-told-to-move.html?mcubz=1>. While the Dolans do not appear to be taking this deadline seriously, some of have suggested that the arena can be moved to the other side of Eighth Avenue and into the James A. Farley Post Office Building. See Michael Kimmelman, *How to Transform Penn Station: Move the Garden*, N.Y. TIMES, Jan. 12, 2016, available at <https://www.nytimes.com/2016/01/13/arts/design/how-to-transform-penn-station-move-the-garden.html?mcubz=1>; see also Michael Kimmelman, *Penn Station Reborn*, N.Y. TIMES, Sept. 30, 2016, available at <https://www.nytimes.com/interactive/2016/09/30/opinion/penn-station-reborn.html?mcubz=1>. Further, New York City is arguably the biggest hub and most profitable location for professional sports in North America, having the most valuable collection of sports franchises of any city in the United States, thus making it foolish for the Rangers and/or Knicks to move away. See Cork Gaines, *New York beats out LA and Chicago with the most valuable collection of pro sports teams*, BUSINESS INSIDER, May 25, 2017, available at <http://www.businessinsider.com/new-york-sports-value-2017-5>.
30. See Marc Beja, *Rangers, Knicks playoff games mean millions for city businesses*, NEWSDAY, Apr. 22, 2012, available at <http://www.newsday.com/news/new-york/rangers-knicks-playoff-games-mean-millions-for-city-businesses-1.3675979?view=print>.

Daniel S. Greene is a practicing attorney based in Syracuse and provides commentary on ice hockey and its intersection with the law on his legal blog, *The Hockey Blawg* (www.thehockeyblawg.com). He graduated from the Syracuse University College of Law in May 2016, where he served as an Associate Notes Editor for the *Syracuse Law Review* and President of the Entertainment and Sports Law Society. During law school, Daniel had his article titled “From the Ice to the Courtroom: Analyzing the Relationship Between Professional Ice Hockey and Tort Liability,” published in the Spring 2016 issue of *The Sports Lawyers Journal*, and was a finalist at the 2015 Hockey Arbitration Competition of Canada. Before law school, he served as the Coordinator of Hockey Operations for Union College’s Division I men’s ice hockey program.