



### What Will the Revised Casino Host Fee Look Like?

**Summary:** The State Supreme Court struck down part of Pennsylvania’s 2004 slot machine law that outlined required payments to be made by casinos to their host counties and municipalities. The decision was stayed for 120 days, which means the General Assembly has until late January 2017 to come up with new legislation governing casino payments to the communities in which they are located.

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Recently, in addition to presenting the City’s 2017 operating and capital budgets, the Mayor of Pittsburgh announced that the City had reached an agreement with the Rivers Casino for a payment next year of \$10 million, a sum integral to the City’s operating plan. The payment agreement represents what would have been the casino’s local share assessment (host fee) as required by law prior to the Supreme Court’s decision to strike down (or sever) the language outlining how casinos were to pay host fees to the counties and municipalities where they were located.

The section of the law, Act 71 of 2004, 1403(c) states that casinos (there are three categories: category 1 being connected to a horse racing facility, category 2 being a stand-alone casino, and category 3 being a resort casino) are to pay their host counties and municipalities a portion of their gross terminal revenue (GTR). Rivers, a category 2 facility in a County of the Second Class (Allegheny) and in a City of the Second Class (Pittsburgh) has to pay 2 percent of its GTR to the County and 2 percent, or \$10 million, whichever is greater, to the City. Based on 2015 audited financials for 2015, the County received \$5.4 million and the City \$10 million.

It was this latter language—requiring a percentage or a minimum dollar amount to a municipality—that prompted Mt. Airy Casino, a category 2 facility in a County of the Fourth Class (Monroe) and a Township of the Second Class (Paradise) to bring a lawsuit. The casino argued that the section of the law violated the Pennsylvania Uniformity Clause “...because [the municipal requirement] imposes grossly unequal local share assessments upon similarly situated slot machine licensees”.

The Supreme Court of Pennsylvania, which has exclusive jurisdiction over claims stemming from Act 71 by virtue of language in the statute, found merit in the casino’s claims (specifically the argument that depending on whether a casino’s GTR was above or below \$500 million their municipal host fee would result in differing taxation). Indeed, the Court ruled in favor of the Mt. Airy Casino and severed all of the Act’s language at 1403(c)(2) and (3) outlining how counties and municipalities were to receive host fees and how much.

The Court noted that “...our decision may significantly affect many counties and municipalities that have ordered their affairs in reliance upon Section 1403” and thus stayed their decision for 120 days to “...afford the General Assembly an opportunity to evaluate potential remedial measures”.

To date, nothing has passed the General Assembly, and, given existing language in the Pennsylvania Rules of Civil Procedure, specifically Rule 106, which outlines periods of time referred to in rules, the 120 day stay should be up on January 26<sup>th</sup>. In the meantime, counties and municipalities are obviously worried and wondering what will emerge from the General Assembly. Besides the arrangement by Pittsburgh and Rivers Casino, published reports show that Penn National (category 1) has come to an agreement with Dauphin County for a \$6.5 million payment and Mohegan Sun (category 1) with Plains Township for \$3 million.

So what is the long term solution? In the Supreme Court opinion it was noted the Mt. Airy wanted “...to strike the \$10 million minimum local share assessment, leaving a uniform 4% tax rate for all casinos [casinos in Philadelphia pay 4% to the consolidated city/county]”. The state Department of Revenue wanted to keep the \$10 million minimum.

The language for host fees for counties (2% of GTR) was not challenged, but it was likewise severed by the decision, so it could be seen as an example of how Mt. Airy’s recommendation would satisfy uniformity. However, it would not guarantee a minimum \$10 million to the host municipalities. A flat \$10 million requirement with no reference to an alternative percentage payment would seem to treat all casinos the same, but it appears from notes in the Supreme Court decision that they disagreed with the Department of Revenue’s argument that the host fee was more like an excise or privilege tax.

If revised legislation keeps the County share at 2 percent and alters the municipal share to 4 percent, then Pittsburgh would get slightly more than \$10 million from Rivers based on the \$5.4 million (at 2 percent of GTR) Allegheny County received.

The General Assembly is out of session and reconvening in January. It is quite clear that one of the top priorities is to design a fix for the host fee language that will be acceptable to the Court. There is some leeway. But if the 120 day stay lapses, then host counties and municipalities will be even more concerned. For whatever time the fee is in limbo there can be no required payment as it is doubtful the fee can be levied retroactively. Thus, some urgency by the General Assembly is needed.

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