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Don't allow 'jock tax' ruling to strap Pittsburgh

The City of Pittsburgh should cut its losses and not appeal a Common Pleas Court ruling that found its "jock tax" unconstitutional, concludes an analysis by the Allegheny Institute for Public Policy.

Then, the city must cut its budget to help offset the loss of the proceeds previously garnered by the tax, says Eric Montarti, research director at the Pittsburgh think tank.

"This will be made more difficult given that the preliminary budget adds over 100 new full-time equivalent employees, which will add to pension and health care expenses in the future," Montarti cautions (in *Policy Brief Vol. 22, No. 38*).

The tax on athletes is formally known as the "non-resident sports facility usage fee." The state Legislature authorized the fee for cities of the second class (Pittsburgh is the only one in the commonwealth) in Act 222 of 2004.

In a nutshell, non-residents engaging in an athletic event or other performance at a facility that received public dollars for construction or maintenance are subject to it. Think PNC Park, Acrisure Stadium and PPG Paints Arena.

The act permits a flat dollar amount or a percentage not to exceed 3 percent of earned income. Those subject to the fee are exempt from the 3 percent combined earned income tax levied by the city and Pittsburgh Public Schools.

The city chose the 3 percent fee option.

"First collected in 2005, revenues through 2021 averaged $3.9 million [a year]," Montarti notes. "The highest year of collections was 2015 with $5.9 million; the lowest (besides the initial year) was 2006 with $2.4 million."

In COVID-affected 2020, collections were $2.8 million.

But in 2019, a consortium of professional sports leagues and athletes filed a lawsuit against the city. At the crux of the suit was the contention that the "fee" was a "tax" by any other name, a tax administered unequally across those subject to it and, thus, a violation of the Pennsylvania Constitution's taxation uniformity mandate.

The judge agreed and permanently enjoined the city from collecting it. While it remains unclear if any refunds are due, should they be, it could create a conundrum for the city; more than $70 million has been collected since 2005.

"From where would the money come?" asks Montarti. Might taxes on others have to be implemented and/or raised to cover the annual shortfall? Is there any practicality in attempting to collect the earned income tax from these athletes?

Given the relative paucity of the annual take from the "jock tax," even if the revenue evaporated and there were no spending reductions, the city still would run positive operating results each year through 2027 and have a sizeable fund balance at the end of that year.

"But," Montarti cautions, "as a percentage of spending, the fund balance would fall below 10 percent as in 2026 and 2027, a threshold required by city ordinance.

"Thus, the city should find spending reductions to offset the elimination of the [tax]," he says, noting that adding city employees (as the latest preliminary budget does) should not be an option.

"This is the wrong direction to go given Pittsburgh's stagnant population count and its dramatically higher employee-to-population ratio compared to better-performing cities," Montarti concludes.

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