



Pittsburgh should go forward without the “jock tax”

Summary: An Allegheny County Common Pleas judge struck down Pittsburgh’s “non-resident sports facility usage fee” (fee) in September. This was due to a 2019 lawsuit filed by professional sports leagues and athletes who were subject to what became known as the “jock tax.”

The Pennsylvania General Assembly authorized the fee for cities of the second class in Act 222 of 2004. Non-residents who engage in an athletic event or other performance at a facility that received public dollars for construction or maintenance are subject to it. The act permits a flat dollar amount or a percentage not to exceed 3 percent of earned income “attributable to the usage of the facility” 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. Pittsburgh’s Department of Finance regulations outline those subject to the fee, payment dates and enforcement. First collected in 2005, revenues through 2021 averaged \$3.9 million. The highest year was of collections was 2015 with \$5.9 million; the lowest (besides the initial year) was 2006 with \$2.4 million. In the COVID-affected year of 2020, collections were \$2.8 million. The list of publicly funded facilities in the city ordinance where non-residents would be subject to the fee includes PNC Park, Heinz Field (now Acrisure Stadium), PPG Paints Arena, the David L. Lawrence Convention Center, Stage AE and the Petersen Events Center.

The crux of the lawsuit was over whether the fee is really a tax. The treatment of National Football League players as opposed to those in other professional sports leagues (whether duty days or total games played within Pittsburgh was counted) was also an issue.

Act 222 calls it a “fee,” but that act also created the payroll preparation tax and altered the occupational privilege tax in amending Act 511 of 1965. The city’s code of ordinances places the fee under “business related fees” and city budgets, monthly, quarterly and year-end reports have always used the word “fee.” However, all include the fee with tax revenues from property, earned income and others.

Further complicating the issue is that another state statute directs that two-thirds of the revenue from the fee is to reduce the amount of the amusement tax on nonprofit performing arts events.

A 1953 Pennsylvania Supreme Court decision established that “taxes raise revenue for general public purposes” while fees (a license fee in that ruling) had to apply to a business subject to supervision and regulation by the licensing authority. Payment of the fee was a condition to pursue the occupation and the fee had to reimburse the licensing authority.

The Common Pleas Court held in the Sept. 21 ruling that no licensing authority collects the fee, the use of the publicly funded venues is not predicated on payment of the fee and the revenue went to the city’s general fund. Thus, the fee “seems to fit [the 1953 case’s] description of a tax.” The ruling resulted in “an injunction ... barring any action by the City of Pittsburgh to assess, impose, or collect the Facility Fee.”

It is not clear if refunds would be due for past payments. Through August of this year, \$3.7 million has been collected, amounting to 85 percent of the budgeted amount. Cumulative collections from 2005 would be \$70.1 million. If the city was ordered to refund all collections, including interest, from where would the money come?

As of Oct. 18 there was no indication the city has appealed the ruling. The fee and revenue from it are contained in the city’s 2023 preliminary operating budget and five-year forecast posted online on Sept. 30. There are some who might argue that the city should appeal because there should be some levy that falls upon visiting athletes and performers since the facilities were built with public subsidies. Or that the city needs the money and without it, some other tax or fee, likely to fall upon residents, might have to increase to fill the gap.

On the other hand, a higher court might uphold the ruling. Note, too, according to the state’s Taxation Manual, taxes on occupancy, residential construction and off-track wagers have been struck down. The cost of pursuing legal action to collect revenue from people who spend a limited amount of time at the facilities might be excessive and that money and time might be better served on collecting delinquent taxes.

Act 222 contains language stating that if a court should strike down the fee those non-residents subject to it would no longer be exempt from the earned income tax. But enforcement of that provision could prove problematic due to crediting provisions in Act 511 where non-residents pay such a tax in their home municipality.

Until there is an indication of the city’s course of action, the budget and forecast show annual revenue from the fee never exceeding \$5 million, and, as a percentage of total revenue, never exceeding 1 percent. If the revenue went away and there were no spending reductions, the city would still run positive operating results each year through 2027 and have a sizeable fund balance at the end of that year. But 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 fee. 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. 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.

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