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## Opportunity in ‘jock tax’ demise

By Colin McNickle

There’s a counterintuitive question for Pittsburgh officials in the aftermath of a second straight court ruling that struck as unconstitutional the city’s “jock tax,” says Eric Montarti, research director at the Allegheny Institute for Public Policy:

Sans a successful state Supreme Court appeal, where will the city – instead of raising taxes -- find budget economies to offset the loss of millions of dollars the tax brought in over two decades?

The Pennsylvania Commonwealth Court recently upheld an Allegheny County Common Pleas Court ruling that struck down what’s formally known as Pittsburgh’s “non-resident sports facility usage fee.”

Professional sports leagues and athletes who were subject to this so-called “jock tax” originally filed a lawsuit in 2019. The tax applies to events at PNC Park, Acrisure Stadium, PPG Paints Arena, the David L. Lawrence Convention Center, Stage AE and the Peterson Events Center.

Per the Pennsylvania Legislature’s 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 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.

As Montarti reminds (in *Policy Brief Vol. 24, No. 5*), the city chose the 3 percent fee option, passed an ordinance in 2004 and amended it in 2016.

From January through November 2023, the city collected \$5.7 million in fee revenue (current year, prior years and penalties and interest). A Department of Finance document states the city’s appeal of the Common Pleas Court ruling in October 2022 “automatically stayed the decision and reinstated the [fee] for at least the duration of the appeals process.”

The original Common Pleas Court ruling held that the fee was a tax by any other name and violated the state Constitution’s Uniformity Clause. Not only did the appellate court side with the lower court’s ruling, it also found that the trial court did not err in issuing an injunction against the city collecting such an unlawful tax.

“Now the question becomes whether the city will appeal the ruling to the state Supreme Court,” Montarti says.

Furthermore, he adds, it’s possible the General Assembly “could make changes to the 2004 statute in light of the lawsuit and a final ruling, such as authorizing a fee that applies to all residents and non-residents who earn income” from the publicly funded facilities.

Montarti notes that Pittsburgh’s 2024 operating budget counts \$4.4 million in fee revenue for this year and the average for the following four years is forecast at \$4.7 million.

“If the ruling is appealed, the Supreme Court upheld it, the fee was revoked and the city made no spending reductions, there would still be a positive operating budget result this year,” the think tank scholar says.

But, he notes, the “city’s ending fund balance as a percentage of spending would fall below the minimum 10 percent required by city ordinance in 2027 and 2028.”

There also could be refunds.

“If the fee goes away, that affects the City of Pittsburgh’s finances directly and there should not be an effort to increase existing taxes or fees to make up the loss of the revenue,” Montarti stresses.

And that rationale is quite sound. For Montarti reminds that in pre-pandemic 2019, Pittsburgh spent 51 percent more per capita than the benchmark city; its spending level was higher for many years before.

“The city’s focus needs to shift to reducing spending or holding the line of future spending growth,” he says.

“Note that audited financial data on the city’s governmental funds shows spending per resident grew 33 percent from 2013 through 2022, which was greater than the 22 percent increase in the Northeast Consumer Price Index in those years,” Montarti adds.

“The rapid spending growth, together with already higher than average spending per capita, means the city should be scouring operations for savings and improving efficiencies in the delivery of services to taxpayers—a far better approach to achieving its fiscal goals.”

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