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## Is Pittsburgh's 'jock tax' soon to be history?

**Summary:** The Pennsylvania Commonwealth Court upheld an Allegheny County Common Pleas Court ruling that struck down Pittsburgh's "non-resident sports facility usage fee" (fee). Professional sports leagues and athletes who were subject to what became known as the "jock tax" originally filed a lawsuit in 2019.

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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, passed an ordinance in 2004 and amended it in 2016. Pittsburgh Department of Finance regulations outline those subject to the fee, payment dates and enforcement. Publicly funded facilities include PNC Park, Acrisure Stadium, PPG Paints Arena, David L. Lawrence Convention Center, Stage AE and the Peterson Events Center.

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."

In its ruling on the appeal, Commonwealth Court considered "whether the [fee] violates the Uniformity Clause (of the Pennsylvania Constitution) and, assuming this Court agrees that the [fee] is unconstitutional, whether the trial court erred in issuing an injunction, as the unconstitutional language could have been severed from [the city's] Ordinance."

The ruling summarized the Common Pleas decision which held "the Uniformity Clause is violated where the method used to compute the tax produces arbitrary, unjust, or

discriminatory results.” As noted in *Policy Brief Vol. 22, No. 38*, the court determined that the fee was more like a tax based on a 1953 case.

On the first point, the Commonwealth Court ruled “it is clear that the City has effectively imposed a 3% [earned income tax] on nonresidents who derive income from the City’s Facilities, while imposing a 1% [earned income tax] on residents who similarly derive income from the Facilities ... [and] has failed to provide the requisite concrete justification for treating residents and nonresidents as distinguishable classes that may be subjected to different tax burdens.”

On the second point the court ruled Act 222 “only provides for [the fee’s] enactment and assessment on compensation earned by nonresidents ... the General Assembly preferred that an ordinance adopted pursuant to [Act 222] would be stricken entirely if held unconstitutional, and not expanded to encompass residents who earn income at one of the City’s Facilities.”

Now the question becomes whether the city will appeal the ruling to the state Supreme Court. Assuming there is an appeal, the court could affirm or overturn the Commonwealth Court ruling.

According to the state’s Taxation Manual, taxes on occupancy, residential construction and off-track wagers have been invalidated by courts in the past. But none of these involved the City of Pittsburgh. If the fee is struck down, Act 222 states non-residents who earn income from a publicly funded facility would no longer be exempt from the earned income tax.

The Commonwealth Court ruling notes the state’s Public School Code prohibits school districts of the first class A (Pittsburgh Public Schools) from levying its earned income tax on non-residents. This is a 2 percent rate, which then implies a non-resident athlete or performer would only be subject to the 1 percent earned income tax levied directly by the city. In Pennsylvania a person who works in a municipality that has an earned income tax is credited if there is an earned income tax in the municipality where the person resides.

There is the possibility 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 them.

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 were revoked and the city made no spending reductions, there would still be a positive operating budget result this year. 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 is also the issue of refunds for payment of the fee. The Department of Finance document cites the state's Local Taxpayer Bill of Rights (Act 50 of 1998), which allows for refunds if there is a request made "within three (3) years of the due date ... or one (1) year after payment of the tax." It is not known how much revenue could be refunded.

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. In pre-pandemic 2019 Pittsburgh spent 51 percent more per capita than the [benchmark city](#) and its spending level was higher for many years before. The city's focus needs to shift to reducing spending or holding the line on future spending growth.

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. 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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**Eric Montarti, Research Director**

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Allegheny Institute for Public Policy  
305 Mt. Lebanon Blvd.\* Suite 208\* Pittsburgh PA 15234  
Phone (412) 440-0079  
E-mail: [aipp@alleghenyinstitute.org](mailto:aipp@alleghenyinstitute.org)  
Website: [www.alleghenyinstitute.org](http://www.alleghenyinstitute.org)  
Twitter: [AlleghenyInsti1](https://twitter.com/AlleghenyInsti1)