

### **Pittsburgh's 'jock tax' sacked**

**Summary:** On Sept. 25 the Pennsylvania Supreme Court ruled Pittsburgh's non-resident sports facility usage fee ("jock tax") unconstitutional. The city's 2026 preliminary operating budget provides some insight as to how finances will be affected by the ruling, with plenty of questions on refunds yet to be answered.

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The Pennsylvania General Assembly authorized the jock tax 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 receives 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 jock tax are exempt from the 3 percent combined earned income tax levied by the city and Pittsburgh Public Schools.

Following lower court decisions that struck down the jock tax, the Supreme Court permitted a "limited appeal" on the uniformity of the jock tax. It agreed with previous rulings. The majority opinion ruled "the City does not provide concrete reasons that would justify taxing nonresident athletes and entertainers more than resident athletes and entertainers. Instead, the City once again argues that the facility fee 'does not impose an unequal tax burden on nonresidents' because it actually *equalizes* the tax burdens of resident and nonresident performers" (*italics in original*).

The opinion concluded that "[b]ecause the two percent Pittsburgh School District tax cannot be used to justify the facility fee in our Uniformity Clause analysis ... we agree with the lower courts that the facility fee is unconstitutional."

Interestingly, the opinion stated that the General Assembly granted Pittsburgh permission to levy the jock tax not because it spent money to construct the stadiums but to provide additional revenue to the city as it entered Act 47 distressed status.

What are the immediate and long-term impacts for the city's finances? The city budgeted \$6.1 million in jock tax revenue for 2025; through August it collected \$2.5 million. The

five-year forecast in the 2025 approved operating budget had annual collections above \$6 million through 2029.

Act 222 states that if a court strikes down the tax, non-resident athletes and performers would be subject to the city's 1 percent earned income tax.

The preliminary operating budget for 2026 released Sept. 30 zeroes out the jock tax at the conclusion of this year. The earned income tax is budgeted at \$147.9 million. The controller's revenue certification letter stated revenue from that tax is expected to reach \$159.2 million by 2030.

**Jock Tax Forecast Revenues (\$, millions)**

| <b>Budget</b>    | <b>2025</b> | <b>2026</b> | <b>2027</b> | <b>2028</b> | <b>2029</b> | <b>2030</b> |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 2025 Approved    | \$6.1       | \$6.2       | \$6.4       | \$6.5       | \$6.7       | N/A         |
| 2026 Preliminary | \$2.6       | ---         | ---         | ---         | ---         | ---         |

Will collections for this year and previous years be refunded due to the Supreme Court's decision? 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. The Department of Community and Economic Development did not have any information on how any refunds were handled.

A document that is currently on the city's Department of Finance website 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 actual payment of the tax, whichever is later."

The attorney for the plaintiffs mentioned in a news article a three-year statute of limitations and anticipated more refunds would be filed.

The director of the Office of Management and Budget stated in a news article that "[n]othing happens automatically as of today as it relates to refunds. That would have to be the subject of further litigation." In another news article the director questioned if refunds would only apply to those who brought the lawsuit.

Finally, the controller's revenue certification letter stated "[w]hile the ruling doesn't automatically trigger payments, it also doesn't prevent them. This is a potential liability [the city needs] to account for and plan for in the years ahead."

With 2026's preliminary budget projecting an operating result (revenues less expenditures) of \$485,403 for next year and a forecasted decline in the ending fund balance through 2030, the city should find spending reductions so that it can avoid depleting the fund balance further or raising taxes to pay any possible refunds and instead start delivering the tax relief that will fuel the growth officials want to see.

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