



This Week in State Tax (TWIST)

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Pennsylvania: Commonwealth Supreme Court holds public facility usage fee imposed on nonresident athletes violates uniformity clause

The Pennsylvania Supreme Court issued an opinion striking down a tax imposed by the City of Pittsburgh on nonresident individuals who use any of the City's publicly funded sports stadiums for income-earning purposes. Under Pennsylvania law, certain cities which have publicly funded sports stadiums are statutorily enabled to impose a tax on nonresidents using those facilities "to engage in an athletic event or otherwise render a performance for which they receive remuneration." Additionally, City ordinances provide that athletes subject to this facility tax are not subject to the City's general earned income tax unless the state statute which enables the facility fee is struck down as unconstitutional. The City imposes the facility tax on nonresident athletes and performers at a 3 percent rate, and the earned income tax is imposed at a 1 percent rate. While City residents are not subject to the facility tax, they are subject to the earned income tax, as well as a 2 percent school district tax. School districts are prohibited by law from imposing an earnings tax on nonresidents. In the aggregate, City residents and nonresident athletes and performers are taxed at a similar rate but under two different regimes.

The taxpayers, a group of current and former professional athletes and players' associations from several professional sports leagues, argued that the facility tax is unconstitutional under the Uniformity Clause of the Pennsylvania Constitution because it treats nonresident athletes less favorably by subjecting them to a 3 percent tax rate when resident athletes are taxed at a 1 percent rate. The City, on the other hand, argued that resident players are subject to the same tax rate as nonresidents, when the separate school earnings tax is considered. At the trial level, the court agreed with the taxpayers, comparing the facility tax to only the earned income tax, and found the two to be non-uniform because the facility tax is plainly 2 percent higher than its earned income counterpart. On appeal, the Commonwealth Court agreed with the trial court, also excluding the school district tax from the analysis, and stated that the City did not provide justification for treating nonresident athletes differently from resident athletes, such that the two groups should be subject to different tax burdens. The Pennsylvania Uniformity Clause requires that every tax "operate alike on the classes of things or property subject to it" and when a tax creates "arbitrary, unjust, or unreasonable discriminatory results," the uniformity clause has been violated. The Supreme Court agreed with both lower courts that the facility tax violated the Pennsylvania Constitution. It cited *Danyluk v. Bethlehem Steel Co.*, stating that the case stands for "...the proposition that a city cannot use a tax which, of necessity, only applies to residents to cover up the discriminatory effect of a separate, disuniform tax on nonresidents." In other words, without any additional reasoning for treating nonresident athletes differently from resident athletes, the City's justification that the combination of the City and school district taxes made the rates on residents and nonresidents essentially the same, was insufficient, and the facility tax is unconstitutional under Pennsylvania law. For question on [National Hockey League Players' Association v. City of Pittsburgh](#), contact [Mark Achord](#).

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