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Nexus News

From Hillenmeyer to the National Hockey Case: A Broader Constitutional Reckoning for Jock Taxes

By Breen M. Schiller and Daniel L. Stanley

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Introduction

The taxation of nonresident professional athletes—commonly referred to as the "jock tax"—has generated significant legal scrutiny. States and municipalities have adopted varying methodologies to allocate and assess income earned by athletes who temporarily perform services within their jurisdictions. This column compares two pivotal cases from Ohio and Pennsylvania that address the constitutional boundaries of such taxation.

The Ohio Supreme Court's decision in *Hillenmeyer v. Cleveland Board of Review*[1] marked a pivotal moment in the judicial scrutiny of municipal taxation schemes targeting nonresident professional athletes. By invalidating Cleveland's "games played" allocation method on due process grounds, the Court emphasized that local tax authorities must tether their assessments to actual in-jurisdiction activity.

A decade after the *Hillenmeyer* decision, the Pennsylvania Supreme Court most recently extended this constitutional analysis in *National Hockey League Players Association v. City of Pittsburgh*.[2] Here, the Court struck down Pittsburgh's "Nonresident Sports Facility Usage Fee"—a 3% tax imposed exclusively on nonresident athletes performing at publicly funded stadiums—as a violation of Pennsylvania's Uniformity Clause. While *Hillenmeyer* focused on the geographic nexus required under the U.S. Constitution, *National Hockey* addressed the discriminatory structure of the tax under state constitutional principles. Together, these cases form a compelling narrative: courts are increasingly unwilling to tolerate tax schemes that either overreach jurisdictionally or discriminate structurally. Both decisions underscore the need for precision, fairness, and constitutional fidelity in how municipalities approach the taxation of transient, high-earning professionals.

Why Are We Talking About These Cases Together?

One of the legal foundations for a locality's ability to tax visiting athletes lies in the concept of nexus. In the context of professional sports, nexus is established

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when an athlete earns income by performing services within the city's boundaries, such as playing in a game at a local stadium. This connection gives the city the legal authority to impose a tax on the portion of income earned during that performance. The rationale is straightforward: the athlete is using public infrastructure, benefiting from local services, and generating income within the jurisdiction, even if only temporarily. However, while nexus allows taxation, the Uniformity Clause requires that such taxes be applied uniformly to similarly situated taxpayers.

Recalibrating the Jock Tax: Ohio Supreme Court Reins in Extraterritorial Municipal Taxation

The Ohio Supreme Court in *Hillenmeyer v. Cleveland Board of Review*[3] struck down Cleveland's method of taxing nonresident professional athletes, ruling that the city's "games played" allocation formula violated the Due Process Clause of the U.S. Constitution.[4] The ruling not only reshaped how municipalities may tax visiting athletes, but also clarified the constitutional boundaries of local tax authority—particularly regarding nexus and income attribution.

Background: The Games Played *vs.* Duty Days Debate

Hunter Hillenmeyer, a linebacker for the Chicago Bears, played one game per year in Cleveland during the 2004–2006 seasons.[5] Cleveland taxed 5% of his annual income based on a "games played" method—allocating income by the number of games played in the city relative to the total number of games played in a season.[6] Hillenmeyer argued this overstated his Cleveland earnings, as his compensation covered far more than just game appearances, including training, meetings, and promotional duties.[7] He proposed the "duty days" method, which allocates income based on actual workdays spent in the city.[8] Under this approach, Cleveland would have taxed only about 1.25% of his income—reflecting the two days he worked in the city each year.[9]

Key Holding: Due Process Requires Territorial Precision

The Court held that Cleveland's method violated due process by taxing income earned outside its jurisdiction.[10] Municipalities may only tax income that has a "minimum connection" to the taxing authority and is "rationally related" to in-jurisdiction activities. The Court cited *Shaffer v. Carter*[11] and *Moorman Mfg. Co. v. Bair*[12] to emphasize that local taxation must be based on services performed within the jurisdiction. The "games played" method failed this test, reaching income for services performed elsewhere. Instead, the Court endorsed the "duty days" method as constitutionally sound, emphasizing that compensation must be allocated to the location where the work was actually performed.[13] The Court found that Cleveland's power to tax reaches only that portion of a nonresident's compensation that was earned by work performed in Cleveland.[14] The games-played method reaches income that was performed outside of Cleveland, and thus Cleveland's income tax as applied is extraterritorial.[15]

As cities continue to seek revenue from transient, high-earning professionals, these decisions serve as a constitutional roadmap—one that demands precision, fairness, and respect for the limits of local authority imposing guardrails on localities' authority.

Clarifying Nexus in Local Taxation

At the heart of the *Hillenmeyer* decision is the concept of nexus. The Court reaffirmed that nexus for nonresidents must be based on physical presence and services performed within the jurisdiction. Taxing income earned outside the city exceeds the permissible scope of municipal authority and constitutes extraterritorial taxation and that allocation methods must be rationally related to the taxpayer's in-jurisdiction activities to satisfy due process.

Beyond Nexus: Structural Equity and the Uniformity Clause in Pittsburgh's Jock Tax

Since 2005, Pittsburgh has imposed a 3% "Nonresident Sports Facility Usage Fee" (commonly called the "Jock Tax") on income earned by nonresidents performing at

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publicly funded sports venues (*i.e.*, PNC Park, Acrisure Stadium, PPG Paints Arena).[16] Residents pay a 1% earned income tax to the City and a 2% school district tax, totaling 3%, whereas nonresidents are exempt from the school tax but pay the full 3% facility fee to the City.[17] The fee was authorized under the Local Tax Enabling Act (LTEA) and was enacted to help Pittsburgh during financial distress.[18]

The issue reviewed by the Court was whether Pittsburgh's facility fee violated the Uniformity Clause of the Pennsylvania Constitution by imposing a higher tax burden on nonresidents than on residents.[19] Ultimately, the Court found that yes, the facility fee violated the Uniformity Clause because it imposed unequal tax burdens on similarly situated taxpayers (resident *vs.* nonresident performers) without a concrete justification.[20]

The city argued that the fee could be justified because the tax burden on both residents and nonresidents is 3%, since nonresidents pay the jock tax while residents pay a 1% earned income tax and a 2% school district tax.[21] However, the Court rejected the City's argument that the total tax burden (3% for both groups) was equal.[22] The school district tax is imposed by a separate entity and cannot be used to justify the City's unequal treatment.[23] The facility fee applied only to nonresidents, while residents pay a lower City tax. The City failed to provide a "concrete justification" for treating residents and nonresidents as different classes.[24] The Court distinguished this case from *Minich v. City of Sharon*, where a neutral credit system applied equally to residents and nonresidents.[25] The Court also referenced *Danyluk v. Bethlehem Steel Co.*, reaffirming that residency cannot be the basis for discriminatory taxation.[26]

This decision invalidated Pittsburgh's "jock tax" and reinforced the principle that residency-based tax distinctions must be supported by legitimate, concrete justifications under Pennsylvania's Uniformity Clause. It may also have broader implications for how municipalities structure taxes on nonresidents.

Conclusion

Taken together, *Hillenmeyer v. Cleveland Board of Review* and *National Hockey League Players Association v. City of Pittsburgh* reflect a continued judicial intolerance for municipal tax schemes that either overreach their territorial bounds or discriminate against nonresident taxpayers. While Ohio's Supreme Court emphasized the constitutional requirement of nexus and territorial fairness under the Due Process Clause, Pennsylvania's highest court focused on the structural equity of tax burdens under its Uniformity Clause. Both courts arrived at the same essential principle: municipalities must craft tax policies that are not only legally authorized but constitutionally sound. As cities continue to seek revenue from transient, high-earning professionals, these decisions serve as a constitutional roadmap—one that demands precision, fairness, and respect for the limits of local authority imposing guardrails on localities' authority.

ENDNOTES

1 144 Ohio St3d 165 (2015).
2 No. 20 WAP 2024 (Pa. 2025).
3 144 Ohio St3d 165 (2015).
4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 SCt, 252 US 37 (1920).
12 SCt, 437 US 267 (1978).
13 *Id.*
14 *Id.*
15 Hillenmeyer also challenged his exclusion from Ohio's 12-day "occasional entrants" exemption, which shields nonresidents from municipal income tax if they work in the city for fewer than 12 days annually. The statute excludes professional athletes and entertainers. The Court upheld this exclusion, citing rational policy grounds: athletes' high compensation, ease of enforcement, and the disproportionate public burden their events impose, ultimately rejecting Hillenmeyer's equal protection claim.
16 *National Hockey League Players Association, et al. v. City of Pittsburgh*, No. 20 WAP 2024 (Pa. 2025).
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.*
25 *Id.*
26 *Id.*

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