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Supreme Court Hands Athletes And Entertainers Win Over Jock Tax

Everyone wants a piece of the big revenue stream produced by pro athletes and entertainers. States and cities do when someone comes within their borders to earn big. The City of Cleveland imposed a 'jock tax' on any who play or perform there and earn income. It isn't an unusual tax, although how it was computed turned out to raise constitutional questions.

Cleveland and other taxing jurisdictions hoped the U.S. Supreme Court would take their case and uphold Cleveland's jock tax. But without comment, the Supreme Court let stand a lower court victory by retired Indianapolis Colts center Jeff Saturday and ex-Chicago Bears linebacker Hunter Hillenmeyer. [The Ohio Supreme Court had ruled unanimously](#) that Cleveland should base the tax on the number of days athletes *work* each year, rather than the number of *games* they play annually. The formula matters, and the athletes took the city to court. Now, Cleveland must scramble to change its tax to meet constitutional standards.



Pro athletes can earn a lot, but their taxes are complex. There's the IRS, multiple states, and even foreign governments. And there are city and local taxes too. The suit against Cleveland involved retired NFL football players [Hunter Hillenmeyer](#) and [Jeff Saturday](#). They claimed Cleveland was subjecting athletes playing for visiting teams to disproportionately high taxes. The ex-players admitted they played in Ohio, but not in Cleveland. That made the tax illegal, they said.

The court agreed, saying that "Cleveland's power to tax reaches only that portion of a nonresident's compensation that was earned by work performed in Cleveland." The court's rulings overturned decisions by the state Board of Tax Appeals. [In Hillenmeyer's case](#), he was taxed about 5% (one game in Cleveland out of 20 or 21 played) in 2004, 2005 and 2006. The court ordered a refund of \$5,500, plus interest.

[In Saturday's case](#), the court found he was illegally required to pay tax on a sick day for a 2008 Colts game in Cleveland when he was injured and did not travel there. The victory for this type of taxpayer was big. However, Cleveland is the only major-league city taxing visiting players based on the *games played* in the city divided by the total number of games their team plays in a year. Many cities tax pro athletes based on the number of "duty days" in their season and days spent in the city.

The court [said this in one of the two opinions](#):

- 6 Due process requires an allocation that reasonably associates the amount of compensation taxed with work the taxpayer performed within the city. The games-played method results in Cleveland allocating approximately 5 percent of Hillenmeyer's income to itself on the basis of two days spent in Cleveland. By using the duty-days method, however, Cleveland is allocated approximately 1.25 percent based on the same two days. By using the games-played method, Cleveland has reached extraterritorially, beyond its power to tax. Cleveland's power to tax reaches only that portion of a nonresident's compensation that was earned by work performed in Cleveland. The games-played method reaches income for work that was performed outside of Cleveland, and thus Cleveland's income tax violates due process as applied to NFL players such as Hillenmeyer.

Many taxpayers are not sympathetic when pro athletes complain. Golfer Phil Mickelson triggered a firestorm over taxes when he said he might move after California retroactively [raised tax rates to 13.3% from 10.3% for those making more than \\$1 million](#). Tiger Woods came to his defense, noting that he had also left California for Florida. Professional athletes and entertainers face a dizzying array of tax laws. Most states and countries tax them when they perform or play in their boundaries.

Foreign athletes and entertainers must file U.S. income tax returns and face [special withholding rules](#). What is considered U.S.-source can be debated but includes pay for performances, endorsements, merchandise sales, and royalty or other income closely related to the event. But when you are a resident—as Mickelson is of California—you get taxed on *everything*. Most PGA Tour players live in no-tax states like Florida or Texas.

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