



Fair Taxation for Pittsburgh— A Foundation for a More Just City Beyond American Rescue Plan Dollars

Stephen Herzenberg, Diana Polson, and Nthando Thandiwe

April 14, 2022

Summary

Federal funds in the American Rescue Plan (ARP) provide a historic opportunity to address structural inequities in the City of Pittsburgh and invest in affordable housing, creation of good jobs, and access to health and community services. Yet an investment of one-time ARP funds in our people and our communities raises a question: how can we sustain investments when ARP support runs dry? This briefing paper answers that question. It posits that by getting Pittsburgh’s more affluent residents, corporations—including anchor nonprofit institutions—to pay their fair share of the city’s revenues, there could be tens of millions of dollars annually to build a more just Pittsburgh for the long term.

Pittsburgh’s Unfair Tax System

- Local taxes in the City of Pittsburgh, as in many other localities, fall more heavily on working and low-income people than on the rich.
- The city’s unfair, or “upside-down,” taxes stem partly from the fact that a third of city revenues come from property taxes and another 4% from sales taxes. Both property and sales taxes subject lower-income and working families to higher tax rates as a share of income than the rich.
- Pittsburgh’s unfair taxes also stem from the city’s and the Pittsburgh Public School District’s combined 3% earned income taxes. (On paper, the city’s income tax rate is 1% and the school district’s is 2%. For most of the past two decades, however, 0.25 percentage points of the school district’s 2% tax have been remitted to the city each year.)
 - These tax wage and salary income but do not tax some kinds of income received mostly by the rich, such as dividends and capital gains, which we call “income from wealth.”
 - Thus, the city’s current income tax takes nearly twice as big a share of income from middle-income taxpayers as from the top 1%.
 - The city (and school district) also takes 50% more as a share of income from the lowest-income taxpayers than from the rich.

One Path to Fairer Pittsburgh Taxes: Tax Income From Wealth

- Many Pennsylvanians think our state constitution’s “uniformity clause” requires that income taxes be “flat”—i.e., the same tax rate must be imposed on all taxpayers and kinds of income (except for seniors and the poor for which there are constitutional exemptions).

- As explained in the legal memo in the Appendix to this brief, however, tax rates do not have to be the same for each kind, or “class,” of income.
- Moreover, Pittsburgh has the authority to make its income taxes fairer in two distinct ways *without new legislation from Harrisburg*. The city could
 - i. broaden the base of its income tax to include currently untaxed income from wealth—such as dividends and capital gains—that goes disproportionately to the affluent.
 - ii. tax additional categories of income from wealth, and tax (currently taxed) “net profits” from partnerships and corporations, at a higher rate than wage income and other kinds of income that go mostly to the less affluent.
- We provide preliminary estimates from the Institute on Taxation and Economic Policy (ITEP) of the additional revenue that (i) and (ii) would yield.
 - If Pittsburgh were to broaden the base of its earned income tax to include untaxed income from wealth (such as dividends and capital gains):
 - each one percentage point tax on dividends and capitals would raise, conservatively, \$7 million in revenue annually.
 - a 3% tax on dividends and capital gains would thus raise \$21 million.
 - the rich would pay most of this additional revenue, half coming from the top 1% and 84% from the richest fifth.
 - If the city taxed currently untaxed income from dividends and capital gains at 2% and raised the tax rate on income from net profits to 2%, it would raise an estimated \$19 million more.
 - If the city and school district raised the combined tax rate on net profits to 6% (from 3%) and imposed a 6% tax rate on (currently untaxed) dividends and capital gains, the increase in local revenue would equal \$57 million.
 - Pittsburghers with the greatest ability to pay would pay most of these tax increases.

A Second Path to Fairer Pittsburgh Taxes: Anchor Nonprofits Need to Contribute

- Another reason that Pennsylvania and Pittsburgh taxes are regressive is that corporations do not pay their fair share. In the city, these corporations include anchor nonprofit institutions, such as UPMC, Carnegie-Mellon, the University of Pittsburgh, and Highmark.
- If UPMC were not exempt as a “purely public charity,” it would pay an estimated \$50 million annually to the city and school district in property taxes.
- In four Pennsylvania communities, UPMC does pay “payments in lieu of taxes” (“PILOT” payments) that can amount to roughly half of what it would pay in property taxes without its exemption.
- To tax anchor nonprofit institutions, including UPMC, the city could seek to negotiate PILOT payments as other municipalities have. It could also reinstate a court suit challenging UPMC’s status as a purely public charity.

The City Should Act Now to Secure Revenues from Fair Taxation by the Time ARP Funds Run Out

- If Pittsburgh acts now, it can secure more revenues from fair taxation by the time ARP funds expire.

- The knowledge that Pittsburgh has ways to raise additional revenues fairly should embolden the city to use its ARP revenues to address structural inequalities and racism, including by investing in more affordable housing and in job-creation programs that enable more jobless workers and people of color to access family-supporting careers.

The Problem: An Upside-Down Pittsburgh Tax System

States and localities rely primarily on three types of taxes to raise revenues: property, sales, and income taxes. Both sales and property taxes are regressive, which means they take a bigger bite out of the incomes of low- and middle-income people than the rich.

In some states and cities, graduated income taxes—through which richer families pay higher rates on incomes above certain levels—offset the regressive character of property and sales taxes to create an overall state or city tax system that is less unfair. But Pennsylvania’s constitution prohibits the state and its localities from enacting graduated income taxes. Worse, the income taxes in many Pennsylvania localities, including Pittsburgh, are imposed primarily on the income of wage and salary earners, or “earned income,” while many kinds of “unearned” income, or “income from wealth,” received primarily by the rich (e.g., capital gains and dividends), are not taxed at all. (See box 1 for more detail.)

Box 1. Pittsburgh and Pennsylvania Income Taxation

Classes of income taxable in Pittsburgh under current state law. Pennsylvania taxes eight classes of income: (1) compensation; (2) interest; (3) dividends; (4) net profits from the operation of a business, profession, or farm; (5) net gains or income from the dispositions of property;¹ (6) net gains or income from rents, royalties, patents, and copyrights; (7) income derived through estates or trusts; (8) gambling and lottery winnings.²

Income currently taxed in Pittsburgh.³ Pittsburgh currently imposes a 1% city income tax and 2% school district income tax on categories (1) and (4) of income above: compensation defined the same way as the state (“wages, salaries, tips compensation that is earned, bonuses, stock options...”) and “...net profit from businesses or professions.” Excluded from the current Pittsburgh income taxes are: “Interest, dividends, active duty pay from the armed forces, pensions, social security, and capital gains.” (Note: while on paper the city’s and school district’s income tax rates are 1% and 2%,

¹ This category includes net gains or income from the dispositions of intangible financial property—i.e., capital gains—as well as from tangible property. Capital gains is not a stand-alone class of income under Pennsylvania law.

² Pennsylvania Department of Revenue, <https://www.revenue.pa.gov/TaxTypes/PIT/Pages/default.aspx>; for more detail, see Pennsylvania Department of Revenue, *The Tax Compendium*, 20-23, https://www.revenue.pa.gov/News%20and%20Statistics/ReportsStats/TaxCompendium/Documents/2021_tax_compendium.pdf. For the statutory language, see 72 P.S. § 7303, “Classes of income,” [https://govt.westlaw.com/pac/Document/N52644340E8D611EBBE35EA738D8E1915?viewType=FullText&originati onContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/N52644340E8D611EBBE35EA738D8E1915?viewType=FullText&originati onContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

³ Pittsburgh Tax Descriptions, <https://pittsburghpa.gov/finance/tax-descriptions>.

For another list of what Pittsburgh does not currently tax, in addition to interest, dividends, and capital gains (i.e., Social Security benefits, unemployment compensation, pensions, public assistance, death benefits, etc.), see 2021 Taxpayer Annual Local Earned Income Tax Return page 5, “B. Regulations/Line by Line Instructions,” Line 1, <https://www.jordantax.com/Forms/JTS-2021TaxpayerAnnualLocalEITReturnACCTCD.pdf>. This tax form does not specifically address whether classes of income (6) to (8) are currently taxable in Pittsburgh.

respectively, for most of the past two decades, 0.25 percentage points of the school district's 2% income tax have been remitted to the city each year.⁴⁾

Who is taxed? Residents pay both city and school district income tax. Pennsylvania residents who work in the city but live outside it do not pay the taxes. Non-Pennsylvania residents who work within the city pay 1%.⁵

Additional classes of income could be taxed in Pittsburgh under current law: The legal memo in the Appendix to this brief indicates that Pittsburgh *could tax* currently untaxed dividends, interest, and capital gains. By the same logic, the city could also tax categories (6) and (7) in the state's list of classes of income above which are subject to the state income tax—income from rents, royalties, patents, copyrights, estates and trusts.

Pittsburgh could also tax different classes of income at different rates: The legal memo in the Appendix and an earlier Pennsylvania Budget and Policy Center memo both indicate that different kinds of income can be taxed at different rates in Pittsburgh and Pennsylvania, respectively, under the Pennsylvania constitution and current state law.⁶

Figure 1 shows the share of income paid by working-age (non-elderly) taxpayers at different incomes under Pittsburgh's current 1% income tax. The city's current income tax (and the school district's) thus takes nearly twice as big a share of income from middle-income taxpayers as from the top 1%. The city and school district also take 50% more as a share of income from the lowest-income taxpayers as the top 1%. Adding property and sales taxes to an overall analysis of the city's tax system would show that it is even more upside-down than indicated in figure 1 (on the next page).

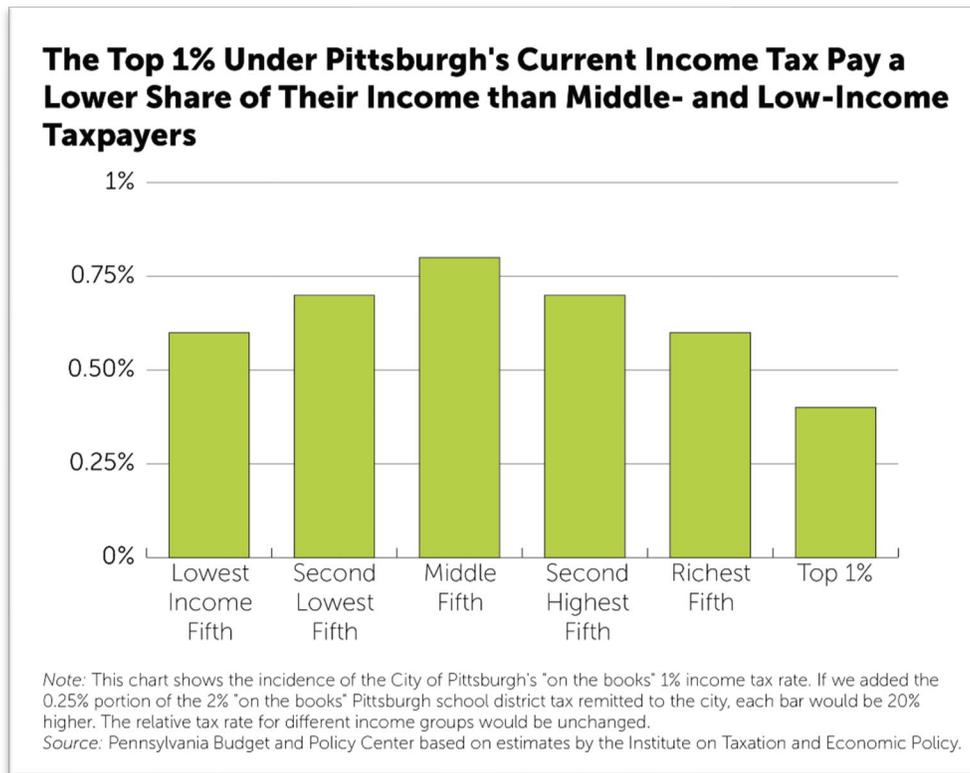
In addition to making the tax system unfair, the failure to tax unearned income deprives both Pittsburgh and its school district of critical revenues.

⁴ Bob Bauder, "Pittsburgh Mayor Calls for State Oversight of Public Schools," *Governing Magazine*, November 12, 2019, <https://www.governing.com/news/headlines/pittsburgh-mayor-calls-for-state-oversight-of-public-schools.html#:~:text=City%20residents%20pay%20a%203,the%20district%20is%20audited%20annually>.

⁵ Mt. Oliver Borough residents pay the School Earned Income Tax of 2% to the city which acts as the tax collector for the school district. Mt. Oliver residents must also file directly with the Mt. Oliver Borough tax office to report the borough's earned income tax.

⁶ Under uniformity clause case law, governments in PA may tax different categories of wealth and income if those categories are usual and customary. "The test of uniformity is whether there is a reasonable distinction and difference between the classes of taxpayers sufficient to justify different tax treatment. *So long as the classification imposed is based upon some standard capable of reasonable comprehension*, be that standard based upon ability to produce revenue or some other legitimate distinction, [*the Uniformity Clause is satisfied*]" *Appeal of Borough of Aliquippa*, 175 A.2d 856, 862-63 (Pa. 1961). See Richard Feder, "The Fair Share Tax Proposal Is Uniform Under the PA Constitution," January 13, 2022, https://krc-pbpc.org/research_publication/the-fair-share-tax-proposal-is-uniform-under-the-pa-constitution/.

Figure 1.



The Solution — Part One: A City Fair Share Tax

Simply describing the problem suggests a possible solution. If our income taxes are “upside-down” because some kinds of income which go mostly to the wealthy are not taxed, then a possible solution is to tax those kinds of income. That is, income such as dividends and capital gains should be taxed at the same or higher rates than typical wage and salary income.

To explore this solution, the Institute on Taxation and Economic Policy generated preliminary estimates of two possible changes to Pittsburgh’s city school district income taxes.

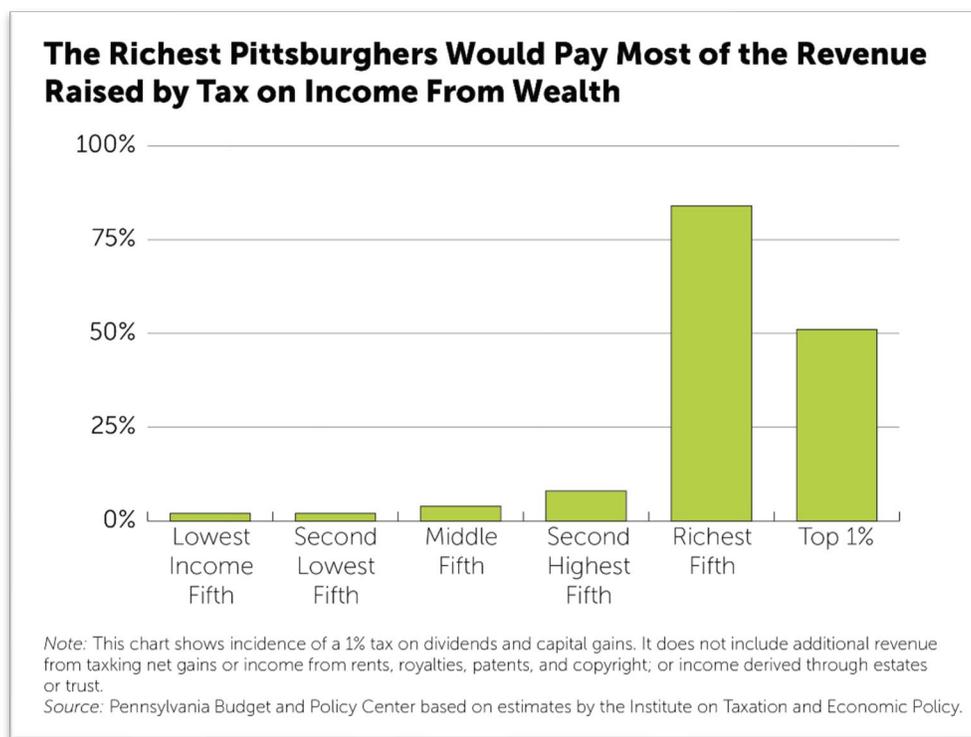
- The first scenario broadens the base of the current city-plus-school-district 3% income taxes to also include currently untaxed dividends, capital gains, and interest. (While we recommend that the city and school district also broaden the base to tax income from rents, royalties, patents, estates and trusts, ITEP’s modeling of scenario 1 does not do that. The revenue estimates from scenario 1 are lower than would result from also taxing these two classes of income.)
- The second scenario would continue to tax wage and salary income at a combined city and school district 3% tax rate but tax categories of income that go mostly to the affluent (dividends, capital gain, and pass-through income from corporations, partnerships, and other artificial entities) at double that rate, 6%. Interest income in this scenario would still be taxed at 3%. (As with scenario 1, scenario 2 does not model the impact of also taxing income from rents,

royalties, patents, estates and trusts; the revenues from also taxing these types of income from wealth at a 6% great would therefore exceed the revenue estimates from scenario 2 below.)⁷

Scenario 1: Taxing Currently Untaxed Income from Wealth at the Current City and School District Tax Rates

This scenario would raise an estimated \$21 million more from the city's and school district's combined 3% income tax—\$303 million instead of \$282 million. Figure 2 shows the share of the increase in taxes that would be paid by each part of the income distribution. The figure makes clear that the rich would pay most of this additional tax. Half of the revenue raised would come from the top 1% and more than 80% from the richest fifth.

Figure 2.



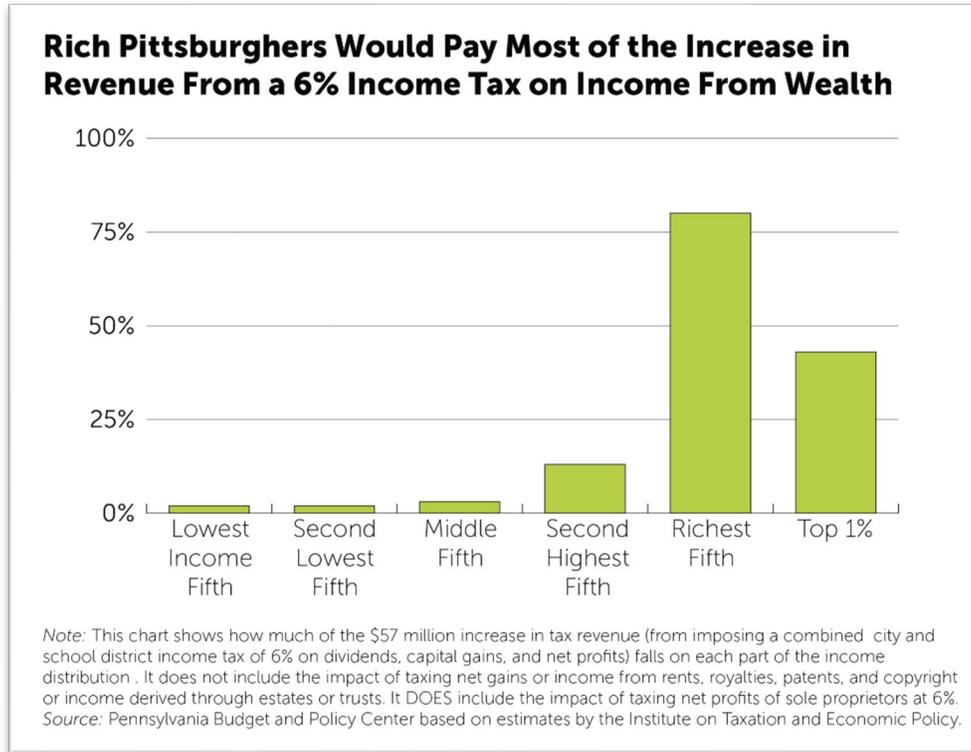
Scenario 2: A 6% Tax Rate on Income from Wealth

Our second scenario combines the first scenario's base broadening of the income tax with a raise in the city plus school district income tax rate to 6% on income received mostly by the rich: capital gains, dividends, and already-taxed net profits. This scenario would raise an estimated \$57 million more than the city's current 1% income tax: \$339 million instead of \$282 million. Figure 3 shows the share of the

⁷ These is one respect in which the ITEP modeling overestimates the revenues from our currently recommended scenario 2. While we recommend taxing net profits received through pass-through entities and corporations at a higher rate but leaving net profits of sole proprietors at the current rates, both are taxed in the ITEP modeling at the higher rate (i.e., 2% in the city, 4% in the school district and a combined rate of 6%).

increase in taxes that each part of the income distribution would pay in this scenario. It is virtually identical to figure 2: the rich would pay most of this increase in tax. Nearly half of the revenue raised would come from the top 1% and an increase of 80 cents of every dollar from the richest fifth.

Figure 3.



In combination, our two scenarios allow us to roughly estimate the shares of the \$57 million in scenario 2 that result from (a) broadening of the base of the income tax versus (b) raising the rate on currently taxed income that goes primarily to the affluent. Since scenario 1 shows that taxing new classes of income at 3% would generate \$21 million, taxing those classes at 6% would generate \$42 million. That means that the remainder of the \$57 million increase in revenue from scenario 2 would generate \$15 million—i.e., doubling the tax rate on the existing class of income that go primarily to the affluent (net profits) would generate \$15 million.⁸

As with the “Fair Share Tax” that the Pennsylvania Budget and Policy Center has proposed at the state level, raising taxes on unearned income could be coupled with lowering taxes on earned income if one wanted to raise revenue *and* cut taxes for most taxpayers.⁹ Other options include a local tax forgiveness threshold like the one at the state level or a local earned income tax credit.

⁸ As per the legal memo in the Appendix, Pittsburgh has statutory authority to set any tax rate it deems appropriate. As a home rule municipality, it is not subject to the rate limitations set forth in the Local Tax Enabling Act with respect to the resident income tax. 53 P.S. § 2692(f), (i).

⁹ For information on the PA Budget and Policy Center’s Fair Share Tax proposal, including a two-minute video explainer, see https://krc-pbpc.org/research_publication/a-fair-share-tax-plan-for-pennsylvania-2019-update/.

The Solution – Part Two: Pittsburgh Anchor Institutions Contribute to the City Budget

Many have observed that the city’s economy has shifted over time from manufacturing to “eds and meds” and high tech. One challenge with the growth of eds and meds is that major anchor institutions in the city register as nonprofits and therefore contribute little to the Pittsburgh budget.

The University of Pittsburgh Medical Center (UPMC), for example, is the largest non-governmental employer in Pennsylvania and in Pittsburgh, employing 92,000 people.¹⁰ In 2021, UPMC had excess revenue of \$1.5 billion, up from \$420 million in 2019, a striking increase during the pandemic.¹¹ Despite this, UPMC continues to pay few property taxes because of its status as a purely public charity. A decade ago, this status allowed the medical center to avoid paying \$40 million in taxes each year—the equivalent (based on inflation only, not considering UPMC expansion) of over \$50 million today—as well as receive favorable terms when financing its own development.¹² In 2020, Jeffrey Romoff, then president and CEO of UPMC prior to Leslie Davis taking over in August of 2021, received a paycheck of \$9.5 million in pay and benefits.¹³ Meanwhile, UPMC healthcare workers often face low pay, little job security, a lack of voice in the workplace, and, ironically, high costs for the health care they provide.¹⁴ Prior to his departure, Romoff took home 115 times the pay of the average UPMC employee.¹⁵

In 2013, Mayor Ravenstahl brought a lawsuit against UPMC to challenge its charitable status, which exempts the organization from paying Pittsburgh’s property and payroll taxes. Under Pennsylvania’s constitution (Article VIII, section 2(a)(v)), businesses cannot be exempt from paying PA taxes unless they qualify as an “institution of purely public charity.”¹⁶ This is a stricter legal standard than the federal Internal Revenue Service (IRS) 501(c)(3) standard—so non-profit 501(c)(3) organizations can be exempt from paying federal taxes but still be required to pay state and local taxes in Pennsylvania.

In the lawsuit, the City of Pittsburgh argued that UPMC did not meet a five-pronged legal test required to qualify as a purely public charity in Pennsylvania. Institutions must meet five criteria to pass the so-called HUP (health care provider) test: 1) advance a charitable purpose; 2) donate or render gratuitously a substantial portion of its services; 3) benefit a substantial and indefinite class of persons who are legitimate subjects of charity; 4) relieve the government of some of its burden; and 5) operate entirely free from a private profit motive. An Allegheny County analysis found that UPMC might not meet all

¹⁰“UPMC Facts & Stats: Health Care Provider & Insurer – Pittsburgh, PA,” <https://www.upmc.com/about/facts>.

¹¹ Dave Muoio, “UPMC adds \$1.3B in revenue but dips on operating income in 2021,” *Fierce Healthcare*, March 2, 2022, <https://www.fiercehealthcare.com/providers/upmc-adds-13b-revenue-dips-operating-income-2021>; Natasha Lindstrom, “UPMC took in \$20B in revenue in 2019, claims dominance in Western Pa. insurance market,” *TribLive*, February 28, 2020, <https://triblive.com/local/pittsburgh-allegheny/nonprofit-upmc-reports-2-billion-increase-in-revenue-420-million-in-net-income-in-2019/>; Rich Lord, “At UPMC, the money kept coming in, even when the patients didn’t,” *Public Source*, May 21, 2021, <https://www.publicsource.org/upmc-pittsburgh-romoff-revenue-covid-pandemic-coronavirus-tax-exempt-gainey/>.

¹² Pittsburgh United, “Hidden in Plain Sight: The Cost of UPMC Tax Exemptions,” 2012, <https://pghunited2.pairsite.com/wp-content/uploads/2016/08/HiddeninPlainSight-TheCostofUPMCTaxExemptions.pdf>.

¹³ Rich Lord, “At UPMC, the money kept coming in, even when the patients didn’t.”

¹⁴ Moshe Z. Marvit, “UPMC Drives Largest Anti-Union Campaign in Pittsburgh,” The Century Foundation, ND, https://posting.pghcitypaper.com/media/pdf/marvit_upmc_report_2_.pdf.

¹⁵ Rich Lord, “At UPMC, the money kept coming in, even when the patients didn’t.”

¹⁶ Allegheny County, “2013 Exempt Status Review: ‘HUP Test’ Cover Sheet,” February 28, 2013.

these requirements, especially the requirement to operate free from a private profit motive.¹⁷ Mayor Peduto, however, dropped the lawsuit. Now Mayor Ed Gainey has signaled that he would like to make sure Pittsburgh's large nonprofits, including UPMC, pay their fair share to the city.¹⁸

In four other Pennsylvania municipalities, UPMC contributes to local revenues through so-called PILOT (payment in lieu of taxes) payments which equal about 40%–55% of what it would pay in property taxes as a for-profit.¹⁹ UPMC makes PILOT payments in Erie, South Fayette, Lock Haven, and Williamsport. In some cases, these PILOT payments pre-date UPMC's acquisition of local hospitals or health care systems. Williamsport and Lockhaven negotiated two of these PILOTs in just the last two years. These PILOTs provide models for agreements with UPMC that Pittsburgh could negotiate.

Any local taxing authority can either (re)initiate a lawsuit challenging UPMC's tax-exempt status or negotiate payment in lieu of taxes. Local tax revenue from UPMC and other large institutions could enable Pittsburgh to sustain investments in communities started with ARP funds.

Box 2. UPMC PILOT Payments in Lock Haven and Williamsport

Lock Haven: UPMC Susquehanna Lock Haven bought Lock Haven Hospital in 2017. Lock Haven Hospital was a for-profit hospital and paid property taxes. The city had been receiving annual payments of about \$71,000 from the hospital, \$72,000 from Clinton County, and more than \$161,000 from the Keystone Central School District, for a total of \$304,000. But UPMC filed a property value assessment appeal in 2019, arguing that because it is a "purely public charity" under the state assessment law, it is exempt from paying real estate property taxes. Since then, Lock Haven city council, Clinton County and the Keystone Central School District have all accepted payment in lieu of taxes (PILOT) agreements with UPMC. UPMC agreed that from 2021 to 2024, it will pay the city \$40,000 per year, the county \$38,000, and the school district \$64,000, a total annual payment of \$142,000.²⁰

Williamsport: In January of 2021, the City of Williamsport and UPMC Susquehanna agreed that the city would not challenge UPMC's nonprofit status and UPMC would pay the city a \$213,000 in 2020, and \$327,000 in 2021 and 2022 (\$50,000 each year in municipal services payment, \$13,000 each year for business privilege and mercantile payment, and a voluntary payment of \$150,000 in September of 2020 and \$264,000 in 2021 and 2022).²¹

¹⁷ Ibid.

¹⁸ "Mayor Ed Gainey Says It Is Time Major Nonprofits Pay Their Fair Share," *MSN*, March 24, 2022, <https://www.msn.com/en-us/news/us/mayor-ed-gainey-says-it-is-time-major-nonprofits-pay-their-fair-share/ar-AAVslSF?ocid=uxbndlbing>.

¹⁹ Jonathan D. Silver, "UPMC among nonprofits eager to avoid paying property taxes," *Pittsburgh Post-Gazette*, September 26, 2012, <https://www.post-gazette.com/news/health/2012/09/26/UPMC-among-nonprofits-eager-to-avoid-paying-property-taxes/stories/201209260169>; "KCSO Okays Payment in Lieu of Taxes for UPMC Lock Haven Hospital," *The Record Online*, December 4, 2020, <https://therecord-online.com/site/archives/64738>; "Resolution Authorizing the Execution of a Community Contribution Agreement," City of Williamsport, PA, January 7, 2021, <https://www.cityofwilliamsport.org/wp-content/uploads/formidable/10/9094.pdf>.

²⁰ "KCSO Okays Payment in Lieu of Taxes for UPMC Lock Haven Hospital," *The Record Online*; "Lock Haven Council Okays Payment in Lieu of Taxes with UPMC Lock Haven," *The Record Online*, November 2, 2020, <https://therecord-online.com/site/archives/64112>.

²¹ "Resolution Authorizing the Execution of a Community Contribution Agreement," City of Williamsport, PA.

Conclusion: Fairer Taxation, a More Just City

Implementing changes to the city income tax and obtaining tax revenue or PILOT payments from UPMC and other anchor institutions would provide the City of Pittsburgh with critical additional revenue in 2023 and 2024 as American Rescue Plan funds wind down. This revenue can help make real the potential to use the current pandemic and economic crisis to address structural inequities. Fair taxation would mean the city could sustain new programs established with ARP dollars in areas including affordable housing, job-creation, and community and social programs that reduce crime rates. It can serve as a signature initiative of the new administration of Mayor Ed Gainey.

Appendix

April 8, 2022

To: Pennsylvania Budget and Policy Center
 From: Richie Feder
 Re: Pittsburgh Taxes

The City of Pittsburgh's income tax currently is imposed only on earned income – wages, compensation, net profits from a business. *See* Pitt. Code, Title II, Art. VII, Chaps. 245, 246. You have asked me whether Pittsburgh could expand the reach of its income tax to certain classes of unearned income, *e.g.*, dividends and capital gains; whether Pittsburgh could impose a higher tax rate on certain classes of earned income, *e.g.*, income from partnerships and corporations; and whether Pittsburgh has discretion regarding the tax rates it chooses to impose on the foregoing or on its existing earned income tax. The answer is yes to all three questions. The City has all the necessary authority from the General Assembly, and no further State legislative authorization is needed.

1. Unearned income. Pittsburgh's authority to impose its income tax derives primarily from the Local Tax Enabling Act, which authorizes local governments in Pennsylvania to tax anything, subject to extensive exceptions. *See* 53 P.S. § 6924.301.1(a) ("cities of the second class . . . may . . . levy . . . such taxes as they shall determine on persons, transactions, occupations, privileges, subjects and personal property within the limits of such political subdivisions"). The critical exception that must be addressed is the prohibition on taxing any subject that already is taxed by the Commonwealth. *See id.*, subsection (f)(1) ("Such local authorities shall not have authority by virtue of this act [to levy a tax] . . . on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee.").

As you know, the Commonwealth itself does tax unearned income, including, *e.g.*, dividends and capital gains, as part of the Commonwealth's personal income tax. This tax is set forth in Article III of the Tax Reform Act of 1971, 72 P.S. §§ 7302, 7303(a)(3), (5). This Commonwealth tax, however, does *not* preclude local taxation of the same subjects because of an express saving clause set forth at the end of Article III:

Notwithstanding anything contained in any law to the contrary, . . . the validity of any ordinance . . . now or hereafter enacted or adopted by any political subdivision of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this article, except as [setting out exceptions not applicable to our question].

72 P.S. § 7359(a).

Thus, the General Assembly has clearly provided that, as a general matter, local governments may not tax anything already taxed by the Commonwealth, *but that this prohibition does not apply to items taxed by the Commonwealth Personal Income Tax*. The Commonwealth

Court has expressly so held with respect to earned income, *see Aronson v. City of Pittsburgh*, 485 A.2d 890, 895 (Pa. Commw. 1985) (section 7359(a) “clearly states that the levy of the state income tax will not preclude local political subdivisions from levying similar taxes”), and there is no logical or textual reason why this same conclusion should not apply to unearned income.

I recognize that, in the Local Tax Enabling Act, the definition of “net profits” expressly excludes income “in the nature of earnings from an investment,” 53 P.S. § 6924.501, but nothing in this exclusion suggests that such earnings are excluded from all taxing authority; the exclusion is simply to clarify that the repeated references in the Act to a net profits tax does not include a tax on investment earnings. Indeed, the Act elsewhere expressly contemplates taxation of unearned income. *See, e.g., id.* (defining “income tax” to include “an earned income and net profits tax, personal income tax or other tax that is assessed on the income of a taxpayer levied by a political subdivision under the authority of this act”).

2. Subclassification of net profits. I see nothing in the Act that would preclude the City from taxing pass-through income from corporations, partnerships, and other artificial entities different from income from sole proprietorships; and I have elsewhere advised you that such a subclassification would not run afoul of the Uniformity Clause.

3. Tax rates. Although the Local Tax Enabling Act does contain several limitations on tax rates, the General Assembly has expressly provided that these rate caps do not apply to home rule municipalities (at least with respect to taxes on *residents*), of which Pittsburgh is one. *See* 53 P.S. § 2692(f), (i); *Reilly v. City of Pittsburgh*, 484 A.2d 736, 736 (Pa. 1984).