



## **Millage Hike Will Tax Property Owners and Patience**

On December 6<sup>th</sup>, Allegheny County Council voted to increase property taxes by 1 mill, or 21 percent, resulting in a new millage for property owners of 5.69 mills. Sadly, but predictably, this action is consistent with the disconcerting pattern of recent years wherein the Council passes illegal legislation that gets overturned in court.

Under normal circumstances when there is no reassessment pending, a property tax increase by County Council is subject only to the Home Rule Charter language of Article VII, Section 4c which requires “an affirmative vote of at least two-thirds of the seated members [of Council]”. Last night’s vote was eleven to four along partisan lines and evidently there will not be a veto from the County Executive.

But in the current situation Act 71 of 2005 takes away the power of the County to boost property taxes by 21 percent without approval of the court. Signed into law by Governor Rendell in November of 2005, it requires that in a reassessment year Allegheny County and its municipalities (school districts are subject to the subsequent Act 1 requirements) change millage rates by an amount that will hold property tax revenue at the previous year’s level. After establishing the revenue neutral millage, the taxing body is permitted, “by a separate and specific vote” to increase its millage rate to a level which it brings in up to 5 percent above what it collected the previous year.

Whereas prior to 2005 the County and its taxing bodies were able to take 105 percent of the previous year’s revenue in a reassessment year, Act 71 mandates that 105 percent comes in a two-step process. If the County or other taxing bodies want a higher than five percent rise, they must petition the court of common pleas. The Act says the court can approve an increase based “upon good cause shown” by the petitioning taxing body.

Remarks made by the primary sponsor of the law from the floor of the House on September 27<sup>th</sup>, 2005, distill the statute’s intent:

*“We make our locally elected officials accountable. No longer can they do the backdoor tax increases with the assessments. They are going to be held accountable by making separate votes for tax increases if they see those are*

*fit...and if they want to make their case to court, that certainly is a public way that they are going to have to justify raising taxes beyond that 5 percent”*

In the seventh year after adoption, Act 71 appears to be headed for its first court test.

Using 2011 assessment numbers and the current 4.69 mill tax rate, the County projects \$294 million in property taxes—\$274 million after homestead exemptions and refunds. With the reassessment proceeding towards implementation in 2012, the County will have to adjust its millage to keep tax collections level with 2011. It would then be permitted to take a separate vote to increase taxes to take in 5 percent above that revenue neutral amount, an amount of roughly \$14.0 million. If the County chooses to go after more revenue, it would take the approval of a judge. As to what case the County would make to argue it would have a “good cause” to implement an additional tax increase is anyone’s guess, but it is a safe assumption that the reason it would point to would be state and Federal cuts in funding. They might win that case, but it would no doubt drag on as parties filed briefs and debated the case. The 21 percent increase, if allowed to go into effect, would boost revenues by about \$60 million.

**What is Council thinking?** It seems clear that the majority who voted for the tax hike are heavily influenced by the thinking from the incoming County Executive, who formerly served on Council and spent time as Council president.

*Do they believe the reassessment is not happening?* For most people that would be extremely hard to do since new assessment notices are scheduled to be mailed to property owners in the Pittsburgh Public School District (the City of Pittsburgh and Mt. Oliver) in two weeks’ time—something Council has no power to stop. And that creates a real problem for Council because there is no conceivable legal way the City will have new assessments for 2012 but the rest of the County will not.

The new assessments going out on December 19<sup>th</sup> will require the City to go through steps mandated by Act 71 to hold revenue neutral from 2011 and then to vote for a tax hike of up to 5 percent in a separate vote if they choose to raise taxes. That has to be done very soon in order for tax bills to go out in January. It seems the County Council and the Executive-elect are planning to set aside the new City and Pittsburgh School tax bills in the new year by retroactively rescinding the new assessment numbers for Pittsburgh and Mt. Oliver. Taxpayers and City Council would be overwhelmed by uncertainty and confusion. The City and Schools would have to take out tax anticipation loans, which is the primary reason Judge Wettick ordered the City assessments to be completed first. A rescission of the new City assessments by the County would obviously run dramatically afoul of the Judge’s orders.

*Are they taking the arrogant stance that Act 71 does not apply and that the County can ignore it?* The Executive-elect has argued that the County can raise taxes now for 2012 and if there is a reassessment, the revenue neutral calculation would be based on 2011 revenue raised by 21 percent. But that is a ludicrous argument. To be revenue neutral compared to the 2011 collection can only mean revenue neutral relative to the actual

amount of 2011 revenue, not the 2011 level artificially raised after the fact by applying a retroactive tax hike. Thus, the incoming Executive's argument is likely to be unpersuasive when a judge hears it. The authors of Act 71 cannot possibly have envisioned the language of the bill being so tortured and misused.

*Does Council believe the Supreme Court will overturn its decision on the base year?* The Supreme Court deliberated long and hard over its ruling and heard all the arguments that could have been raised by County attorneys. Their decision will almost certainly not be revisited. A revision of a Court decision in such a short period is extraordinarily rare—if it has in fact ever happened.

Moreover, the incoming Executive's reading of the Supreme Court ruling is in error when he argues the Court should have tossed out base year assessments for all counties. The Court ruled only that the base year as applied in Allegheny County violated the uniformity clause and that it could not set aside another county's base year system unless or until there was a convincing legal challenge in such a county showing the uniformity clause was being violated.

Incredibly, the incoming Executive is now arguing that the courts should not have the power to force the County to do something its elected officials and the majority of voters do not want and therefore, the County is within its rights to ignore the courts. One wonders if he believes the rights of the minority as contained in and protected by the Constitution of Pennsylvania can be trampled on any time the majority decides they are not interested in minority rights or the court rulings that uphold those rights. The correct position for an elected official is to honor one's oath to obey, defend and protect the Constitution and obey the laws of the state and court decisions based on those laws. It is honorable to work on changing the Constitution and the laws following prescribed processes if that is the will of the majority but until that happens the Constitution as written is the controlling legal document. Abandoning that principle is to abandon the rule of law, on which our entire societal and economic structures depend.

*Does Council think the General Assembly will intervene?* The Legislature adopted the concept of the base year assessment and it will have to change that law. Up to this point there has been virtually no appetite in the Legislature to reform the state's assessment and property taxation laws to bring the Commonwealth into the 20<sup>th</sup> century. It would seem unlikely they are about to undo the base year statute any time soon. No doubt they should for a number of reasons, but it is a political firestorm waiting to happen and few wished to get burned. So, for now it is more comfortable to let the courts do the work.

And if the Executive-elect expects the Legislature to write a bill setting aside the Supreme Court ruling he will be disappointed. There is little or no prospect that the Legislature will write such a bill. Such an act would create a constitutional crisis in the state by destroying the balance and separation of power of the three branches of government.

As matters now stand, the Council's tax hike is almost certainly headed to court. Indeed, it would be useful for the Judge to issue an injunction against the County's tax increase pending the completion of the reassessment on the grounds that it will create enormous confusion and delays in a process that has already dragged on for years and has perpetuated the inequities in the assessment errors that have been in place for a decade. One can only imagine the turmoil if the Executive-elect follows through on his pledge to refuse to certify and mail out the new assessments even though new assessments are available and the County is under a Supreme Court order to do so. Will the judge hold the Executive in contempt and have him arrested?

One thing is sure, Allegheny County is about to witness property tax chaos if the Council raises the millage rate by 21 percent and refuses to carry out the Supreme Court's order to reassess.

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