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Voter Approval of Taxes Still Out of Reach

Should voters in the City of Pittsburgh have the right to approve or reject property tax increases? A majority of City Council does not think so, and have effectively killed a measure that would have put a question on the ballot asking voters if the City's Home Rule Charter should be amended to require a referendum for tax increases. A petition containing the requisite number of signatures could override the Council's decision and place the measure before voters.

But even if the petition drive was successful and voters approved the tax referendum requirement, it is doubtful the Charter amendment would survive a Court challenge by City attorneys.

As we have noted in *Policy Briefs* in years past, Pennsylvania's home rule law is interpreted by the courts as giving the governing body (in this case, City Council) complete control over taxes, without constraint. Allegheny County last wrestled with this provision in the battle over the drink tax when a petition drive failed to get the question seeking to reduce the tax from 10 percent to 0.5 percent on the ballot. The matter proceeded all the way to the Pennsylvania Supreme Court with the high Court upholding lower court opinions that the County Council could not be constrained in its power to set tax rates. The relevant provision of the 1972 home rule law states "the governing body shall not be subject to any limitation on the rates of taxation imposed upon residents". An up-or-down vote by the electorate would do just that, according to the Court's opinion.

But as we pointed out at the time the County Council was already constrained on several taxes with those limitations written into the Home Rule Charter—somewhat ironically, a governing document voted on and approved by the electorate. Just as the County Council has constraints on its authority over taxes, so too does City Council.

For instance, the City was granted permission by the state to levy a payroll preparation tax but the City can't change the rate without state action. The state also authorized a shift of the wage tax from the school district to the City so that the 3 percent a City resident pays now has a different makeup, but the City has no authority to change the wage tax rate from the 1.25 percent it receives. The parking tax was boosted by City Council in 2004 to 50 percent, but state law reforms ratcheted it down in steps to 37.5 percent, where it will presumably stay for the foreseeable future. When the Regional Asset District was created, the City had to lower its amusement tax rate. All that is left in complete control of City Council is the rate on the property tax and the realty transfer tax. The former has been unchanged since 2001.

So what is the state saying? Clearly, as creatures of the state, local governments are subject to state control. So the state can dictate to the City the rates on the taxes mentioned above. Meanwhile, the state also gives the power for home rule and optional plans of government to the citizens, enabling them to tailor their form of local government. Inexplicably, the law granting such enormous power to citizens withholds from them the authority to constrain the ability of elected officials to raise taxes—the most critical power over the people the governing body possesses.

Surely it is time for the Legislature to rectify this inconsistency. At the very least, for home rule communities, the citizens should be able through referendum to approve or reject tax increases or new tax levies. Ideally, all communities and state voters would have that right but it certainly makes sense for the voters in home rule communities to have referendum approval power over taxes. Amending the state's home rule law would simply require changing the language that permits no constraint on the governing body's authority to impose taxes on residents to permit home rule communities to include in their charters, a voter referendum requirement for tax increases or new taxes.

While elected officials are quick to claim that voters will never vote to raise taxes there would be ample opportunity to make the case for the proposed increase or a new tax. And there are examples from other states where rate hikes have been approved.

Who should have the power to set taxes in a home rule government? The law now says the authority resides exclusively with the elected officials who make up the governing body. But the Allegheny Institute—and most likely the majority of voters and taxpayers—believe citizens should have the right to approve or reject tax hikes or new tax levies. The Legislature can make that a reality by amending the home rule law. We either believe people are capable of self-governance or we don't—our ideals say we should believe in them.

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