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Act 47: Life Preserver for the City?

There is a lot of confusion about what the City of Pittsburgh can and cannot do under Act 47 --the Financially Distressed Municipalities Act--if it decided to file for status as a distressed municipality. Though the law is more than a decade old, the public's knowledge of the law is limited, and understandably so. It is complex and rarely used. Still, the financial problems in the City of Pittsburgh have focused attention on the Act, its conditions, and what it would mean if the City were to pursue distressed status.

We will clear up some of the misperceptions and comment as to whether the City would be wise to pursue the Act 47 route.

The legislative intent of Act 47 is to "enact procedures and provide powers and guidelines to ensure fiscal integrity of municipalities" by directing state-level assistance to the municipality for the duration of its distressed status. Upon application, the Department of Community and Economic Development (DCED) will launch an investigation in order to determine whether a municipality qualifies for distressed status. This includes assessing the available tax base and current tax levels to see if the municipality could raise revenues by increasing rates it has the power to raise already. If distressed status is granted, DCED appoints a coordinator to oversee the process, create a recovery plan, and guide the municipality back to fiscal health.

One of the most important parts of the Act--and the one that piques the most interest--is the ability of a distressed municipality to levy a "commuter tax" on non-residents who work within its borders. It has been alleged in some published reports the City could immediately and unilaterally boost the occupation privilege tax, the $10 annual tax paid by everyone working in the City. This is simply not the case. The only taxes that can be increased under the law are taxes on real estate and earned income (the wage tax). Thus, the only "commuter tax" that could be levied on non-residents would be the wage tax. But there are a few catches.

First, putting a wage tax on non-residents would require the same levy to be imposed on City residents. Thus, imposing a tax of 1.5 percent on non-residents would require the City residents to pay 1.5 percent as well. Second, all Pennsylvania municipalities are able to levy their own earned income tax under Act 511 of 1965--the Local Tax Enabling Act--and the majority have done so. In order to avoid paying twice, non-residents working in a distressed municipality only pay the difference between the earned income tax in their home community and the new higher rate in the distressed community.

Third, there is no guarantee that the coordinator will include a wage tax increase in the recovery plan. And finally, any imposition of a wage on non-residents beyond the 1 percent statutory limit must be approved by the County Court Of Common Pleas, which must find that an urgent necessity has been demonstrated.

Let's apply these stipulations to a hypothetical example of Pittsburgh. The City qualifies for distressed status and the coordinator recommends a 1.5 percent wage tax that receives court approval. In this scenario, a Mt. Lebanon resident, who works in the City and pays a 1.3 percent rate to Mt. Lebanon, would see a net increase of 0.2 percent in his/her wage tax that is due to the City. Residents of municipalities with lower earned income tax rates would face a greater bite out of their paychecks.

In light of all this the obvious question is: Would the City of Pittsburgh benefit from pursuing Act 47 status? Owing to statutory and practical reasons, the answer is almost certainly no. First, there is no guarantee that the City would be able to partake in the majority of the programs under the Act. Indeed, the Act has explicit language that prevents Pittsburgh, Philadelphia, and the state's counties from receiving grants or loans under the Act. In other words, special legislation would still have to be enacted to provide monetary assistance to the City.

Moreover, the City would be giving up a great deal of power to an appointed coordinator who could either design a plan that calls for tax increases on residents and non-residents, or who could put into effect a plan that makes massive cost reductions as a requirement for any revenue enhancements. At the same time, the Act gives the coordinator no power to reopen its existing contracts with labor unions, the principal cause of its financial problems.

Given the justifiable unwillingness of the legislature to provide new taxing authority to the City, it is time for City decision makers to fulfill their obligations to the taxpayers. This includes a massive restructuring of its spending levels. In the near term, it should sell assets or arrange to borrow against them. Longer term, it must address public safety spending and put it in line with comparable cities. It must also embrace a program to privatize as many services as possible in order to realize savings.

Unless the General Assembly and the Governor approve a legislative plan with sufficient powers to force the City to cut spending, sell assets, etc., there would seem to be no choices but to consider bankruptcy or raise taxes on Pittsburgh residents. Bankruptcy would allow the City to re-open onerous labor contracts, especially those which have "no layoff" clauses. Perhaps the threat of imminent bankruptcy would cause the unions to voluntarily re-open the contracts. In the final analysis, removing "no-layoff" clauses remains the single most important element in any long-term resolution of the City's financial problems.

Act 47 is not, and never was, the answer to the City's problems.

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