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Legislature Moves to Squash Tuition Tax

With thirty co-sponsors, a bill introduced by Rep. Paul Costa would ban the imposition of the proposed education privilege tax in Pittsburgh and preclude any other municipality in Pennsylvania from enacting such a levy. The so called “fair share tax” is highly controversial and has enraged students and prompted university officials to mount a serious opposition campaign. And rightly so: as we have pointed out over recent weeks, this tax is one of the worst ideas ever to arise out of Pittsburgh government.

But seeing the virtual certainty of widespread adoption of such a tax across the state if it is implemented in Pittsburgh, the Legislature is moving to stop the ill-conceived and damaging tax before it advances any further. The Legislature will have to move quickly or it might have to make the bill retroactive. Pittsburgh could decide in a week or so to pass the bill and it could stand up to a court challenge under current state law.

And that means state law is severely flawed. Indeed, Act 511 (the Local Tax Enabling Act of 1965) permits the consideration of such nonsensical taxes and must be reformed to narrow the range of permissible local taxes.

As we have noted in two previous *Policy Briefs* (see *Volume 8, Numbers 29 and 37*) the broad language of the law allowing municipalities and school districts to “levy, assess, and collect...such taxes as they shall determine on persons, transactions, occupations, privileges, subjects...” is what has allowed Pittsburgh to reason that post-secondary education is a privilege subject to taxation. That’s what the City’s Deputy Solicitor said in a newspaper article in November: “There's nothing in [Act 511] that says we can't do this...there's general language authorizing taxation of a privilege. There's no restriction. Therefore the city can do what it's doing.”

That’s the same thinking on the part of several communities that have levied a tax on free parking spaces, declaring it a privilege permitted to be taxed under Act 511. Only broad statutory language would provide a rationale for such taxes.

As of now the law has sixteen prohibitions contained in Section 2(f) that forbid local governments from taxing such things as:

- Public utility services
- Minerals, timber, natural resources, and farm products
- Membership dues to charitable, religious, beneficial, or non-profit organizations

- Construction or improvements to residential dwellings
- Admission to bowling alleys (yes, that is correct, bowling alley admissions)

If the education privilege tax ban is passed, it would be entered as the seventeenth prohibition. Some of the prohibitions apply to only certain classes of municipalities or school districts. For instance Pittsburgh, the only City of the Second Class, is the sole municipality permitted to levy a payroll tax, a publicly funded sports usage fee, and an amusement tax on motion picture tickets under the Act.

Rather than simply passing a bill to ban the tuition tax, perhaps the Legislature should amend the governing statute to spell out exactly what can be taxed by municipalities and school districts, eliminating “privilege” taxes not specifically permitted by the statute. And there should be few, if any, of those.

It might even be preferable at this point to have a clear, exhaustive list of permissible taxes (real estate, wage, realty transfer, parking, local services, and gross receipts) and allow municipalities and school districts to levy no more than a maximum number from the list (three of five, six of seven, etc.) with maximum allowable rates clearly spelled out with exemptions granted only by special dispensation from a state oversight board. That would give local officials flexibility to pick and choose a mixture of taxes suitable to their community without the murkiness of determining what might or might not be a subject of taxation.

And a very desirable addition would be legislation requiring all new local taxes and rate increases to be put to the voters in a referendum. Home rule communities would not be exempt from such a statute.

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