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Improving Tax Equity In Communities:
The Impact Of Oil and Gas Development

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The General Assembly has many decisions to make in the next few months. Budget season always brings a flurry of activity, with major legislative proposals moving through the legislative process concurrent to the passage of the budget. This year, counties believe the General Assembly must act to improve tax equity in communities impacted by oil and gas development.

County commissioners across the commonwealth are advocating for a simple and common sense correction to a decision by the state Supreme Court that has resulted in seven years of a free pass for the oil and gas industry when it comes to paying property taxes. Prior to 2002, counties had a long history of assessing property taxes on oil and gas producers. It is important to note that producers of other minerals such as coal and limestone already pay their fair share of the property tax. In terms of equity, exempting oil and gas from property taxation is comparable to exempting owners of two-story colonial homes from paying property taxes, while all other homeowners continue to pay taxes.

Counties seek the public's support for legislation that would grant specific authority in Pennsylvania law to reinstate the assessability of oil and gas. While counties have been advocating for this restoration since the court issued its decision, the issue is ripe for action in 2009. Today, the issue takes on new urgency. New resources are being tapped in the Marcellus formation. Counties that have not historically been oil and gas producing counties are booming with development. Broader swaths of Pennsylvania's residents are now being negatively impacted by the inequity created by the state Supreme Court.

So what does a state Supreme Court decision about property taxes on oil and gas have to do with other property owners? Any time one segment of property is excluded from taxation, the burden of provision of local government services falls to the remainder of the taxpayers. The fundamental basis of the property tax system is that everyone who owns property – whether an individual, a retailer, a mineral producer, a manufacturer – is a member of the community and derives benefit, directly or indirectly, from that community. Property taxes are one mechanism to share the fiscal cost of providing core community services, in some nominal proportion to the ability to pay. As the law stands today, all other property owners are carrying the tax responsibility that should be borne by for-profit oil and gas developers. Simply stated, our efforts are about assuring that oil and gas producers pay their fair share of the property tax.

Property owners who are leasing mineral rights will not be negatively impacted by this proposal. When counties talk about assessing oil and gas, we are talking about property taxes on the producer's interest, not the landowner's. The subsurface mineral rights are assessed as a separate parcel of property from the surface rights, because the landowner has essentially "sold" the mineral right to the producer by virtue of either the lease, or transfer of deed, allowing exclusive access to exhaust all of the gas present. The company that severs the mineral interest through deed or lease has capacity for production, so the lease is evidence of potential for extraction, and so acquires value. Because the oil or gas interests are severable, the entity that owns the oil or gas interest in the lease pays the tax, not the surface property owner.

Pennsylvania sits atop a valuable domestic energy resource. It is not inexhaustible, but it is bountiful. Development of this resource represents a delicate balance between economic development and protection of rural quality of life. Companies will come from all over the country to tap the play that lies beneath us. In other top producing states, some combination of local and state taxes have been levied against oil and gas developers, and this did not cause them to pull up stakes and rush back across the border. Those of us who will remain when the resource has been depleted want to assure that it is developed responsibly, and in a manner that is beneficial to our communities.

Why should local residents and businesses be forced to bear a disproportionate share of the property tax burden while oil and gas developers profit?