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AVOIDING ANOTHER PROPOSITION 13: THE NEED FOR REFORM OF THE NORTH CAROLINA PROPERTY TAX

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One of the most hotly debated issues in property tax circles is whether a system of fractional assessment or full value assessment should be used to value real property. North Carolina law requires that property be appraised at fair market value, but in practice the law is often ignored in favor of a de facto system of fractional assessment, with valuation practices differing significantly from county to county in the State. As California's experience with Proposition 13 indicates, taxpayers will not long tolerate a property tax system that is overburdensome and inequitably applied. In this Article Messrs. Mercer and Whittaker, recognizing the potential that exists in this State for taxpayer revolt, carefully examine the North Carolina property tax. The authors first trace the constitutional and statutory requirements of the current property tax law and then evaluate the actual practices of property tax assessors against those standards. They conclude that the current law is not being followed and argue that it needs reform. After examining reform that has occurred in other states, the authors propose model legislation that adopts a system of full value assessment, supplemented by a roll-back provision to temper the effects of inflation on tax assessments. This system, the authors believe, is necessary to avoid the kind of taxpayer unrest in this state that other states have experienced.

I. INTRODUCTION

The issue of whether fractional assessment or full value assessment should be used as a standard for the valuation of real property has been debated vigorously for the last twenty years. This debate has led to legislative action in some jurisdictions and judicially mandated reform in others.

The North Carolina Constitution mandates that the taxing power be exercised in a "just and equitable" manner.¹ Certain statutory provisions require

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1. N.C. CONST. art. V § 2(i).

property to be appraised at fair market value.² Evidence in court actions and county records, however, indicates that the state's constitutional and statutory provisions frequently are ignored in the actual practice of valuing real property. In fact, hearings before the North Carolina Property Tax Commission indicate that the current valuation and assessment practices soon may be challenged in either state or federal court.

The purpose of this article is to discuss the current property valuation system in North Carolina. It will address whether the statutorily mandated valuation system is being followed, whether a successful challenge to the system in either state or federal court could occur, and whether the statutorily mandated fair market valuation system is indeed an appropriate system. Finally, the article will propose model legislation that might help correct the valuation problem in North Carolina and thus prevent a challenge in the courts.

To most North Carolinians it is not a question, but a fact, that the property tax law needs to be revised. In fact, the former city-county supervisor of Mecklenburg County has warned that the octennial 1983 property revaluation could trigger a tax revolt in that county. Because of sky-rocketing property values, taxes have also increased, prompting Mr. Alexander to state that "[p]roperty taxes have gone about as far as the public will stand for it."³ Although a tax revolt is brewing in Mecklenburg County, one already has occurred in Burke County following that county's octennial revaluation. At one public meeting the county commissioners locked themselves in a room to escape an angry crowd, and another commissioner had his necktie cut in half by an angry citizen.⁴ Although these incidents are rare, tax dissent tends to brew in any county in which a revaluation is underway or was recently completed, and according to Jean Sales of Asheville, President of United Taxpayers, a group seeking to limit the property tax, tax revolt groups have sprung up in at least a dozen western countries.⁵

As North Carolina heads down this uncertain path, legislative reform seems a viable alternative to revolt. It is apparent that the octennial valuations are not functioning as well as they did in the years when revaluation was a tour about the muddy country roads on an old steed and during an era when inflation did not double property values every half dozen years. Consequently, North Carolina's Machinery Act, the property tax legislation, needs a fast, complete, yet viable reform before taxpayer morale, citizen suits, and revolt make any reform action impossible.

2. N.C. GEN. STAT. § 105-283 (1979). The actual statutory language is "true value in money," the term "true value" [being] interpreted as meaning market value."

3. The Charlotte News, Feb. 18, 1980, at 1A, col. 1.

4. Goldberg, *Tax Revolt*, The Washington Post, Feb. 17, 1980.

5. *Id.*

II. THE PROPERTY TAX LAW OF NORTH CAROLINA.

A. *Constitutional Requirements*

The guidelines for the taxation of real property in North Carolina are found in one section of the North Carolina Constitution and in the North Carolina General Statutes. In addition, a federal statute circumscribes the power of the legislature in its taxation of railroad property. The North Carolina Constitution in article V, section 2, subparts (i) and (ii), provides:

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised on a State-wide basis. No class shall be taxed except by a uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. The General Assembly's power to classify property shall not be delegated.⁶

The Constitution requires that the state and local governments exercise the power of taxation in a just manner and that taxes be uniformly applied throughout the state. The North Carolina Supreme Court addressed the meaning of uniformity under article V, § 3 of the 1868 Constitution⁷ in *Hajoca Corp. v. Clayton*.⁸ In *Hajoca Corp.* a plumbing fixture corporation challenged a North Carolina sales and use tax that provided for a referendum by the voters of each North Carolina county to decide whether to impose the sales and use tax on businesses within the county.⁹ The effect of the tax was that a business located within a county that passed the tax had to pay a one percent sales and use tax on sales within that particular county as well as on sales in all other counties in North Carolina.¹⁰ However, a business in a nontaxing county was not required to pay the tax in any North Carolina county.¹¹ Buncombe County, which was plaintiff's principal place of business, as well as 24 other counties, passed the local option tax, while 75 other counties voted it down.¹² Plaintiff corporation then paid a total of \$1,170.14 in sales and use taxes. Buncombe County collected \$436.41 of this total for sales and deliveries made by the plaintiff corporation in counties that voted down the tax.¹³

6. N.C. CONST. art. V, § 2(i) & (ii).

7. N.C. CONST. art. V, § 3 (1868) provided:

Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise; and, also, all real and personal property according to its true value in money. The General Assembly may also tax trades, profession franchises, and incomes, provided that no income shall be taxed when the property, from which the income is derived, is taxed.

8. 277 N.C. 560, 178 S.E.2d 481 (1971).

9. *Id.* at 561-62, 178 S.E.2d at 482.

10. *Id.* at 562, 178 S.E.2d at 483.

11. *Id.* at 561, 178 S.E.2d at 482.

12. *Id.* at 563, 178 S.E.2d at 483.

13. *Id.* at 561, 178 S.E.2d at 482.

In determining whether this tax was constitutional, the court examined authorities on the issue of uniformity. In defining uniformity in taxation, the court drew from a number of sources.

Equality within the class or for those of like station and condition is all that is required to meet the test of constitutionality 'A tax on trades, etc., must be considered uniform when it is equal upon all persons belonging to the prescribed class upon which it is imposed.' . . . It may also be noted that the requirements of 'uniformity,' 'equal protection,' and 'due process' are, for all practical purposes, the same under both the State and Federal Constitutions.¹⁴

The court concluded¹⁵ with a quotation: "The principles of equality and uniformity are indispensable to taxation, whether general or local. Local taxation must be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and must be assessed upon all the property according to its just valuation."¹⁶

The court held that Buncombe County had illegally and unconstitutionally exacted the tax from the plaintiff corporation and ordered a refund of the \$1,170.14. The court found that the tax was not uniform because it required the plaintiff corporation to pay the tax on its sales throughout the state, while a competitor of the plaintiff located in a nontaxing county did not have to pay the tax anywhere in the state.¹⁷

A second case interpreting the uniformity provisions of article V, section 2, is *In re Martin*.¹⁸ In *Martin* the Supreme Court cited *Hajoca Corp.* for the proposition that the Constitution requires "uniformity in taxation [that] relates to equality in the burden on the State's taxpayers."¹⁹ The *Martin* court then

14. *Leonard v. Maxwell*, 216 N.C. 89, 3 S.E.2d 316, quoted in 277 N.C. at 568, 178 S.E.2d at 486.

15. Before concluding its list of sources, the court quoted *Norfolk S. R.R. v. Lacy*, 187 N.C. 615, 122 S.E. 763 (1924). The court also noted the following authorities in its definition of uniformity within a territory:

"Uniformity of taxation, as provided for by state constitution, is required throughout the territorial limits of the taxing district * * *." *Cooley on Taxation*, 4th Ed., p. 645.

"Taxing is required to be by a uniform rule—that is, by one and the same unvarying standard. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. . . ." *Burroughs on Taxation*, Section 51, p. 62.

277 N.C. at 569, 178 S.E.2d at 487.

16. *Id.* at 569, 178 S.E.2d at 487 (quoting 2 DESTY ON TAXATION 1119 (1884)).

17. *Id.* at 570-71, 178 S.E.2d at 488. In a dissent joined by two other justices, Chief Justice Bobbitt agreed with the majority that the \$436.41 of taxes collected on sales outside of Buncombe County was properly refundable to the plaintiff corporation. The Chief Justice, noting the separability clause in the statute, would allow a North Carolina county to impose a tax on sales made within that particular county by a business located in that county; however, no taxes could be collected on a transaction outside the jurisdictional limits of the taxing county. Thus, the dissenting justices believed Buncombe County could validly collect the \$733.73 in taxes imposed on sales made within the county. *Id.* at 571-73, 178 S.E.2d at 488-89.

18. 286 N.C. 66, 209 S.E.2d 766 (1974).

19. *Id.* at 76, 209 S.E.2d at 773. The *Martin* court decided that goods which were stored by a

delineated the bounds of uniformity:

Article V, Section 2 of the Constitution of North Carolina provides, *inter alia*, that the General Assembly alone has the power to classify property for taxation and that *no class shall be taxed except by a uniform rule*. Even so, this constitutional provision does not prohibit reasonable flexibility and variety appropriate to reasonable schemes of State taxation. . . . While the General Assembly may not establish a classification that is arbitrary or capricious, a classification is constitutional if founded upon a reasonable distinction or difference and bears a substantial relation to the object of the legislation.²⁰

Thus, the power of the General Assembly to classify property for taxation, as provided for by article V, section 2(2), has been construed broadly. The legislature's power to classify subjects for taxing purposes is flexible, and the power carries with it the discretion to select subjects to be so classified.²¹ A classification will be upheld by the court if it is not arbitrary or capricious and is based on reasonable differences between the delineated classes.²² Any classification must apply equally to all members of the class defined.²³

B. Statutory Requirements

In addition to the broad constitutional provisions, specific statutes govern the taxation of real property. These statutes, N.C. Gen. Stats. 105-283, 105-284, and 105-317(1), are particularly relevant to any discussion of valuation of real property for the purpose of taxation. Section 105-283 of the North Carolina General Statutes provides:

Uniform appraisal standards.—All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this subchapter, the words "true value" shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having

foreign corporation in warehouses in Mecklenburg County were being held for "transshipment" as that term is used in N.C. GEN. STAT. § 105-281 (1969) (repealed 1973) and thus were exempt from ad valorem taxation. The court also held that Mecklenburg County did not have standing to challenge the nontaxable classification of property. First, the County, as a creature of the General Assembly with no inherent taxing power, cannot complain that its enabling legislation is lacking in breadth. 286 N.C. at 74, 209 S.E.2d at 772. Second, the County could not accept the benefits of the statute's taxing powers and then turn around and contest on constitutional grounds the statutory classification of property that was exempt from property taxes. *Id.* at 74-75, 209 S.E.2d at 772. Finally, the County may not challenge the constitutionality of the legislation since it is not a member of the class subject to the alleged discrimination and there was someone else with standing to assert the alleged constitutional deficiency. *Id.* at 75, 209 S.E.2d at 772-73. The court, although denying standing to the County to attack the constitutionality of the statute, did allow the County to challenge the interpretation of the statute. *Id.* at 76-77, 209 S.E.2d at 773.

20. 286 N.C. at 75-76, 209 S.E.2d at 773 (Martin court's emphasis) (citing *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930)).

21. *Charlotte Coca-Cola Bottling Co. v. Shaw*, 232 N.C. 307, 59 S.E.2d 819 (1950).

22. *Snyder v. Maxwell*, 217 N.C. 617, 9 S.E.2d 19 (1940).

23. *Id.*

reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.²⁴

Section 105-284 requires a uniform assessment standard:

All property, real and personal, shall be assessed for taxation at the valuation established under G.S. 105-283, and taxes levied by all counties and municipalities shall be levied uniformly on assessments determined as provided in this section.²⁵

Section 105-317(a) states:

(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

(1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.

(2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement costs; adaptability for other uses; past income; probable future income; and any other factors that may affect its value.

(3) To appraise partially completed buildings in accordance with the degree of completion of January 1.²⁶

Although Section 105-283 expressly defines "true value," the North Carolina courts still have developed their own interpretation of the words. The North Carolina Supreme Court has asserted that the purpose of the section "is to assure, as far as practicable, a distribution of the burden of taxation in proportion to the true values of the respective taxpayers' property holdings, whether they be rural or urban."²⁷ The court also stated that "[t]rue value . . . means the amount for which such property can be sold in the usual manner of sale."²⁸ Further articulation of this theme is found in other cases. "True value" has been equated with "actual market or fair cash value,"²⁹ but "true value" does not necessarily mean "book value."³⁰ In appraising property there does not have to be a market for a piece of property to have a true value: "[m]arket value can be constructed of elements other than sales in the

24. N.C. GEN. STAT. § 105-283 (1979).

25. *Id.* § 105-284.

26. *Id.* Section 105-317(1) is important primarily because it reinforces the legislative intent of § 105-283 and § 105-284. The court, in *In re Reeves Broadcasting Corp.*, 273 N.C. 571, 160 S.E.2d 728 (1968), found that § 105-295, the predecessor of the current § 105-317, was directory; however, "all real property as far as practicable, [should] be appraised at its true market value in money." *Id.* at 578, 160 S.E.2d at 733.

27. *In re King*, 281 N.C. 533, 539, 189 S.E.2d 158, 161 (1972).

28. *Id.*

29. *Albermarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 408, 192 S.E.2d 811, 816 (1972).

30. *See In re Amp. Inc.*, 287 N.C. 547, 564, 215 S.E.2d 752, 763 (1975).

market place.”³¹ In their determination of true value, appraisers should consider all the factors that enter into market value.³² “There may be reasonable variations from market value in appraisals of property for tax purposes if these variations are uniform.”³³

C. Federal Limitations

Congress has enacted legislation that affects the property tax system by prohibiting discrimination against railroad transportation property in the assessment and levying of property taxes. A railroad challenging the taxation of its property would rely on 49 U.S.C. section 11503, which went into effect after February 4, 1979.³⁴

31. *Id.* at 571, 215 S.E.2d at 767.

32. One North Carolina statute, N.C. GEN. STAT. § 105-342(c)(4) (1979), provides that any “public service company” can obtain relief from an allegedly unequal assessment by showing the existence of an “inequitable difference,” defined by § 105-342(c)(4) to be 15% or more between the level of assessment of locally appraised property and its property, which is appraised by the Department of Revenue. Although this statute appears to be inconsistent with § 105-283 and § 105-284, which require all property to be assessed at true value, § 105-342(c)(4) can be interpreted as a cushioning provision to allow for good faith differences in determination of true value. This interpretation of § 105-342(c)(4) bolsters the court’s analysis of *In re Bosley*, 29 N.C. App. 468, 224 S.E.2d 686, *cert. denied*, 290 N.C. 551, 226 S.E.2d 509 (1976).

33. *In re Bosley*, 29 N.C. App. 468, 472, 224 S.E.2d 686, 688, *cert. denied*, 290 N.C. 551, 226 S.E.2d 509 (1976).

34. Section 11503 provides:

(a) In this section—

...

(2) “assessment jurisdiction” means a geographical area in a state used in determining the assessed value of property for ad valorem taxation.

...

(4) “commercial and industrial property” means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. . . .

49 U.S.C. § 11503 (Supp. III 1979).

In *Alabama Great Southern Railroad v. Eagerton*,³⁵ eight interstate railroads alleged that the State of Alabama was discriminating against interstate commerce by assessing railroad property at a value that had a higher ratio to the true market value than the ratio that other commercial property bore to its true market value. The court held that 49 U.S.C. section 11503 prohibited this tax discrimination against the railroads and that the state was required to reduce the assessment ratio to the ratio imposed on other industrial and commercial property.³⁶

Ten railroad companies recently filed an action in federal court challenging the assessment practices in North Carolina. Prior to filing this action, the railroads jointly commissioned a sales ratio study in North Carolina, which they plan to use in this court challenge.³⁷ Their probability of success is quite high if they are able to show a five percent or greater difference in assessment ratio.³⁸

35. 472 F. Supp. 60 (N.D. Ala. 1979).

36. This case is unusual in that the State did not challenge the railroad's assertion of a higher assessment ratio. 472 F. Supp. at 61. Rather, the State merely wished to apply the old assessment ratio in 1979, whereas the railroads claimed that the lower ratio should be applied. *Id.* The court found that the new, lower assessment ratio was the applicable ratio for 1979. *Id.* at 64.

37. On October 21-23, 1980, the North Carolina Property Tax Commission heard an appeal filed by Southern Railway Company, Norfolk Southern Railway Company, and Seaboard Coast Line Railroad Company, in which these companies appealed the proposed 1980 ad valorem tax valuations made by the North Carolina Department of Revenue of the companies' respective system properties. The Commission upheld the valuation made by the Department of Revenue. On April 8, 1981, these railroad companies joined seven other companies and filed an action in the United States District Court for the Eastern District of North Carolina challenging the assessment procedures in North Carolina. *Clinchfield R.R. Co. v. Lynch*, No. 81-229 (E.D.N.C. Apr. 8, 1981).

38. See 28 U.S.C. § 11503(e) (Supp. III 1979). In challenging an assessment in North Carolina, a plaintiff must first determine the appropriate forum in which to bring suit. The alternatives are to seek to enjoin the operation of the tax system by suit in federal district court, invoke federal jurisdiction under the equal protection clause of the Fourteenth Amendment, or make the same argument, and possibly a "true value in money" argument, before the State Property Tax Commission, with a right of appeal to the North Carolina Court of Appeals. See *Brock v. Property Tax Comm'n*, 290 N.C. 731, 228 S.E.2d 254 (1976) (construing N.C. GEN. STAT. § 150A-43 (1978)); *King v. Baldwin*, 276 N.C. 316, 172 S.E.2d 12 (1970).

Accessibility to federal court is significantly restricted by the provisions of 28 U.S.C. § 1341 (1976). This section provides: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be used in the courts of such State." *Id.* The conclusion that this statute effectively precludes filing suit in federal court is supported by the case law. For example, in *Sacks Bros. Loan Co. v. Cunningham*, 578 F.2d 172 (7th Cir. 1978), the Seventh Circuit Court of Appeals upheld the district court's dismissal under 28 U.S.C. § 1341 of an action by a pawn shop owner alleging a violation of the Equal Protection Clause because the inventory of his shop had been subject to the Indiana personal property tax and the inventories of six other pawn shops in the same township had not been subject to the tax. The court held that the plaintiff had an adequate remedy under state law because the state constitution mandated an "equal rate of property assessment and taxation" and a state statute provided that "all tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner." *Id.* at 174. These provisions track the language of the North Carolina Constitution and statutes closely enough to support the conclusion that a North Carolina plaintiff would also have an adequate remedy under the law of this state. See, e.g., N.C. GEN. STAT. §§ 105-283, -284 (1979). See also *Robinson Protective Alarm Co. v. City of Philadelphia*, 581 F.2d 371 (3d Cir. 1978) (sustaining the refusal of a district court to take jurisdiction).

Recent cases finding remedies at state law to be inadequate include *Garrett v. Bamford*, 538 F.2d 63 (3d Cir.), cert. denied, 429 U.S. 977 (1976), and *Louisville & Nashville R.R. v. Pub. Serv. Comm'n*, 249 F. Supp. 894 (M.D. Tenn.), aff'd, 389 F.2d 247 (6th Cir. 1966). Federal jurisdiction

was upheld a second time in *Garrett* by the Third Circuit. 582 F.2d 810 (3d Cir. 1978). (It is important to consider only post-1940 cases in analyzing federal jurisdiction in this area: in 1932, the U.S. Supreme Court held that federal courts should not take jurisdiction of state tax matters in *Matthews v. Rodgers*, 284 U.S. 521 (1932). However, the predecessor of 28 U.S.C. § 1341 was adopted in 1940 because district courts had continued to exercise jurisdiction despite *Matthews*). In *Garrett*, the state remedy was held to be inadequate because the claimed discrimination was based on race, a fact probably not present in the instant case. In *Louisville & Nashville R.R.*, the state court remedy was held to be inadequate because it barred relief from discriminatory tax assessments unless the plaintiff railroad could show that it had been assessed at more than "actual cash value." Even upon that showing the only remedy was an increase in the assessments of other taxpayers. 249 F. Supp. at 903, 904.

There appears to be no North Carolina law on the issue of available remedies, that is, reduction in a plaintiff's assessment as opposed to an increase in the assessments of every taxpayer in the plaintiff's class assessed at a lower rate than the plaintiff. In contrast, at the time of *Louisville & Nashville R.R.*, there were several decisions of the Tennessee Supreme Court holding that only the latter remedy was available. *Id.* at 903.

The United States Supreme Court has spoken on this issue, holding in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923), that a taxpayer whose property was taxed at 100% of its true value was entitled to have his assessment reduced to the percentage of true value at which others were taxed. In light of this authority, the North Carolina courts are also likely to give a taxpayer this relief. Accordingly, there probably is an adequate remedy at state law.

In addition, N.C. GEN. STAT. § 105-322(g)(2) (1979) specifically requires that county boards of equalization and review "hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others." (Emphasis added). This section has been construed as giving a taxpayer a right to contest a county's entire tax roll if the commissioners have failed to value property as required by law and if the taxpayer is harmed by that unlawful valuation. *Brock v. North Carolina Property Tax Comm'n*, 290 N.C. 731, 228 S.E.2d 254 (1976); *King v. Baldwin*, 276 N.C. 316, 172 S.E.2d 12 (1970). There seems to be no point in requiring a taxpayer to show specific harm to himself if a concurrent specific remedy (reducing his valuation) is not available.

The procedural law of the state also appears to afford the aggrieved taxpayer an adequate remedy. The complaining taxpayer can first appeal his assessment to the county board of equalization and review. N.C. GEN. STAT. § 105-322 (1979). Further appeal may be taken to the Property Tax Commission. *Id.* § 105-290. If this decision is adverse to the taxpayer he can pay the assessed tax and bring an action in state court to recover the payment, *King v. Baldwin*, 276 N.C. at 323, 172 S.E.2d at 16, with an ultimate right of appeal to the United States Supreme Court. However, the standard of review followed by the state courts is unfavorable to the taxpayer.

In North Carolina, there is a presumption that ad valorem tax assessments are correct. Because of this presumption, a taxpayer challenging his assessment has the burden of proving that the assessment is erroneous. *In re Amp, Inc.* 287 N.C. 547, 562, 215 S.E.2d 752, 761-62 (1975); *In re Basley*, 29 N.C. App. 468, 472, 224 S.E.2d 686, 689 (1976) (citing *Amp*). Furthermore, § 150A-51 of the North Carolina General Statutes delineates when a superior court, involved in the review process, can reject the findings of the Property Tax Commission:

150A-51. *Scope of review; power of court in disposing of case.*—The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constituted provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150A-29(A) OR 150A-30 in view of the entire record as submitted, or
- (6) Arbitrary or capricious. . . .

N.C. GEN. STAT. § 150A-51 (1978).

Concerning rebuttal of the presumption that ad valorem tax assessments are correct, the Supreme Court of North Carolina has said:

[I]n order for the taxpayer to rebut the presumption he must produce "competent material and substantial" evidence that tends to show that: (1) either the county tax supervisor used an *arbitrary method* of valuation; or (2) the county tax supervisor used an *illegal method* of valuation; AND (3) the assessment *substantially exceeded* the true value in

D. Current Practices

The practices³⁹ of North Carolina assessors do not follow the guidelines of the Machinery Act. Instead, most North Carolina assessors have adopted a de facto system of fractionalized assessment. For example, in Columbus County farm property is generally appraised at twelve percent of fair market value and city property at thirty-five percent. In the current revaluation, farm property will be appraised at thirty-three percent and city property at forty-five percent. The change was due to a letter from an anonymous group of urban property owners who threatened legal action if the gap was not closed as much as possible.⁴⁰

Although not all counties are as far away from full valuation as Columbus' twelve percent valuation of farm land, an examination of Property Tax Commission documents shows many counties to be a good distance from the

money of the property. See *Albemarle Electric Membership Corp. v. Alexander*, *supra*, 282 N.C. at 410, 192 S.E.2d at 816-17. Simply stated, it is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong, he must also show that the result arrived at is *substantially* greater than the true value in money of the property assessed, i.e., that the valuation was *unreasonably high*.

In re Amp., Inc., 287 N.C. at 563, 215 S.E.2d at 762 (emphasis in original). See also *In re Wagstaff*, 42 N.C. App. 47, 255 S.E.2d 754 (1979).

This limited review may work a hardship on the taxpayer whose proof of inequality has been held to be inadequate by the State Property Tax Commission.

Where then should a suit be filed? The answer to this question depends on whether the property in question is railroad property. A potential advantage to a nonrailroad plaintiff of filing in federal court is that a federal judge will be making findings of fact and weighing the merits of any sales ratio studies presented. If appeal is made to the county equalization board first, that board will be passing on the equality of its own assessments. There is a lessened chance of conflict of interest if a federal judge makes the findings as to equality of assessment ratios. However, the potential advantage of filing in federal court is outweighed by the necessity of showing that no adequate remedy exists at state law. The remedies available under North Carolina law appear to satisfy the standards of 28 U.S.C. § 1341 (1976).

The conclusion is different if the taxpayer owns railroad property. The Railroad Revitalization and Regulatory Reform Act, 49 U.S.C. § 11503 (Supp. III 1979), prohibits discrimination against rail transportation property. The Act specifically provides that a federal district court has jurisdiction of an action brought under that section "[n]otwithstanding Section 1341 of Title 28 and without regard to the amount in controversy or citizenship of the parties . . ." *Id.* § 11503(c). A plaintiff railroad will almost certainly file suit in federal court and convince that court to take jurisdiction.

39. In the taxation of real property in North Carolina, there are two essential steps required before a tax rate is ascertained. First, all property must be appraised. Appraisal refers to "the true value of the property" as well as "the process by which true value is ascertained." N.C. GEN. STAT. § 105-273(2) (1979). Second, all property must be assessed. "'Assessment' means both the tax value of property and the process by which the assessment is determined." *Id.* § 105-273(3). The difference between appraised value and assessed value was crucial under the old Machinery Act, which contained different versions of §§ 105-283, 284, which allowed a county to tax a property at an assessed value that was a uniform percentage of the appraised value. The percentage was then known as the county's assessment ratio. The assessment ratio no longer has a de jure existence in North Carolina. In 1974, a revision of the Machinery Act deleted the old assessment ratio provisions and replaced them with § 105-283 and § 105-284. These provisions mandate that the counties assess tax property at the full appraisal value. Thus, appraisal value must equal assessment value and tax value must equal full market value. See H. LEWIS, THE PROPERTY TAX IN NORTH CAROLINA—AN INTRODUCTION 4-5 (3d ed. 1978). Despite this revision of the Machinery Act, some counties persist in using an assessment ratio to value property. See text accompanying notes 36-40 *infra*.

40. Wilmington Morning Star, January 16, 1980, at 1-B, col. 1.

100 percent mark. A random sample of consent orders between utilities and counties shows the following range of appraisals:

| | |
|--------------------|------------------------------------|
| Halifax County | 65-80% of true value ⁴¹ |
| Northampton County | 65-69% of true value ⁴² |
| Rockingham County | 75% of true value ⁴³ |
| Stokes County | 95% of true value ⁴⁴ |

Under the current system, this de jure acceptance of misfeasance by a public official is difficult to justify, but if the figures are arrived at equitably, fair taxing may result. However, the figures, particularly for Northampton and Halifax Counties, indicate a range for valuation, leaving the possibility of equitable taxation very much in doubt in those counties. But even the stable figure in the Rockingham County consent order is brought into doubt when it is analyzed further. In a sales/assessment ratio study conducted in the City of Reidsville in Rockingham County based on 237 transactions, the results were as follows:

| | |
|---------------------------|----------------------|
| Medium Ratio | 73.6% |
| Coefficient of Dispersion | 20.9% |
| Standard Deviation | 31.7% |
| Coefficient of Variance | 43.15% ⁴⁵ |

Although these figures appear rather meaningless at first glance, they are significant in determining the equity of an appraisal. The medium ratio is essentially equivalent to the rate of fractional assessment. In other words, land was assessed at 73.6% of its subsequent sales price. The coefficient of dispersion showing how much variance there is from the median, indicates the quality and equity of the assessment procedure. A low coefficient, under ten percent, is considered excellent, and the range of five to fifteen percent is considered acceptable; 20.9% clearly exceeds these limits.⁴⁶

41. *In re* Appeal of Virginia Electric & Power Company, No. 1978-46 (Property Tax Comm'n, Raleigh, N.C., Sept. 18, 1979) (consent order of Virginia public service company operating in North Carolina, from the level of appraisal of its property in Halifax County).

42. *In re* Appeal of Virginia Electric & Power Company, No. 1978-46 (Property Tax Comm'n, Raleigh, N.C., June 13, 1979) (consent order of Virginia public service company operating in North Carolina, from the level of appraisal of its property by the Department of Revenue in comparison with locally appraised property in Northampton County).

43. *In re* Appeal of Duke Power Company No. 1978-39 (Property Tax Comm'n, Raleigh, N.C., May 1, 1979) (consent order of North Carolina public service company, from the level of appraisal of its property by the Department of Revenue in comparison with locally appraised property in Rockingham County).

44. Appeal of Duke Power Company, No. 1978-40 (Property Tax Comm'n, Raleigh, N.C., Sept. 24, 1979) (consent order of North Carolina public service company, from the level of appraisal of its property by the Department of Revenue in comparison with locally appraised property in Stokes County for 1978 and 1979).

45. Letter from William Connolly, Ad Valorem Tax Division Real Property Appraiser, to Robert Cox, City Manager, City of Reidsville (August 31, 1979).

46. The standard deviation and coefficient of variation are used in arriving at the coefficient of dispersion. This is illustrated by reviewing the steps taken in a sales ratio study.

Steps in Sales Ratio Study

1. Select sample that meets requirement that would insure that all sales have same chance of being included in study. (All sales originally included).
2. Qualify sales to insure that only bona fide sales included.

These random samples from several of the 100 North Carolina counties indicate that, at the very least, these counties are not in compliance with the provisions of the Machinery Act. However, it is clear from other records of the Property Tax Commission that the remaining counties, to varying degrees, also are not in compliance with the law.⁴⁷ Clearly the law needs either amendment or stricter enforcement.

III. PROPERTY TAX REFORM IN SISTER STATES

The North Carolina system of property tax valuation and assessment is ripe for both judicial challenge and legislative reform. North Carolina is not the first state to deal with these challenges, and the experience of her sister states should be a guide for future reform in North Carolina. The trend toward full value assessment has been a quiet revolution, with crucial battles fought in the courtrooms and legislative halls of the states. In this section, the problems, challenges, and reforms of other states will be discussed and weighed as models for developing a reform statute.

A. New Jersey

One of the first cases to tackle the problem of full value assessment, *Switz v. Township of Middletown*,⁴⁸ offers one of the most comprehensive sets of judicial viewpoints on the full value assessment question. Five opinions were handed down in the *Switz* case—the majority, a concurrence, and three dissents.

The facts of *Switz* are typical of most cases in the full value assessment area. A property owner, who had ascertained that her property had been overvalued relative to other property in the township, brought an action against the assessor seeking to compel assessment of all property in the township at full and fair value. She also sought to compel equalization of all assessments in the county to the level required by statute.

The court ordered the assessor of Middletown to assess property in that

-
3. Obtain appraised values of each sold property;
 4. Compute individual ratio by dividing the appraised value by the verified sales price.
 5. Array ratios.
 6. Identify median—more meaningful and less influenced by outliers.
 7. Measure actual difference between individual ratio and median with no plus or minus signs.
 8. Sum the individual ratios.
 9. Divide this figure by (N-1) one less number than the sum of the observation. Result is average absolute deviation.
 10. Divide average absolute deviation by the median. Result is called the coefficient of dispersion.

47. Copies of these records may be examined at the office of the Property Tax Commission, N.C. Department of Revenue, Two South Salisbury Street, Raleigh, N.C. See also Liner, *Accuracy and Uniformity of Property Tax Assessments in North Carolina*, 40 POPULAR GOV'T 29 (1975); U.S. CENSUS BUREAU, CENSUS OF GOVERNMENTS, 1977, 2 TAXABLE PROPERTY VALUES AND ASSESSMENT SALES PRICE RATES.

48. *Switz v. Township of Middletown*, 23 N.J. 580, 130 A.2d 15 (1957).

township at full value. The Township of Middletown was also ordered to appropriate the funds that would allow the assessor to comply. In addition, the court granted a time extension:

The inquiry as to true value shall proceed, but the mandate otherwise shall not apply to the tax years 1957 and 1958, thereby to afford the Legislature the opportunity to take such measures and provide for such administrative procedures as its own inquiry may prove to be essential to the public interest, and to allow the Township time needed for the fulfillment of the project.⁴⁹

The court then rationalized its delay:

It is the magnitude of the task of revaluation and the danger of windfall inflationary spending that counsels so strongly against drastic and abrupt action—the likelihood of even greater discrimination by hasty and ill-considered assessments and the disposition to spend when ‘new’ revenues are at hand, measured by the old tax rate, restrainable only by a statutory tax ceiling or ‘freeze’ in accordance with the old rate mathematically readjusted, a measure that could prejudice local fiscal action and work serious injury to the individual taxpayers and hardship in other directions, but one that at all events calls for the studied consideration of the legislative authority when all the facts and circumstances are known.⁵⁰

There were three dissents in *Switz*.⁵¹ The first, by Justice Wachenfeld, agreed with the majority that “the problem is *basically legislative and administrative*” (court’s emphasis) but then chastised the majority for “inconsistently proceed[ing] to solve it judicially.”⁵² He asserted that the court should not overturn “almost a century of precedent in an area which it admits is ‘legisla-

49. *Id.* at 598, 130 A.2d at 25.

50. *Id.* at 598-99, 130 A.2d at 25.

51. The fifth opinion in *Switz* was a concurrence to the majority opinion, which would have reversed the lower court’s findings in favor of the taxpayer. He would then have remanded the case for further fact-finding, but retained jurisdiction. *Id.* at 613-14, 130 A.2d at 33 (Weintraub, J., concurring).

52. 23 N.J. at 615, 130 A.2d at 34 (Wachenfeld, J., concurring).

Any discussion of the role of the judiciary in the evolution of the property tax assessment standards in New Jersey is incomplete without reference to a line of cases that deal with the manner in which a property owner proves inequality under a standard of fractional assessment. The first in this line of cases, *Hillsborough v. Cromwell*, 326 U.S. 620 (1946), found no adequate state remedy where a taxpayer who was discriminated against could not have his assessment lowered but was forced to seek an upward valuation in the assessment of the other taxpayers. This led to recognition of a constitutional right to review an assessment to see if it was in line with the “common level” of assessment in that jurisdiction. *See, e.g.*, *Gibraltar Corrugated Paper Co. v. Township of N. Bergen*, 20 N.J. 213, 119 A.2d 135 (1955); *Baldwin Constr. Co. v. Essex County Bd. of Taxation*, 16 N.J. 329, 108 A.2d 598 (1954). *See also* Lasser, *Assessment of Real Property in New Jersey: An Appraisal of the Baldwin Case*, 9 RUTGERS L. REV. 497 (1955). The New Jersey courts, following this continuing evolution, next allowed a taxpayer to prove an average ratio if no uniform ratio was present and have his assessment reduced to that average or common percentage. *In re Kents*, 2124 Atl. Ave., Inc., 34 N.J. 21, 166 A.2d 763 (1961). The court in *Kents* was faced with a municipality that had a “hit and miss” assessment procedure with no uniformity. Allowing the taxpayer to prove an average ratio and then reducing his assessment to that ratio was considered an appropriate solution since it would encourage property owners with a higher-than-average assessment ratio to litigate. According to the court’s reasoning, this would be desirable since it would force the municipality to reassess or be faced with a flood of litigation.. *Id. See, e.g.*, *Piscataway Assocs. v. Township of Piscataway*, 73 N.J. 546, 376 A.2d 527 (1977).

tive and administrative' and constantly under the surveillance of and wholly subject to the legislative processes."⁵³ Justice Wachenfeld thus would not have disturbed the present system absent legislative approval.

The second dissent was written by Justice Vanderbilt and concurred in by Justice Jacobs. These two justices, citing the legislative and constitutional historical precedents for true value, would have made the order effective immediately rather than two years later. The justices found the issues quite clear: "whether we will recognize the clear and unmistakable mandate of the statutes for assessment at true value and direct performance of the solemn duty of the defendants to assess at true value or ignore it and make ourselves a party to the positive disregard of the statutes."⁵⁴ The two justices then stated that

[A]ny such weakness on the part of the court in enforcing what is clearly the law can lead only to disregard of its judgment. On the other hand, by insisting on adherence to the standard of true value, we effectuate the purpose and policy of the existing law, extinguish the evils that have grown up from the acceptance of a percentage of true value as an adequate standard of value and make policing of abuses infinitely easier, in the interest of realizing equality of treatment and burden.⁵⁵

In a brief dissent, Justice Jacobs crystallized the opinion of Vanderbilt:

The statutory direction for assessment at true value is unequivocal and long-standing. When duly called upon in an appropriate legal proceeding, our solemn judicial responsibility to insure fair fulfillment of the legislative mandate is entirely clear. To meet practical necessities, the Appellate Division granted a deferment of the effective date of the original order and the record suggests no just need for additional delay in this thoroughly litigated case before us; if perchance any such need should appear, application by the township and its assessor for reasonable relief may readily be entertained by the Appellate Division.⁵⁶

These opinions illustrate three basic judicial attitudes towards the question of full value assessments. The majority, aware of the injustice and illegalities that are inherent in an unauthorized fractional assessment system, but also aware of the decades of precedents for this system, was unwilling to act hastily to change. They therefore allowed a two-year waiting period in order to avoid further injustices and havoc in revaluation. The two-year period also gave the legislature time to amend the statutes if it so desired.⁵⁷ The Wachenfeld dissent took a more pragmatic approach to the situation. Recognizing years of reliance on the de facto system of fractional assessment, Justice Wachenfeld asserted that the legislature and the executive relied on the system as it actually existed. Changing the system should not be achieved by judicial

53. *Switz v. Township of Middletown*, 23 N.J. at 617, 130 A.2d at 35 (Wachenfeld, J., dissenting).

54. *Id.* at 633, 130 A.2d at 44 (Vanderbilt, C.J. and Jacobs, J., dissenting).

55. *Id.* at 633-34, 130 A.2d at 44.

56. *Id.* at 634, 130 A.2d at 44 (Vanderbilt, C.J. and Jacobs, J., dissenting).

57. See text accompanying note 50 *supra*.

action but rather by the people through legislative action. The final pair of dissents by Vanderbilt and Jacobs offer a strict legalistic approach to the problem: a law is being broken; therefore we, as the judiciary, must immediately correct this breach.

These three viewpoints in *Switz* are reiterated in the decisions of other states. As will be shown in the analysis that follows, implementation of any of these alternative viewpoints would have negative effects, either in taxpayer morale, legislative support, or assessor morale and accuracy. A far superior solution to the sort of litigation present in *Switz* is effective legislation before the problem arises.

New Jersey's battle with fair value assessment did not end with the *Switz* decision. Following the *Switz* decision and a tax commission study,⁵⁸ the legislature adopted a form of local-option fractional assessment that allowed a county to adopt a uniform, county-wide assessment ratio. The assessment ratio must be expressed as a multiple of ten percent and must be not lower than twenty percent nor greater than 100 percent of value. Further, if a county failed to adopt a ratio, its percentage would be set at fifty percent.⁵⁹

58. COMMISSION ON STATE TAX POLICY, NINTH REPORT (1958). This report, cited extensively in *Switz v. Kingsley*, 37 N.J. 566, 182 A.2d 841 (1962), recommended, after thorough examination, a uniform state-wide ratio of 40%:

So far as the taxpayer is concerned, assessments at a fraction of full value will make no difference in his tax liability. It would cause no greater shift in the tax burden among classes or among individuals regardless of what the present differences may be. He will pay the same under 100 percent, 60 percent, 40 percent, or 10 percent assessments—provided local budget requirements remain unchanged. If a uniform assessment requires that the local average ratio of assessed value to true value be lowered, the tax rate will increase; conversely, assessments at a higher local ratio would cause the tax rate to decrease.

For psychological reasons, it seems best to adopt a fractional valuation. This valuation must be selected so as to bring a minimum disturbance to conventional tax rates. No matter what uniform fractional valuation is used, however, some tax rate adjustments will be large, but this need not change the tax bill received by any taxpayer. Shifts of tax burden among taxpayers in the same class and among classes of taxpayers will occur—but only because of the establishment of uniform treatment, not because of the fraction selected.

COMMISSION ON STATE TAX POLICY, *supra* note 97. The Commission concluded: "In view of the wide public reluctance to accept 100% assessments, and despite the fact that there is no real difference between the two in the distribution of the tax burden, a uniform Statewide assessment ratio for real estate should be established at 40% of the full valuation." *Id.* at 100.

59. N.J. STAT. ANN. §§ 54:4-2.25, 4-2.26, 4-2.27 (West 1960) (amended 1964). These statutes provided:

54:4-2.25 Standard of value for assessment of real property; taxable value

All real property subject to assessment and taxation for local use shall be assessed according to the same standard of value, which shall be the true value of such real property and the assessment shall be expressed in terms of the taxable value of such property, which taxable value shall be that percentage of true value as shall be established by each county board of taxation as the level of taxable value to be applied uniformly throughout the country.

54:4-2.26 Percentage level of taxable value; limits

Every percentage level of taxable value of real property established by a county board of taxation shall be expressed as a multiple of 10%, and no level so established shall be lower than 20% or higher than 100% of the standard of value.

54:4-2.27 Time for establishment of percentage level of taxable value; uniform application; alteration, failure to establish

The local option assessment standard was unsuccessfully challenged in *Switz v. Kingsley*.⁶⁰ The plaintiff argued that the local option was constitutionally deficient because of lack of uniformity and that only a single statewide ratio was appropriate.⁶¹ The court held that the statute passes constitutional muster since the tax is uniform within the taxing district of the local government unit. The court brushed aside arguments relating to a state-wide property tax, answering that no such tax currently existed, and if one were enacted, the court would face the uniformity issue again at that time.⁶²

B. Connecticut

Another state that experienced an early challenge to its system of fractional assessment is Connecticut.⁶³ From 1860 until the challenge in 1957, Connecticut required real property to be assessed at full value.⁶⁴ However, in a situation similar to that prevailing in North Carolina, the courts, with the implicit blessing of the legislature, allowed the assessors to assess property at less than full value. As early as 1893, the Connecticut Supreme Court allowed a taxpayer assessed at a higher ratio than the lower, but illegal, prevailing ratio to have his higher assessment lowered to the prevailing ratio.⁶⁵ This result was the rule in Connecticut until the 1957 *E. Ingraham Co. v. Town and City of Bristol*⁶⁶ case. In *Ingraham* the assessors had assessed the plaintiff manufacturer's property at three different ratios—100% of actual value for motor vehicles, 90% for personalty, and 50% for real property.⁶⁷ The plaintiff sought to have all of his property assessed at the lowest ratio. The court reversed its earlier stance and held that it would allow no reduction⁶⁸ and stated that the assessor had acted illegally in using any base other than the actual value of the

Each county board of taxation shall, by resolution, establish the percentage level of taxable value of real property on or before April 1 of the year preceding the tax year, and the level so established shall be applied uniformly in such county for the purpose of assessing the taxable values to be used in levying taxes for the calendar year next succeeding the year in which such level was established. The level so established may be altered by any such board by establishing, on or before the date fixed by this section in any year, a new level; but the percentage level last established pursuant to this act shall remain in full force and effect for a period of not less than 3 years and until altered as provided in this section. In the event that the county board of taxation for any county shall fail to initially establish the percentage level for such county, then until the same shall be done the level of assessment shall be 50% of the true value. The secretary of the county board of taxation, not later than April 10 of each year, shall mail to the Director of the Division of Taxation, to each assessor and board of assessors, and to the municipal clerk of each municipality within the county, a copy of such resolution, or, if such resolution was not adopted, a statement to that effect.

60. 37 N.J. 566, 182 A.2d 841 (1962).

61. *Id.* at 572-74, 182 A.2d 843-45.

62. *Id.* at 573, 182 A.2d at 844.

63. *E. Ingraham Co. v. Town and City of Bristol*, 144 Conn. 374, 132 A.2d 563 (1957).

64. The court in *Ingraham* traced the legislative and judicial history of the full value requirement. *Id.* at 379, 132 A.2d at 565-66.

65. *Randell v. City of Bridgeport*, 63 Conn. 321, 28 A. 523 (1893).

66. 144 Conn. 374, 132 A.2d 563 (1957).

67. *Id.* at 375-76, 132 A.2d at 564.

68. *Id.* at 383, 132 A.2d at 567.

property.⁶⁹ The court thus refused relief to the taxpayer, although it acknowledged the illegal conduct of the assessor.⁷⁰

The legislature moved quickly in the wake of the *Ingraham* decision. In the same year, it amended the assessment statute so that all property that was not legislatively exempt "shall be liable to taxation at a uniform percentage of its present true and actual valuation, not exceeding one hundred percent of such valuation, to be determined by the assessors."⁷¹ This new standard required a three-step process: appraisal at full value, determination of a uniform assessment ratio, and computation of the assessment.⁷²

The Connecticut legislature amended the assessment statute again in 1974.⁷³ The statute now requires "[e]ach such municipality [to] assess all property for purposes of the local property tax at a uniform rate of seventy percent of present true and actual value. . . ."⁷⁴ Thus, in Connecticut, a true value system of assessment, with a local option of fractional or full value assessment, was legislatively overruled, and a uniform statewide fractional assessment standard was adopted.

C. Tennessee

The courts in both New Jersey and Connecticut recognized the statutory imperatives of the full value standard as well as a right to enforce that mandate. However, the legislatures in both states adopted fractional assessment almost immediately after the cases were reported. A third state that has also backed away from the full value standard is Tennessee. Prior to 1972, the Constitution of Tennessee contained provisions for full value assessment.⁷⁵ Full valuation was supported by the state supreme court in 1901 when a property owner sought to have his assessment reduced to the lower ratio common in his jurisdiction.⁷⁶ The court held that the proper remedy was not the lower-

69. *Id.* at 380, 132 A.2d at 566.

70. The court apparently did not consider CONN. GEN. STAT. ANN. § 12-170 (1949) which provides for a \$50 fine for an assessor who does any illegal act. Nor did the court grant relief pursuant to *Sioux City Bridge v. Dakota County*, 260 U.S. 441 (1923), which gave the plaintiff relief similar to that requested in *Ingraham*.

71. Act of June 21, 1957, Pub. Act No. 673, § 6, 1957 Conn. Pub. Acts, 1090 (codified at CONN. GEN. STAT. ANN. § 12-64 (1957) (repealing CONN. GEN. STAT. ANN. § 1738 (1949)).

72. *Lerner Shops v. Town of Waterbury*, 151 Conn. 79, 85, 193 A.2d 472, 475-76 (1963). The *Lerner Shops* court found that the assessors had merely assessed the property and skipped the first two steps. The court then ascertained the true value of the property and then applied the averaged ratio established by the property owner. *Id.* at 90-91, 193 A.2d at 477-78.

73. Act of May 30, 1974, Pub. Act No. 74-299 §§ 1, 3 Conn. Pub. Acts 726-27 (codified at CONN. GEN. STAT. ANN. § 13-62a (1980)).

74. CONN. GEN. STAT. ANN. § 12-62a (1975).

75. TENN. CONST., art. 2, § 28 (1870) (amended 1973). This article provided in pertinent part that

all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value.

Id.

76. *Carroll v. Alsap*, 107 Tenn. 257, 64 S.W. 193 (1901).

ing of his assessment but the increasing to true value of the assessments of other properties in his jurisdiction.⁷⁷

Despite the clear constitutional mandate that property be taxed according to value and that properties be classified for different rates of taxation, the Tennessee practice continued to be one of classified fractional assessment, with particular discrimination against railroads and utilities. The railroads, aware of the apparent injustice and illegality of this practice, and cognizant of the increased economic costs to their shareholders, challenged the system in 1939.⁷⁸ The suit alleged that nonrailroad property was assessed at seventy-five percent of value while railroads were assessed at full value⁷⁹ and that this discrepancy in assessment constituted illegal discrimination. The Tennessee Supreme Court viewed things differently, however, and held that the state had not acted in violation of the law. The railroad then appealed to the United States Supreme Court, which affirmed the Tennessee decision.⁸⁰ The Court noted in dicta that even if the railroads were discriminated against as a class there was no violation of equal protection since the alleged discrimination was apparently common to the whole class.⁸¹

77. *Id.* at 284, 64 S.W. at 200.

78. *Nashville, Chattanooga & St. Louis Ry. v. Browning*, 176 Tenn. 245, 258, 140 S.W.2d 781, 786 (1939), *aff'd*, 310 U.S. 362 (1940).

79. *Id.* at 258-59, 140 S.W.2d at 786.

80. 310 U.S. 362 (1940).

81. *Id.* at 368. The Court stated:

We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. *Raymond v. Chicago Traction Co.*, 207 U.S. 20; *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350; *Sioux City Bridge v. Dakota County*, 260 U.S. 441; *Bohler v. Callway*, 267 U.S. 479; *Cumberland Coal Co. v. Board*, 284 U.S. 23; *Iowa-Des Moines Bank v. Bennett*, 284 U.S. 239. All these cases are inapposite. None denied power to a state to apply different yardsticks to different classes of property. Equally irrelevant are those cases in which this Court, because of the nature of the litigation, was construing the uniformity clause of a state constitution, and was not applying the Fourteenth Amendment. *Greene v. Louisville & I. R. Co.*, 244 U.S. 499; *Louisville & N. R. Co. v. Greene*, 244 U.S. 522. This Court has previously had occasion to advert to the narrow and sometimes cramping provision of these state uniformity clauses, and has left no doubt that their inflexible restrictions upon the taxing powers of the state were not to be insinuated into that meritorious conception of equality which alone the Equal Protection Clause was designed to assure. *See Puget Sound Co. v. King County*, 264 U.S. 22, 27.

That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate—these are among the commonplaces of taxation and of constitutional law. *Kentucky Railroad Tax Cases*, 115 U.S. 321; *Pacific Express Co. v. Seibert*, 142 U.S. 339; *Florida Central & P. R. Co. v. Reynolds*, 183 U.S. 471; *Southern Ry. Co. v. Watts*, 260 U.S. 519; *Atlantic Coast Line v. Daughton*, 262 U.S. 413; *Rapid Transit Corp. v. New York*, 303 U.S. 573. Since, so far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another, the only question relevant for us is whether the state has done so. If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous. If the state supreme court had construed the requirement of uniformity in the Tennessee Constitution so as to permit recognition of these diversities, no appeal could successfully be made to the Fourteenth Amendment. . . . And if the state supreme court chooses to cover up under a formal veneer of uniformity the established system of differentiation between two classes of property, an

The de facto fractional assessment affirmed in *Browning* continued to be the practice in Tennessee. This practice was again challenged by a railroad in 1966.⁸² In this challenge, the railroad attacked on grounds similar to those used in *Browning*, but this time buttressed their attack with the state constitution. After a showing by the railroads that their property was assessed at between fifty-five and sixty-five percent of true value while other property was assessed at approximately twenty percent, the district court ruled against the state, finding that the discrimination was "systematic, intentional and of long standing."⁸³ Despite this finding for the plaintiffs, the district court refused to issue a decree calling for a reduction in the railroad's assessment. Citing the disruptive effects that such a decree would occasion, the court instead ordered the State Board of Equalization to "rehear and reconsider the assessment so that it may be made to conform with the requirements of equal protection of the law under the Fourteenth Amendment."⁸⁴ The opinion was affirmed by the Sixth Circuit Court of Appeals.⁸⁵

In a response uncharacteristically slow in property tax challenges, Tennessee finally amended its constitution in 1972 to provide for classified and fractionalized assessment.⁸⁶ Following the adoption of this new article, the

exposure of the fiction is not enough to establish its unconstitutionality. Fictions have played an important and sometimes fruitful part in the development of law; and the Equal Protection Clause is not a command of candor.

Id. at 368-69.

82. *Louisville & Nashville R.R. v. Public Serv. Comm'n*, 249 F. Supp. 894 (M.D. Tenn. 1966), *aff'd*, 389 F.2d 247 (6th Cir. 1968).

83. *Id.* at 898.

84. *Id.* at 904.

85. 389 F.2d 247 (6th Cir. 1968).

86. The new article 2, § 28 provides:

Taxable property—Valuation—Rates.—In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation, but the Legislature may except such as may be held by the State by Counties, Cities or Towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except the direct product of the soil in the hands of the producer, and his immediate vendee, and the entire amount of money deposited in an individual's personal or family checking or savings accounts. For purposes of taxation, property shall be classified into three classes, to wit: Real Property, Tangible Personal Property and Intangible Personal Property.

Real Property shall be classified into four (4) subclassifications and assessed as follows:

- (a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;
- (b) Industrial and Commercial Property, to be assessed at forty (40%) percent of its value;
- (c) Residential Property, to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and
- (d) Farm Property, to be assessed at twenty-five (25%) percent of its value.

House trailers, mobile homes, and all other similar movable structures used for commercial, industrial, or residential purposes shall be assessed as Real Property as an improvement to the land where located.

The Legislature shall provide tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities or Towns; provided, that such tax

Tennessee legislature in 1973 repealed the statutes requiring full value and substituted the constitutionally mandated fractional assessments.⁸⁷ The statute provides that public utility property be assessed at fifty-five percent of full value, industrial and commercial property at forty percent, and residential and farm property both at twenty-five percent.⁸⁸ In subsequent attacks on the statute, the Tennessee Supreme Court found that the statutes incorporated reasonable classification and did not violate the equal protection clause of the fourteenth amendment.⁸⁹ The court, in a different suit, also found that the classification of real property for purposes of taxation and the subsequent imposition of higher rates on that property was not unconstitutionally arbitrary or discriminatory.⁹⁰ Thus, Tennessee, like New Jersey and Connecticut, opted

relief for the years 1973 through 1977 shall be not less than an amount equal to the State, County, and Municipal Taxes on Five Thousand (\$5,000) Dollars worth of the full market value (or One Thousand Two Hundred Fifty (\$1,250) Dollars of the assessed value) of property used for a residence by any taxpayer over sixty-five (65) years of age for a period of one (1) year prior to the date of assessment; provided further, that such relief shall not extend to persons having a total annual income from all sources in excess of Four Thousand Eight Hundred (\$4,800) Dollars.

The Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly.

Tangible Personal Property shall be classified into three (3) subclassifications and assessed as follows:

- (a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;
- (b) Industrial and Commercial Property, to be assessed at thirty (30%) percent of its value; and
- (c) All other Tangible Personal Property, to be assessed at five (5%) percent of its value; provided, however, that the Legislature shall exempt Seven Thousand Five Hundred (\$7,500) Dollars worth of such Tangible Personal Property which shall cover personal household goods and furnishings, wearing apparel and other such tangible property in the hands of a taxpayer.

* * * *

The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

The Legislature shall have power to tax merchants, peddlers, and privileges, in such manner as they may from time to time direct, and the Legislature may levy a gross receipts tax on merchants and businesses in lieu of ad valorem taxes on the inventories of merchandise held by such merchants and businesses for sale or exchange. The portion of a Merchant's Capital used in the purpose of merchandise sold by him to non-residents and sent beyond the State, shall not be taxed at a rate higher than the ad valorem tax on property. The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem.

TENN. CONST. art. 2, § 28 (effective 1973).

87. 1907 Tenn. Pub. Acts, ch. 602, § 4, 2049 (repealed 1973).

88. *Id.* In addition to adopting the classified assessment statute, ch. 602, § 4, the legislature also adopted a slightly different valuation formula. The original formula for actual cash value, "the amount of money the property would sell for, if sold at a fair, voluntary sale", 1907 Tenn. Pub. Acts, ch. 602, § 4, 2049 (repealed 1973), was replaced with a standard enunciated as the property's "sound intrinsic and immediate value, for purposes of a sale between a willing seller and a willing buyer without consideration of speculative values." TENN. CODE ANN. § 67-606 (Cum. Supp. 1975). Such a standard would seem to limit the use of sales as a measure of value and thus limit the probative value of sales ratio studies. If this was the intent, it was unsuccessful in a recent case. *See Consolidated Appeals of Public Utility Cas.* (Tenn. Bd. of Equalization, Nashville, Tenn. Nov. 20, 1978) (on file in N.C. L. Rev. office).

89. *Snow v. City of Memphis*, 527 S.W.2d 55 (Tenn.) *appeal dismissed*, 423 U.S. 1083 (1976).

90. *Louisville & Nashville R.R. v. Atkins*, 390 F. Supp. 576 (M.D. Tenn.), *aff'd*, 423 U.S. 802

for fractionalized assessment.

D. Kentucky

Not all states that have been faced with full value assessment challenges have legislatively adopted the fractionalized assessment standard. One of the more resounding victories for full value assessment occurred in Kentucky. The Kentucky constitution affirmatively required full value taxation:

All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law.⁹¹

Three statutes also implement the constitutional directive: section 132.440 of the Kentucky Revised Statutes,⁹² which requires a taxpayer to certify that his property was assessed at fair cash value, section 132.450(1),⁹³ which requires the county commissioners to assess property at full cash value; and section 133.150,⁹⁴ which requires the Department of Revenue to equalize assessments to fair cash value.⁹⁵

(1975). The classification of railroad property at a higher ratio than commercial and industrial property violates 49 U.S.C. § 11503 (Supp. III 1979). See note 34 *supra*. This has been challenged in Consolidated Appeals of Public Utility Cos., (Tenn. Bd. of Equalization, Nashville, Tenn. Nov. 20, 1978 (on file in N.C. L. Rev. office).

91. KY. CONST. § 172.

92. KY. REV. STAT. § 132.440 (1970).

93. *Id.* § 132.450(1) (Cum. Supp. 1978).

94. *Id.* § 133.150 (1970).

95. These statutes provide:

132.440 Oath of taxpayer on listing property

The property valuation administrator or his deputies shall read and administer to every person listing property the following oath: "You swear that the list of taxable property given by you contains a full and complete list of all of your property and of all the property in your possession which is not otherwise listed as of the assessment date, and that a fair cash value has been placed on all such property required to be valued."

Id. § 132.440.

132.450 Assessment; Special procedure and provision for assessing real property at agricultural or horticultural value; Election by owner

(1) Each property valuation administrator shall assess at its fair cash value all property which it is his duty to assess except as provided in paragraph (g) of subsection (2) of this section. In the case of securities which are regularly bought and sold through stock exchanges, the price at which such property closed on the last regular business day preceding the assessment day shall be prima facie evidence of the fair cash value of such property. The property of one (1) person shall not be assessed willfully or intentionally at a lower or higher relative value than the same class of property of another, and any grossly discriminatory valuation shall be construed as an intentional discrimination. The property valuation administrator shall make every effort, through visits with the taxpayer, personal inspection of the property, from records, from his own knowledge, from information in property schedules, and from such other evidence as he may be able to obtain, to locate, identify, and assess property.

Id. § 132.450 (Cum. Supp. 1978).

133.150 Equalization of county or district assessments by department of revenue
The department of revenue shall equalize each year the assessments of the property

Despite this strict and clear scheme of taxation, the assessors failed to maintain full value assessment, and the courts did not press them to fulfill their statutory duties. In a 1918 case, *Eminence Distillery Co. v. Henry County*,⁹⁶ the plaintiff complained that it was taxed at an assessment ratio higher than the prevailing sixty percent. The plaintiff further alleged that the property was overvalued. The court reduced the assessment on the property to the prevailing percentage rather than raising the assessment of other taxpayers to 100 percent. The court then concluded that equal protection under the law was a more preferable route than strict statutory enforcement.⁹⁷

The Kentucky Court of Appeals discarded the *Eminence Distillery Co.* doctrine in *Russman v. Luckett*.⁹⁸ The *Russman* plaintiffs, taxpayers, parents of school children, and the school children themselves, sought a declaration of their rights and an injunctive mandamus to compel the enforcement of the constitutional and legislative fair cash value provisions. The *Russman* court decided that despite over seventy-five years of noncompliance, the constitutional and legislative provisions were still vital and enforceable.⁹⁹ However, the court realistically noted that immediate compliance and implementation was an impossibility because of the longstanding disregard for the provisions. The court also stated that it would be "unjust, impractical, and perhaps ineffective" to permit action against the tax officials for misfeasance.¹⁰⁰ The court then fashioned its own remedy. First, the court concluded that by the January 1, 1966 assessment date, six months from the date of decision,

[t]he county tax commissioners, the Commissioner of Revenue, and other public officials will be held strictly accountable for the performance of their constitutional and statutory duties with respect to the assessment of property for tax purposes on and after that date. Such advance preparation as is necessary and proper to make the transition from customary methods will of course be required. Misfeasance or malfeasance in this connection on or after the above des-

among the counties. It shall compare the recapitulation of the property valuation administrator's books from each county with the records of sales of land in such county or with such other information that it may obtain from any source and shall determine the ratio of the assessed valuation of revenue shall have power to increase or decrease the aggregate assessed valuation of the property of any county or taxing district thereof or any class of property or any item in any class of property. The department of revenue shall fix the assessment of all property at its fair cash value. When the property in any county, or any class of property in any county, is not assessed at its fair cash value, such assessment shall be increased or decreased to its fair cash value by fixing the percentage of increase or decrease necessary to effect the equalization.

Id. § 133.150 (1970).

96. 178 Ky. 811, 200 S.W. 347 (1918).

97. The rule in *Eminence Distillery Co.* has been followed in *Luckett v. Tennessee Gas Transmission Co.*, 331 S.W.2d 879 (Ky. 1960); *City of Lexington v. Cooke*, 309 Ky. 518, 218 S.W.2d 58 (1949); *City of Louisville v. Martin*, 284 Ky. 490, 144 S.W.2d 1034 (1940); *Prestonbury Water Co. v. Prestonbury Bd.*, 279 Ky. 551, 131 S.W.2d 451 (1939); *McCracken Fiscal Court v. McFadden*, 275 Ky. 819, 122 S.W.2d 761 (1938).

98. 391 S.W.2d 694 (Ky. 1965).

99. *Id.* at 697.

100. *Id.* at 699.

igned date would certainly be willful.¹⁰¹

The court then entered the following judgment:

(1) Declaring that section 172 of the Kentucky Constitution and the statutory law implementing that section require all property in Kentucky (not exempted by the Constitution) to be assessed for tax purposes at its fair cash value and that this section of the Constitution and the statutory law implementing it are valid, subsisting and binding upon all public officials;

(2) directing the defendant Commissioner of Revenue to advise and instruct all county tax commissioners of their assessment duties under the Constitution and the statutes of this Commonwealth;

(3) directing defendant Commissioner of Revenue to inform and advise all county tax commissioners of the substance and effect of this opinion, and their duties thereunder;

(4) directing the defendant Commissioner of Revenue to take appropriate steps to comply with his duties under KRS 133.150 and other applicable statutes affecting property assessment;

(5) retaining this case on the docket for the entry of such further orders as may be necessary and proper.¹⁰²

The Kentucky legislature's response to *Russman* was immediate. A special session of the General Assembly was called after the decision was handed down, and "roll-back legislation," statutes that adjusted tax rates downward as assessments increased, were enacted. Kentucky's general state property tax rate was reduced from 5% to 1.5%.¹⁰³ After enacting a roll-back of the state rate, the legislature imposed a "compensating tax rate" on the local units to prevent an increase in the local tax burden.¹⁰⁴ Fractional assessment tax rates, when applied to full value assessments, might have increased revenue ten times over the present amount if the fractional assessment rate was ten percent.¹⁰⁵ The compensating tax rate was a rate that would provide the same revenue as was raised in 1965. Thus, the state essentially set a budgetary limit as a form of fiscal responsibility.¹⁰⁶

Kentucky's move to full valuation has been relatively successful. An evaluation of property taxes in the United States noted that Kentucky was one of two states, the other being Oregon, "approaching full value assessment for

101. *Id.* at 700.

102. *Id.*

103. Act of Sept. 16, 1965, ch. 2, § 1, 1965, Ky. Acts, 1st Ex. Sess. 3 (amending KY. REV. STAT. § 132.020 (1942)).

104. Act of Sept. 17, 1965, Ch. 2, § 11(6), 1965 Ky. Acts, 1st Ex. Sess. 17 (amending KY. REV. STAT. § 132.010 (1942)).

105. See *Russman v. Luckett*, 391 S.W. 694, 696 (Ky. 1965).

106. For a detailed discussion of the Kentucky roll-back legislation and the exact workings of the compensating tax rate, see Note, Property Tax Revenue Assessment Levels and Taxing Rates: The Kentucky Roll Back Law, 60 Ky. L. J. 105, 118-40 (1971). For more information on the past roll-back situation in general, see *Student Symposium on Kentucky Property Tax*, 60 Ky. L.J. 75 (1971).

all real property."¹⁰⁷ In 1966, 96 of the 120 counties had achieved substantial compliance. The remaining 24 counties needed assessment increases of only 10 percent to 35 percent to achieve equalization.¹⁰⁸

E. Florida

Florida, like Kentucky, has both a constitutional provision and statutory provisions calling for full cash valuation. The Florida Constitution of 1885 sought to impose taxes on "a just valuation of all property."¹⁰⁹ Florida statutes prior to 1963 had equated just valuation with full cash value,¹¹⁰ but in 1963 the standard was changed to the constitutional language of just valuation.¹¹¹ In adopting the constitutional language, the legislature listed seven factors to be considered in making a "just valuation":

1. the property's present cash value;
2. the property's present use and the highest and best use to which it could be put in the near future;
3. the property's location;
4. the property's size;
5. the property's cost and the present replacement value of any of its improvements;
6. the property's condition; and
7. the property's income.¹¹²

107. ADVISORY COMMITTEE ON INTERGOVERNMENTAL RELATIONS, *THE PROPERTY TAX IN A CHANGING ENVIRONMENT* 7 (1974) [hereinafter cited as *INTERGOVERNMENTAL REPORT*].

108. Lockett, *The Administration Response to Full Value Assessment*, in *NAT'L TAX ASS'N ANN. CONF. PROC.*, 197 (1966).

109. FLA. CONST. of 1885, art. IX, § 1. The current constitution contains identical valuation language. FLA. CONST. art. VII, § 4.

110. See Act of June 7, 1941, ch. 20722, § 2, 1941 Fla. Laws 1934.

111. Act of May 31, 1963, ch. 63-250, § 1, 1963 Fla. Laws 600 (codified at FLA. STAT. ANN. § 193.011 (West Cum. Supp. 1978)).

112. The present statute provides:

In arriving at just valuation as required under § 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable local or state land use regulation and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs

The Florida courts have been dealing with the full value assessment problem since 1919. In that year the supreme court decided, in *Camp Phosphate Co. v. Allen*,¹¹³ that the major issue was not whether fractional assessment or full value assessment was proper but whether assessments were uniform, fair, and equal. However, the supreme court reconsidered the issue in 1944¹¹⁴ in light of article X, section 7 of the Florida Constitution, a provision that granted a \$5,000 homestead exemption in property tax assessments.¹¹⁵ In this later case the court reversed its earlier stance and held that, because of the homestead exemption, assessment of property at less than fair cash value would result in discrimination against nonhomestead property owners.¹¹⁶ Several intermittent suits¹¹⁷ by taxpayers, beginning in 1961, set the stage for the important decisions of *Walter v. Schuler*¹¹⁸ and *Burns v. Butscher*.¹¹⁹

In the first major Florida case, *Walter v. Schuler*, the court began its opinion with apparent understatement: "From all accounts the tax roll of Duval County for 1964 is a mess."¹²⁰ The court then sought to correct this mess. First the court attempted to define the constitutional phrase "just valuation" and concluded that fair market value and just valuation were equivalent. The court then ordered immediate revaluation and reassessment of just valuation. Finally, the court refused to allow the assessor simply to double the assessments since this would compound the assessment problems already inherent in the rolls. The *Schuler* opinion was successful in correcting the Duval County tax rolls,¹²¹ but the scope and thus the impact of the opinion were limited.

In *Burns v. Butscher* the plaintiff taxpayer sought to require the State De-

and expenses of financing and allowance for unconventional or atypical terms of financing arrangements.

FLA. STAT. ANN. § 193.011 (West Cum. Supp. 1978). Section 193.011(8) was added by Act of June 30, 1970, ch. 70-243, § 8, 1970 FLA. LAWS 970 (amended by Act of June 27, 1977, ch. 77-363, § 1, 1977 Fla. Laws 1587).

113. 77 Fla. 341, 81 So. 503 (1919).

114. *Cosen Invs. Co. v. Overstreet*, 154 Fla. 416, 17 So. 2d 788 (1944).

115. It is interesting to note that Justice Thomas in *Burns v. Butscher*, 187 So. 2d 594 (Fla. 1966) points out the importance of the homestead exemption:

And we pointed out that the rate of taxation and the percentage of assessed valuation no longer so complemented each other that assessments of less than 100 percent. [sic] would distribute the tax burden equally as long as the assessments were uniformly applied. *Schleman, Tax Collector v. Connecticut General Life Ins. Co.*, 151 Fla. 96, 9 So. 2d 197, *Walter v. Schuler, infra*. This was the inescapable conclusion because of the exemption of \$5000. [sic] on homesteads. In the absence of these fixed exemptions, disparity in the relationship of assessed value to full cash value would not be so significant as long as the percentage of valuation was universally applied within taxation units. However, the only way now to escape the mischief that results from varied assessments is the valuation of all property at 100 per cent. [sic] of its value as the legislatures of the State for at least 97 years, since Chapter 1,713, Acts of 1869, have said must be done.

Id. at 594.

116. 154 Fla. 416, 416-17, 17 So. 2d 785, 788 (1944).

117. *See Green v. Walter*, 161 So. 2d 830 (Fla. 1964); *State v. McNays*, 133 So. 2d 312 (Fla. 1961).

118. 176 So. 2d 81 (Fla. 1965).

119. 187 So. 2d 594 (Fla. 1966).

120. 176 So. 2d at 82.

121. *See Burns v. Butscher*, 187 So. 2d 594, 595 (Fla. 1966).

partment of Revenue to exercise supervisory powers over local assessors. In *Burns*, the court rejected the state's argument that the supervision would be a constitutional infringement on the power of the assessors and held that the state did have the power to supervise the assessors and was not limited merely to advising them.¹²² The court added that the "[e]xercise of unbridled discretion by 67 Tax Assessors without their being anchored to any master plan would result in the imbalance already so clearly indicated."¹²³ The court then held that the Comptroller had the authority to institute suits to compel assessors to follow the tax laws and assess property at 100 percent. The court also held that the Comptroller could investigate the conduct of the tax assessors and recommend their removal if they failed to perform their duties properly.¹²⁴

The response of Florida's executive and legislative branches in the quest for fair value assessment has been limited. The legislature enacted roll-back legislation in 1963 and again in 1973.¹²⁵ In addition to these roll-back laws, the Florida Constitution of 1968 provided for limited assessment classification: agricultural land and land used exclusively for noncommercial recreation purposes might be classified and then assessed on the basis of character or use.¹²⁶ This seems merely to allow an assessor to value agricultural land at its present use instead of its highest and best use. In addition to these reforms, the legislature also increased the supervisory powers of the state tax commission.¹²⁷

F. Oregon

Oregon's route to attaining full value assessment was quite unusual. The Oregon Constitution requires "uniform rules of assessment and taxation" and uniform taxation on the same class of subjects.¹²⁸ Although the Oregon Constitution permitted classification under article I, section 32, the statutory property tax scheme did not. Two sections of the Oregon Code provided for fair value assessment. Section 69-101 provided for "assessment and taxation in equal and ratable proportions,"¹²⁹ and section 69-231 required the assessor to assess property as "true cash value."¹³⁰ Despite the statutory mandates of full

122. *Id.* at 595.

123. *Id.* at 596.

124. *Id.*

125. Act of June 13, 1973, ch. 73-172, § 13, 1973 Fla. Laws 331 (codified at FLA. STAT. ANN. § 200.065 (West. Cum. Supp. 1980)); Act of May 31, 1963, ch. 62-250, § 8, 1963 Fla. Laws 600 (repealed 1969) (FLA. STAT. ANN. § 193.03).

126. FLA. CONST. art. VII, § 4(a).

127. See FLA. STAT. ANN. ch. 195 (West Cum. Supp. 1980).

128. OR. CONST. art. IX, § 1, art. I, § 32. article IX, § 1 provides: "The Legislative Assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly throughout the State." Article I, § 32 provides: "No tax or duty shall be imposed without the consent of the people or their representatives in the Legislative Assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax."

129. OR. CODE ANN. § 69-101 (1930) (current version at OR. REV. STAT. § 307-030 (1979)).

130. *Id.* § 69-231 (1930) (current version codified in scattered sections of OR. REV. STAT. § 308.)

value assessment, the familiar story of fractional assessment developed in Oregon and gave rise to a civil action. In *Appeal of Kliks*¹³¹ the taxpayer alleged that his property was assessed at a higher rate than other similar property. The court noted that the Oregon statutes did not require full value assessment; rather, "uniformity is more important to the taxpayer than appraisal in terms of the correct number of dollars."¹³²

The rule of *Kliks*, with minor variations, continued to be the law in Oregon until 1961.¹³³ In 1961, the Oregon legislature enacted two statutes that affected property tax assessments. The legislation most closely tied to assessment standards was an amendment that required all property to be assessed at twenty-five percent of true cash value. However, if a county had a higher ratio, it could retain but not increase it, and if a county had already contracted for reappraisal at less than twenty-five percent, the adjustment was deferred.¹³⁴ The other statute created a tax court, which had the authority to review and correct assessments.¹³⁵ The statutory mandate of a uniform assessment ratio was implemented quickly. However, in 1967 the legislature once again reformed the assessment standard and instituted full value assessment.¹³⁶ This change from fractional assessment to full value assessment was a quiet one, unaccompanied by judicial coercion, uproar, or disruption of fiscal affairs.¹³⁷

G. New York

New York, like the other states mentioned, requires full value assessment.¹³⁸ Full value assessment has a rich historical background in New York; the full value standard can be traced back at least to 1788.¹³⁹ Like assessors in

131. 153 Or. 669, 76 P.2d 974 (1938).

132. *Id.* at 685, 76 P.2d at 980.

133. See *Galloway v. Watson*, 167 Or. 403, 118 P.2d 107 (1941); *In re GeBauer Apartments*, 170 Or. 47, 131 P.2d 962 (1942); *Wadhams & Co. v. State Tax Comm'n*, 202 Or. 132, 273 P.2d 440 (1954); *M & M Woodworking Co. v. Chambers*, 217 Or. 161, 339 P.2d 718 (1959); *Robinson v. Stewart*, 216 Or. 532, 339 P.2d 432 (1959).

134. Act of April 18, 1961, ch. 243, § 1, 1961 Or. Laws 297 (amending OR. REV. STAT. § 308.232).

135. Act of May 24, 1961, ch. 533, § 1, 1961 Or. Laws 987.

136. Act of May 19, 1967, ch. 293, § 6, 1967 Or. Laws 357 (amending OR. REV. STAT. § 308.232).

137. INTERGOVERNMENTAL REPORT, *supra* note 107, at 225.

138. N.Y. REAL PROP. TAX LAW § 306 (McKinney Cum. Supp. 1980).

139. See Act of March 7, 1788, ch. LXV, 1788 N.Y. Laws 769. The history of the New York statute was traced by the New York Court of Appeals in 1975:

Section 306 of the Real Property Tax Law has an ancient lineage. In 1788 the New York Legislature directed "the assessors of each respective city, town and place in every county of this State [to] make out a true and exact list of the names of all the freeholders and inhabitants and opposite the name of every such person shall set down the real value of all his or her whole estate real and personal as near as they can discover the same". (See L.1788, ch. 65, March 7, 1788.) In 1801 the standard was changed to "just and true value" (L.1801, ch. 179, § 1, April 8, 1801) and in 1823 was altered again to read as follows: "all real and personal property shall be valued by the assessors for the purpose of taxation, at the value they would appraise such estate in payment of a bona fide debt due from a solvent debtor". (L.1823, ch. 262, § V, "All property to be assessed at its cash value.") The term "full value" first appeared in a draft revision of 1826-1828 providing

most of the previously mentioned states, however, New York's assessors failed to fulfill their statutory mandate. As early as 1852 one court, referring to the fractional value assessment, noted, "if this be so, the practice should be corrected."¹⁴⁰ However, 123 years later the assessors had not corrected their practices. Finally, in *Hellerstein v. Assessors of Islip*, the practice of fractional assessment was successfully challenged. Pauline Hellerstein, the owner of a bungalow in the Town of Islip, sought to have the town's assessments reviewed, alleging that they were based not on full value but on a percentage of the property's market value.¹⁴¹

In defending its assessment ratio, the Town of Islip mustered the conventional defenses to an assessment challenge. First, it asserted that previous decisions by the New York Court of Appeals lowering assessments from true value to the uniform rate indicated an acceptance of the fractional assessment standard. The court rebuffed this defense, asserting that decisions "reducing assessments to the uniform rate, are not premised on the legality of fractional assessments," but are merely an attempt to do equity to an aggrieved taxpayer.¹⁴²

The Town further defended its position by arguing that the establishment of the State Board of Equalization by the legislature indicated that the statutory full value requirements are satisfied if the assessments are uniform throughout the taxing unit. The court rejected this argument as well and stated:

The only significance the board has in relation to this problem is found in section 720 of the Real Property Tax Law which permits a taxpayer in an inequality proceeding to rely on the ratio established by the board in proving his claim. But this provision was merely designed to ease the taxpayers' burden of proof in inequality cases which, as indicated earlier, is not premised on the legality of fractional assessments.¹⁴³

Finally, the Town argued that the statute had been violated for 200 years and that the legislature, aware of this violation, had acquiesced. The court also dismissed this argument:

that "All real and personal estate liable to taxation, the value of which shall not have been specified by affidavit of the person taxed, shall be estimated by the assessor at its full value, as they would themselves be willing to receive the same in payment of a just debt due from a solvent debtor; but in the valuation of real estate, the term, 'solvent debtor,' shall be construed to mean a debtor who is capable of paying all his debts, without resort to the land to be valued." (Report of the Commissioners to Revise the Statute Laws of 1826-1828, ch. XIII, tit. II, art. 2, § 16, "Of the manner in which assessments are to be made.") This proposal was enacted into law in 1829 after the Legislature deleted the last clause beginning with the words "but in the valuation of real estate" (N.Y. Rev. Stat. 1829, vol. I, ch. XIII, § 17, p. 393; see, also, L.1896, ch. 908, § 21, subd. 3; Cons. Laws of 1909, ch. 62; L.1933, ch. 470, § 18).

Hellerstein v. Assessors of Islip, 37 N.Y. 2d 1, 3-4, 332 N.E.2d 279, 280, 371 N.Y.S. 2d 388, 390 (1975).

140. *Van Rensselaer v. Witbeck*, 7 N.Y. 517, 522, 3 N.Y.S. 260, 261 (1852).

141. *Hellerstein v. Assessors of Islip*, 37 N.Y.2d 1, 332 N.E.2d 279, 371 N.Y.S.2d 388 (1975).

142. *Id.* at 9, 332 N.E.2d at 284, 371 N.Y.S.2d at 394.

143. *Id.* at 9, 332 N.E.2d at 284, 371 N.Y.S.2d at 395 (citation omitted).

In sum, for nearly 200 years our statutes have required assessments to be made at full value and for nearly 200 years assessments have been made on a percentage basis throughout the State. The practice has time on its side and nothing else. It has been tolerated by the Legislature, criticized by the commentators and found by our own court to involve a flagrant violation of the statute. Nevertheless the practice has become so widespread and been so consistently followed that it has acquired an aura of assumed legality. The assessors in Islip inherited the custom and it is conceded that they have continued it. Throughout the years taxes have been levied and paid, or upon default, tax liens have arisen, followed by foreclosure and ultimate transfer of title, all on reliance on the apparent legality of fractional assessments.¹⁴⁴

The court concluded that in the future the town should assess at full value.¹⁴⁵ It recognized, however, that an invalidation of the assessment roll could bring fiscal chaos to the local government and that it had a responsibility to avoid disorder and confusion in public affairs. Thus, the court found that past levies and liens made on reliance of the rolls were not before the court and that interim assessments made in accordance with existing practice would not be subject to challenge for failure to comply with the full value standard. The court suggested that this judicial restraint was important in any tax assessment case and urged it upon the lower courts.¹⁴⁶

The legislative response to *Hellerstein* has been rather limited. In 1978 the legislature authorized a freeze on current assessment valuation, thus legalizing the existing system of assessment temporarily. Compliance with full valuation could then occur on or after January 1, 1981. This statute was applicable only to those local units that had affirmatively provided for the physical revaluation of property and were implementing that program with all deliberate speed.¹⁴⁷

A final solution to the New York situation does not appear to be close at

144. *Id.* at 13, 332 N.E.2d at 286-87, 371 N.Y.S.2d at 398.

145. *Id.* at 14, 332 N.E.2d at 287, 371 N.Y.S.2d at 399.

146. *Id.*

147. Act of May 23, 1978, ch. 163, 1978 McKinney's Sess. Laws of N.Y. 351; Act of July 11, 1978, ch. 476, 1978 McKinney's Sess. Laws of N.Y. 823 (amending N.Y. REAL PROP. TAX LAW §§ 306 & 307 (McKinney Cum. Supp. 1980)). The amended statutes were declared unconstitutional in 1978 to the extent that they attempted to be retroactively applicable to pending proceedings, since this constituted a denial of equal protection. *Slewett & Farber v. Board of Assessors*, 412 N.Y.S.2d 292, 302 (1978). In addition, the *Slewett* court held that to the extent the State Board of Equalization was left without statutory guidelines for determining major types of property and local assessors were given discretionary powers to select assessment ratios, the statute granted an unconstitutional delegation of legislative powers. *Id.* at 300.

In addition to the legislative response to *Hellerstein*, two cases should be mentioned in connection with property tax assessment standards in New York. *Ed Guth Realty, Inc. v. Gengold*, 34 N.Y.2d 440, 315 N.E.2d 441, 358 N.Y.S.2d 367 (1974); *860 Executive Towers, Inc. v. Board of Assessors*, 385 N.Y.S.2d 604, 53 A.D.2d 463 (1976). In 1961 the New York legislature allowed parties to introduce the state equalization rate as proof of a ratio in an assessment challenge. N.Y. Real Property Tax Law § 720 (3) (McKinney 1972). However, courts were reluctant to give the equalization rate weight without selected parcel and actual sale data. *O'Brien v. Assessors*, 20 N.Y.2d 587, 232 N.E.2d 844, 285 N.Y.S.2d 843 (1969). The court in *Ed Guth Realty, Inc. v. Gengold* found, however, that the state rate was entitled to weight since it was objective and

hand. The legislature, to date, has failed to develop an effective long-term response to the *Hellerstein* decision. Two bills proposed in the 1980 session are illustrative of this current inaction. A bill in the state senate would repeal that part of the law that requires full value assessments.¹⁴⁸ This would leave the system as it now stands intact and would effectively eliminate *any* standards for property assessment, a result probably unconstitutional under New York law. A bill in the state assembly also would repeal the full value assessment provision that prompted the *Hellerstein* decision and would replace the old system with a classified property system. In addition, the bill would prohibit revaluation of residential property by postponing residential tax increases until after the property changes hands.¹⁴⁹ Neither of these two bills, as weak as they are, appears to have any chance of passing. Instead, the property owners of New York continue to be confused and angered by the full value assessment changes that are proposed. The New York problem dramatically demonstrates the need to solve the full value assessment problem legislatively.

IV. EVALUATING FULL VALUE ASSESSMENT

We have examined the constitutions, statutes, and case law of seven states that have experienced challenges and changes in their assessment standards. The challenges in each state have been costly in monetary terms as well as in judicial time and taxpayer morale. The state with the least painful experience in attaining full value assessment and with the best record of maintaining that standard apparently is Oregon, a state that had no significant court challenges. With this in mind, we suggest that legislative rather than judicial reform of the property tax assessment standard is the appropriate means of change. In this manner the people, through their elected legislators, are represented, and constituency input will be given its proper weight.¹⁵⁰ Before we recommend a

arrived at expertly. The taxpayer no longer needed a sales ratio study, and the state rate was conclusive evidence of the general level of assessment.

The *860 Executive Towers* decision expanded the *Guth* decision and made taxpayer challenges easier. First, the court reaffirmed the *Guth* holding that the state equalization rate could be utilized as the sole basis for determining the ratio. *860 Executive Towers, Inc.*, 385 N.Y.S.2d at 608. The court then held that this precluded the taxing unit from attempting to challenge the methodology and underlying data employed by the equalization board. Second, the court found that the taxpayers may use an expert witness to prove the ratios and need not produce the equalization board officials to testify themselves. *Id.* at 610. Finally, the court indicated that once a taxpayer had established the unit's rate, the unit was estopped from litigating issues that it raised in earlier rate contests—the equalization rate established in a prior hearing was sufficient evidence in a latter suit. *Id.* at 612. The court also awarded the taxpayer reasonable costs and expenses when he proved the correct ratio to be not in excess of the one for which stipulation was sought and denied. *Id.*

148.

149. See *Tax Trouble in New York*, PEOPLE AND TAXES (March 6, 1980).

150. See, e.g., Note, *State ex rel. Park Investment Co. v. Board of Tax Appeals*, 21 CASE W. L. REV. 147, 147-54 (1969).

Even if strict uniformity is desirable for Ohio's system of real property taxation, a further question is raised as to the propriety of the judiciary establishing the standard. The entire subject of uniformity is in need of much study, and the legislature, with its fact-finding facilities, would seem best suited for the task. Given the Ohio Supreme Court's decision that uniformity is constitutionally required, the court still could have imple-

number of different model statutes that might be adopted by the legislature, it is appropriate to address three separate, yet integrated, questions that are important in making this legislative reform: why do assessors use the fractional assessment standard; what are the merits of full value assessment; and, what are the indicia of a good property tax system?

Although a vast majority of the states require full value assessment, assessors in most states ignore the statutory mandate and assess at a fraction of the property's valuation.¹⁵¹ In examining how the custom of fractional assessment began, the United States Supreme Court speculated in an early case that, in a jurisdiction where both land and personalty were subject to tax, the tax collector, aware of the difficulty of subjecting personalty to the tax, undervalued real property, which is difficult to hide, in an effort to create a rough sort of equity between owners of real and personal property.¹⁵² However, as noted by the *Hellerstein* court, this analysis is inappropriate now that many states tax only realty.¹⁵³

The *Hellerstein* court was much less charitable than the Supreme Court in attempting to determine why fractional assessment continued to be used:

Bonbright, in his treatise . . . lists . . . "several reasons for the persistence of partial valuation. Gullible taxpayers associate a larger valuation with a larger tax, or at any rate are less contentious about a relatively excessive assessment if it does not exceed their estimate of true value. The ability to maintain a stable rate and to increase revenue by tampering with the tax base—a change which calls for less publicity and less opposition—is naturally desired by the party in

mented its determination by seeking legislative guidance. For example, the Minnesota Supreme Court, faced with a similar problem in *Dulton Realty, Inc. v. State*, was convinced that "inequality between counties is as much a violation of constitutional requirements as is inequality within a county" and held that statewide uniformity was required. However, rather than simply announcing its decision and remaining silent with regard to the problem's practical solution, the *Dulton* court sought legislative guidance by deferring to the legislature for implementation of its decision. By contrast, the Ohio Supreme Court's action thrusts upon the BTA the burden of devising and promulgating a scheme which conforms to the court's mandate. At the same time, however, the court has severely limited the alternatives the BTA may utilize in implementing such a standard. "So as the BTA wrestles with its problems, county auditors and taxpayers can hold their breath. Only the seven judges of the Ohio Supreme Court seem unruffled by the trouble they have caused."

Id. at 153-54.

151. *Hellerstein v. Assessors of Islip*, 37 N.Y.2d at 10, 332 N.E.2d at 285, 371 N.Y.S.2d at 396:

The vast majority of States require assessors, either by statute or constitutional prescription, to assess at full value, true value, market value or some equivalent standard. (See Note, 68 YALE L.J. 335-387). Two States have expressly provided by statute that this requires assessment at 100% of value (see 13 ARIZ. REV. STAT. ANN., § 42-227; California Revenue & Taxation Code, §§ 401, 408). Several States have specifically authorized fractional assessments, and this seems to be the modern trend. In 1917 there were four States in this latter category (see *Greene v. Louisville Interurban R.R. Co.*, 244 U.S. 499, 516, 37 S.Ct. 673, 61 L.Ed. 1280); by 1958 there were eight (see Note, 68 YALE L.J. 335, 387); and, as of 1962 15 States had enacted legislation providing for fractional assessments, either at a fixed percentage or according to local option (Note, 75 HARVARD L. REV. 1374, 1377, n.28).

152. *Cummings v. National Bank*, 101 U.S. 153, 163 (1879).

153. 37 N.Y.2d at 11, 332 N.E.2d at 285, 371 N.Y.S.2d at 397.

power. Occasionally, partial valuation is intended as a substitute for a varied system of rates; i.e., different forms of property, while nominally taxed at the same rate, are in fact taxed at differing rates by being assessed at different proportions of full values. Undervaluation of realty is sometimes justified as compensating for the elusiveness of personalty; but even if the latter is assessed fully when caught, experience has shown that the net result is to furnish an additional incentive for evasion.

"Another inducement to undervaluation has been that, since the state relies on the property tax for part of its revenue, the county assessors seek to lighten their constituents' burden at the expense of the rest of the state by assessing the local property at a lower percentage than is applied elsewhere. This process has often resulted in a competition between counties as to which could most nearly approach the limit of nominal valuation. With the increasing trend in some states toward reserving the property tax for the support of the local communities, and in other states toward the creation of state boards of equalization, the enthusiasm for percentage valuation has been dampened."¹⁵⁴

In addition, the *Hellerstein* court stated that since New York provides aid to communities based on assessed valuation, it creates an inducement to undervalue property. Despite attempts by the State Equalization Board to correct this situation, local officials apparently see no harm in trying to undervalue property.¹⁵⁵ The court also suggested that, since the state constitution provides that "assessment shall in no case exceed full value," an assessment of less than full value discourages suits claiming unconstitutional overvaluation.¹⁵⁶

Other commentators have been less harsh in their evaluation of fractional assessment procedures. One writer denies that the universal practice of fractional assessment can be explained away by asserting that assessors are incompetent. Rather, fractional assessment results from policy decisions made by assessors responding to social and economic needs. The need to prevent fiscal collapse during depression, limit fiscal spending, encourage residential housing, and support unprofitable industries important to the community are all policies that may be pursued by an assessor, virtually unfettered in his discretion so long as he does not overvalue.¹⁵⁷ Other commentators have agreed with this interpretation of fractional assessment:

It is often felt that assessors should mistrust what are alleged to be inflated market levels and interpret . . . full value under 'ordinary or normal circumstances,' such a construction . . . will ensure the sta-

154. *Id.* at 11-12, 332 N.E.2d at 285-86, 371 N.Y.S.2d at 397 (quoting 1 J. BONBRIGHT, VALUATION OF PROPERTY 498 (1937)).

155. *Id.*

156. N.Y. CONST. art XVI, § 2; see 37 N.Y.2d at 1-2, 332 N.E.2d at 286, 371 N.Y.S.2d at 398.

157. See Comment, *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 336-41, 347-59 (1958) See also Lesnik, *Does Full Value Mean Full Value? Prospects for Assessment in New York in Light of the Experiences of Other States with Hellerstein Progenitors*, 5 HOFSTRA L. REV. 235, 237-38 (1977).

bility of the tax structure, facilitate advance planning by both the government and the taxpayer and protect the government from bankruptcy during a depression.¹⁵⁸

The inexperience of tax assessors also can contribute to the use of fractional assessment. Assessors are frequently part-time elected officials with little or no training.¹⁵⁹ Faced with a dearth of information on the value of properties, few assessors have the current information needed to value property properly—information such as location, size, quality of land, local selling prices, construction costs, rentals, investment returns.¹⁶⁰

However, not everyone agrees with these sympathetic portrayals of assessors, or that fractional assessment is a benign practice. Fractional assessments benefit those whose property receives an exemption, such as veterans and homeowners.¹⁶¹ Similarly, welfare recipients benefit from fractional assessment since it allows them to hold more property without losing their eligibility.¹⁶² A more invidious reason has been proposed as well: most local governments have an assessed value-to-debt limitation ratio imposed upon them by the state government. To the extent that expenditures exceed this limit, state expenditures or another tax must augment property tax receipts. If a community has a low assessed value, it limits its expenditures and the state must step in. State revenue is generally derived from sales taxes and income taxes. To the extent that fractional assessment leads to expenditures that are supplemented by the state or federal government, taxes shift to nonproperty owners through the sales and income taxes. But the cycle does not end there.

When arbitrary undervaluation by a county assessor shifts taxes to the State-assessed utilities, it is again non-property owners who pick up the tab in the form of higher rates for utility services. The shiftability [to consumers] of property taxes on monopoly utilities is guaranteed by the Public Utilities Commission, which sets their rates. Those who look with satisfaction upon the relative overassessment of utilities, who see in that practice the restraint of 'big corporate monopolies', are uninformed. Utilities are not taxpayers, but tax collectors. Utility customers pay the tax.¹⁶³

The New York court found all of these to be good reasons for abolishing the custom of fractional assessment. "Theoretically the taxpayer's pocket is not in the least affected by uniform undervaluation or overvaluation. Systematic undervaluation diminishes the tax base and the tax rate must therefore

158. Note, *Inequality in Property Tax Assessment: New Cures for Old Ills*, 75 HARVARD L. REV. 1374, 1379 (1962).

159. Assessors are not elected officials in North Carolina. See N.C. GEN. STAT. §§ 105-296, -299 (1979).

160. Note, *Equality in Property Taxation—The Law, Practice and Prospects*, 11 NEW ENG. L. REV. 617, 621 (1976).

161. See note 115, *supra*. Thus a homeowner eligible for the \$5000 homestead exemption in Florida will pay no taxes on a \$20,000 home if the fractional assessment ratio is 23% yielding a \$4600 assessment value on his home.

162. See, e.g., CAL. WEL. & INST. CODE §§ 11150 to 11153 (West 1980).

163. Tideman, *Fractional Assessments—Do Our Courts Sanction Inequality?* 16 HASTINGS L.J. 573, 579 (1965).

rise in order to supply the required government revenue.'"¹⁶⁴ The court concluded:

"The objections to the practice of undervaluation are patent. In the first place, except where sanctioned by statute, it involves a generally known and sanctioned disregard by officials of the law requiring them to assess property at its full and fair value. The other great vice is that the percentage of undervaluation is rarely a matter of common knowledge, so that it is extremely difficult to ascertain whether there is uniformity in the proportion or whether, through incompetence, favoritism, or corruption of the assessors, some portions of the tax-paying body are bearing the others' burdens, as between either individuals or local groups."¹⁶⁵

Despite the plethora of evidence indicting fractional assessment, the justification of a full value assessment standard is not simple. The primary reasons for supporting fair market assessment are too often stated in the negative—as arguments against fractional assessment—and these reasons often appear to be too simplistic. Despite these shortcomings, two obvious factors tilt the balance in favor of full value assessment—fairness and simplicity. Full value assessment is fair because a taxpayer is aware that his property is taxed at 100 percent of its value. It is simpler, because it avoids one step in the assessment valuation—the decrease from fair value to the fractional assessment.

Full valuation is clearly fairer than fractional valuation because it allows the taxpayer to know at exactly what value his property has been appraised—the assessed value and the appraised value are identical. In the case of fractional assessments, misinformed taxpayers associate a larger valuation with a larger tax and thus favor the partial assessment.¹⁶⁶ A taxpayer, even when overassessed relative to other similarly situated taxpayers, is less likely to challenge the assessed value so long as it does not exceed his own valuation of the property. This is particularly true when the ratio is unknown. If fractional, rather than full value, assessment is used, slight unnoticed variations in the fraction might also be used as an invidious form of classification.¹⁶⁷

In addition to being more equitable to the taxpayer, full valuation forces the assessor to affirmatively value a property. Despite the seeming redundancy of that statement, it is quite evident that fractional assessment has led to sloppy appraisal techniques in many states:

Failure to obey full-value requirements is but one aspect of the haphazardness which often characterizes the assessing process and to which much of the prevailing inequality may be traced. Not only do assessors feel free to assess at only a fraction of full value, but sometimes, relying on the wide latitude derived from using an unpublished percentage, they estimate the "fractional" valuation directly

164. *Hellerstein*, 37 N.Y.2d at 12-13, 332 N.E.2d at 286, 371 N.Y.S.2d at 398 (quoting 1 J. BONBRIGHT).

165. *Id.* (quoting 1 J. BONBRIGHT, VALUATION OF PROPERTY 497-98 (1937)).

166. *See id.*

167. *See id.*

without even attempting to first determine full value. "I personally wouldn't know where to begin to find such a figure," the chairman of the board of assessors in Wenham, Massachusetts, said recently. Other Massachusetts assessors likewise testified to the absence of valuation standards: "[T]here is no particular method here," the Melrose chairman admitted, and the Marshfield assessor complained that "we should have a system to go by, not just guesswork." Even when state statutes or regulations direct that certain factors be taken into account in making an assessment, they rarely attempt to specify the relative weight to be accorded to each factor. "[O]pinion rather than evidence plays a strong role in the assessing process," a North Carolina observer reports, "estimation rather than measurement becomes the method of appraisal."¹⁶⁸

A full value assessment standard is simpler to administer. At a very basic level, it is easier to equate appraised value and assessed value rather than have a fraction of appraised value equal assessed value. As one court stated: "It is apodictic that a percentage of ["just valuation"] cannot be computed without first establishing ["just valuation"] and the assessors upon reaching the first figure are enjoined not to proceed to the second."¹⁶⁹

The advantages and disadvantages of full value assessment have been summarized in a study by the Advisory Commission on Intergovernmental Relations. They list the advantages of a statewide full value standard:

- 1) full value assessment reduces the possibility of sloppy, politically-oriented, or corrupt assessments;
- 2) it increases uniformity, thereby reducing inequities between taxpayers and tax districts;
- 3) it reduces costs because it makes maximum use of market information;
- 4) it promotes taxpayer understanding since the taxpayer is most likely to be aware of the actual market value of his own property.¹⁷⁰

The disadvantages that the Advisory Commission listed included:

- 1) high start-up costs caused by the fact that most states are a long way from full-value assessment;
- 2) increased work loads for assessors and their staffs to keep records current;
- 3) a significant disruption in existing state-local relations as a government function and corresponding political power is shifted from the local assessor's office to a state supervising agency;
- 4) taxpayer fears that the large increases in the property tax base which would occur in most taxing districts would not be accompanied by a commensurate reduction in tax rates.¹⁷¹

168. Note, *supra* note 158, at 1379.

169. *Walter v. Schuler*, 176 So. 2d 81, 85 (Fla. 1965).

170. INTERGOVERNMENTAL REPORT, *supra* note 107, at 4.

171. *Id.* at 5.

The final issue worthy of exploration before proceeding to a model tax proposal is the characteristics of a "good property tax." Adam Smith first attempted to identify the primary qualities of a good tax when he proposed four maxims applicable to taxes in general:

First, taxes on individuals should be 'in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the State.' Secondly, 'the tax each individual should pay should be certain, not arbitrary.' Third, 'every tax should be levied at a time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.' Fourth, 'every tax should be so contrived as both to take out and to keep out of the pockets of people as little as possible over and above what it brings into the public treasury of the State.'¹⁷²

This last maxim Smith interpreted to mean that a tax (1) should be capable of economical administration, (2) should not 'obstruct the industry of the people,' (3) should not offer undue opportunities for evasion, and (4) should not impose 'unnecessary trouble, vexation, and oppression' upon the public.

Modern economists and tax analysts have developed their own lists of criteria in the evaluation of various taxes.¹⁷³ Although some of the criteria developed by these distinguished economists are useful in analyzing the prop-

172. See A. SMITH, *THE WEALTH OF NATIONS* Book V, ch. II, pt. II.

173. A few of these criteria are summarized below:

I believe that the legislative, administrative, and judicial history of the federal income tax, as well as the pertinent literature, reveals the existence of seven pervasive purposes which have shaped its rates and structure. These are (1) to supply *adequate* revenue, (2) to achieve a *practical* and workable income tax system, (3) to impose *equal* taxes upon those who enjoy equal incomes, (4) to assist in achieving economic *stability*, (5) to *reduce economic inequality*, (6) to avoid impairment of the operation of the *market-oriented economy* and (7) to accomplish a high degree of harmony between the income tax and the sought-for *political order*.

Sneed, *The Criteria of Federal Income Tax Policy* 17 STAN. L. REV. 567, 568 (1965);

- (1) Taxes should be fair, and not arbitrary.
- (2) Taxes should reduce inequalities in wealth, income, and power.
- (3) Taxes should preserve human resources.
- (4) Taxes should preserve a wide market; they should not aggravate oversaving.
- (5) Taxes should preserve incentives.
- (6) Taxes should be as direct as feasible.
- (7) Direct taxes should be widely shared.
- (8) Taxes should be adequate.
- (9) Tax reductions and increases should be administered to reduce business instability.

H. GROVES, *POSTWAR TAXATION AND ECONOMIC PROGRESS* 373, 374, in JACOBY, *GUIDELINES OF INCOME TAX REFORM FOR THE 1960'S*, HOUSE COMM. ON WAYS AND MEANS, 86TH CONG., 1ST SESS., 1 TAX REVISION COMPENDIUM 157, 158-60 (Comm. Print 1959);

(1) [A] tax climate more favorable to economic growth; (2) greater equity through closer adherence to the principle that equal incomes should bear equal tax liabilities; (3) assurance that the degree of progression in the distribution of tax burdens accords as closely as possible with widely held standards of fairness; (4) an overall tax system which contributes significantly to maintaining stability in the general price level and a stable and high rate of use of human and material resources; (5) a tax system which interferes as little as possible with the operation of the free market mechanism in directing resources into their most productive uses; and (6) greater ease of compliance and administration.

erty tax, most are rarely on point. The study by the Advisory Commission on Intergovernmental Relations offers an analysis geared to the property tax:

Openness: Keeping the Taxpayer Informed

A State Should:

1. Conduct annual studies of the relationship between assessed value and sale price, and publish such assessment-sales ratios.
2. Require assessors to send each real property taxpayer, before preparation of the final property assessment lists, a notice containing the assessment information the taxpayer needs to judge the fairness of his assessment, and also telling him how, when, and where to appeal an assessment he feels is unfair.
3. Provide an assessment appeals procedure that is readily accessible, utilizes rather informal procedures, and is staffed by professionally qualified persons who can exercise independent judgment about the accuracy of an assessment.
4. Provide that State assessment-sales ratios are admissible as evidence in support of an assessment appeal (with a prescribed "tolerance zone" or margin of error that recognizes that property appraisal is not an exact science).

Technical Proficiency: Organization for High-Quality Appraisal

A State should:

1. Assign responsibility for primary appraisal of real property to jurisdictions that are large enough to make effective and efficient use of specialized personnel and equipment (at least county-wide).
2. Select appraisal personnel on the basis of their professional qualifications and ability to administer (and to keep current) a market value, mass-appraisal system.
3. Conduct State training and certification programs for appraisers at both the entry and advanced levels.
4. Provide strong State-level guidance and technical assistance to local appraisal districts (if appraisal is not completely centralized at the State level).
5. Commit sufficient fiscal resources to real property appraisal to (a) permit each parcel of property to be physically inspected and appraised at least every three years and (b) make adjustments of appraisals and assessments between major reappraisal efforts to keep them current with market developments.

Compassion: Relief from Extraordinary Property Taxes

A State should:

1. Relieve extraordinary property tax burdens for renters as well as for homeowners.
2. Relieve extraordinary property tax burdens for the non-elderly as well as for the elderly.

3. Relieve extraordinary property tax of moderate-income, as well as destitute, households.
4. Provide some relief to farmers (either circuit-breaker or tax deferral) to keep rising property taxes from forcing premature conversion of agricultural land to non-agricultural uses.
5. Mandate such relief on a statewide basis.
6. Fund such relief at the State, rather than local, level.¹⁷⁴

V. PROPOSED MODEL LEGISLATION

Working within the constraints of the North Carolina Constitution, the reformer must keep at least two thoughts in mind. First, any tax must be uniform within a class. Second, only the legislature may designate a classification.¹⁷⁵

The first piece of legislation would be an amendment of the appraisal and assessment statutes—sections 105-283 and 105-284 of the North Carolina General Statutes.¹⁷⁶ This revision would be in several parts:

(1)(a) Uniform Appraisal Standard—All appraisals of property shall be made at 100 percent of true value in money.

(b) The words “true value” are equivalent, for purposes of this article, to fair market value, full value, true cash value unless otherwise defined herein.¹⁷⁷ True value shall also be interpreted as the price, estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither under compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.

(2)(a) Uniform Assessment Standard—All property, real and personal, within each county and municipality, shall be assessed at 100 percent of its true value in money.

(b) In the cases of farm land, timber land, noncommercial recreational land, and vacant land, true value shall be interpreted as the value of the land at its present use. The assessor shall value such property only at the value which a willing buyer would pay a willing seller if the current use were the highest and best use of the property.¹⁷⁸

(c) No assessment shall be other than equal to the appraised value of the property unless specifically exempted by an act of the

174. INTERGOVERNMENTAL REPORT, *supra* note 107, at 330-31.

175. The former requirement is the subject of an excellent law review article by Lewis, *Property Tax Classification and Exemption: A Problem in North Carolina Constitutional Law*, 37 N. C. L. REV. 115 (1958).

176. N.C. GEN. STAT. §§ 105-283, -284 (1979).

177. The words herein are necessary for the adoption of any of the following sections.

178. This amendment would effectively classify specific types of property to be assessed at a different fair market value. It would also effectively repeal N.C. GEN. STAT. § 105-277.4 (1979), unless the legislature continued to impose the double-valuation standard of that section.

General Assembly.¹⁷⁹

Once the assessment and appraisal standards have been set at a full value standard, the procedures for the administration of the standards must be set out. Properly trained assessors and technical proficiency in assessment will assure the use of a full value assessment standard. Effective property appraisal at full value requires well-trained personnel, adequate information, appropriate techniques, and an effective, efficient framework of state administration. This administration may be either completely centralized or marked by strong state coordination of local appraisers.¹⁸⁰ North Carolina presently provides for state certification of assessors,¹⁸¹ but in order to upgrade the quality of appraisals made in North Carolina, the state might adopt an assessor training program. These programs are operative in a number of states¹⁸² and those states offer models¹⁸³ for a North Carolina statute. Georgia recently adopted

179. This provision is worded in order to insure that the provision is mandatory and not merely directory.

180. INTERGOVERNMENTAL REPORT, *supra* note 107, at 18.

181. N.C. GEN. STAT. § 105-296f (1979).

182. See INTERGOVERNMENTAL REPORT, *supra* note 107, at 20.

183. Statutes adopted by states other than Georgia include those of Tennessee and California:

Tennessee:

67-333. Qualifications.—To assure that the assessment functions will be performed in a professional manner by competent assessors, meeting clearly specified professional qualifications, the state board of equalization is authorized and directed to prescribe educational and training courses to be taken by assessors and their deputies, and to specify qualification requirements for certification of any one who is to be engaged to appraise and assess property for the purpose of taxation. The state board of equalization may authorize the division of property assessments to administer this function under the control and supervision of the state board, to specify the certification requirements of persons who are to be certificated as qualified as local assessor of property and to prescribe qualifications of those who are to be certified as qualified to act as deputy assessors. Any specifications or qualifications which shall be determined upon as a prerequisite to receiving and holding a certificate from the state board of equalization as qualified to be an assessor or a deputy assessor of property shall be approved and promulgated by the state board of equalization.

Provided, however, that it is the legislative intent that the provisions of this section shall not serve to prevent any duly elected or appointed assessor of property from assuming such office or performing his legally specified duties.

TENN. CODE ANN. § 67-333 (1976 & Cum. Supp. 1980).

67-336. Schools and field training courses.—The state board of equalization, out of funds available to it by appropriation, may enter into contracts with educational or professional institutions or organizations conducting schools and field training courses for all Tennessee assessors and their deputies in keeping with standards and qualifications adopted or to be adopted.

Id. § 67-336.

California:

59 § 671. Annual training; failure to receive as grounds for revocation of certificate; advanced appraiser's certificate; qualifications for issuance

(a) In order to retain a valid appraiser's certificate every holder shall * * * complete at least 24 hours of training conducted or approved by the State Board of Equalization in each one-year period * * *.

Any excess in training time over the 24-hour minimum accumulated in any one year shall be carried over as credit for future training requirements with a limit of three years in which the carryover time may be credited * * *.

Failure to receive such training shall constitute grounds for revocation of an appraiser's certificate; conducted in accordance with the Administrative Procedure Act con-

a comprehensive training statute, which provides in pertinent part:

91A-1435 Qualifications

(a) No person shall serve as a member of the county board of tax assessors who:

(2) Fails to make his residence within the county within six months after taking the oath of office as a member of the board.

(3) Does not hold a high school diploma or its equivalent. A person who has held an equivalent responsible position of employment for a period of five years shall not be required to meet the high school education requirement as provided in this paragraph. The commissioner is authorized to specify by regulation the types of employment qualifying as equivalent responsible positions of employment under the terms of this paragraph.

(4) Does not have at least one year of experience in appraisal related work. The successful completion of 40 hours of approved appraisal courses as provided for in subsection (c), taken either prior to appointment or within one year after appointment, may be substituted for this experience requirement.

(5) Has not successfully completed an assessor examination to be administered by the commissioner or has not successfully completed at least 40 hours of approved appraisal courses as provided in subsection (c).

(6) Does not successfully complete at least 40 hours of approved appraisal courses as provided in subsection (c) during each two years of his tenure as a member of the county board of tax assessors.

tained in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Training shall include, but not be limited to, new developments in the case and statutory law and administrative rules.

(b) An advanced appraiser's certificate shall be issued by the board after an applicant has held an appraiser's certificate for at least three years and;

(1) Has successfully completed a course of study; or

(2) Has passed an advanced level examination; or

(3) Holds a valid professional designation from a recognized professional organization.

The board, with the advice and assistance of five assessors selected by the State Association of County Assessors of California, shall prescribe the course of study, prepare the advanced level examination, and approve the professional designation.

In order to retain a valid advanced appraiser's certificate, every holder shall complete at least 12 hours of training in each one-year period.

Any excess in training time for the advanced appraiser's certificate over the 12-hour minimum accumulated in any one year shall be carried over as a credit for future training requirements with a limit of two years in which the carryover time may be credited.

Failure to receive such training shall constitute grounds for revocation of an advanced appraiser's certificate; provided, however, that proceedings to revoke shall be conducted in accordance with the Administrative Procedure Act contained in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Training to retain the advanced appraiser's certification shall include, but not be limited to, new developments in the case and statutory law and administrative rules.

CAL. REV. & TAX. CODE § 671 (West Supp. 1979) (Italics indicate changes or additions by amendment) (Asterisks indicate deletions by amendment).

(c) Approved appraisal courses shall be courses of instruction covering the basic principles of appraisal and assessing of all classes and types of property including instruction in the fundamentals of Georgia law covering the appraisal and assessing of property for ad valorem tax purposes as prescribed and designated by the commissioner. The commissioner shall develop and administer courses of instruction designed to qualify applicants or tax assessors under the terms of this section and he may contract with any professional appraisal organization or firm or institution of higher education in this State to provide the necessary courses of instruction or any part of any such course.¹⁸⁴

Drawing on the Georgia model, the University of North Carolina could develop an assessor training program that could serve the needs of the state. The Institute of Government, with adequate funding support, could develop and administer the program.

A simple procedure, and possibly one of the best methods of assuring assessor compliance to a full value assessment standard, is to provide adequate taxpayer notice, as proposed in the following model legislation:

(1) Each property taxpayer shall receive a notice 60 days before the tax roll becomes finalized. Such notice shall include:

- (a) the appraised market value of the property being taxed.
- (b) the assessed value of the property.
- (c) the ratio of assessed value to market value.

(d) a statement of the taxpayer's right to appeal the assessment. Such statement shall contain instructions as to how, where, and when appeals may be taken.

(2) Sixty days after such notice is given to all taxpayers, the tax roll may be finalized. A copy of the finalized tax roll shall be filed at (1) every municipal hall in the taxing district and (2) every public library in the taxing district.¹⁸⁵

The above statute is basically an attempt to give the taxpayer full access to information on his assessment. It informs him of his appraisal value, his assessed value, and their equivalent relationship. It attempts to educate the taxpayer as to this relationship. The notice also informs the taxpayer of the processes by which his assessment is determined. If he understands these processes, he will know whether his assessment is fair relative to his neighbors and others in the taxing jurisdiction.¹⁸⁶

In addition to imposing a statutory form on the method of taxpayer notification, the above statute also concerns itself with the taxpayer's right of appeal from an assessment. Although a thorough evaluation of the property tax appeals process is beyond the scope of this article, the North Carolina appellate

184. GA. CODE ANN. § 91A-1435 (1980 & Cum. Supp. 1980).

185. This statute is adopted from INTERGOVERNMENTAL REPORT, *supra* note 107, at 16. It might be noted that subsections a-c are to some degree redundant. This, however, is necessary, we believe, to assure that value is properly fixed.

186. *Id.*

procedure in this area is also ripe for reform.¹⁸⁷ Among the many reforms that might be advanced in the area of the taxpayer's right of appeal, two theoretical suggestions are worthy of consideration as part of a general legislative package. First, any taxpayer appeal should be made to an independent judicial body that is not influenced by either the assessor or the taxing jurisdiction. Since its tax base is directly affected, the taxing unit should not have the power to appoint these referees. As a corollary, the assessor himself should not be a member of this panel since he has a vested interest in defending the quality of his work. Second, the taxpayer should not wholly carry the burden of proof. The burden of proof should shift, as it does in a normal civil suit, once the taxpayer establishes a prima facie case of improper assessment.

In addition to the two amendments to the appeals procedure outlined above, a third procedure would aid the taxpayer on appeal and also assure the maximum compliance with the assessment statute. A mandatory sales ratio study on a periodic basis should be conducted by the state in each taxing jurisdiction to relate assessed value to sales prices. The study would reveal whether the actual administration (assessment) of the property tax fulfills the statutory mandate and treats taxpayers equitably. The state assessment ratios would be admissible as evidence in any appeal of an assessment.¹⁸⁸

Once the statutory structure for appraisal and assessment has been established, the next question relates to the frequency of its use. North Carolina law currently calls for an octennial reappraisal in each county; the appraisal

187. In revising the property tax law, North Carolina might consider adopting the current scheme of assessment challenge operational in Oregon. The Oregon Legislature has set up the Oregon Tax Court, a court of limited jurisdiction in tax matters. OR. REV. STAT. §§ 305.405-.575 (1979). In its enabling statute, the court is empowered to hear the complaints of taxpayers whose property has been valued at less than \$35,000. *Id.* § 305.515(1)(b). The procedure in the Small Claims Division is informal. The judge may hear any testimony he deems necessary or desirable, and the taxpayer need not be represented by an attorney. *Id.* § 305.545. Once the taxpayer elects to proceed in the Small Claims Division, he loses his right of appeal; however, any judgment is conclusive upon all parties, including the Department of Revenue. *Id.* §§ 305.530, .555. The predominant advantage of the Oregon system is in its distribution of the burden of proof. Rather than a strict presumption in favor of the administrative agency, as in North Carolina, the Oregon statute shifts the burden depending on the circumstances. Section 305.427 provides that "[i]n all proceedings before the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation." *Id.* § 305.437. This statute was cited in *J.R. Widmer, Inc. v. Department of Revenue*, 261 Or. 371, 494 P.2d 854 (1972), in which the court struck down the "presumption of assessment validity". The court found the presumption still existed that an assessor performed his procedural duty faithfully, but this presumption no longer extended to any valuation the assessor made of a property. *Id.* at 375, 494 P.2d at 856. In addition to the Small Claims Division, property tax cases with assessments greater than \$35,000 are processed in the regular division of the Tax Court. This streamlined process for property tax cases (and other tax cases as well) should be considered in any revision of the North Carolina property tax laws. At the very least, the Oregon experience suggests that the simple shifting of the burden of proof is an effective way of doing equity in property tax cases. See Schoettle, *Review of Real Property Valuation in the Court*, 4 INT'L PROP. ASSESSMENT AD. 161, (1972); Phillips, *The Oregon Tax Court: Some Thoughts on Its First Decisions*, 42 OR. L. REV. 292 (1963); Roberts, *An Introduction to the Oregon Tax Court*, 9 WILLIAMETTE L.J. 193 (1973). A number of other states have established tax courts or special tax tribunals, including Hawaii, Maryland, Michigan and New Jersey.

188. See *Ed Guth Realty, Inc. v. Gengold*, 34 N.Y. 2d 440, 315 N.E.2d 441, 358 N.Y.S. 2d 367 (1974).

year is staggered from county to county. In addition to the octennial reappraisal, the statute also allows the county commissioners to impose a reappraisal during the fourth year following the appraisal.

The current North Carolina system of revaluation has drawn criticism from a variety of sources. A number of North Carolina tax officials have asserted that annual revaluation would be the fairest method of revaluation because real property loses tax value in relation to the market value if not revalued each year.¹⁸⁹ In addition to maintaining a fair tax value, frequent revaluation of real estate is important to maintain equity between owners of personal property and real property. According to Robert Heater, a Wake county commissioner, "Roughly speaking, businesses are paying a fifty percent higher rate than an individual (land owner) is right now, because of the effects of an annual assessment of the personal property portion . . . so the person who has real estate is getting by lighter, and the person who has personal property is getting browbeaten."¹⁹⁰ Finally, octennial revaluations have been considered plainly archaic:

Back in horse-and-buggy days, tramping all over the county once every eight years checking property values might have been a reasonable way to keep the tax rate up to date. In the middle of the Twentieth Century, however, an eight-year-old assessment is a relic, almost a curiosity, like a Depression grocery ad featuring pork chops at a dime a pound. It is no realistic basis for taxation and no way for a government to support itself.¹⁹¹

It is clear that the larger metropolitan areas of North Carolina—the Triangle, the Triad, and Mecklenburg County—need and probably can afford annual¹⁹² assessment.¹⁹³ However, it is equally clear that the smaller, rural counties do not need and cannot afford an annual reassessment. Thus, a practical, and perhaps politically feasible, compromise would be biennial assessments with optional annual assessments. In addition, a special provision might allow a county to extend the biennial requirement two more years if a sales ratio study shows a medium ratio of eighty-five percent and a coefficient of dispersion of less than twelve.¹⁹⁴ This formula would allow frequent reval-

189. See *Property Tax Shift Hits Homeowners*, Raleigh News and Observer, Nov. 25, 1979, at 1, col. 1.

190. Sicheluff, *Tax Base Balance is Stressed*, Raleigh News and Observer, Oct. 30, 1979, at 23, col. 2.

191. Editorial *Value Update*, Winston-Salem Sentinel (on file in N.C. L. Rev. office).

192. Annual assessment, however, is frequently misunderstood. Annual assessment implies that: (1) the factors affecting market value (and therefore the factors used in an appraisal) are consciously and continuously reevaluated and (2) when one or more of the factors has changed, appraised values are recalculated to reflect the status of the market as of the current year's appraisal date. Annual assessment does not require that all assessments must be changed each year, but it does require that assessors have the capability to change each assessment each year if a change is warranted. . . . Annual assessment, therefore, is as much a *process* as it is an identifiable result of that process.

Property Tax Relief and Reform, ASSESSMENT DIG. 29, 29 (July/August 1979).

193. See Margin, *Mecklenburg's System of Appraisal Unique*, Winston-Salem Journal (article details the computer model that Mecklenburg County adopted) (on file in N.C.L. Rev. office).

194. These are optional numbers and have no legal significance. Eighty-five percent is used in

uation when necessary and practicable, but would not force them in areas where they are not needed.

Once the legislature has determined the appropriate timing for revaluations, a second problem must be considered. In a time of rising prices and inflation, a tax based on value rises automatically even absent a concomitant increase in the wealth necessary to pay the tax. If a revaluation occurs annually or biennially in an inflationary economy, the appraisal will rise and the tax will increase if the rate remains constant. A second, closely related problem will also occur any time a state adopts full value assessment following the use of fractional assessment. An increase to full value will automatically increase the tax bill if the rate remains constant.

The solution to both of the above problems is "roll-back" legislation. Roll-back legislation automatically reduces the tax rate by the same percentage as property values increase. Thus, a \$40,000 assessment at a one percent rate would yield a tax of \$400. If the true value of the house was \$80,000, the tax rate would be cut in half, to one-half percent, so that the tax yield would remain at \$400. Accordingly, the effective tax rate remains constant and the assessment value would be increased without increasing taxes.¹⁹⁵

Once the North Carolina system has fully absorbed the impact of full value assessment through roll-back legislation, the problem of inflationary tax increases must be solved. If the statute requires annual or biennial assessment, a hidden tax increase occurs without legislative mandate, and revenues are increased without taxpayer scrutiny. To remedy this situation, a different type of roll-back legislation is proposed. First, the new assessment is completed and the total assessed value of the jurisdiction is computed. Then the value of new buildings and improvements is subtracted from the total. A comparison of the figure thus obtained to the whole of the previous year's sum will then yield the percent of the property's increase due to inflation. This figure will then be used to reduce the tax rate. An example of this would be as follows: Suppose a town has an assessed valuation of \$1,000,000 in 1981, and a tax rate

the first instance since this allows the 15% statutory deviation currently allowed. A coefficient of 12 was an arbitrary pick between 10 and 15, which is considered an acceptable range. Some latitude must also be allowed for the fact that a sales-ratio study draws only from property sold, and a property owner is more likely to sell speculative property that has increased in value faster than surrounding property than he is to sell a residence or business that has not appreciated as substantially or as quickly.

195. Of course, roll-back legislation following an adjustment to full value assessment is not as simple as the above example would appear. Two statutes that enact roll-back legislation are reproduced here to show the complexity of the problem:

Kentucky:

Act of Sept. 17, 1965, ch. 2, § 1, 1965 Ky. Acts, 1st Ex. Sess. 3 (amending KY. REV. STAT. § 132.020 (1942)); Act of Sept. 17, 1965, ch. 2, § 11(6), 1965 Ky. Acts, 1st Ex. Sess. 17 (amending KY. REV. STAT. § 132.010 (1942)).

Florida:

Act of June 13, 1973 ch. 73-172, § 13, 1973 Fla. Laws 331 (codified at FLA. STAT. ANN. § 200.065 (Supp. 1980)); Act of May 31, 1963, ch. 63-250, § 8, 1963 Fla. Laws 600 (formerly codified at FLA. STAT. ANN. § 193.03) (repealed 1969).

Kentucky has had extraordinary success with its roll-back legislation. See text accompanying notes 107 & 108 *supra*.

of one percent, yielding taxes of \$10,000. In 1982, following the revaluation, the town has a value of \$2,500,000, \$1,000,000 of which is attributable to inflation and \$500,000 of which is attributable to new construction. Thus, the new base, following 100 percent inflation, is \$2,000,000, twice the amount of the old base. The tax rate would thus be reduced by a ratio of one-half ($\$1,000,000 \div \$2,000,000$), yielding a rate of one-half percent. This in turn would yield a tax return of \$10,000 on the old property, and \$2,500 on the new construction.¹⁹⁶

The necessity for this type of roll-back legislation becomes clear when one examines the pre-Proposition 13 situation in California. California had adopted tremendously efficient assessment machinery that revalued property annually. The effects of inflation and greater demands for owner-occupied housing increased the value of property and land significantly in that state, with residential assessments rising an average of twenty percent.¹⁹⁷ While the property assessments were increasing, local jurisdictions were failing to lower the tax rates on property,¹⁹⁸ and surpluses developed; the state surplus was approximately \$6.1 billion.¹⁹⁹ Taxpayers whose bills increased twenty-five to fifty percent justifiably were angered at this failure of response by local government and rebelled. Unfortunately, their rebellion culminated in Proposition 13, a poorly drafted piece of stopgap legislation that is now part of the California Constitution. To avoid a similar scenario in North Carolina, roll-back legislation keyed to successive revaluations and inflation, as well as to the initial reassessment yielding full value assessment, is a necessity.

Once the general system outlined above has been adopted, North Carolina will have the basis for an effective and efficient property tax administration. Implementing ideas to make the system equitable and compassionate for all citizens would make the above system truly "model." While an exhaustive discussion of these topics is clearly beyond the scope of this article, a few ideas are noteworthy.

The possibility of classification of property has been given limited exposure up to this point. Classification is constitutionally permissible in North Carolina, but has not been extensively imposed by the legislature. The authors, like the legislature, would allow limited classification in the assessment process for farm land and forests. They would also allow limited classification for noncommercial recreational land. Further classification might be made to include commercial property, homeowners, rental property, and the like. Although the authors do not agree on the role of classification in property tax administration, agreement extends to one principle—property should be valued at full market value. Any classifications can be implemented either as described above²⁰⁰ or in the rate of tax imposed—not in the appraised

196. New construction and improvements are exempted from the base for two reasons: first, they would distort the amount of inflationary increases and second, new construction would presumably create a larger demand for services which would not otherwise be accounted for.

197. Levy, *On Understanding Proposition 13*, 56 PUBLIC INTEREST 66, 76 (Summer 1979).

198. *Id.* at 75.

199. *Id.* at 80.

200. See text accompanying notes 176-79 *supra*.

value. A property should not be valued at seventy-five percent and then taxed at the full rate. Rather, property should be valued at 100 percent and the rate should be reduced by one-fourth. Although this may appear to be quibbling over formulas that yield identical results, a classification system that maintains the unity in the full value appraisal system is preferable.

In addition to developing an effective, fair, and accurate property tax system, any new legislation in North Carolina also should develop an effective and fair system of relief from property taxes for particular individuals. Since property taxes are not computed relative to income, the most effective property tax relief is tied to income. The most common form of income-related property tax relief is the "property tax circuit breaker." A property tax circuit breaker is a tax relief program that is designed to "protect family income from a property tax overload in the same manner that an electrical circuit breaker protects property from an electrical current overload."²⁰¹ Thus, under most state systems, if the property tax exceeds a particular percentage of gross income, the tax overload is broken by a form of tax relief—either a reduction in the property tax itself, credit against the state income tax, or a cash rebate.²⁰² In addition to gearing the benefit to income, about twenty states also allow relief for elderly homeowners.²⁰³ A detailed circuit breaker statute is also outside the scope of this article but is a necessity for any new scheme of fair and effective property taxation. Without an effective circuit breaker, the system once again will become overloaded by complaints of a tax so confiscatory that it takes the bread off the table of poor and elderly homeowners.²⁰⁴

In addition to the adoption of an income-related circuit breaker in the property tax scheme, the legislature might consider implementing a variety of other policies through the use of property tax credits, reductions, and exemptions. Downtown revitalization projects might be induced through a reduction on the rate of property taxes paid. New housing projects in formerly blighted urban areas might also receive special tax treatments. In order to preserve certain beach areas, property owners might be enticed by cash rebates. These particular policies are not outside the scope of the property tax, but they must be handled by the legislature in an equitable manner. In no case, however, should property be appraised at less than full market value. If property is

201. ADVISORY COMM. ON INTERGOVERNMENTAL RELATIONS, PROPERTY TAX CIRCUIT-BREAKERS: CURRENT STATUS AND POLICY ISSUES 2 (1975).

202. *Id.*

203. *Id.* at 4.

204. See J. Clairborne, *Alexander's Warning: Next Revaluation May Cause Property Tax Rebellion Here*, *Charlotte Observer*, July 7, 1979, at 14A, Col. 1 (quoting Robert P. Alexander, retired Tax Supervisor, Mecklenburg County):

"I would guess that half the owner-occupied houses there are owned by widows and elderly people, who have very little income. But in the last few years, that neighborhood's become a very popular place to live, and property values there have probably doubled and tripled. How are those widows and elderly people going to pay taxes on property valued that high?

When taxes begin to take milk and bread off a family's table, they are confiscatory, he said, "but that's what I see us getting into."

valued at less than full value, the whole system of a roll-back will be distorted, and citizens will not know the costs of these exemptions.

A final piece of legislation that would be informative to taxpayers, tax administrators, and legislators alike, would be a statute that requires publication of information on the costs of exemption. Accurate appraisal of exempt properties will indicate the cost of exemption to the public and allow more rational, informative debates on the cost/benefit of the exemption.²⁰⁵ The easiest statute to yield this result would read as follows:

It is the duty of the assessor to list, appraise and assess all real property exempted from general property taxation. Such property shall be listed separately on the tax rolls and shall not be included for purposes of the roll-back statute. Such list shall be published with the taxable list and properly filed in the taxing jurisdiction.²⁰⁶

In the course of developing a model property tax scheme for North Carolina, many different ideas and proposals were carefully weighed, primarily in terms of fairness, efficiency, and effectiveness. However, a factor that was always considered at each stage of a proposal was "what is the economic cost of this amendment and does the cost outweigh the benefit?" Although only estimates are available for most of these costs in the North Carolina system, heavy reliance was placed on the experience of other states. In each instance, in our estimation, the social and economic benefits of any aspect of a change outweighed its costs.

VI. CONCLUSION

The North Carolina property tax system needs reform. This article proposes a comprehensive scheme for that reform. The key to acceptable reform lies in the concept of full value assessment—a system of assessment that is simple, fair, and easy for any taxpayer to understand. Once full value assessment has been adopted, corollary problems, particularly inflation, must be considered. An effective roll-back statute, at the time of the first full value assessment, and again at each revaluation, will temper the rages of inflation and avoid a tax spiral such as that witnessed in California. Absent effective roll-back legislation, any reform will be saddled with the spectre of inflation. In addition to the problem of inflation, the needs of low income and elderly

205. It is a fundamental precept of democracy that an uninformed people is not a free people. Thus the publication of this seemingly mundane information will be useful in having rational decision-making in the property tax area.

206. *See, e.g.*, COLO. REV. STAT. § 39-3-105 (Cum. Supp. 1978):

39-3-105. Exempt property listed and valued. It is the duty of the assessor to list, appraise, and value all real property exempted from general property taxation, pursuant to the provisions of section 39-3-101(1)(e) to (1)(g), and all other property otherwise exempt but taxable under section 39-3-112 and the same shall be entered in the same detail required of taxable property.

The Advisory Commission on Intergovernmental Relations states that 17 states enacted legislation requiring local assessors to list and set values on exempt properties. These states include California, Colorado, Florida, Hawaii, Maryland, Minnesota, New Jersey, Ohio, Oregon, and South Dakota. INTERGOVERNMENTAL REPORT, *supra* note 107, at 19.

taxpayers must be considered. Any system that fails to adopt these reforms eventually will be burdened again by taxpayer rebellion and unrest.