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PROPERTY ASSESSMENT REMEDIES FOR THE KENTUCKY TAXPAYER

I. INTRODUCTION

Probably no subject is more discussed and less understood by citizens of any state than taxation, and *ad valorem* taxes, or property taxes as they are most commonly known, in particular seem to generate more controversy than any other type of taxation. Unfortunately, most taxpayers seem to regard property taxes much as they do the weather—a subject to bemoan but one incapable of remedy. The purpose of this note is to point out the avenues available to a taxpayer to remedy overassessment and disproportionate assessment of property for property tax levies. One of the most difficult problems of the taxpayer wishing to protest an assessment¹ is the proverbial problem of not being able to see the forest for the trees or, more literally, not being able to see the remedies for the statutes. It is hoped that this note may in at least a small way assist interested parties in successfully dealing with a number of non-functionally grouped statutes relating to property assessment.

To appreciate the remedies available to a taxpayer, it is necessary to have a basic understanding of the tax structure in Kentucky as it concerns property taxes. There are four principal levels of government which levy and collect property taxes in Kentucky:

1. State Government: The legislature fixes state property-tax rates which presently range from one-tenth of a cent to 47.5 cents per \$100 of assessed value depending upon the type of property upon which the tax is levied.²

2. County Government: The fiscal court in each county establishes the property-tax rates within the limits imposed by the Kentucky Constitution and state statutes. The constitution³ and statutes⁴ now limit the tax that a fiscal court can levy to 50 cents

¹ "Assessment" is commonly used in two different senses. It is used synonymously with valuation of property, but it is also commonly used to refer to the actual levying of a tax after valuation has been completed and the tax rate applied to the valuation. When the term is used in this note, it is intended to have the valuation meaning.

² KY. REV. STAT. [hereinafter KRS] §§ 132.020, 132.030, 132.050, 132.200, 136.270, 136.300, 136.320 (Baldwin's 1969).

³ KY. CONST. § 157.

⁴ KRS § 68.090 (Baldwin's 1969),

per \$100 of assessed value of the property being taxed where the income is to be used for other than school purposes.

3. City Government: The city legislative body promulgates property tax rates within imposed restrictions. The constitution provides that the maximum property-tax rate, for other than school purposes, for towns and cities of 15,000 or more population shall be \$1.50 per \$100 of assessed value; for towns and cities having less than 15,000 but not less than 10,000, \$1.00 per \$100; and for towns and cities having less than 10,000 people, 75 cents per \$100.⁵

4. School Government: The boards of education of the various school districts establish the property-tax rates within statutory restrictions and the taxes are then levied by the fiscal court of each county except in the case of independent school districts embraced by cities of the first four classes where the tax is levied by the city.⁶ The property-tax rate for school purposes is not less than 25 cents per \$100 of assessed value of the property being taxed and not more than \$1.50 per \$100.⁷

The procedures used to assess and levy property taxes vary with each level of government and therefore the assessment procedures of each governmental subdivision will be examined.

STATE

The Kentucky Department of Revenue, which exercises all administrative functions of the state with regard to collection of state revenue and administration of the tax laws, directly assesses distilled spirits,⁸ domestic building and loan associations' capital stock,⁹ domestic life insurance companies' taxable capital and reserves,¹⁰ and public service companies' property.¹¹ The state does tax other property, but it relies on assessments made by the county property valuation administrators¹² for such property. On

⁵ Ky. CONST. § 157.

⁶ KRS § 160.460 (Baldwin's 1969).

⁷ KRS § 160.475 (Baldwin's 1969).

⁸ KRS § 132.140 (Baldwin's 1969).

⁹ KRS § 136.290 (Baldwin's 1969).

¹⁰ KRS § 136.320 (Baldwin's 1969).

¹¹ KRS § 136.120 (Baldwin's 1969).

¹² County property valuation administrators, formerly known as county tax commissioners, are elected by county voters but make assessment of county property under the supervision of the Kentucky Department of Revenue. KRS §§ 132.370(2), 132.420(1) (Baldwin's 1969).

those items assessed by the Department of Revenue, the assessment and levying procedure is much less complex than the procedure employed at lower levels of government. Once the assessment is made by a state official, the Department of Revenue mails the taxpayer a notice of the tax.

COUNTY

The county governments follow a more intricate procedure in their assessment of property. Owners of taxable property are required to list that property with the property valuation administrator of the county where the property is located. The valuation must be the value of the property as of January 1 of each year except for a few specified items which have a different valuation date, and the listing with the property valuation administrator must take place between January 1 and March 1, with a few exceptions.¹³ If a taxpayer fails to list his property, the valuation administrator may at any time list and assess the property and notify the taxpayer. Property so listed is subject to a penalty.¹⁴ This listing by the owner is not the official assessment but only evidence from which assessment may be made.¹⁵ Thus, at least theoretically, the county property valuation administrator assesses the property, at its fair cash value¹⁶ and he may visit the taxpayer, inspect the property, consult records or property schedules, and use any other evidence he is able to obtain to locate, identify, and assess the property.¹⁷

The property valuation administrator must complete his assessment and preparation of the tax roll of all property by the first Monday in May of each year. He must also, by that same date, file a recapitulation of the tax roll with the Department of Revenue. The Department of Revenue, within two weeks, directs any changes it deems necessary to correct the county assessments.¹⁸ The tax roll is officially open for inspection in the property valuation administrator's office for five days beginning

¹³ KRS § 132.220(1) (Baldwin's 1969).

¹⁴ KRS §§ 132.310, 132.320 (Baldwin's 1969).

¹⁵ *Kentucky River Coal Corp. v. Knott County Bd. of Supervisors*, 54 S.W.2d 377 (Ky. 1932).

¹⁶ Ky. CONST. § 172.

¹⁷ KRS § 132.450 (Baldwin's 1969).

¹⁸ KRS § 133.040 (Baldwin's 1969).

with the first Monday in May.¹⁹ However, being a public record, the tax roll may be inspected by taxpayers at other times.²⁰

CITY

Any city regardless of size may, by ordinance, elect to use the annual county assessment for property situated within the city. Notwithstanding any statutory provisions to the contrary, the assessment dates of a city making this election must conform to the corresponding county dates as discussed above. Such a city may also, by ordinance, abolish any office connected with city assessment and equalization.²¹ The practical effect of abolishing any such office is the substitution of the equivalent county assessment system for the abolished office (this has significance for the city taxpayer who is challenging his assessment as he may thereby find himself challenging a county, rather than a city agency's action). Assuming that the city does not choose to use the county assessment, city assessment procedures depend upon the class of city and, as shall be mentioned later, in the case of cities of the second, fifth and sixth class, upon the city's determination of the system it wishes to design for itself. A brief description of the statutory city assessment provision should serve to illustrate the complexity and non-uniformity of city assessment procedures.

Every person owning or holding taxable property within a first-class city must provide the city assessor with a list of the property; if any person fails to provide such a list, the assessor may nevertheless assess the property using the best information that he can obtain.²² If the assessor concludes that the taxpayer has omitted any taxable property or has undervalued his listed property, he may assess the omitted property or raise the valuation of the property.²³ The city assessor is required by statute to assess all property at its fair cash value as of July 1 of each year²⁴ and, on or before September 10th or as soon thereafter as is practicable, to make available to the public, records indicating the assessed value of all property.²⁵

¹⁹ The statute further provides that the Department of Revenue may direct a different period for inspection of the tax roll. KRS § 133.045 (Baldwin's 1969).

²⁰ OP. KY. ATT'Y GEN. 43,597 (1959).

²¹ KRS § 132.285 (Baldwin's 1969).

²² KRS § 91.320 (Baldwin's 1969).

²³ KRS § 91.330 (Baldwin's 1969).

²⁴ KRS § 91.310 (Baldwin's 1969).

²⁵ KRS § 91.350 (Baldwin's 1969).

In cities of the second class, all persons having property subject to city taxation must, prior to September 1, furnish the city assessor a list of such property with its value as of July 1. On or before December 1 of each year, the assessor must return his records to the auditor's office for public inspection until the records are transmitted to the board of equalization.²⁶

In cities of the third class, there is no statutory requirement for taxpayers to list their property. The city assessor simply assesses property subject to city assessment upon, or as soon thereafter as practicable, an assessment date fixed by the city legislative body.²⁷

In cities of the fourth class there is again no statutory requirement for taxpayers to list their property, but the burden is placed on the city assessor to call upon all taxpayers and request a statement under oath by the taxpayer as to the taxable property in his possession as of April 1. The assessor then assesses the property after it has been physically viewed by him or an assistant.²⁸

In cities of the fifth and sixth classes the assessor is required to prepare a list of taxable property between January 1 and March 1 and between July 1 and November 1, respectively, of each year. The process of assessment is required to be in conformity with the laws regulating the duties of the county property valuation administrator where not otherwise provided by statute or city ordinance. The assessors of fifth and sixth class cities are to deposit the list with the city clerk on or before the first Monday in March and December, respectively.²⁹ There are no statutory provisions as to the period of public inspection of the tax rolls in cities of the third, fourth, fifth, and sixth classes. However, this is of little practical significance since, as previously noted, these are public records which may be inspected by taxpayers at any time.³⁰

It should be apparent from the foregoing that it is impossible to generalize concerning assessment procedures in cities of various classes. Another statutory provision³¹ makes even this

²⁶ KRS § 92.430 (Baldwin's 1969).

²⁷ KRS §§ 92.420, 92.460 (Baldwin's 1969).

²⁸ KRS § 92.490 (Baldwin's 1969).

²⁹ KRS § 92.520 (Baldwin's 1969).

³⁰ OP. KY. ATT'Y GEN. 43,597 (1959).

³¹ KRS § 92.540 (Baldwin's 1969).

delineation of specific provisions potentially futile as it allows second, fifth, and sixth class cities to change the manner of assessment, levy, and collection of taxes from that provided by statute with only minimal restrictions as to what method of procedure the cities may adopt.

SCHOOL DISTRICTS

School districts do not become involved in assessment at all. School taxes are based upon the assessment made by the level of government which levies the tax for its school system.³²

II. REMEDIES FOR IMPROPER TAX ASSESSMENT

It is convenient to separate the discussion of remedies for improper tax assessment into two categories: remedies for *improper valuation* and remedies for *disproportionate assessment*. The former category concerns the remedies available to the taxpayer whose property has not been valued correctly by the assessing authority, *e.g.*, a farm whose fair cash value is \$50,000 is assessed at \$100,000. The latter category concerns the remedies available to the taxpayer who bears a disproportionate tax burden due to the relationship of the assessment of his property to the assessment of the property of other taxpayers within the assessing jurisdiction, *e.g.*, a farm is assessed for county tax purposes at 90 percent of its fair cash value while other farms in that county are assessed at 60 percent; or farms in one county are assessed at 60 percent of fair cash value for state tax purposes while farms in other counties tend to be assessed at only 40 percent.

A. REMEDIES FOR IMPROPER VALUATION

1. STATE ASSESSMENTS

For corporations and other property mentioned above which are assessed directly by the Department of Revenue rather than by the county property valuation administrators, the appeal takes the following form: after the Department of Revenue mails the taxpayer a notice of the tax levied, the assessment becomes final at the expiration of thirty days from the date of notice, if the taxpayer does not file a written protest with the Department of

³² KRS § 160.460 (Baldwin's 1969). See note 6 *supra* and accompanying text.

Revenue. The protest must be accompanied by a supporting statement giving the grounds for and information upon which the protest is made. The taxpayer may request either a written rule on the filed protest or a conference with the department or its agent, to be attended by the taxpayer or his representative. After consideration of the taxpayer's protest and any matters presented at the conference, the department will issue a ruling. If the taxpayer is dissatisfied with this ruling, he may appeal to the Kentucky Board of Tax Appeals [hereinafter KBTA],³³ an administrative review agency vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of any state or county agency affecting revenue or taxation.³⁴ If still unsatisfied, the taxpayer may, within thirty days after the KBTA decision becomes final, file a petition of appeal to the Franklin County Circuit Court or to the circuit court of the county in which the aggrieved party resides or conducts his business. The circuit court will hear the cause upon the record of the KBTA and dispose of the cause in a summary manner.³⁵ A final appeal may be made to the Kentucky Court of Appeals as provided for by the Rules of Civil Procedure.³⁶

There is some dispute as to whether the procedures noted above are exclusive or whether a taxpayer may bring an independent action under Kentucky Revised Statutes [hereinafter KRS] § 134.590 which provides for refund of a tax illegally collected.³⁷ *Reeves v. Kentucky Utilities Company*³⁸ construed the legislative intent to be to provide an expeditious manner for final determination of current disputes by statutes such as KRS § 131.110 (concerning appeal to KBTA)³⁹ but not to preclude recovery by independent action under statutes such as KRS § 134.590. Likewise, *Commonwealth v. Van Meter*⁴⁰ held that the remedial procedures established by KRS § 131.110 were entirely

³³ KRS § 131.110 (Baldwin's 1969).

³⁴ KRS § 131.340 (Baldwin's 1969).

³⁵ KRS § 131.370 (Baldwin's 1969).

³⁶ *Id.*

³⁷ KRS § 134.590 (Baldwin's 1969) provides for refund by the Department of Revenue of any amount collected when in fact no such taxes were due when taxes were paid under a statute held unconstitutional. Application for refund may be made under this section within four years from the time payment was made.

³⁸ 163 S.W.2d 482 (Ky. 1942).

³⁹ See note 33 *supra* and accompanying text.

⁴⁰ 190 S.W.2d 668 (Ky. 1945).

permissive.⁴¹ In *Reeves v. Service Lines Incorporated*⁴² the Court of Appeals held that a corporation could maintain an independent action to enjoin collection of a tax where the assessment was clearly void but the court held the corporation could not maintain an independent action where the admitted facts, or those found by the Department of Revenue under adduced evidence, were sufficient in law to create the tax liability, thus making the assessment at most only voidable.

KRS § 131.125, enacted in 1946, stated that unless otherwise specifically provided for by law, no appeal from or review of any ruling, order, or finding of the Department of Revenue or Kentucky Tax Commission should be allowed except as provided for in KRS § 131.110. As would be expected, the Court of Appeals thereafter consistently held, on the basis of KRS § 131.125, that the remedial provisions of KRS § 131.110 were exclusive.⁴³ However, KRS § 131.125 was repealed in 1964, thus raising the issue of whether the repeal of KRS § 131.125 evidences a legislative intent that the remedy under KRS § 131.110 is no longer to be exclusive. Such an argument would be logical in view of the holdings of *Kentucky Utilities Company, Van Meter*, and *Service Lines Incorporated*, prior to the enactment of KRS § 131.125.

The foregoing discussion reveals that the taxpayer whose property is assessed directly by the state has a reasonably adequate remedy for improper assessment. The provision for a written protest requesting a written ruling or a conference with the Department of Revenue followed by an appeal to the KBTA provides a reasonably simple and inexpensive administrative review which will either resolve the protest or provide a record for review by the courts.

2. COUNTY ASSESSMENTS

After tax assessment is made by a county, an aggrieved taxpayer may appeal to the board of supervisors,⁴⁴ a body of "reputable real property owners" appointed by the county judge.⁴⁵

⁴¹ It should be noted, however, that the language of KRS § 131.110 has since been made more mandatory in style. See KRS § 131.110 (Baldwin's 1969).

⁴² 164 S.W.2d 593 (Ky. 1942).

⁴³ See, e.g., *Koehler v. Commonwealth*, 432 S.W.2d 397 (Ky. 1968); *Department of Conservation v. Co-De Coal Co.*, 388 S.W.2d 614 (Ky. 1964); *Commonwealth v. Kettanacher*, 335 S.W.2d 339 (Ky. 1960).

⁴⁴ KRS § 133.120 (Baldwin's 1969).

⁴⁵ KRS § 133.020 (Baldwin's 1969).

The appeal is by letter or written petition filed with the county clerk between the time the inspection period begins (normally the first Monday in May) and the date the board of supervisors convenes (normally the second Monday in May).⁴⁶

Appeal to the board of supervisors appears to be the exclusive remedy when the taxpayer's complaint is that his property has been overassessed. After the rendering of the board of supervisor's ruling, he may appeal to the circuit court if dissatisfied.⁴⁷ However, in recent years the Court of Appeals has distinguished between cases of misassessment and cases where assessment is alleged to be illegal or where property is claimed to be exempt from taxation. Only in the latter cases has the Court tended to hold that the circuit court has jurisdiction to entertain an independent action for an injunction against collection of the tax and for declaratory judgment as to exemption of the property.⁴⁸ The rationale seems to be that since exemption is a judicial question, the statutory appeal to the board of supervisors required by KRS § 133.120 is a formality which merely delays the inevitable judicial determination.

The board of supervisors holds public hearings for all appeals.⁴⁹ At a hearing, the taxpayer has the burden of proof in establishing an erroneous assessment.⁵⁰ After hearing all the evidence, the board makes such changes as it deems necessary to equalize assessments.⁵¹ If the taxpayer feels himself aggrieved by the action of the board of supervisors, there is clearly an appeal but it is not entirely clear what the appeal procedure is.

When KRS § 133.120(4) was first enacted in 1942, it provided that any taxpayer might appeal to the circuit court [not further identified by the statute] or the Kentucky Tax Commission [hereinafter KTC]⁵² within thirty days after adjournment of the

⁴⁶ KRS §§ 133.030, 133.045, 133.120 (Baldwin's 1969).

⁴⁷ See *Board of Supervisors v. Ware Cannel Coal Co.*, 179 S.W.2d 225 (Ky. 1944); *Ball v. P.V. & K. Coal Co.*, 31 S.W.2d 707 (Ky. 1930); *Farmers Nat'l Bank v. Board of Supervisors*, 8 S.W.2d 401 (Ky. 1928); *Farm Bureau v. Pool*, 265 S.W. 809 (Ky. 1924); *Roger Wheel Co. v. Taylor County*, 47 S.W. 876 (Ky. 1898).

⁴⁸ See *Jefferson Post No. 15, Am. Legion v. City of Louisville*, 280 S.W.2d 706 (Ky. 1955); *Iroquois Post No. 229, Am. Legion v. City of Louisville*, 279 S.W.2d 13 (Ky. 1955); *Todd County v. Bond Bros.*, 188 S.W.2d 325 (Ky. 1945).

⁴⁹ KRS § 133.120(2) (Baldwin's 1969).

⁵⁰ *Hyden v. Board of Supervisors*, 51 S.W.2d 441 (Ky. 1932).

⁵¹ KRS § 133.120 (Baldwin's 1969).

⁵² The Kentucky Tax Commission [hereinafter KTC] was a commission within the Kentucky Department of Revenue which consisted of the Commissioner of

board of supervisors, and from the judgment of the circuit court to the Kentucky Court of Appeals; or from the judgment of the KTC to the Franklin County Circuit Court.⁵³ In 1944, the section was amended to specifically provide that appeal from the board of supervisors must be made to either the KTC or the circuit court where the property was located.⁵⁴ In 1949, the section was again amended to allow only fifteen days, after adjournment of the board of supervisors, for appeal to the KTC, and all references to an appeal to the circuit court in lieu of the KTC were deleted. It was provided that the decision of the KTC could be appealed to the circuit court in the county in which the property was located and thence to the Court of Appeals.⁵⁵ Finally, in 1964, KRS § 133.120(4) was again amended to delete reference to channels of appeal. The current language of this section mentions "appeal" but does not indicate the manner in which the appeal is to be made.⁵⁶ However, KRS § 131.340, enacted in 1964, states: "The Kentucky Board of Tax Appeals (KBTA)⁵⁷ is hereby vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation."⁵⁸ Therefore it appears that the legislative intent was to make appeal to the KBTA from the decisions of boards of supervisors mandatory and to preclude an initial appeal from the board of supervisors to a circuit court.

A party has 30 days to appeal to the KBTA from receipt of a ruling, order, or determination of a board of supervisors.⁵⁹ Pro-

(Footnote continued from preceding page)

Revenue and two associate commissioners. KRS § 131.020(2) (1942). The KTC's principal functions were assessment of that property which the Kentucky Department of Revenue was authorized to assess, hearing appeals from findings of the Department of Revenue, and reviewing local assessments. KRS § 131.090 (1942).

⁵³ Ky. Acrs, ch. 131, § 16 (1942).

⁵⁴ Ky. Acrs, ch. 99 (1944).

⁵⁵ Ky. Acrs, ch. 2, § 7 (1949).

⁵⁶ Ky. Acrs, ch. 141, § 34 (1964).

⁵⁷ The Kentucky Board of Tax Appeals [hereinafter KBTA] was created in 1964 as an administrative review agency and "[a]ll files, equipment, budget, and pending business of the Kentucky Tax Commission" were transferred to the KBTA. Ky. Acrs, ch. 141, § 1 (1964). The KBTA consists of three members appointed by the Governor. KRS § 131.315(1) (Baldwin's 1969). Unlike the Kentucky Tax Commission, the KBTA has no assessment function. The KBTA's function is "to hear and determine appeals from final rulings, orders and determinations of any agency of state or county government affecting revenue and taxation." KRS § 131.340(1) (Baldwin's 1969).

⁵⁸ Ky. Acrs, ch. 141, § 6 (1964).

⁵⁹ KRS § 131.340(2) (Baldwin's 1969).

ceedings before the KBTA are *de novo* but findings are restricted to issues raised by the parties.⁶⁰ Expenses of such hearings are paid by the state.⁶¹ The KBTA may affirm, reverse, modify or remand the order of an agency appealed from and its findings must be written. Any taxes, interest or penalties paid but found not to be due are refunded.⁶²

If a taxpayer is aggrieved by the KBTA decision, he may appeal to a circuit court within thirty days after the decision becomes final, by filing a petition of appeal. If the appeal was originally from a county board of supervisors, appeal is taken to the circuit court of the county in which the appeal originated. If the appeal was from other than a county board of supervisors, the appeal is to the Franklin County Circuit Court or to the circuit court of the county in which the taxpayer resides or does business. A party may appeal from the circuit court to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.⁶³

Thus it appears that the taxpayer whose property is assessed by a county also has a reasonably adequate procedure for protesting that assessment. By being allowed to appeal to the county board of supervisors, the taxpayer is spared the expense of a judicial proceeding. The taxpayer need not incur the expense of legal counsel since the protest may be in the form of a letter, and the simplicity of the public hearing will probably be such that the taxpayer can present his own case. Though perhaps the taxpayer is not well advised to present his own argument, it is desirable at least at this initial hearing stage, that the administrative process be simple enough to permit self-representation since many of the tax liabilities in question will be relatively small. If legal counsel were necessary to present such a protest, the cost would probably cause the protest of small assessment errors to be foregone, a result that is undesirable both from the standpoint of public confidence in the revenue system and of the efficiency of the system.

The county taxpayer has yet another level of administrative appeal, the KBTA, to which he may appeal the ruling of the board

⁶⁰ KRS § 131.345 (Baldwin's 1969).

⁶¹ KRS § 131.355(3) (Baldwin's 1969).

⁶² KRS § 131.360 (Baldwin's 1969).

⁶³ KRS § 131.370 (Baldwin's 1969).

of supervisors before taking his case into the state court system. Though the fact that the state pays the expense of this hearing favors the small taxpayer, there still seems to be a need for a small claims procedure at this level. Such a procedure might allow a very informal appeal such as a written statement of the grounds for protest and any accompanying facts the taxpayer wished to present for consideration. The use of this informal procedure, as opposed to the formal hearing normally conducted by KBTA, could be made contingent upon the tax liability in question not exceeding a certain amount and the signing by the taxpayer of a waiver of his right to appeal the KBTA ruling to the state courts.⁶⁴

3. CITY ASSESSMENTS

As indicated above, a city may, by ordinance, abolish any office connected with city assessment and equalization⁶⁵ and the city legislative body in second, fifth, and sixth class cities may change the manner of assessment, levy, and collection of taxes from that provided by statute.⁶⁶ There is considerable variation in statutory procedures for appeal from a city assessment, depending on the class of city which made the assessment. It is therefore impossible to generalize as to remedies except to say that there are no statutory provisions for administrative review of city assessments at the state level by the KBTA as there are for state and county assessments. Also it is important to note that city assessment activities are not placed under the supervision of the Department of Revenue as are county assessment activities. Because of this difficulty in generalizing as to remedial procedures, discussion will be confined to a very basic survey of the statutory procedures for appeal from assessments of cities of various classes.

Cities of the First Class: KRS § 91.400(1) provides that any taxpayer who feels aggrieved by his assessment may file his complaint with the assessor. The board of equalization, which consists of three citizens of the city elected annually by the board of aldermen,⁶⁷ investigates all complaints and approves, reduces, or

⁶⁴ Such a small claims procedure was proposed by the Advisory Commission on Intergovernmental Relations [hereinafter cited ACIR]. PROPOSED STATUTE ON ASSESSMENT NOTIFICATION, REVIEW, AND APPEAL PROCEDURE, 30 SUGGESTED STATE LEGISLATION 19, 23-24 (1971).

⁶⁵ KRS § 132.285 (Baldwin's 1969).

⁶⁶ KRS § 92.540 (Baldwin's 1969).

⁶⁷ KRS § 91.390 (Baldwin's 1969).

raises the assessment. Either the city or the taxpayer may appeal the action of the board of equalization to the county quarterly court within thirty days after adjournment of the board and may further appeal the action of the quarterly court to the circuit court and then to the Court of Appeals.⁶⁸

Cities of the Second Class: KRS § 92.440(3) provides that the board of equalization, which consists of three persons selected by the city legislative body,⁶⁹ shall hear all complaints made against assessments. Any taxpayer whose assessment is not decreased after his complaint may, within thirty days after adjournment of the board, appeal to the county quarterly court, and either party may appeal from the quarterly court to the circuit court and then to the Court of Appeals.⁷⁰

Cities of the Third Class: KRS § 92.480(2) provides that any person aggrieved by the action of the assessor or by the action of the board of supervisors, which consists of three persons appointed by the mayor⁷¹ to supervise all assessments,⁷² may appeal to the common council, which is the legislative branch of the city government composed of twelve men elected for two year terms.⁷³ The common council may make such changes in the assessment as are just and equitable, but if the taxpayer is not satisfied, he may appeal to the quarterly court of the county where the property is located, from there to the circuit court, and finally to the Court of Appeals.⁷⁴

Cities of the Fourth Class: KRS § 92.510(2) provides that the supervisors of taxes, three freeholders appointed annually by the city council,⁷⁵ shall hear complaints of taxpayers as to assessments and may increase or decrease such assessments. Appeals from the action of the supervisors are the same as those for appeal from an action of the board of equalization of fifth and sixth class cities,⁷⁶ as indicated below.

Cities of the Fifth and Sixth Class: KRS § 92.530(1) provides that the board of equalization, which consists of three property

⁶⁸ KRS § 91.400(2) (Baldwin's 1969).

⁶⁹ KRS § 92.240 (Baldwin's 1969).

⁷⁰ KRS § 92.440(9) (Baldwin's 1969).

⁷¹ KRS § 92.250 (Baldwin's 1969).

⁷² KRS § 92.480(1) (Baldwin's 1969).

⁷³ KRS §§ 85.040, 85.060(1) (Baldwin's 1969).

⁷⁴ KRS § 92.480(2) (Baldwin's 1969).

⁷⁵ KRS § 92.260 (Baldwin's 1969).

⁷⁶ KRS § 92.510(4) (Baldwin's 1969).

owners appointed by the city council of each fifth class city and by the board of trustees of each sixth class city,⁷⁷ may hear complaints and may correct, modify, or strike out any assessments. Any taxpayer aggrieved by the action of the board of equalization may appeal to the quarterly court of the county within thirty days after the adjournment of the board and either party may further appeal to the circuit court.⁷⁸ Although not specifically provided for by statute, further appeal to the Court of Appeals would obviously be appropriate.

The statutory procedures for appeal from city assessments raise a variety of questions, such as exclusivity of remedy which, for the most part, remain unanswered and their determination awaits action by the courts.

The city taxpayer does not have an adequate administrative remedy. Because there is no statutory provision for administrative review by the KBTA as there is for state and county assessment, the taxpayer may be forced to appeal his assessment through the entire state court system, a procedure that is costly and time consuming. There are at least two possible approaches to the solution of this problem.

The first approach would be to make it mandatory, by statute, that cities use the assessment of the county in which they are located, a procedure that is currently only permissive. A second approach would be to allow cities to make their own assessments and maintain their own offices of assessment and equalization but provide for review by the KBTA of the decision of the city review body, whether it be called a board of supervisors, board of equalization, or whatever.

Of the two approaches, the former would seem to offer the most promise. In a time when cities are increasingly unable to provide necessary services due to lack of funds, it seems logical to eliminate a service which is duplicative and must necessarily be performed by the county for its own purposes. It is difficult to envision a city being able to maintain its own assessment and equalization system at a lower cost than it could contract for such services from a county which already has a functioning assessment and equalization system and which is already assessing city

⁷⁷ KRS § 92.270(1) (Baldwin's 1969).

⁷⁸ KRS § 92.530(2) (Baldwin's 1969).

property. Under such a solution the city taxpayer could make his protest through the same channels the county taxpayer currently uses, including review by the KBTA.

B. REMEDIES FOR DISPROPORTIONATE ASSESSMENT

As previously indicated, the procedures for challenging improper valuation are fairly well structured by statutes, and while these laws are not free from ambiguity there is at least an established general remedial procedure to be followed by the taxpayer. However, disproportionate assessments among taxpayers is an area in which the taxpayer's remedy has been, until very recently, far more speculative.

Although the Kentucky Constitution has always required assessment at fair cash value, the requirement has been largely disregarded. The result had been assessment at differing percentages of fair cash value in different counties throughout the state, thus violating the Kentucky constitutional requirements for uniformity. Three sections of the Kentucky Constitution are important in this connection: Section 171 provides that taxes shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax and that all taxes shall be levied and collected by general laws. Section 172 provides that all property shall be assessed at its fair cash value, estimated at the price the property would bring at a fair voluntary sale. Section 174 provides that all property shall be taxed in proportion to its value unless exempted by the Kentucky Constitution. These sections of the constitution do not specifically state that the ratio of assessments to value must be uniform throughout the state,⁷⁹ but it appears that this was the intent of the framers.⁸⁰

⁷⁹ Muehlenkamp, *Remedies for Disproportionate Tax Assessment in Kentucky*, 36 Ky. L.J. 401 (1948).

⁸⁰ In the course of debate during the constitutional convention concerning a proposed section which subsequently became § 172 of the constitution, Chairman Johnson of the Revenue and Taxation Committee made it clear that the committee was concerned about the problem of varying ratios of assessment to value throughout the state and was proposing a constitutional provision which the committee believed would prevent it:

The fourth section provides that all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale. It will not be denied that assessments should be uniform. The cash value is the only safe and uniform standard, and we, therefore, recommend it. It is undoubtedly right. If your property is assessed at

(Continued on next page)

There are two dependent principles embodied in these constitutional provisions: uniformity of taxation within the territorial limits of the taxing authority and assessment at fair cash value. As one authority points out, if uniformity was intended to mean uniformity of burden and not just uniformity of tax rate, and if the state and county assessment are the same [as they are on most property] and if the assessment ratio for the various counties vary greatly [as they have in the past], the burden of state taxation is not uniform even if the rate of taxation is exactly the same in all counties.⁸¹ Likewise, the burden of county taxation is not uniform where the assessment ratios vary within a county.

In *Eminence Distillery Company v. Henry County Board of Supervisors*,⁸² concerning sections 171, 172 and 174 of the constitution, the Court indicated that uniformity of burden was the intended meaning.⁸³ The taxpayer here successfully challenged the unequal assessment of his property at 100 percent of fair cash value when other property in the same county was assessed at 60 percent. The case presented the Court with a dilemma since the only way to comply with the constitutional requirements of uniformity and assessment at 100 percent fair cash value was to raise the assessment of all other property in that county to 100 percent. This the Court of Appeals declined to do and instead lowered the

(Footnote continued from preceding page)

half its value, the rate will be twice as high as if it were assessed at its full value. The same sum must be paid. It is a question simply as to the best method of doing it; and I submit that the recommendation of the Committee is best and most business-like. The great trouble in our system has been unequal assessments. You all know that assessors in different localities fix different standards of value, thereby imposing on different communities, different rates of taxation. . . . Land in one locality pays a tax altogether different from that paid by land of equal value in another locality. These evils ought to be remedied, yet they have existed time out of mind without check or hindrance. To prevent them we propose this provision, that any officer or other person authorized to assess property for taxation, who shall commit any gross and 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. 2 DEBATES, CONSTITUTIONAL CONVENTION 2384-85 (1890).

⁸¹ Muehlenkamp, *supra* note 79, at 411.

⁸² 200 S.W. 347 (Ky. 1918).

⁸³ These sections of the Constitution [171, 172, and 174] not only require that the rate of taxation upon all property shall be uniform, but it just as emphatically demands and requires that the burden of taxation upon all property shall be equal. . . . In order that taxes levied shall be lawful and have the sanction of the Constitution, it is essential that, the burden which it imposes shall have the necessary virtue of equality as that it shall be uniform. *Id.* at 350.

assessment of the plaintiff to 60 percent.⁸⁴ The court cited *Randell v. City of Bridgeport*⁸⁵ as an authority for its decision. *Randell* provides a concise summation of the dilemma in the context of a city assessment and the solution subsequently followed by the Court of Appeals in *Eminence Distillery*.⁸⁶

Eminence Distillery was concerned only with equality and uniformity of taxation within the county taxing unit. It did not raise the issue of whether the Court's solution (ordering all property valued at 60 percent of fair cash value) still permitted inequality from the standpoint of state taxes based on the county assessment. That is, if other counties had been assessing property at less than 60 percent, taxpayers of Henry County would have shouldered an unequal share of state taxation. And, if the Court had held that all the property of Henry County was to be assessed at 100 percent, greater inequality in state tax burden would have resulted although, from the standpoint of the county tax burden, the decision would have been entirely consistent with the Kentucky Constitution.

The Kentucky Tax Commission was created in 1942 to remedy the obvious injustice of the varying ratios of assessed value to fair cash value that existed from county to county.⁸⁷ KTC was given the duty to equalize annually the assessments of property among the counties by ordering increases or decreases in aggregate assessed valuation of the property of any county or taxing district.⁸⁸ By amendment in 1964, the Department of Revenue

⁸⁴ *Id.* at 349-52.

⁸⁵ 28 A. 523 (Conn. 1893).

⁸⁶ The dilemma is analyzed in the *Randell* opinion as follows:

There are two ways in which a taxpayer may be wronged in levying taxes. An assessment may conform to the statute generally, and the individual may be assessed in excess of the statutory requirement. A wrong of that description is easily redressed. But when the town disregards the statute, and establishes a rule of its own, assessing the property at one-half of its actual value, and then assesses an individual at the full value of the property, while the injury is the same, the application of the remedy becomes more complicated. Practically, the only way to redress the wrong is to reduce the assessment, and that makes the court seem to disregard the statute; while, if the wrong is not redressed, there is a denial of justice, and the court practically ignores the statute giving an aggrieved party an appeal, and practically ignores the statute which provides that —“said court shall have power to grant such relief as shall to justice and equity appertain”. . . . Under the circumstances, we do not hesitate to choose the former and to redress the wrong. *Id.*

⁸⁷ Ky. Acts, ch. 131, §§ 23, 32 (1942).

⁸⁸ *Id.*

was given this duty.⁸⁹ One authority maintained that this duty was mandatory rather than directive,⁹⁰ an interpretation subsequently adopted by the Kentucky Court of Appeals in a case to be discussed below.⁹¹ The KTC's function was to insure at least approximate uniformity of assessment throughout the state at or near fair cash value. Unfortunately, the courts had already taken the position that absolute equality could not be attained⁹² and had allowed assessors to disregard the strict requirement of fair cash value assessment, treating the requirement as only requiring uniformity at a general level of proportional values in assessing various classes of property.⁹³ The effect upon the legislative mandate to the commission to equalize assessments by fixing assessment at fair cash value was predictable. For example, the average assessment ratio [assessed value to sale price] for real estate fell from approximately 60 percent in 1943⁹⁴ to about 26 percent in 1965.⁹⁵ During this same period, the number of counties ordered to raise their assessments went from 55 in 1943 to three in 1948 to one in 1953.⁹⁶ There was a flurry of enforcement in 1954 when 62 counties were ordered to increase their assessments,⁹⁷ but this move was so politically unpopular that no increases were again ordered until 1966⁹⁸ and then only after a landmark case in the Court of Appeals.⁹⁹ Even when equalization was ordered, it sometimes bore little resemblance to the action necessary for equality. For example, Wolfe County's assessment was raised 10 percent in 1945 in spite of the fact that it was already assessing at 112.7 percent of fair cash value at the time.¹⁰⁰

It can be seen from the foregoing that Kentucky courts were willing to provide a remedy for a taxpayer whose property was assessed at a higher percentage of fair cash value than that of

⁸⁹ Ky. Acts, ch. 141, § 16 (1964).

⁹⁰ Muehlenkamp, *supra* note 79, at 412.

⁹¹ See note 103 *infra* and accompanying text.

⁹² Swift Coal and Timber Co. v. Board of Supervisors, 3 S.W.2d 1067 (Ky. 1928); Eminence Distillery Co. v. Board of Supervisors, 200 S.W. 347, 350 (Ky. 1918).

⁹³ Prestonsburg Water Co. v. Board of Supervisors, 131 S.W.2d 451 (Ky. 1939).

⁹⁴ 1960-1961 KY. DEPT. OF REVENUE ANNUAL REP. 77 (1961).

⁹⁵ 1964-1965 KY. DEPT. OF REVENUE ANNUAL REP. 30 (1965).

⁹⁶ 1960-1961 KY. DEPT. OF REVENUE ANNUAL REP. 75 (1961).

⁹⁷ *Id.*

⁹⁸ 1965-1966 KY. DEPT. OF REVENUE ANNUAL REP. 20 (1966).

⁹⁹ Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965).

¹⁰⁰ Muehlenkamp, *supra* note 79, at 414.

other property within the taxing jurisdiction.¹⁰¹ However, the question as to whether a state agency and the assessors of property could be compelled to equalize assessments between taxing jurisdictions at fair cash value as required by the Kentucky Constitution and by statutes remained unanswered until 1965.

Mr. Muehlenkamp perceptively noted in 1948 that though no case had ever squarely presented the issue of whether a writ of mandamus could be used to compel the state equalization body [originally the Kentucky Tax Commission but now the Department of Revenue] to revise their equalization figures, such action was not only possible but "highly proper."¹⁰² In *Russman v. Luckett*¹⁰³ and a companion case¹⁰⁴ the issue was squarely presented.

Russman was a suit by taxpayers, parents of school children, and students against state and county taxation authorities for a declaration of rights and injunctive relief in the nature of mandamus to rectify assessment in violation of constitutional and statutory provisions requiring assessment at fair cash value. The Court of Appeals recognized that the existing policy of flagrantly violating section 172 of the Kentucky Constitution and its implementing statutes,¹⁰⁵ had to be halted.¹⁰⁶ The Court held that: (1) the plaintiffs had no other adequate remedy and therefore had the right to sue for a declaration of rights,¹⁰⁷ (2) the constitutional provision requiring assessment at fair cash value was not repealed by continued violation by public officials,¹⁰⁸ (3) past decisions by the Court of Appeals, allowing taxpayers relief by lowering assessments to prevailing percentages, did not annul the constitutional provision or implementing statutes,¹⁰⁹ and (4)

¹⁰¹ See, e.g., *Eminence Distillery Co. v. Board of Supervisors*, 200 S.W. 347 (Ky. 1918).

¹⁰² Muehlenkamp, *supra* note 79, at 415.

¹⁰³ 391 S.W.2d 694 (Ky. 1965).

¹⁰⁴ *McDevitt v. Luckett*, 391 S.W.2d 700 (Ky. 1965).

¹⁰⁵ KRS §§ 132.450(1), 133.150 (Baldwin's 1969).

¹⁰⁶ The existing situation was summarized by the court as follows:

It is apparent the situation is bad from almost any standpoint, is becoming worse, is unfair, is administratively inefficient, and gives tax commissioners [now called property valuation administrators] an unwarranted and arbitrary control of the tax base. More significant than all of these considerations, however, is the fact that the current method of assessment is in direct violation of clearly written mandatory laws. *Russman v. Luckett*, 391 S.W.2d 694, 695 (Ky. 1965).

¹⁰⁷ *Id.* at 696.

¹⁰⁸ *Id.* at 697.

¹⁰⁹ *Id.* at 698.

mandamus was the proper remedy to require taxation officials to make mandatory fair cash value assessments.¹¹⁰ The Court did soften the potentially chaotic effect of the decision on tax administration by delaying the necessity for positive compliance with the requirements of assessment at full cash value until January 1, 1966.¹¹¹ It is interesting to note that after *Russman* [June 1965] there were percentage raises ordered in 21 counties for the 1966 assessment,¹¹² and the average real estate assessment ratio for 1967 was up to 90.4 percent of fair cash value.¹¹³

Russman has demonstrated that a taxpayer can bring an action of mandamus to compel the Commissioner of Revenue to comply with his statutory duty as head of the Department of Revenue to annually equalize the assessments of property among the counties at fair cash value¹¹⁴ and to direct, instruct, and supervise property valuation administrators to insure that they make assessments at fair cash value.¹¹⁵ In addition, it demonstrated that a taxpayer can compel a property valuation administrator to comply with his statutory duty to assess property at its fair cash value.¹¹⁶

III. CONCLUSION

In addition to the conclusions already drawn as to the adequacy of the remedy available to the taxpayer for improper tax assessment, there is a consideration which has general applicability to tax assessment by all levels of government. Since the premise underlying all provisions for protest or appeal is that the taxpayer will recognize misassessment of his property, it appears that the Kentucky taxpayer should be given more immediate access to information concerning his property assessment and the assessment of other property within the taxing jurisdiction. For example, an appeal from a county assessment must be filed before the notice of tax liability is sent to the taxpayer.¹¹⁷ This places the burden on the taxpayer to inspect the assessment records

¹¹⁰ *Id.* at 698-99.

¹¹¹ *Id.* at 699-700.

¹¹² 1965-1966 KY. DEPT. OF REVENUE ANNUAL REP. 20 (1966).

¹¹³ 1968-1969 KY. DEPT. OF REVENUE ANNUAL REP. 72 (1969).

¹¹⁴ KRS §§ 131.020(1), 133.150 (Baldwin's 1969).

¹¹⁵ KRS §§ 131.020(1), 131.420(1), 132.450(1) (Baldwin's 1969).

¹¹⁶ KRS § 132.450(1) (Baldwin's 1969).

¹¹⁷ The appeal must be filed "between the date the inspection period begins and the date the board of supervisors convenes." KRS § 133.120(1) (Baldwin's 1969).

within the period allowed for appeals. Even if the taxpayer inspects the record and determines his assessment, under the current practice of assessing at a percentage of true value, the taxpayer still will not know whether his property has been mis-assessed unless he is able to determine the assessment ratio for other property within the jurisdiction. It does not seem unrealistic to require that assessment authorities notify taxpayers of their assessment and the most recently computed assessment ratio for that jurisdiction.¹¹⁸ (The Kentucky Department of Revenue currently makes such assessment ratio studies for each county). This notice could be given between the time the assessment is determined and the time the taxpayer is notified of the tax liability or it could be provided as a part of the notice of tax liability sent to the taxpayer. If the latter time of notice were used, it would require an amendment of current statutes to allow an appeal from misassessment to be made during an appropriate period after notice of the assessment. It might also be worthwhile to legislatively establish a maximum percentage of deviation from the most recent assessment ratio and provide that if the proven assessment ratio of a taxpayer's own property exceeded that deviation, the assessment of the property would be conclusively presumed to be incorrect.¹¹⁹

It is hoped that at this point, if the taxpayer cannot see the forest referred to at the beginning of this note, he at least knows its boundaries and knows which trees are included therein. It should also be apparent that the taxpayer's problem is not so formidable as a cursory reading of the statutes would imply.

Richard C. Stephenson

¹¹⁸ Such notification procedure was proposed by ACIR. PROPOSED STATUTE ON ASSESSMENT NOTIFICATION, REVIEW, AND APPEAL PROCEDURE, *supra* note 64, at 20.

¹¹⁹ Such a presumption was proposed by ACIR. PROPOSED STATUTE ON ASSESSMENT NOTIFICATION, REVIEW, AND APPEAL PROCEDURE, *supra* note 64, at 24.