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THE MARYLAND COUNTY PROPERTY TAX— A NEED FOR REFORM

Benjamin L. Cardin† and Robert A. Rombro‡

A careful examination of the local real property tax in Maryland suggests the need for reform in both the structure and application of the tax in order to satisfy the constitutional requirements of equality and uniformity. The authors first discuss the regressive nature of the present property tax scheme, as it affects both taxpayers within an individual county and taxpayers among the different counties, and then discuss current trends which may effectively work toward equalization of the county real property tax.

The tax which each individual is bound to pay, ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. . . .

Every tax ought to be levied at the time or in the manner, in which it is most likely to be convenient for the contributor to pay it. . . .

Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above, what it brings into the public treasury. . . .¹

Thus wrote Adam Smith nearly two hundred years ago in his now classic statement on the goals that a truly fair, equitable and uniform system of taxation should achieve. Has the Maryland local real property tax achieved Smith's lofty goals? If not, how can the tax be made more equitable and uniform?

I. THE LOCAL REAL PROPERTY TAX — PRESENT STRUCTURE AND APPLICATION

Within the present Maryland tax structure, the paramount revenue source for county governments² is the local real property tax.³ In fiscal

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1. 2 A. SMITH, WEALTH OF NATIONS 434 (Arlington House Ed. 1965).

2. "County governments" and similar descriptive phrases refer to Maryland's 23 counties and Baltimore City.

3. The real property tax is also the primary revenue source for local governments throughout

year 1972 the property tax⁴ for all Maryland county governments raised revenues of approximately \$635 million.⁵ The second major revenue source for the counties is the local income tax.⁶ In fiscal year 1972 the local income tax for all counties raised revenues of approximately \$201 million.⁷ Thus, the property tax as a revenue source for county governments exceeded its closest fund raiser by approximately \$434 million or 316 percent.

Moreover, total revenues raised by all county governments in fiscal year 1972, from all taxable sources, were approximately \$906 million.⁸ The property taxes raised by all county governments for fiscal year 1972 accounted for 70 percent of their total taxable revenues.⁹ The percentage of property tax reliance in relation to total local revenues from all taxable sources is substantial,¹⁰ and demonstrates that the property tax is the largest and most important revenue source for local governmental units, since without this revenue source the county governments would be unable to provide the essential services demanded and required by their residents.

A. *Is the Property Tax Burden Equal Within Each County?*

The Maryland Declaration of Rights states that the General Assembly shall provide for the assessment, classification and subclassification of land and improvements thereon, and that all real property taxes

the United States. Although total local governmental revenues have increased over the past ten years, the real property tax now constitutes a smaller percentage of revenue from all sources and tax revenue than ten years ago. Real property taxes were still the principal source of local governmental revenue in 1971, accounting for 84.6 percent of all tax revenue. 2 BUREAU OF THE CENSUS, DEP'T OF COMMERCE, 1972 CENSUS OF GOVERNMENTS 1-2 (1973).

4. Unless otherwise indicated, "property tax" refers to the local real property tax.
5. DIVISION OF FISCAL RESEARCH, MD. DEP'T OF FISCAL RESEARCH, LOCAL GOVERNMENT FINANCES IN MARYLAND (1973) [hereinafter cited as LOCAL GOVERNMENT FINANCES]. The figures represent a compilation from Tables I-III by the Division of Fiscal Research. The figures were obtained by subtracting from the aggregate figures revenues from special taxing districts and municipalities.
6. The \$635 million figure takes into consideration property tax revenues gained or lost by tax credits for the elderly, interest, penalties and discounts.
6. MD. ANN. CODE art. 81, § 283(a) (Supp. 1972), permits the county governments to impose a local income tax upon their residents as a percentage of the liability of the residents' State income tax. This "piggyback" tax must not be less than 20 percent nor more than 50 percent of the residents' State income tax liability. Moreover, increases or decreases in the local income tax rate must be in increments of five percent.
7. LOCAL GOVERNMENT FINANCES, *supra* note 5.
8. *Id.*
9. The revenues raised by the Maryland property tax in relation to revenues from all taxable sources are lower than property tax revenues raised by local governments throughout the United States. *Cf.* note 3 *supra*. The reason for this fact is that in Maryland, unlike most other states, local governments have the use of an income tax to raise local revenues.
10. In fiscal year 1972 the county governments received \$1.8 billion of revenue from all sources including federal and state grants. Accordingly, in fiscal year 1972 the percentage of property tax reliance in relation to total revenues from all sources was 35.3 percent. LOCAL GOVERNMENT FINANCES, *supra* note 5 and accompanying text.

asserted by the State and the local governmental units shall be "uniform within each class or sub-class of land," and improvements thereon.¹¹ Similar language was first introduced into the Maryland Constitution in 1915, and, despite amendment this language has remained substantially unchanged.¹² Thus, the fundamental principle of taxation inherent in the Maryland Constitution is equality—a principle which is indispensable as between individual taxpayers within each county.

Although theoretically the property tax laws in Maryland must comply with the Constitutional requirement of equality, the application of the law tends to result in considerable inequality, primarily because of variables in assessment practices. As will be shown, inner-city areas generally pay more than their fair share of property taxes because of the assessment procedures. An appreciation of such inequities requires an understanding of assessment practices in Maryland.

1. Assessment Practices

By statutory requirement, all real property situated in Maryland is subject to assessment and taxation,¹³ except property expressly exempted.¹⁴ Generally, the property tax is composed of a tax base and a tax rate. Whereas the tax *base* is the total assessed value placed on real property by the local assessors, the tax *rate* is a function of both the

11. MD. CONSTITUTION, DECLARATION OF RIGHTS art. 15. *as amended*, Law of March 23, 1960, Ch. 65, § 1, [1960] Laws of Md. 185, ratified Nov. 8, 1960.

12. MD. CONSTITUTION, DECLARATION OF RIGHTS art. 15 (1915 version) provided:
[A]ll taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy.

Whereas under the 1915 amendment only improvements on land could be classified and subclassified, the major change made by the 1960 constitutional amendment was its mandate allowing land itself to be classified and subclassified.

13. MD. ANN. CODE art. 81, § 8(1) (Supp. 1972).

14. *Id.* § 9. Generally, real property is exempt from assessment and taxation if it is owned by: (1) the United States, the State of Maryland and the local governmental subdivisions; (2) a religious organization and actually used exclusively for public religious work or for educational purposes; (3) cemeteries; (4) nonprofit charitable, fraternal, benevolent, educational or literary organizations; (5) veteran's organizations; (6) dwelling houses of blind persons or disabled veterans honorably discharged from active service in the armed forces; (7) historical societies and museums; (8) Boy Scouts and Girl Scouts of the United States and actually used exclusively for scouting purposes; (9) fire companies and rescue squads; (10) conservation property; (11) Chesapeake Bay Foundation, Inc.; (12) nonprofit community water companies; and (13) nonprofit housing property.

It should be noted that this list is not complete. Furthermore, such exempt owned property is not exempt merely because it meets the exemption requirements generally. Rather, each exempt property must be organized and operated within the statutory directive established for that class of exempt property.

taxing district's revenue needs and its tax base. Consequently, the property tax rate is derived by the taxing district considering its total revenue needs from the property tax for the ensuing taxable year in relation to its entire taxable base. For example, if the taxing district's total revenue needs from the property tax for the ensuing taxable year are \$90,000,000 and its assessable tax base is \$3,000,000,000, its tax rate will be \$3.00¹⁵ per \$100 assessed value.¹⁶

The tax base is determined by an assessment procedure, the purpose of which is to attribute a cash value to individual parcels of real property. This procedure is vital to the property tax scheme and may be categorized into three elements: (1) locating the property to be taxed and listing it on the assessment rolls; (2) valuing the property; and (3) reviewing the value assigned to the property.

a. Locating and listing the property

The instrumentality in Maryland responsible for the supervision of the real property tax structure is the State Department of Assessments and Taxation (the "Department"). This administrative agency is empowered to supervise the local assessment of all assessable real property situated in the State.¹⁷

To locate the property to be assessed, the local assessor in each taxing district refers to aerial maps and metes and bounds maps¹⁸ of all the realty situated in his district. Whenever a real estate transaction occurs in his district, the local assessor receives from the district's land record office a copy of the deed for each such transaction. Immediately thereafter, the transfer is entered on the taxing district's books and tax maps. The use of the maps assures that all real property in a district is on that district's tax books and the receipt of all deeds from the land record office of the county assures that the proper person is listed as the taxpayer. This procedure ensures the local assessor's cognizance of any subdivisions, additions and resulting changes of ownership which occur in his district. In this manner he continually receives current, pertinent information regarding the individual parcels located in his district which are subject to assessment and taxation.

After discovering the assessable property, the Department is

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15. The formula used to derive the tax rate is $X = R/B$, where "X" is the tax rate per \$100 assessed value, "R" is the taxing district's total revenue needs from the property tax and "B" is the taxing district's assessable tax base.
 16. The tax rate is levied on each \$100 of assessed value. Thus, if the taxing district has a tax rate of \$3.00 and if it has pegged the market value of the taxpayer's property at \$20,000 and calculated 60 percent of \$20,000 to arrive at an assessed value of \$12,000, the taxpayer's final tax bill would be \$360 (or \$3.00 times \$120). Therefore, the tax rate is applied not to the property's current market value, but rather to its assessed value per \$100.
 17. MD. ANN. CODE art. 81, § 232(1) (1969).
 18. The Department has prepared aerial maps and metes and bounds maps of the entire State for use by the local assessors.

authorized to supervise the actual assessment of such property to ensure that all taxable property is "entered upon the assessment rolls and equalized between persons, firms and corporations, so that [they] shall be assessed alike for like kind of property."¹⁹

b. Valuing the property

The nucleus of the assessment process is valuation. Once the property is discovered and listed on the assessment rolls, it is assigned a monetary value. It is this valuation process, which may be defined as the transmutation of an abstract physical asset into a current monetary value, which generates the largest amount of public concern in the property tax structure, for it is the most complex, least understood and one of the most inequitable stages in the assessment process.

Real property is required to be assessed at full cash value, a term which is clearly defined by the statute to mean current value less an inflationary allowance, if inflation factually exists.²⁰ This allowance for inflation has been established by regulations of the Department at 40 percent of full cash value.²¹ The ideal assessment, therefore, is determined as 60 percent of full cash value,²² with full cash value generally being equal to current market value.²³

Current market value is defined as the price at which property changes hands in a transaction between a willing buyer and a willing seller, both of whom are under no compulsion either to buy or to sell, and both of whom are reasonably well informed as to all the relevant facts.²⁴

Notwithstanding that full cash value is explicitly defined by the statute and surrounding case law, the concept of full cash value generally has been applied neither objectively nor uniformly to similarly situated property and is thus a primary source of assessment inequality. In making his determinations many choices are available to an assessor for valuing real estate for purposes of property taxation.

19. MD. ANN. CODE art. 81, § 232(4) (1969). Section 232 also provides that the Department is commissioned to: (1) supervise the administration of the assessment and tax laws of the State and each taxing district; (2) supervise the performances of duties imposed upon supervisors of assessments; (3) compile a complete record of properties and appraisal aids for each local governmental unit; (4) provide a uniform system of accounts for tax collectors; and (5) formulate standards for assessments of various kinds of property. *Id.*

20. MD. ANN. CODE art. 81, § 14(b) (Supp. 1972).

21. See letter from State Tax Commission to County Commissioners, Supervisors of Assessments and Appeal Tax Courts or Commissioners, March 12, 1958. See letters from the State Department of Assessments and Taxation to all Supervisors of Assessments, June 30, 1967 and June 15, 1970.

22. When this percentage figure is applied to the property's full cash value, the attained result is assessed value or the value to which the tax rate is ultimately applied. See note 15 *supra*.

23. *Supervisor of Assessments v. Banks*, 252 Md. 600, 608, 250 A.2d 860, 864 (1969); *Rogan v. County Commissioners*, 194 Md. 299, 311, 71 A.2d 47, 52 (1950).

24. *Bornstein v. State Tax Comm.*, 227 Md. 331, 337-38, 176 A.2d 859, 861-62 (1962).

Three methods commonly used to measure current market value are: (1) market comparison, which compares the actual sales price of similar realty parcels to the property being appraised; (2) depreciated reproduction cost, which subtracts accumulated depreciation from present reproduction cost; and (3) capitalization of anticipated income, which roots the value to the current value of future earnings.²⁵ The first two methods are generally used for residential property, whereas the third method is used for commercial property including apartments.²⁶

Theoretically, each method should yield the same cash value for a particular parcel of real estate, since a change in one method should produce a corresponding change in the remaining two methods. However, this is not true in practice, since extraneous factors may sidetrack the theoretical equalization. For example, each method is affected differently by current economic conditions. Although certain improvements may no longer be in vogue, their cost of reproduction is not substantially changed, notwithstanding that their market demand may be substantially diminished, thereby reducing their potential sales price. Thus, depreciated reproduction cost may not actually reflect changes in style and hence current market value. Furthermore, in the method of "cost of reproduction less accumulated depreciation," depreciation is susceptible of many interpretations, depending upon the property's useful life and the method and rate of depreciation.²⁷ Thus, depending upon the valuation method selected by the assessor to calculate the current market value of the subject property, it is possible for nearly identical properties to be assessed unequally.

Likewise, a difficulty in ascertaining full cash value or current market value by use of the "market comparison" method is that a current market quotation may not be readily available either for the property being assessed or for similarly situated property. This has resulted in the Department's devising and employing a "conglomerate valuation" method to assist in determining full cash value. However, it appears that this method is employed despite the availability of a current market quotation.

This hybrid valuation method utilizes the market comparison, depreciated reproduction cost and capitalization of anticipated income methods to measure current market value, and is presently employed by the Department to establish the current market value of residential property. The Department employs this hybrid valuation method in valuing residential properties, excluding apartments, through a complex procedure designed to obtain the property's reproduction cost.²⁸ This

25. See generally, II J. BONBRIGHT, *THE VALUATION OF REAL PROPERTY*, 451-510 (1937).

26. In addition, Baltimore City also uses the method of capitalization of anticipated income for the assessment of residential property in those neighborhoods where the predominant number of individual homes are occupied by renters.

27. See INT. REV. CODE OF 1954, § 167(b) which allows four methods of depreciation for purposes of federal income taxation.

28. STATE DEP'T OF ASSESSMENTS AND TAXATION, *APPRAISAL MANUAL FOR MARYLAND ASSESSORS* (1970) [hereinafter cited as *APPRAISAL MANUAL*].

procedure involves a partially subjective classification of the residential building by the assessor, according to its condition and a cubic foot measurement of the improvement.²⁹ After the improvement's reproduction cost is obtained, the assessor subtracts a depreciation factor.³⁰ At this point, the use of the depreciated reproduction cost method ends and the market comparison method begins. The depreciation allowance is then determined primarily by market comparisons of recent sales of similar properties in the neighborhood. The assessor has a chart which indicates all recent sales in the general vicinity of the subject property. In addition, the land upon which the improvement is located is valued solely by the market comparison method, since land is not depreciable and, therefore, the depreciated reproduction cost method is inappropriate for valuing land. Lastly, the Department uses capitalization of anticipated income as the method for valuing apartments.³¹

Once current market value has been determined, it must be adjusted by an allowance for inflation.³² However, inflation, unlike full cash value, is not defined in the statute. Neither a price level nor a base price year for measuring inflation is offered or suggested. Rather, the legislature has relinquished the power to establish the inflationary allowance to the Department, which has done so by regulation.³³ The effect of the legislature's failure to act on this matter permits the inflationary allowance to be selected arbitrarily, thereby allowing the assessing authority to establish the inflationary allowance at whatever level it deems currently appropriate.

c. Reviewing the assigned value

The final element in the assessment process is reviewing the value assigned to the subject property. This task also has been delegated to the Department, which is required to maintain and enforce a continuing method of assessment review, on an annual basis, of all assessable real property situated in each taxing unit. The review is accomplished not only by a physical inspection, but also by the use of maps, sales records, building cost data, by private appraisals or periodic surveys of assessment ratios, or by any other reliable materials or information.³⁴ Property so reviewed need not be reviewed individually or separately,

29. *Id.* at Intro. 1-10.

30. *Id.* at Intro. 11, Depr. 1-4.

31. STATE DEP'T OF ASSESSMENTS AND TAXATION, ASSESSMENTS PRINCIPLES 35 (1972). This method of valuation is based on the "present worth" of the right to receive the future income which the property produces.

32. It is interesting to note that personal property subject to assessment and taxation is assessed at full cash value without any allowance for inflation. MD. ANN. CODE art. 81, § 14(b)(2) (Supp. 1972). However, for those counties which still impose a personal property tax for manufacturing and commercial inventory, there is at least a 40% exemption. MD. ANN. CODE art. 81, § 9A(d)-(e) (Supp. 1972).

33. See note 21 *supra* and accompanying text.

34. MD. ANN. CODE art. 81, § 232(8)(a) (1969).

but may be grouped into areas or segregated according to character or use.³⁵

Moreover, the Department is empowered to develop a method of real property reassessment.³⁶ That is, whenever the required annual review discloses a change in value, assessable real property in each county must be properly reassessed annually.³⁷ If the Department thereafter discovers that existing assessments are erroneous because they are significantly greater or less than assessments on other similar properties possessing comparable values, it may order property reassessments.³⁸ Although the Department is by statute authorized (and, arguably, *required*) to make annual reassessments, it has, instead, adopted by regulation a policy of triennial reassessments.³⁹

Another method by which the Department is empowered to review the value assigned to property to maintain uniformity of assessment is by physical inspection. Additionally, effective July 1, 1972, physical inspection of all assessable real property situated in the State must be made at least once every three years.⁴⁰ Prior to the enactment of this provision, a substantial number of assessable real property accounts had been reassessed even less frequently than triennially. Such laxity directly affects a county's tax base and hence its tax rate, particularly during periods of steady inflation, as evidenced by comparing the percentage of real property accounts not reassessed in the three year periods prior to 1971 and 1972 in Baltimore City, with those in Baltimore County during the same period. In Baltimore City 42 percent of the assessable real property accounts had not been reassessed in the three years prior to 1971, and 48 percent of them had not been reassessed in the three years prior to 1972.⁴¹

In Baltimore County, by comparison, 51 percent of its assessable real property accounts had not been reassessed in the three year period prior to 1971.⁴² But in 1972 Baltimore County had a dramatic about face and a major effort was made to reassess all assessable real property accounts in that jurisdiction within a three year cycle. The result of this effort was to increase Baltimore County's property tax *base* to such a degree that its property tax *rate* decreased from \$3.85⁴³ in fiscal year 1972 to \$3.29⁴⁴ in fiscal year 1973 for a resulting property tax rate reduction of 14.5 percent. It would thus appear that during inflationary

35. *Id.*

36. *Id.* § 232(8)(b).

37. *Id.*

38. *Id.*

39. Letter from the State Department of Assessments and Taxation to all Supervisors of Assessments, April 12, 1965.

40. MD. ANN. CODE art. 81, § 232(8)(c) (Supp. 1972).

41. 29 MD. STATE DEP'T OF ASSESSMENTS AND TAXATION BIENNIAL REP. 18 (1973) [hereinafter BIENNIAL REP.].

42. *Id.*

43. Information obtained from the Department of Fiscal Services, Annapolis, Maryland.

44. *Id.*

periods frequent reassessments of assessable real property accounts will decrease the property tax rate by increasing the property tax base, thus assuring that each taxpayer will pay only his fair share of the property tax burden.

Baltimore City, however, presents a unique exception to this general rule, because of declining property values in the inner city. Since the City seldom reassesses in those areas where property values are declining, adoption of a plan for more frequent reassessments in the City may cause its property tax base to diminish, causally increasing its property tax rate.

Infrequent reassessment causes sudden increases in a taxpayer's final tax bill. However, the legislature has enacted a "phase-in" provision to abate part of a taxpayer's tax bill, so that the taxpayer will not be excessively burdened in one year by a precipitous property tax assessment increase. This provision, known as the "36 percent rule," provides that if a real property assessment is increased more than 36 percent in any three year period, the percentage increase in excess of 36 percent is "phased in" over the ensuing three year assessment period in equal annual percentages.^{4 5}

The 36 percent rule functions in the following manner: assume that in Year One the taxpayer's property is assessed at \$10,000. In Year Two the assessment is increased 135 percent to \$23,500. Since the increase exceeds 36 percent, the rule is operative. Accordingly, in Year Two the taxpayer's property assessment increase will be limited to 69 percent, i.e., 36 percent plus one-third of the excess above 36 percent, or an assessment of \$16,900. The assessment would be \$20,200 in Year Three and the full \$23,500 in Year Four. According to present departmental regulations,^{4 6} the property would then be reassessed for Year Five and if the reassessment exceeded 36 percent of the \$23,500 assessed valuation, the 36 percent rule would come into play once again.^{4 7}

A 69 percent assessment increase in one year and a 33 percent increase in each of the subsequent two years may, by some standards, appear harsh. However, since this increase is imposed in order to attain the constitutionally required uniformity of assessment, the sympathy extended to a taxpayer must be tempered by the fact that the taxpayer has paid less than his fair share of the property tax burden in the past.

45. MD. ANN. CODE art. 81, § 232(8)(c) (Supp. 1972). It should be noted that this rule was optional to the taxpayer in 1972, but was made compulsory effective January 1, 1973.

46. Letter from State Department of Assessments and Taxation to all Supervisors of Assessments, April 12, 1965.

47. It should be noted that the 36 percent rule is not available if any of the five following events transpires: (1) the property is transferred to new ownership; (2) the property's zoning classification is changed; (3) the property's use is substantially changed; (4) extensive improvements are made to the improvements on the existing property; and (5) the previous assessment was clearly erroneous due to an error in calculating the improvements. MD. ANN. CODE art. 81, § 232(8)(c) (Supp. 1972).

2. Effect of Unequal Treatment

As a result both of the lack of equal assessment practices within a county and of the delays in review and reassessment, some areas of a subdivision bear a disproportionately higher tax burden than other areas. For example, the property tax inequities in Baltimore City neighborhoods were demonstrated in one recent report⁴⁸ which divided each of ten large metropolitan cities in the United States⁴⁹ into four neighborhood classifications as follows: "stable (property values at a high value and increasing at the city's average rate); upward transitional (property values increasing at an above average rate); downward transitional (property values declining); and blighted (property values steady at a low level or sinking toward zero)."⁵⁰ The report went on to state that "poor quality housing in blighted neighborhoods, occupied by low-income tenants, [is subject to] property taxes at a substantially higher rate than property in other neighborhoods. . . . due entirely to differential assessment/market value ratios. . . . [notwithstanding the] legislative requirements that residential properties be assessed at a uniform proportion of market value throughout each city."⁵¹

The effective tax rate⁵² for each of the four neighborhoods in Baltimore City in 1970 was as follows: stable (1.6 percent); upward transitional (1.4 percent); downward transitional (9.8 percent); and blighted (14.9 percent).⁵³

Of the ten cities sampled, the effective tax rates of Baltimore City's stable and upward transitional neighborhoods ranked fourth and fifth, respectively.⁵⁴ On the other hand, Baltimore City's downward transitional and blighted neighborhoods had not only the highest effective tax rates for equivalent neighborhoods of the ten sampled cities, but also the effective tax rate of each such neighborhood was nearly four times higher than the effective tax rate for such comparable neighborhoods of the other nine cities.⁵⁵ Not only are depressed neighborhoods in Baltimore City paying an effective tax rate ten times higher than other Baltimore City neighborhoods, but also these inner-city neighborhoods in Baltimore are paying an effective tax rate greater than that paid by neighborhoods in the other surveyed cities.

In addition, the lack of frequent reassessments contributes to

48. ARTHUR D. LITTLE, INC., REPORT TO HUD, A STUDY OF PROPERTY TAXES AND URBAN BLIGHT (1973) [hereinafter cited as STUDY OF PROPERTY TAXES AND URBAN BLIGHT].

49. The ten cities surveyed were: Atlanta, Baltimore, Chicago, Detroit, Nashville, Oklahoma City, Philadelphia, Portland, Providence and San Francisco. *Id.* at 1.

50. *Id.*

51. *Id.* at 2 (emphasis omitted).

52. In the study, effective tax rate is stated as "a percent of owner reported market value." *Id.*

53. STUDY OF PROPERTY TAXES AND URBAN BLIGHT, *supra* note 48, at 2.

54. *Id.*

55. *Id.*

effecting a regressive property tax structure. Three administrative weaknesses contribute to this result. First, an initial under-assessment of high value properties is generally prevalent, since these properties usually reflect improvement variables not easily incorporated into an assessment formula. Second, low value properties are generally over-assessed. Third, the lag in reassessments adversely affects, in particular, those properties in blighted and downward transitional neighborhoods whose values are not increasing as rapidly as the rate of inflation.^{5 6} Consequently, as property values increase in the wealthier neighborhoods and collaterally decrease in the poorer neighborhoods, infrequent reassessments of both types of neighborhoods most noticeably affects the poorer neighborhoods.

Not only is the tax burden disproportionate among neighborhoods, but also it is disproportionate among neighbors. No reason exists why two neighboring taxpayers residing in the same county, in identical residences with the same market values, should have their properties assessed differently. The net result of the unequal assessments is that, whereas each taxpayer's tax rate is the same, one neighbor's total tax bill is higher than the other's solely because of the unequal assessment assigned each taxpayer's tax base.

B. Is the Property Tax Burden Equal among the Counties?

The fundamental principle of property assessment equality, applicable as among individual taxpayers within a local governmental unit, is also applicable as among the local governmental units. However, in practice, the property tax burden inequalities as between individual taxpayers within a county also are found to an even greater extent among the individual counties.

1. Percentage of Assessment to Market Value

Inequality in property tax assessments among the local governmental units is still prevalent, primarily because the assessment practices for valuing property have traditionally varied widely among the taxing districts.^{5 7} This diversity in assessment practices becomes evident upon a review of the counties' comparative assessment ratios, i.e. the percentage that a county's assessable property tax base bears to the full cash value of its taxable property. Ideally, the assessment ratios of all

56. Paglin and Fogarty, *Equity and the Property Tax! A New Conceptual Focus*, 25 NAT'L TAX J. 360 (1970).

57. Historically, assessment ratios among the counties have diversified more in the past than they do today. For example, in 1953 Calvert County's assessment ratio was 25 percent as compared to Baltimore City's assessment ratio of 60 percent. 1958 TAXATION AND FISCAL MATTERS COMMITTEE ANN. REP. TO MD. GENERAL ASSEMBLY 25.

counties should be 60 percent of current market value since there is a 40 percent inflationary allowance. However, this is not in fact occurring.

For example, in 1971, Garrett County was the taxing jurisdiction with the lowest property tax assessment value, having a total *weighted* assessment ratio⁵⁸ of 44.9 percent.⁵⁹ The taxing district with the highest assessment value for 1971 was Baltimore City, with a total weighted assessment ratio of 58.8 percent.⁶⁰ Even if Garrett County and Baltimore City had the same tax rates, the taxpayers of Baltimore City still would have had a substantially higher property tax burden for 1971 than the taxpayers of Garrett County because of their assessment ratio inequalities.

The same result is found in the *residential* property assessment ratio. In 1971, that ratio ranged from a low of 47.2 percent in St. Mary's County to a high of 59.6 in Baltimore City.⁶¹ The average residential property assessment ratio for the entire State was 52.9 percent.⁶² Only Baltimore City, with a residential property assessment ratio of 59.6 percent⁶³ was close to the optimum ratio of 60 percent.⁶⁴

The figures for 1972 reflect a similar disparity. The average total *weighted* assessment ratio of all the counties was 52.0 percent,⁶⁵ and ranged from a high of 55.8 percent in Baltimore City⁶⁶ to a low of 48.3 percent in Kent County.⁶⁷ The 1972 average total *residential*

58. The weighted ratio is determined by the ratio of assessments to sales prices and/or appraised values. The total weighted ratio includes the weighted ratios of residential, commercial and agricultural properties.

59. BIENNIAL REP., *supra* note 41, at 16. The total weighted ratio and the residential, commercial and agricultural ratios are determined by surveys, which are a basis for determining the assessment level in each local governmental unit for purposes of State Aid for Education and other State Grant distributions. The surveys were generally based upon residential property sales which occurred in the years following the year in which the reassessments occurred. Commercial and industrial sales were appraised at value levels of the year in which the reassessment work occurred.

The rules under which the assessment survey for residential properties was conducted were as follows:

1. Select a random sample of real estate sales in each taxing district for calendar year 1969.
2. Visit the property to determine if the sales price is representative of normal value. Comparable property not recently involved in a sale is also selected. Examination of existing assessment of the comparable property is made to ascertain if it is assessed and valued similarly to the property involved in the sale.

It is interesting to note that when a taxing district is found to have an assessment ratio above or below the State average, it is ordered to take corrective action to bring its ratio in line, not with the utopian 60 percent assessment ratio, but with the State average ratio. *Id.* at 14.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. This results from the lag in reassessments relative to market conditions. Therefore Baltimore City's ratio is the best, but for the wrong reasons.

65. BIENNIAL REP., *supra* note 41, at 17.

66. *Id.*

67. *Id.*

property assessment ratio of all counties was 51.8 percent⁶⁸ and ranged from a high of 56.2 percent in Baltimore City⁶⁹ to a low of 46.1 percent in Garrett County.⁷⁰ Again, Baltimore City was the victim of overvaluation as compared to its jurisdictional counterparts, and, consequently, its taxpayers assumed a greater portion of the tax burden than the corresponding tax rates indicate.

2. Property Tax Rates

In addition to the inequality of the assessment ratios which result in unequal tax bases, the property tax rates among the counties also vary widely. Worcester County's property tax rate of \$1.90⁷¹ was the lowest, while Baltimore City's property tax rate of \$5.86⁷² was the highest for fiscal year 1972 among the taxing jurisdictions. For fiscal year 1973, Worcester County again ranks lowest among the counties with a tax rate of \$1.75,⁷³ a decrease of \$.15 over the prior year, while Baltimore City remains the highest with a property tax rate of \$5.83,⁷⁴ reflecting a decrease of only \$.03.

Likewise, in fiscal year 1972, Worcester County's residential property assessment ratio was 53 percent,⁷⁵ making its effective tax⁷⁶ for the average taxpayer on residential property 1.007 percent. For the same period, Baltimore City's assessment ratio for residential property was 56.2 percent,⁷⁷ making its effective tax for the average taxpayer on residential property 3.293 percent. Therefore, in Maryland, some taxpayers pay over three times more real property taxes than other taxpayers who live in equal value properties, the sole varying factor being the property's location.

Several factors contribute to this situation. In addition to a county tax rate, taxpayers who reside in municipalities may also have to pay municipal property tax rates.⁷⁸ Furthermore, some taxpayers must pay additional real property tax levies to their municipalities for water and sewage facilities, volunteer fire companies, and park and recreational

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 20.

72. *Id.*

73. Information obtained from Department of Fiscal Services, Annapolis, Maryland.

74. *Id.* It should be noted that for 1973-74 Worcester County also has the lowest piggyback income tax rate.

75. BIENNIAL REP., *supra* note 41, at 17.

76. The effective tax for residential property is derived by multiplying the county's residential property assessment ratio by its tax rate.

77. BIENNIAL REP., *supra* note 41, at 17.

78. For fiscal year 1972, municipal tax rates ranged from a low in Eldorado, Dorchester County and Rosemont, Frederick County of \$.10 to a high in Cumberland, Alleghany County of \$1.79, with a few small municipalities levying no local property tax. LOCAL GOVERNMENT FINANCES, *supra* note 5.

facilities, which are not included in their counties' general property tax rates.⁷⁹

3. Services

In addition to assessment ratios and tax rates, another factor which significantly contributes to the imbalance among the counties is governmental services. Some local governmental units provide more and better governmental services than others, for the receipt of which their taxpayers are willing to pay additional taxes. For example, for school year 1972-73 Montgomery County budgeted \$1,108 per pupil in its educational budget,⁸⁰ whereas Worcester County budgeted \$669 per pupil.⁸¹ Montgomery County thus spent approximately 66 percent more per pupil for education than did Worcester County, even though the tax base per pupil in Montgomery County exceeded Worcester County's by only 11 percent.⁸²

Some counties spend greater sums of tax dollars than other counties for comparable services. For example, in fiscal year 1972 Baltimore City spent \$75.23 per capita for police protection as compared to the State⁸³ average of \$15.47 per capita.⁸⁴ The additional tax needed to provide comparable services in urban communities is commonly referred to as a "municipal overburden." Most economists today agree that the problem of municipal overburden should be handled separately from other property tax problems. Even taking into consideration the governmental services received, the fact still remains that equal property wealth taxpayers in different taxing districts pay unequal total property tax dollars for comparable governmental services.

For example in school year 1972-1973, the taxpayers of Prince George's County paid 15 percent more property taxes for school expenditures than the taxpayers in neighboring Montgomery County, yet Montgomery County with a lower tax rate provided 28 percent greater per pupil expenditures than Prince George's County.⁸⁵ Although inflation and the increased cost of living may be relevant factors to explain some differences among some jurisdictions for different tax burdens, such an explanation is not applicable to the differences between Montgomery and Prince George's Counties, both of which are suburban Washington counties. The real reason for the difference of the property tax burden in these two counties is wealth.

79. See, e.g., LOCAL GOVERNMENT FINANCES, *supra* note 5, Table I.

80. GOVERNOR'S TASK FORCE ON FINANCING PUBLIC EDUCATION REP. (1973).

81. *Id.*

82. *Id.*

83. The State figure excludes Baltimore City.

84. Population figures, Maryland State Department of Health, estimates for January 1, 1972. For local governmental expenditures see LOCAL GOVERNMENT FINANCES, *supra* note 5. Tabulation by Department of Fiscal Services, Annapolis, Maryland.

85. GOVERNOR'S TASK FORCE ON FINANCING PUBLIC EDUCATION MINORITY REP. 3 (1973).

Montgomery County has \$27,034 of assessable real property tax wealth per student, whereas Prince George's County has \$16,640 per student.^{8 6}

One of the principal variables affecting the tax wealth of local governmental units throughout the United States is their *commercial* assessable base.^{8 7} However, such is not the situation in Maryland. Whereas most of the states have hundreds of tax districts, Maryland has only 24 tax districts, with boundary lines corresponding to its 24 counties. Therefore, residential property values among the counties are as significant, and in some instances more significant, than the counties' commercial assessable bases. Any attempt to narrow the gap of the property tax burden among the counties must address itself to equalizing each jurisdiction's comparative real property wealth.

It appears, therefore, that the property tax which each taxpayer is bound to pay is determined not by the individual taxpayer's property wealth, but by the different assessment practices and the collective property wealth of the county in which the taxpayer's property is located. The result of such practices and wealth differences is that the fundamental principle of equality, the theoretical goal of the Maryland tax structure, is thwarted and the property tax burden both within each county and among the counties is unequal.

II. TRENDS TOWARD EQUALIZATION OF THE COUNTY REAL PROPERTY TAX

Despite its inequities, the property tax is essential to a proper state and county tax structure. It has been said to be "one of the most potent weapons against the abuses of wealth in this county."^{8 8} Without a property tax, it is possible that some businesses would pay little or no local taxes.^{8 9} Other reasons for retaining the property tax include the absence of a satisfactory alternative and economy of administration.^{9 0}

Since the property tax is paid at one time, it is subject to closer public scrutiny than other forms of taxation. Yet public criticism of the property tax is directed mainly toward its administration rather than its use. Many suggestions have been advanced to make it more subject to public confidence and more equitable in its treatment of taxpayers

86. For property tax base figures see BIENNIAL REP., *supra* note 41, at 17. Student population figures supplied by Department of Fiscal Services, Annapolis, Maryland.

87. *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

88. Gaffney, *In Praise of the Property Tax*, 4 WASH. MONTHLY 3 (1973).

89. A business pays an income tax only on its profits. Therefore, if it loses money it pays no local taxes except for some minor nuisance taxes.

90. The projected cost for the State to assume the total operation of the assessment process, except for office rental space, is approximately \$12 million, or less than two percent of the total revenues raised by the property tax. DEP'T OF FISCAL SERVICES, FISCAL NOTE FOR H.B. 531 (1973).

both within and among the taxing districts. Therefore, since retention of the property tax is favored, its inherently unequal aspects should be eliminated, its progressive features should be strengthened and extended, and new concepts should be introduced.

A. Trends toward Equalization within a County

1. Uniform Method of Assessments

Equality in property assessments is directly related to the application of a uniform method of supervising assessments by the Department. As explained previously,⁹¹ the Department is required to assess property at full cash value, i.e. current market value less an allowance for inflation. Such a concept is sound if the property tax is to reflect the comparative wealth of a taxpayer (using property as the basis of wealth)⁹² and thus be somewhat progressive. Although other methods are available for valuing property, such as depreciated reproduction cost, any method other than market comparison makes the property tax more regressive, since only the market comparison method reflects current value.

Recently, the Department published an Appraisal Manual to be used on a state-wide basis by all assessors in an attempt to achieve uniformity of assessments.⁹³ Although the manual talks primarily in terms of depreciated reproduction cost, as previously pointed out⁹⁴ the market comparison concept is paramount in arriving at the final assessment, since market comparisons are used to determine the amount of depreciation to be subtracted from the reproduction cost in order to obtain the final assessment. Also, the market comparison method is the only method used to value land. Because assessments must in part be left to the subjective determination of an individual assessor, there will always be some variations in assessments. However, the recent steps taken by the Department in mandating the use of a comprehensive assessment manual should reduce to a minimum fluctuations in assessments caused by the use of different assessment personnel.

2. Frequent Reassessments

Any effort to produce equality of treatment for property taxpayers within a county must be addressed to the frequency of reassessments. As observed previously,⁹⁵ the prospect that equal property wealth

91. See note 20 *supra* and accompanying text.

92. A taxpayer's property as an asset in determination of wealth is what that property's liquidity is on the open market.

93. See APPRAISAL MANUAL, *supra* note 28.

94. See notes 28-31 *supra* and accompanying text.

95. See notes 41-47 *supra* and accompanying text.

taxpayers within a taxing jurisdiction will pay substantially equal property taxes depends in part upon a shorter period between property reassessments.

Presently, the counties are using a triennial reassessment cycle.⁹⁶ The inflationary spiral which our economy is currently experiencing has caused the prices of homes and properties to increase too rapidly to allow continuance of a triennial reassessment policy. Conceivably, equal property wealth taxpayers could have substantially different assessment values assigned to their respective properties merely because of differing inflationary increases in the market values of their properties during the three year reassessment period. Despite the mitigating effects of the "36 percent rule," property value increases representing three years of inflationary spiral are potentially too large an additional tax burden to be levied in one year, especially if the year of the reassessment coincides with a property tax rate increase.

The answer to this dilemma is to reassess all assessable property accounts annually. With the capacity of modern computers to expedite the assessment process there is no reason why reassessments should not be performed annually. Such a recommendation passed the Maryland House of Delegates in 1973 but was defeated by the Senate Finance Committee.⁹⁷

As discussed earlier,⁹⁸ the Department presently has the authority, without further need of legislative action, to develop an annual reassessment program. The Department steadfastly maintains that the language of the statute is merely directory and not mandatory, and that it was enacted only to protect the Department. Despite the Department's construction of the statute, the language of the statute appears to be mandatory since it provides that all assessable real property in the State "shall be properly assessed annually" whenever the required annual review discloses a value change.⁹⁹

3. Different Base for Commercial Property

One suggestion which in recent years has been gathering strong support is the imposition of a greater property tax burden on commercial property in relation to residential property. Such a result could easily be attained by legislation mandating an increase in the

96. Letter from State Department of Assessments and Taxation to all Supervisors of Assessments, April 12, 1965.

97. H.B. 1125, 1973 Sess., Md. Gen. Assem.

98. MD. ANN. CODE art. 81, § 232(8)(b) (1969); *see also* notes 36-39 *supra* and accompanying text.

99. MD. ANN. CODE art. 81, § 232(8)(b) (1969). Since the writing of this article, the Circuit Court for Anne Arundel County has held in *Borden v. Ward*, Equity No. 21,059 (August 29, 1973), that this language requires not only an annual review of all assessable real property situated in each taxing district, but also that such property be reassessed annually. The State was given 30 days to submit to the court a plan to implement a program of annual reassessments.

inflationary allowance for residential property. For example, the legislature could maintain the present 40 percent inflationary allowance for commercial property and increase the inflationary allowance for residential property to 45 percent. Thus commercial property would be assessed at 60 percent of current market value, whereas residential property would be assessed at 55 percent of current market value.¹⁰⁰ Since the county tax rate would have to be increased to make up the loss of revenue from the reduction of the residential property tax receipts, such a proposal would decrease residential property taxes at the expense of increased commercial property taxes.

Although such a proposal is appealing to residential property taxpayers, it meets strong opposition from the business community, which contends that commercial properties already are paying a greater portion of local revenues in relation to the services they receive. For example, 47.6 percent of a typical county's budget is applied toward education,¹⁰¹ which the business community argues is directly beneficial only to the residential community.¹⁰²

An additional problem encountered by this recommendation is that commercial property includes multiple family dwellings,¹⁰³ i.e. apartments.¹⁰⁴ The result of a higher tax burden for commercial property in relation to residential property would be that apartment residents would incur a greater property tax burden than single family dwelling unit residents, the sole variable being the type of dwelling place in which each resident resides. However, it appears that a legislative proposal could be structured in such a manner as to include multiple family dwellings within the definition of residential property.

Another argument advanced against the establishment of a different base for commercial property is the Maryland constitutional mandate for uniformity of assessments.¹⁰⁵ However, the Constitution does permit the General Assembly to classify property.¹⁰⁶ It would appear

100. For example, assume a residential and a commercial property, each with a current market value of \$20,000, located in a taxing district which has a tax rate of \$3.00 per \$100 assessed value. If the commercial property is assessed at 60 percent of full cash value, its final tax bill would be \$360, whereas if the residential property is assessed at 55 percent of full cash value, its final tax bill would be \$330.

101. LOCAL GOVERNMENT FINANCES, *supra* note 5.

102. This argument, however, fails to recognize the probability that the business community will also realize a benefit in the form of better educated personnel, at least in the long run.

103. Dwelling units in excess of three units are classified as commercial properties. APPRAISAL MANUAL, *supra* note 28.

104. Since recent findings indicate that apartment renters may be paying more than their fair share of the property tax burden in relation to single family dwelling unit occupants, any proposal which would increase the property tax burden of apartment renters in relation to the property tax burden of single family dwelling unit occupants would make the property tax more inequitable. Scharfenberg, *Apartment Living Is Taxed Higher*, The Washington Post, August 3, 1973, § 3, at 1, col. 4.

105. MD. CONST., DECLARATION OF RIGHTS art. 15.

106. *Id.*

that so long as the classification is reasonable, a constitutional challenge is not likely to succeed.¹⁰⁷

4. Increase the Inflationary Allowance

A purely political suggestion, which is likely to appear in an election year, is legislation mandating an inflationary allowance greater than 40 percent for all property. Such a proposal would have the effect of requiring each county to increase its property tax rate to offset a decrease in its property tax base without any real benefit to the taxpayer. Members of the State legislature would claim that they reduced the voter's tax burden and that the local officials increased the tax rate, when in fact no real change in the property owner's tax burden would result.

So long as every property assessment is computed using the same inflationary allowance rate, the inflationary factor is not important. From the taxpayer's viewpoint, however, assessing his property at current market value without any inflationary allowance would seem to be desirable since the assessed value assigned to his property would then be more clearly understood.

5. Tax Credit Program for the Elderly and Disabled

In the absence of broad reform of the property tax along the lines previously discussed, one approach which may help to ease for some persons the inequities caused by the regressive nature of the present property tax structure is the tax credit for the elderly and the disabled. While this program admittedly does not have the effect of equalizing the tax burden between taxpayers within the same taxing district, it does offer a tax break to one group which is adversely affected by the regressive nature of the property tax.

Present State law mandates a mandatory minimum property tax credit for the elderly and an optional minimum property tax credit for the disabled.¹⁰⁸ To be eligible for the tax credit program for the elderly, the taxpayer must meet three tests. He must be a homeowner¹⁰⁹ who is at least 65 years of age by July 1 of the taxable year

107. See *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522 (1959); *Villa Nova Night Club, Inc. v. Comptroller*, 256 Md. 381, 260 A.2d 307 (1970); *National Can Corp. v. State Tax Comm'r*, 220 Md. 418, 153 A.2d 287 (1959); *Allied American Co. v. Commissioner of Motor Vehicles*, 219 Md. 607, 150 A.2d 421 (1959).

108. MD. ANN. CODE art. 81, § 12F(a) (1969).

109. The taxpayer must be a homeowner, *i.e.*, must actually reside in a dwelling in which he has a legal interest. MD. ANN. CODE art. 81, § 12F(b) (Supp. 1972). This program is not available to an investor.

for which the tax credit is sought and he must have gross income¹¹⁰ or combined gross income¹¹¹ of \$5,000 or less for the calendar year immediately preceding the fiscal year of application.¹¹² A disabled taxpayer, on the other hand, may be under 65.¹¹³ The prerequisite for his eligibility is that he be a homeowner who receives benefits under the Social Security or Railroad Retirement Acts as a result of a finding of permanent and total disability. However, such a disabled homeowner must still meet the \$5,000 income test.¹¹⁴ If the taxpayer is eligible for either of these programs he must file an application with the designated administrative agency of the subdivision in which his property is located.¹¹⁵

The amount of tax credit available from the taxing district's property tax is equal to the lesser of 50 percent of the assessed value of the dwelling¹¹⁶ for which application is made or \$4,000, multiplied by the local governmental unit's tax rate.¹¹⁷ For example, assume an elderly or disabled taxpayer owns a dwelling which is located in Baltimore City and has an assessed value of \$10,000. Without the tax credit, the taxpayer would pay a property tax to Baltimore City in the amount of \$583.00. With the tax credit, however, the same taxpayer pays a property tax of only \$349.80 and thus saves \$233.20 or a reduction in his property tax of 40 percent. Thus, the tax credit programs for the elderly and disabled can result in a substantial property tax saving.

The tax credit saving may be even greater than indicated. Each local governmental unit may provide a tax credit for the elderly in addition to that mandated by the State.¹¹⁸ This additional local tax credit may be based on the age, income or means of the taxpayer, or the value of his property.¹¹⁹ The purpose and effect of the local tax credit is either

110. MD. ANN. CODE art. 81, § 12F(b) (Supp. 1972), defines "gross income" to mean total gross income from all sources, including gifts, but excluding the amounts received from old age, survivors or disability benefits received under either the Social Security Act or the Railroad Retirement Act.

111. Combined gross income is the combined gross income of all homeowners, if there is more than one, and of all persons who actually reside in the dwelling. MD. ANN. CODE art. 81, § 12F(b) (Supp. 1972). Thus, a husband and wife are treated as a single unit and their combined gross income cannot exceed \$5,000. However, where a person who resides in the dwelling is a renter, as opposed to a homeowner or one who is deemed a constructive homeowner, such person is not considered a homeowner and his income is excluded for purposes of determining the gross income test. *Id.*

112. *Id.* § 12F(c).

113. *Id.*

114. *Id.*

115. *Id.* § 49C.

116. MD. ANN. CODE art. 81, § 12F(b) (Supp. 1972), defines "dwelling" to mean the homeowner's principal residence. To be a principal residence the dwelling must be actually occupied or so expected by the homeowner for more than six months of the 12 month period for which the tax credit is sought, unless due to illness or need of special care the homeowner is unable to actually reside in the dwelling. Furthermore, a homeowner may claim a credit for only one dwelling.

117. MD. ANN. CODE art. 81, § 12F(c) (Supp. 1972).

118. *Id.* § 12D(a).

119. *Id.*

to increase the amount of credit provided by the State or to decrease the conditions of eligibility.^{1 2 0}

Several counties have liberalized the program by reducing the age requirement,^{1 2 1} increasing the income restriction,^{1 2 2} or liberalizing the amount of the credit.^{1 2 3} Numerous legislation is introduced at each legislative session in an attempt to liberalize the State standards.^{1 2 4} However, the proposed legislation is seldom enacted because the program offers only limited help and because State legislators are somewhat reluctant to mandate local expenditures when the local jurisdictions have the authority to act in this area.

B. Trends toward Equalization among the Counties

1. Uniform Basis of Assessments

Just as a uniform basis of assessment is important for equality among taxpayers within a county, it is likewise important to maintain uniformity in the method of assessment from one county to another. The 1973 Legislature recognized this need and enacted House Bill 531.^{1 2 5} That bill provides for the three year implementation of an assessment system for which the State will bear full responsibility.

Prior to the enactment of House Bill 531, all assessors were county employees.^{1 2 6} Under House Bill 531 every assessor in the State will become a State employee subject to uniform qualification require-

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120. *Id.* It appears that the alternatives are either: (1) to increase the credit to those taxpayers who are eligible, thus giving them an even greater tax savings than they presently enjoy, while simultaneously denying the credit to an expanded group; or (2) to expand the eligible group to include taxpayers who are not presently eligible, while denying increased benefits to presently eligible taxpayers.
 121. Baltimore County has reduced the age requirement to 60 years. S.B. 735, 1973 Sess., Md. Gen. Assem.
 122. The following counties have increased the income restriction: Howard County (\$6,500), Charles County (\$6,500), Baltimore County (\$7,000), Prince George's County (\$7,500) and Montgomery County (\$10,000). DEP'T OF FISCAL SERVICES, RESIDENTIAL PROPERTY TAX RELIEF IN MARYLAND: PRESENT AND POTENTIAL 3-4 (1973).
 123. Nine Counties—Anne Arundel, Baltimore, Carroll, Howard, Montgomery, Prince George's, Talbot, Washington and Worcester—have frozen the property assessment of the elderly taxpayer. In addition, Anne Arundel and Baltimore Counties have also frozen the tax rates as to the elderly. Thus, in these two counties a taxpayer who is eligible for the property tax credit will not be subject to any property tax increases either by a reassessment increase or a tax rate increase. In Howard County the taxpayer pays no property tax if his assessable property is less than \$6,000. Anne Arundel County has enacted a similar proposal but with a \$3,000 ceiling. Also some counties have increased the amount of assessment eligible for the credit, *i.e.* Baltimore, Calvert, Charles, Howard, Montgomery and Prince George's Counties. *Id.*
 124. In the 1973 Session of the General Assembly 23 bills affecting property tax credits were introduced and assigned to the House Ways and Means Committee.
 125. Law of Jan. 31, 1973, ch. 784, [1973] Laws of Md. 1618.
 126. MD. ANN. CODE art. 81, § 237 (Supp. 1972).

ments.¹²⁷ The varying standards adopted by the 24 different county personnel offices for the recruitment and selection of assessors will be replaced by one uniform standard established by the State Secretary of Personnel.¹²⁸ The State will also pay the entire cost of the assessment function.¹²⁹

The goal of the new law is to prevent a county from being able to interfere with its local assessment policy to the detriment of statewide taxpayer equality. In the past, a county could thwart the efforts to achieve a uniform State assessment policy by failing either to budget or to appropriate funds for the hiring of sufficient assessment personnel. For example, although the Department has required a three year reassessment cycle, the Baltimore City administration has never appropriated sufficient funds for its local department of assessments to carry out that directive. When House Bill 531 is fully implemented, the State will have the necessary fiscal tools to carry out its assessment policy, regardless of the attitude of the county governments.

Every assessor in the State now receives uniform training by the State prior to becoming a certified assessor. Part of this training includes educating the assessors in the use and application of the uniform statewide Appraisal Manual.¹³⁰ By the use of the same manual statewide, it is possible that near uniformity can be attained in the method of assessments in the various counties. However, since every assessment necessarily involves subjective decisions by the assessor, absolute uniformity in this area will never be attained.

The Department is given broad statutory power to supervise all local assessors to make certain that assessments are made uniform throughout the State.¹³¹ Although this function was not adequately performed by the Department in the past, House Bill 531 was intended to impose upon the Department an affirmative duty to supervise, thereby facilitating the goal of uniformity in assessment practices. The accomplishment of this goal will depend directly on whether the Department carries out this responsibility, which is now squarely on the State.

2. Equalization Programs

Equal treatment of similar taxpayers among the counties cannot be obtained solely by improved assessment methods. Certain counties are

127. Effective July 1, 1973, the supervisors of assessments for each county became subject to the State personnel system. Effective July 1, 1974, all assessors in every county will become subject to the State personnel system. However, present supervisors and assessors may elect to remain under the county system for the sole purpose of determining salary and fringe benefits. But those supervisors and assessors who elect to receive county benefits will still be subject to total State control. See note 125, *supra*.

128. *Id.*

129. *Id.*

130. APPRAISAL MANUAL, *supra* note 28.

131. See note 125 *supra*.

poorer or wealthier than others, because the assessed value of real property per capita varies among the counties. A uniform tax rate with a uniform assessment ratio will produce different per capita revenues in different jurisdictions. The taxpayers in the counties with the lower per capita revenue will generally have a higher property tax burden.¹³² Therefore, two equal property wealth taxpayers receiving the same governmental services may have substantially different property tax burdens depending upon the wealth of the county within which they reside.

The per capita property tax base wealth among the counties varies widely. For 1972, Somerset County had the lowest per capita property tax base which was \$3,273, compared to Worcester County which had the highest per capita property tax base at \$10,949.¹³³ For the same year Somerset County imposed a \$2.30 property tax rate, whereas Worcester County levied a \$1.90 property tax rate.¹³⁴ Even though the property taxpayers of Worcester County paid 21 percent less property taxes per dollar of assessed property as compared to the taxpayers of Somerset County, Worcester County was able to raise over two and one-half times more per capita property tax revenue than Somerset County.

To counteract the tax inequities faced by the taxpayers in the poorer counties, the State has enacted "equalization" programs, through which the State distributes State revenues to the counties for a specific governmental service. This distribution is inverse to the counties' wealth.¹³⁵ To the extent such programs help neutralize the wealth advantage of a county for a particular service, this approach helps to equalize tax burdens throughout the State. The extent of a program's benefit depends on the specifics of each program.

Maryland has established equalization programs for education,¹³⁶ local health services,¹³⁷ welfare,¹³⁸ police protection¹³⁹ and library services¹⁴⁰ and library construction,¹⁴¹ though each equalization program in Maryland fosters equality in a different manner.

Education is the largest and oldest equalization program dating back

132. The property tax burden not only depends on the per capita property wealth of a county, but also on what revenue sources other than the property tax are available to the county as well as what the county's total revenue needs are as determined by local expenditure priorities.

133. Population figures, Maryland State Department of Health, estimates for January 1, 1972, report dated November 6, 1972. The taxable base was calculated by using the assessable base as used for State tax purposes. See BIENNIAL REP., *supra* note 41, Table II.

134. *Id.* at 20.

135. For purposes of the equalization programs, there are many definitions that can be used for wealth. All the definitions relate basically to the per capita taxable base of a county.

136. S.B. 807, 1973 Sess., Md. Gen. Assem.

137. THE MARYLAND STATE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 1974, 404-05 [hereinafter cited as STATE BUDGET].

138. MD. ANN. CODE art. 88A, § 18A (Supp. 1972).

139. *Id.* art. 15A, §§ 36-38.

140. *Id.* art. 81, § 176.

141. *Id.* § 177.

to 1922.¹⁴² The State budget for fiscal year 1973 allocates \$213 million of State money for distribution to the counties by this program.¹⁴³ The money is distributed as follows: first, the State establishes a basic educational program toward which it will contribute. Next, the State determines its percentage contribution to that basic program. For this program the State has established a basic plan of \$610 per pupil (phased in over 5 years) with a State share of 55 percent.¹⁴⁴ This means that the State will contribute 55 percent of the total educational program based on a maximum plan of \$610 per pupil. However, the amount each county will receive varies inversely according to its wealth. For the basic educational program, wealth is defined by using a combination of the county's property tax base equalized at 55 percent of market value plus the county's income tax base.¹⁴⁵

Although the result of this equalization program substantially promotes intercounty tax burden equality,¹⁴⁶ the shortcomings are obvious. The State does not share at all in county expenditures beyond \$610 per pupil. Therefore, wealthier counties (those with a greater assessable property tax base per student than the average county) can provide greater educational expenditures for its taxpayers than the average county with less tax effort. At the end of five years when the program is fully implemented at \$610 per pupil, the State's share becomes fixed and all increases in educational costs are borne by the unequalized county property tax.

Another equalization formula is the "Case" formula, which was enacted by the legislature in 1956 to distribute State funds to the counties for local health services.¹⁴⁷ Approximately \$15 million of State money is budgeted to this program for fiscal year 1973.¹⁴⁸ As in the educational program, the State establishes a minimum health program in each area of local health services. The State's contribution to that basic program is 50 percent, with the counties funding the balance through local expenditures.¹⁴⁹ The amount each county must contrib-

142. Dep't of Fiscal Services, Background Information for the Commission to Study the State's Role in Financing Public Education (1970).

143. STATE BUDGET, *supra* note 137, at 1087. The \$213 million does not include density aid.

144. S.B. 807, 1973 Sess., Md. Gen. Assem.

145. The new law provides: "Wealth means the sum of net taxable income and adjusted assessed valuation of real property [55% of market value]." Law of May 21, 1973, ch. 360, § 1, [1973] Laws of Md. 779.

146. As previously indicated, Montgomery County's per student property tax base is \$27,034 compared to Prince George's County's per student property tax base of \$16,640. When the educational equalization formula is fully implemented, Montgomery County will receive \$179 per student from the State as compared to Prince George's County's State share of \$339 per student. DEP'T OF FISCAL SERVICES, CALCULATION OF PROGRAM PROPOSED BY TASK FORCE FOR STATE AID FOR CURRENT EXPENSES (1973). Both counties will have similar county tax burdens for the basic \$610 per student program. Without equalization, however, the tax burden in Montgomery County would have been substantially less than the tax burden in Prince George's County for the basic program.

147. Law of March 2, 1956, ch. 42, § 1, [1956] Laws of Md. 91.

148. See STATE BUDGET, *supra* note 137, at 404.

149. *Id.*

ute toward the basic program averages 50 percent for all counties, but varies from county to county inversely according to wealth.¹⁵⁰ The State contributes a flat 20 percent (unequalized) of all expenditures beyond the minimum program expenses incurred by the county.¹⁵¹ Unfortunately, this additional State expenditure does nothing to promote the goal of equalization.

The State uses a different approach in its welfare equalization program. Each county must contribute, toward certain welfare grants and administrative costs, an amount equal to eight cents on its assessable property tax base.¹⁵² The State then contributes the remaining costs necessary to fund the total program.

For police protection grants, the State once again establishes a basic program toward which it contributes. That program is determined by allowing a certain per capita expenditure by the local government.¹⁵³ The county then must contribute toward that program an amount equivalent to what .09 percent¹⁵⁴ of its wealth¹⁵⁵ would yield. The difference, which is calculated to be \$26 million for fiscal year 1973, is then paid by the State.¹⁵⁶ In this equalization program, the State share may decrease yearly since the basic program to be supported increases more slowly than the increase in the county wealth upon which its share is based.

Two equalization programs have been established for county library expenditures: operating and construction expense programs.¹⁵⁷ For the operating expense program, the State establishes a basic program calculated at \$1.80 per capita.¹⁵⁸ The State contributes 30 percent of the minimum basic program and the county funds the balance, with each county's share being determined inversely to its wealth.¹⁵⁹ However, the State guarantees each county that it will receive from the State at least 20 percent of the cost of the basic program.¹⁶⁰

150. *Id.* "Wealth" is derived from a formula that determines the "estimated total valuations of real and personal property subject to local taxation [as] estimated by the State Department of Assessments and Taxation."

151. See STATE BUDGET, *supra* note 137, at 405.

152. Although MD. ANN. CODE art. 88A, § 18A (1969), provides that the counties shall contribute a maximum of what ten cents on its property tax rate would yield, the present budget reduces the ten cents to eight cents. STATE BUDGET, *supra* note 137.

153. MD. ANN. CODE art. 15A, § 37(b)(1) (Supp. 1972), provides that this basic program is determined by multiplying the population of a county by \$6.00 per capita. However, MD. ANN. CODE art. 15A, § 37(b)(2)(D) (Supp. 1972), provides a special exception for Baltimore City in allowing its program to be determined by a higher per capita amount to compensate for its much higher per capita expenditures for police protection. See notes 83-84 *supra* and accompanying text.

154. MD. ANN. CODE art. 15A, § 37(b)(1) (Supp. 1972).

155. Wealth is defined as the "adjusted valuation of real property" and "net taxable income." *Id.* § 37(a)(8).

156. STATE BUDGET, *supra* note 137, at 9.

157. The total State budget for the library operating expense program is \$2.6 million and \$1.1 million for the library construction expense program. *Id.* at 1099, 1101.

158. MD. ANN. CODE art. 77, § 176(c) (Supp. 1972).

159. *Id.* § 176(a)(3). Wealth is defined as the "assessable property in each county as determined by the State Department of Assessments and Taxation."

160. *Id.* § 176(d).

Unfortunately, this minimum guarantee works directly against equalization.

For the library construction program the State pays each county the difference between 50¢ per capita of the population in its jurisdiction and the amount realized by the county upon a levy of $\frac{1}{2}$ ¢ on its assessable property tax base.¹⁶¹ The same criticism applies to this program as to the police protection program, in that State aid may decrease in a given year since the basic program may increase at a slower rate than the county's contribution increases.

The present State equalization programs demonstrate several important points. First, the programs will not maintain property tax burden equality among the jurisdictions if the counties' share of the basic programs increases greater than the State's share, as is the case for police protection and library construction, where the State's share in minimum programs increases less from year to year than does the counties' share. Consequently, any extensions in the equalization programs by the State should provide for the State's share to increase each year, at least at the same rate as the local share increases, if the objectives of equalization are to be achieved annually.

Second, several of the equalization programs do not take into consideration different county property assessment ratios. In the welfare and library construction programs, for example, a county which has been lax in reassessing its property accounts, and which has a low assessment ratio, will appear to be poorer than it is in reality, resulting in an award of more State aid than it deserves. A proper equalization formula should equalize all assessment ratios at a fixed percentage in calculating a county's wealth.

Third, almost every equalization formula defines "wealth" differently.¹⁶² An effort should be made to provide a uniform definition of wealth for use in all the equalization formulas, the sole criteria of which would be related to the comparative tax burdens of the taxpayers within a county. During each legislative session, many proposals are made which affect the definition of wealth, as used in one or more of the equalization formulas. For example, a proposal to increase the inflationary allowance would affect all equalization formulas, a side effect of which the sponsor may be unaware. If there were a uniform definition of wealth for use in all equalization formulas, the effects of such legislation could be more easily evaluated by the Legislature.

Although the results of Maryland's present equalization programs are laudible, more must be done to narrow the gap between the relative tax burdens of taxpayers in different wealth counties in Maryland. First, the present equalization programs should be expanded to make certain that the percentages of the State's share of the total expenditures for the local governmental services do not decline. Second, the definition of wealth should be uniform for all equalization formulas and that

161. *Id.* § 177(c).

162. See notes 145, 150, 155, and 159 *supra*.

definition should have the effect of equalizing assessment ratios. Any minimum guarantees should be eliminated. Third, the State should reevaluate those other areas in which it provides revenues to local governments to see if those revenues should be distributed pursuant to an equalization formula.

3. Total State Financing of Local Governmental Services

An equalization program which requires the State to pay 100 percent of the total cost of a county service program results in true tax burden equality among the counties for that governmental service. Such total assumption of county expenditures has occurred in several areas. The most recent move in this direction was the State's assumption of the total cost of county property assessments.¹⁶³ Similarly, the State appears to be moving in this direction in its welfare program and in the funding of the judiciary.

The largest program undertaken by the State in this area is the total State assumption of county educational construction costs.¹⁶⁴ This program is unique to Maryland, as most states have moved in the direction of total state takeover of educational operational costs rather than construction costs.

Recently, proposals for total State assumption of all educational costs have been hotly debated in the General Assembly.¹⁶⁵ Since education is by far the largest expenditure for each county,¹⁶⁶ such a plan would significantly reduce the disparities in the tax burdens which are prevalent among property taxpayers in different counties. Since the Legislature this year enacted a new educational equalization formula,¹⁶⁷ and because the Supreme Court has reversed the landmark *Rodriguez* decision,¹⁶⁸ total State funding of education appears politically unlikely in Maryland within the next several years.

4. State Property Tax

Perhaps the most obvious approach for reducing or eliminating disparities in the property tax burden among the counties is either to reduce, or to eliminate entirely, the local property tax and replace it with a State property tax.¹⁶⁹ The State would then distribute the

163. Law of Jan. 31, 1973, ch. 784, [1973] Laws of Md. 1618.

164. MD. ANN. CODE art. 77, §§ 130-30A (Supp. 1972).

165. S.B. 1, 1973 Sess., Md. Gen. Assem.; H.B. 100, 1973 Sess., Md. Gen. Assem.

166. For fiscal year 1972, educational expenditures ranged from a low of 47.9 percent to a high of 83.7 percent of the counties' total revenue budgets. LOCAL GOVERNMENT FINANCES, *supra* note 5, Table III.

167. Law of May 21, 1973, ch. 360, [1973] Laws of Md. 798.

168. *San Antonio Independent School Dist. v. Rodriguez*, 93 S. Ct. 40 (1973).

169. The State presently imposes a 21 cent State property tax. See STATE BUDGET, *supra* note 137.

resulting property tax revenues to the counties on a per capita or equalization basis. For example, if the State imposes an additional \$2.00 State property tax, it would raise \$466 million¹⁷⁰ or \$115.46 per capita in the State. If, however, the same tax rate were applied on a county by county basis, its per capita yield would vary from \$65.46 in Somerset County to \$218.98 in Worcester County.¹⁷¹ If the State were to distribute the \$466 million to the counties on a per capita basis the disproportionate property tax burden that now exists among the counties would be significantly reduced.

An increase in the State property tax rate, even for this noteworthy purpose would be politically unpopular, since one county's gain would be another county's loss. Also, the concept of imposing a substantial State property tax is repugnant to most legislators' views. Therefore, such a proposal would have little chance of success unless it is coupled with an equalization or full funding program.¹⁷²

5. Tax Base Sharing

A concept similar to that of a State property tax is tax base sharing. Tax base sharing involves the removing of all or part of the local property tax base from the local assessable tax base for county tax purposes and placing it into a State pool. An average tax rate for all of the counties is then applied to the State property tax base and the resultant revenues are distributed to the counties by means of a per capita or equalization formula. There are several variables in tax base sharing: first, the local property tax base to be placed in the State pool must be defined; second, an average tax rate must be determined; and third, a distribution plan must be formulated.

A tax base sharing plan was enacted in 1971 for the Minneapolis metropolitan area which included the Twin Cities and seven surrounding counties.¹⁷³ This plan provides for the placing of 40 percent of the increase in the area's commercial and industrial base into a State pool. An average tax rate is then applied to the growth pool and the funds are distributed according to a complicated per capita or equalization formula. Because the Minnesota law neither affects a county's present *total* property assessable tax base nor affects any increase in its *residential* property assessable tax base, the plan was politically acceptable.

A tax base sharing plan similar to the Minnesota plan was introduced at the 1973 General Assembly.¹⁷⁴ That proposal would have pooled 60 percent of the increases in the commercial and industrial property

170. The State property tax base equals \$23,317,292,000. *Id.*

171. *See* note 133 *supra*.

172. Such a suggestion usually accompanies a proposal for full State funding of county educational expenditures.

173. Ch. 25, [1971] Laws of Minn. 2286-99.

174. H.B. 1091, 1973 Sess., Md. Gen. Assem. *See also* H.B. 866, 1973 Sess., Md. Gen. Assem.

assessable tax bases for all counties. The proposal would have retained the same political advantages as the Minnesota law and, like the Minnesota plan, a tax rate representing an average of the counties' property tax rates would have been applied to the local property tax base pool. The funds raised would have been distributed to each county by means of a per capita and equalization formula.

As indicated above, many modifications of the Maryland plan are available to meet the political and economic problems that exist in Maryland today. The concept of tax base sharing is not only sound and politically expedient, but also brings about more equality among the counties. Other advantages of tax base sharing include reducing the "competition among the counties for commercial and industrial development" and aiding long-range land use planning, since all counties will share in the economic growth of every community in the State.¹⁷⁵ Short-range property tax base growth for a particular county will not be as important to that county as it was prior to tax base sharing.

The primary advantage of tax base sharing is that it brings about more taxpayer equality among the counties by reducing the per capita disparity of the property tax base among the counties. Conceivably, if all counties share in the increase of part of the assessable property tax base increase for each other county, a narrowing of the present gap between the comparative per capita property tax assessable wealth of each county will occur.

6. "Circuit Breaker" Proposals

Another trend toward equalizing the property tax burden among the counties is the "circuit breaker" program. This proposal would fix, as a limit, a percentage of the taxpayer's income, beyond which a taxpayer would not be responsible for property taxation.

A circuit breaker program is comparable to a tax credit program, such as the property tax credit for the elderly.¹⁷⁶ In fact, every state in the country has enacted some form of either a circuit breaker or tax credit property tax relief program.¹⁷⁷ Twenty-one states have chosen the circuit breaker route, whereas Maryland has followed the local property tax credit method.¹⁷⁸ A major difference between the relief offered by these alternative programs is that the circuit breaker usually shifts the property tax to an alternate form of taxation such as the

175. K. LYALL, *TAX BASE-SHARING: A PARTIAL SOLUTION TO SOME PROBLEMS OF THE LOCAL PROPERTY TAX 6* (The Johns Hopkins University Center for Metropolitan Planning and Research, 1973).

176. See notes 108-24 *supra* and accompanying text.

177. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *INFORMATION BULLETIN No. 73-6*, at 1 (1973).

178. *Id.*

income or sales tax,¹⁷⁹ by allowing the property taxpayer a credit on his State income tax in an amount equal to the property tax relief to which he would be entitled.¹⁸⁰ No loss in county revenues results from the use of the state-funded circuit breaker. The State, however, presumably would have to increase income or sales taxes to make up for lost income tax revenues.

A property tax credit plan, on the other hand, usually affects county revenues only. Such is the case in Maryland for the tax credit program for the elderly. The relief provided a taxpayer by such a program is at the expense of other taxpayers within his county.¹⁸¹ Consequently, the relief provided by a circuit breaker law will promote tax burden equality among the counties, whereas a county tax credit program will not.

A circuit breaker law for Maryland could work as follows: assume Maryland law provides that all property taxes in excess of 4 percent of the taxpayer's income would be credited to the taxpayer's State income tax return. Therefore, a property taxpayer with income of \$10,000.00 would be subject to a maximum property tax of \$400.00. Furthermore, if that taxpayer owned a home which was assessed at \$15,000.00, and if that taxpayer resided in Baltimore City where the tax rate was \$5.83, his normal tax bill would be \$874.50. Under the circuit breaker program, however, the taxpayer would be entitled to a tax credit on his State income tax of \$374.50. If that taxpayer's property were located in Baltimore County, where the tax rate was \$3.29, his normal property tax bill would be \$493.50. As a result of the circuit breaker, the Baltimore County taxpayer would be entitled to a \$93.50 tax credit on his State income tax. This example demonstrates the equalizing effect of a circuit breaker proposal. Whereas, in the hypothetical example, a taxpayer in Baltimore City with the same income and property wealth as a taxpayer in Baltimore County paid 77.2 percent more county property taxes prior to the imposition of a circuit breaker program, such a disparity among taxpayers is eliminated by the application of a circuit breaker ceiling.

Although a circuit breaker program has many desirable features, its

179. All the states that have enacted circuit breaker programs fund such programs through State revenues. *See*, note 177 *supra*. S.B. 189, 1973 Sess., Md. Gen. Assem., however, provided authority to the counties to enact circuit breaker programs. Such a proposal would allow a county to replace its property tax credit program with a circuit breaker program, but would leave the funding of such a program to the county government.

180. It should be pointed out that there is presently pending in Congress, legislation which provides that the Federal Government will contribute to the cost of a state circuit breaker law. S.1255, 93d. Cong., 1st Sess. (1973).

181. The effects on each county vary widely. In fiscal year 1972, 7.9 cents of the property tax rate in Baltimore City was needed to make up the property tax revenue loss caused by the tax credit program, whereas in Worcester County 1.4 cents on the property tax rate was so needed. This method of funding property tax relief works against intercounty tax burden equality since the poorer counties, in relation to the wealthier counties, must tax their taxpayers at a greater rate to provide comparable tax credit relief. *See generally*, Md. Assoc. of Counties, Background Information for Fiscal Committees of the General Assembly (1973).

effective implementation requires resolution of certain variables inherent in such a plan. For example the amount of equalization provided by the circuit breaker proposal depends on the particulars of the program. Only five states have enacted a circuit breaker which includes all homeowners.¹⁸² The remaining sixteen states have restricted application of their circuit breaker programs to the elderly. Naturally, such a restriction reduces the total effectiveness of the program to combat intercounty disparity in the property tax burden.

Another factor to be resolved is the determination of a ceiling beyond which the property taxpayer will no longer be liable for property taxes. This will require a balancing of political and economic considerations, since the lower the ceiling, the greater the relief provided and consequently the higher the expense to state revenues. As an illustration, the Maryland Department of Fiscal Services has estimated that a 4 percent all-inclusive circuit breaker program for Maryland would cost the State \$41 million as compared to a 3 percent ceiling costing \$60 million.¹⁸³

A related variable is the problem of defining income to which the percentage ceiling is to be applied. Such a definition could range from the taxpayer's taxable income to his gross income. Arguably, however, if the relief provided by a circuit breaker law is to be truly reflective of the taxpayer's ability to pay, the standard should be gross income.

In every state in which a circuit breaker plan has been enacted, a limitation has been imposed as to the maximum relief available to the taxpayer.¹⁸⁴ Such a restriction is expressed either by an income restriction beyond which a taxpayer is not eligible for the relief provided by the circuit breaker, or by a maximum dollar figure which is allowable as a tax credit. Such a limitation is necessary in order to prevent the plan, which is designed to reduce regressivity of property taxation, from favoring wealthy property taxpayers.¹⁸⁵

To be truly equal to all residential taxpayers, a circuit breaker proposal also should provide relief for qualified apartment dwellers.¹⁸⁶ Five of the states which have enacted circuit breaker legislation have provided such relief for the apartment dweller,¹⁸⁷ recognizing that part of the rent paid does reflect property taxation. For example, the Arizona circuit breaker assumes that 25 percent of the rent paid by

182. See note 177 *supra*.

183. Information obtained from the Department of Fiscal Services, Annapolis, Md.

184. See note 177 *supra*.

185. For example, a wealthy taxpayer who owns a residence assessed at \$100,000.00 may in a particular tax year have a small amount of gross income. If that taxpayer lived in Baltimore City, he would be responsible for property taxes of \$5,830.00. Unless his income exceeded \$145,000.00 (using a 4 percent circuit breaker ceiling), this wealthy taxpayer would benefit by the circuit breaker. By restricting the maximum tax credit to \$500.00, the amount of relief to such a taxpayer is minimal.

186. See note 104 *supra*, indicating that the property tax burden of apartment dwellers is at least equal to the property tax burden of property owners.

187. See note 177 *supra*.

taxpayers who live in apartments is in reality a property tax payment.¹⁸⁸ The circuit breaker formula is then applied as if the taxpayer directly paid property taxes equivalent to 25 percent of his rent. Such tax relief for renters should be graduated according to the taxpayer's income in order to achieve the circuit breaker goal of making property taxes more progressive.¹⁸⁹

An all-encompassing circuit breaker program with a realistic income percentage ceiling using a broad definition of income, including a provision for apartment dwellers, would greatly reduce the variance of property tax burdens among taxpayers residing in different counties. If such a proposal were accompanied by a revision in the State income tax law, thereby making it more progressive to yield the revenues necessary to support the cost of the circuit breaker program, the total effect would be to significantly increase the progressivity of Maryland's total tax structure.

CONCLUSION

The county property tax is an indispensable revenue source for county governments and should not be eliminated. Its use today, however, by the Maryland counties does create inequities with regard to taxpayers both within a county and to taxpayers among the different counties.

No reason exists why certain taxpayers within a county should have ten times the respective property tax burden of other taxpayers within the same county. A uniform method of assessment for all property, including an annual reassessment, should eliminate most of the inequities of property tax burden disparities among taxpayers within a jurisdiction.

The problem of property tax burden equality among taxpayers in different counties is more difficult to resolve. Some counties in Maryland have over three times the effective per capita property tax base as other Maryland counties. The result of such differences is that the wealthier counties can provide better governmental services for their citizens at lower effective property tax rates.

The State must take steps to correct this situation. The fulfillment by the State Department of Assessments and Taxation of the legislative mandate to insure uniform assessment practices throughout Maryland

188. *Id.*

189. For example, Maryland could enact a circuit breaker law for renters which would allow the following State income tax credits for renters to reflect excessive property taxes paid: taxpayer's income 0-\$3,000, tax credit of \$112.50; taxpayer's income \$3,001-\$5,000, tax credit of \$90.00; taxpayer's income \$5,001-\$7,000, tax credit of \$60.00; taxpayer's income \$7,001-\$10,000, tax credit of \$30.00; and taxpayer's income above \$10,000, no tax credit. The Department of Fiscal Services estimates such a proposal for all renters to cost the State \$11.2 million. See note 183 *supra*.

will help. In addition, significant improvement could be made if the State applied some or all of the following programs: (1) improvement and extension of the equalization programs so that a realistic basic county program for a specific county service will be provided by all counties with equal tax effort; (2) assumption of the full cost of county educational budgets (funding the program by extending the present State property tax); (3) institution of a tax base sharing plan similar to the plan introduced during the 1973 Session of the General Assembly; and (4) enactment of a circuit breaker program covering all residential property dwellers and providing a realistic income percentage ceiling (funding the proposal by improvements in the State income tax). These approaches certainly do not exhaust the possible suggestions for limiting the intercounty property tax burden disparity in Maryland. It would not be politically or economically feasible for the State to attempt to implement all four proposals either immediately or simultaneously. However, the State should begin to move in these directions to insure each Maryland resident that he will be paying his proper share of the property tax burden.

