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### Recommended Citation

John H. Hilbert, *Illinois Property Tax Exemptions: A Call for Reform*, 25 DePaul L. Rev. 585 (1976)  
Available at: <https://via.library.depaul.edu/law-review/vol25/iss3/3>

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# ILLINOIS PROPERTY TAX EXEMPTIONS: A CALL FOR REFORM

John H. Hilbert\*

*Throughout the years, there has been a continuous proliferation of Illinois property tax exemptions authorized by expanding constitutional and statutory provisions and extended by lax administrative review. The effect has been a substantial increase in the burden of the property taxpayers. Mr. Hilbert examines this trend and suggests practical reforms to reduce property tax exemptions through statutory revision, improved administrative processing, and expanded use of the court system.*

The property tax historically has evoked lively and continuous debate among taxpayers and legislators alike.<sup>1</sup> However, property tax exemptions, which play a significant role in the entire scheme of taxation, have not elicited the same scrutiny and concern. The result of this neglect has been a proliferation of property tax exemptions which ultimately has worked to the detriment of the taxpayer.

Approximately 5,337 of Illinois' 6,385 local government units depend on their property taxing power as a major source of revenue.<sup>2</sup> Over the past 40 years, Illinois, like the majority of states,<sup>3</sup>

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1. K. BLACK, *Opening Comments to THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 1 (1967).

2. ADVISORY COMMITTEE ON INTERGOVERNMENTAL RELATIONS, *THE PROPERTY TAX IN A CHANGING ENVIRONMENT: SELECTED STATES STUDIES* 99 (1974) [hereinafter cited as *THE PROPERTY TAX IN A CHANGING ENVIRONMENT*].

Altogether property taxes made up 69% of all the general revenue raised by Illinois local governments in 1970-71, more than the corresponding nationwide proportion of 64%.

*Id.* While property tax exemptions in Illinois are enacted by the state legislature, only local governments levy property taxes.

3. Approximately 40 years ago, the effect of exempt property was very minimal, only about 10% of the tax burden. *The Erosion of the Ad Valorem Real Estate Tax Base*, 40 *TAX POLICY* 31 (1973) [hereinafter cited as *TAX POLICY*]. Recent statistics indicate that the increase since then has been substantial. In one study using Census Bureau statistics, a research director for the International Association of Assessing Officers found that \$600 billion out of a total countrywide market value of \$1.8 trillion was exempted from local

has followed a trend of increasing property tax exemptions. This increase, in conjunction with lax administration of exemption procedures, is a direct cause of a less than adequate increase in the property tax base for determining assessments.<sup>4</sup> As a consequence of the erosion of the property tax base, communities have been forced to raise their tax rates for property taxpayers in order to meet local needs. While in recent years there has been an increase in tax revenues, these additional funds were produced by a widespread increase in tax rates rather than a substantial increase in the total official valuations of assessable property.<sup>5</sup>

On the state level, property tax exemptions, with their concealed impact, have proven to be an ideal way for the politician to deal with the conflicting demands of his constituents.<sup>6</sup> Confronted constantly by insistent special interest groups lobbying for tax relief and yet hesitant to alienate further the remaining taxpayers who will have to bear the burden of heavier property taxes, legislators have attempted to hide de facto subsidies in the form of property tax exemptions.<sup>7</sup> The necessary outcome of such activity will be that the steadily narrowing group of taxpayers will

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property tax. A. BALK, *THE FREE LIST 11-12* (1971) [hereinafter cited as A. BALK]. Another study found that almost one-third of all potentially taxable real estate in the United States was entitled to some kind of exemption. H. MEYERS, *Tax Exempt Property: Another Crushing Burden for the Cities*, *FORTUNE MAGAZINE*, May 1969, at 79.

Property tax exemptions are now used quite widely to provide relief to a broad range of interest groups. SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS OF THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS, 93d Cong., 1st Sess., *STATUS OF PROPERTY TAX ADMINISTRATION IN THE STATES 16* (1973). This has prompted critics to conclude that the abuse of the exemption privilege granted by statute or constitutional provisions has in many states become uncontrollable. See, e.g., *TAX POLICY*, *supra* note 3, at 31.

4. While an accurate determination of the total amount of exempt property in Illinois is impossible because of the lack of statistics, see notes 58-62 and accompanying text *infra*, it is the author's conservative estimate that at least 33 1/3% of all property in the state has been removed from the tax rolls, and that in large urban areas approximately 40% of assessable property is exempt.

5. Property tax rates are determined by dividing total assessed value in a taxing district into the budgetary requests. In recent years, total official valuations of taxable property throughout the state have increased only about 2% per year. At the same time, there has been a far greater increase in reported tax revenues. *THE PROPERTY TAX IN A CHANGING ENVIRONMENT*, *supra* note 2, at 99.

6. See SPENGLER, *Exemption of Public and Limited-Dividend Housing Projects*, in *TAX EXEMPTIONS 182* (1939). Property tax exemptions are a way of giving without openly acknowledging cost.

7. *ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE ROLE OF THE STATE IN STRENGTHENING THE PROPERTY TAX 11* (1963).

show more resistance to higher taxes by repudiating bond issues, rejecting school levies, and encouraging tax slashing political candidates. This trend has, in fact, already begun.<sup>8</sup>

Alternatives to the current structure of exemptions do exist.<sup>9</sup> For example, exemptions could be discontinued and replaced with outright grants which would be in the form of direct subsidies for each budget period.<sup>10</sup> This would allow for an annual review in order to determine whether such grants continue to be justified. Another alternative would be to require non-governmental exemption holders to pay service charges for some of the major services which are provided to their property.<sup>11</sup> It also has been suggested that since exemptions in Illinois are enacted by state law, but cause loss of revenue only to local governments, the state government could provide "in lieu" payments to local taxing districts in order to replace some or all of the revenue lost because of the exemptions.<sup>12</sup> Another proposal is to modify the property tax so that all land is taxed and exemptions are granted only for improvements.<sup>13</sup> Limitations on acreage or duration could be imposed on exemptions as another alternative,<sup>14</sup> or exemptions could be provided in the form of credits to be applied against income and other taxes.<sup>15</sup> However, none of these suggestions are cure-alls, since the adoption of one or a combination would only replace existing problems with a myriad of new issues to be resolved.<sup>16</sup> Therefore, rather than propose a complete policy change

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8. Telephone Interview with William Peterson, Director of Field Services for Illinois Ass'n of School Boards, Chicago, Ill., April 2, 1976.

9. See generally A. BALK, *supra* note 3, at 133-40; TAX POLICY, *supra* note 3, at 38-46, for a more detailed discussion of the alternatives to property tax exemptions.

10. See, e.g., TAX POLICY, *supra* note 3, at 39.

11. *Id.* at 45.

12. *Id.* at 42.

13. *Id.* at 45.

14. *Id.* at 39.

15. *Id.* at 43.

16. For example, while the constitutionality of tax exemptions for religious property finally was established by the Supreme Court in *Walz v. Tax Comm'n of New York*, 397 U.S. 664 (1970), direct grants to religious institutions would be prohibited by federal constitutional requirements of the separation of church and state. See, e.g., Alstyne, *Tax Exemption of Church Property*, 20 OHIO S.L.J. 461 (1959); Bittker, *Churches, Taxes and the Constitution*, 78 YALE L.J. 1285 (1969); Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development: Part II. The Nonestablishment Principle*, 81 HARV.L.REV. 513 (1968); Rudd, *Toward an Understanding of the Landmark Federal Deci-*

in Illinois property tax administration, the best solution is practical reform of the present exemption provisions of the law.

This Article will discuss the ever increasing constitutional and statutory exemption provisions with which past and present legislatures have burdened property taxpayers and the continuing failure of property tax administrators to review and process property tax exemptions. The focus of the Article will be suggested revisions in the statutory provisions and possible administrative changes by local and state reviewing agencies which would not require action by the legislature. The role of the judiciary in the exemption process also will be discussed, illustrating its interaction with the legislature and administrative agencies, as well as its potential for assuring adequate performance by these bodies. The emphasis throughout will not be on theory but on workable, practical reforms to the current Illinois situation.

#### CONSTITUTIONAL AND STATUTORY HISTORY

The exemption of certain types of private property from the tax rolls originated with the Anglo-Saxons as a subsidy to foster institutions which would provide vital and costly public services.<sup>17</sup> Exemptions of government property date back even further and were based on the concept that it was fruitless to tax the public to raise funds to pay itself.<sup>18</sup>

In Illinois, exemptions long have been a part of property tax procedures.<sup>19</sup> The Illinois Constitution of 1848 provided that property necessary for school, religious, and charitable purposes, as well as state and county property, could be exempt from

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*sions Affecting Relations Between Church and State*, 36 U.CIN.L.REV. 413 (1967). The problem caused by substituting service payments or revenue sharing by state and federal governments for exemptions is that they probably will not be able to replace lost revenues.

17. A. BALK, *supra* note 3, at 21-22; 2 T. COOLEY, *THE LAW OF TAXATION* 1371 (4th ed. 1924) [hereinafter cited as T. COOLEY]; *TAX POLICY*, *supra* note 3, at 15.

18. A. BALK, *supra* note 3, at 20; 2 T. COOLEY, *supra* note 17, at 1313; J. MARTIN, *General Theory of Tax Exemption*, in *TAX EXEMPTIONS* 10 (1939).

19. In order to be admitted to statehood, the Illinois territory was required to grant exemption from taxes for certain tracts of land sold by the United States, and for bounty lands granted for military service to patentees or their heirs. J. LEWIS, *Foreword to CONSTITUTION OF THE STATE OF ILLINOIS AND UNITED STATES* 5 (1971) [hereinafter cited as J. LEWIS]; Arkiss, *A Perspective on the Real Estate Tax Exemption*, 54 CHI. BAR REC. 273, 275 (1973).

taxation.<sup>20</sup> Only these few classes of property were permitted to be exempt under the constitution, but special grants or private legislation were not forbidden. As a result, numerous corporate charters were granted by succeeding legislatures which provided for the permanent exemption from taxation of certain corporate property.<sup>21</sup> These charter exemptions, which have caused numerous problems in property tax administration,<sup>22</sup> continue to be a source of inequity in the state tax structure. Their validity has been upheld by the United States Supreme Court in *Northwestern University v. Illinois*.<sup>23</sup>

The grave abuses inherent in special legislation, particularly private charters exempting property from taxation, resulted in revised provisions in the 1870 constitution.<sup>24</sup> The new constitution provided that the general assembly could not pass local or special laws "granting to any corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever."<sup>25</sup> The exemption provisions of this constitution did not exempt property from taxation, per se, but they authorized the general

20. ILL. CONST. art. 9, §3 (1848) provides:

The property of the state and counties, both real and personal, and such other property as the general assembly may deem necessary for school, religious and charitable purposes, may be exempt from taxation.

It should be noted that while there is no specific provision in the 1848 constitution or in later constitutions exempting property owned by other states and the federal government, and their related agencies, this property is exempt from Illinois taxation under the "immunity doctrine" set forth by the United States Supreme Court. See, e.g., *Van Brocklin v. Tennessee*, 117 U.S. 151 (1886); *McCulloch v. Maryland*, 17 U.S. 316 (1819).

21. Some charters completely exempted all the property of an institution. The most famous was the charter exempting all property of any kind belonging to or owned by Northwestern University. [1855] ILL. PRIV. L. 483. Other charters only granted partial exemptions. See, e.g., [1851] ILL. PRIV. L. 72 (granting to the Illinois Central Railroad an exemption for all real estate and other property necessary for the construction of railway stations and other accommodations); [1861] ILL. PRIV. L. 47, as amended [1867] ILL. PRIV. L. 269 (allowing exemptions to the Y.M.C.A. of Chicago for certain specifically described lots and premises in Chicago, and for other real estate used for libraries, reading rooms, and benevolent and religious purposes).

22. See, e.g., *People v. Y.M.C.A. of Chicago*, 365 Ill. 118, 6 N.E.2d 166 (1936); *Northwestern Univ. v. Hanberg*, 237 Ill. 185, 86 N.E. 734 (1909); *Rosehill Cemetery Co. v. Kern*, 147 Ill. 483, 35 N.E. 240 (1893); *People v. Baptist Theological Union*, 171 Ill. 304, 49 N.E. 559 (1889); *In re Swigert*, 119 Ill. 83, 6 N.E. 469 (1886).

23. 99 U.S. 309 (1878).

24. J. LEWIS, *supra* note 19, at 9.

25. ILL. CONST. art. 4, §22 (1870).

assembly to exempt certain specified property by general law.<sup>26</sup> Despite the limitation on the legislature of exempting only property specifically mentioned,<sup>27</sup> this constitution increased the categories of exempt property.<sup>28</sup> In the public sector, an exemption for property owned by municipal corporations was added to the exemptions allowed for state and county property. Also, property used for cemetery purposes and for agricultural and horticultural societies was added to the three private exemptions of the 1848 constitution.

While generally adopting the proscription on special legislation<sup>29</sup> and the exemption categories of the 1870 constitution, the 1970 constitution allows even more property to be non-taxable.<sup>30</sup> It adds another governmental exemption, school district property, and allows "homestead or rent credits" to be granted.<sup>31</sup> The homestead exemption is now the most familiar and widely used exemption in Illinois.<sup>32</sup> In addition to expressly ex-

26. ILL. CONST. art. 9, §3 (1870) provides:

The property of the State, counties and other municipal corporations both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law.

See also *In re Walker*, 200 Ill. 566, 66 N.E. 144 (1902); *People's Loan & Homestead Ass'n v. Keith*, 153 Ill. 609, 39 N.E. 1072 (1894), for an interpretation of article 9, section 3.

27. See *People v. Deutsche Evangelish Lutherische Gemeinde*, 249 Ill. 132, 94 N.E. 162 (1911), in which the supreme court held that the general assembly did not possess the power to grant a tax exemption because of ownership by schools, since article 9, section 3 of the 1870 constitution provided an exemption only for property used for school purposes.

28. ILL. CONST. art. 9, §3 (1870). See note 26 *supra*.

29. ILL. CONST. art. 4, §13 (1970).

30. ILL. CONST. art. 9, §6 provides:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

31. Previously, homestead exemption legislation was held unconstitutional under the 1870 constitution. *Hoffman v. Lehnhausen*, 48 Ill.2d 323, 269 N.E.2d 465 (1971). However, with the adoption of the 1970 constitution, the same exemption was passed as law, ILL. REV. STAT. ch.120, §500.23-1 (1975), and subsequently upheld in *Doran v. Cullerton*, 51 Ill.2d 553, 283 N.E.2d 865 (1972). The homestead exemption now provides for a \$1,500 reduction from the equalized assessed value of real property used as a residence by a person over 65 who has a specified property interest and who is liable for the real estate taxes on such property.

32. There are now over 450,000 homestead exemptions throughout the state and over

panding the categories of property which may be exempt, the 1970 constitution provides for some property to be partially exempt from taxation through the classification of real property.<sup>33</sup> Although not a part of the exemption provisions of the constitution, nor called an exemption, the ability of counties with over 200,000 inhabitants to classify property for tax purposes and assess these classes at different levels results in reduced valuations. The effect is the same as if exemptions were granted.<sup>34</sup>

Consistent with the constitutional trend, Illinois exemption statutes have shown an increase in the amount of property removed from the tax rolls over the years. The Illinois Revenue Act of 1872, following the authorization of the 1870 constitution to grant tax exemptions by passage of general law, described ten types of tax exempt property.<sup>35</sup> This Act gradually was amended by the legislature to increase permissible exemptions through the

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130,000 in Cook County alone. Illinois Homestead Exemptions Applications, Form #O.F.A.55A filed for the tax year 1975, on file at Illinois Department of Local Government Affairs, Office of Financial Affairs, Springfield, Ill.

33. ILL. CONST. art. 9, §4 (1970). This classification is subject to the constitutional limitation that the highest class of property may not exceed two and one-half times the assessment level of the lowest. *Id.* These varying reductions from the level of the highest assessed class of property are partial exemptions of varying amounts for each class of property except the highest assessed class.

In Cook County, for example, real estate is classified for the purposes of tax assessment into five groups. Both class 1, improved real estate, and class 2, real estate unimproved for residential purposes except for apartment buildings of more than six units, are assessed at 22% of market value. Class 3, all property improved for residential purposes not included in class 2, is to be assessed at 33% of market value. Class 4, real estate owned by a not-for-profit corporation and used by it for its chartered purposes excluding residential use, is assessed at 30% of market value. All other real estate not included in the above four classes constitutes class 5 and is assessed at 40%. Cook County, Ill., Ordinance 74-0-3, December 17, 1973.

34. *See Hoffman v. Lehnhausen*, 48 Ill.2d 323, 269 N.E.2d 465 (1971), holding that a property valuation reduction is a partial exemption, no matter what nomenclature the legislature uses to describe it. However, where a partial exemption is established by classification of assessment levels, the exemption becomes available without review by state and local agencies. *See* notes 82-84 and accompanying text *infra*.

35. ILL. REV. ACT OF 1872 *found in* T. WILKIN, TAX LAWS AND JUDICIAL DECISIONS OF ILLINOIS 33-35 (1919) [hereinafter cited as T. WILKIN]. In addition to property used for certain educational, religious, charitable and cemetery purposes, it exempted federal lands and any public buildings thereon, state of Illinois property and all property of cities and villages located within their incorporated boundaries or used for municipal purposes, including separate sections for fire extinguishing equipment and public grounds. Certain property of counties and all property used by non-profit societies for agricultural, horticultural, mechanical and philosophical purposes also were declared exempt.



enlargement of the property descriptions in each section.<sup>36</sup>

The section exempting property used for school purposes will serve to illustrate how succeeding legislatures increased the amount of property taken off the tax rolls by adding to the property described in each exemption section.<sup>37</sup> The original school purposes clause of the 1872 Revenue Act exempted: "all lands donated by the U.S. for school purposes . . . all public school houses, all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit."<sup>38</sup> In an attempt to restrict the application<sup>39</sup> of the statutory provision to conform to the constitution, the Illinois Supreme Court in *McCullough v. Board of Review*,<sup>40</sup> established that an "institution of learning" must be a school of higher education which gives courses of study not given in, and of higher grade than taught in, the public school system. In two other cases, the supreme court stated that schools which were not institutions of learning, even though they were not-for-profit, must be public schools in order to be exempt.<sup>41</sup> In 1909 the Illinois legislature amended the school clause, increasing the exemption from "public" schools to all schools, even if supported by private individuals or corporations.<sup>42</sup> The only schools not exempted were those teaching only dancing, riding and like subjects which were not considered useful branches of learning in that era.<sup>43</sup> Additional amendments were

36. Compare ILL. REV. ACT OF 1872, ¶7, as found in T. WILKIN, *supra* note 35, at 34, with ILL. REV. STAT. ch.120, §500.7 (1975) (exemptions for charitable organizations). Compare ILL. REV. ACT OF 1872, ¶8, as found in T. WILKIN, *supra* note 35, at 34, with ILL. REV. STAT. ch.120, §500.8 (1975) (exemptions for fire extinguishing property). Compare ILL. REV. ACT OF 1872, ¶9, as found in T. WILKIN, *supra* note 35, at 34, with ILL. REV. STAT. ch.120, §500.9 (1975) (exemptions for certain public grounds).

37. Compare ILL. REV. ACT. OF 1872, §2, ¶1, with ILL. REV. STAT. ch.120, §500.1 (1975).

38. ILL. REV. ACT OF 1872, §2, ¶1, as found in T. WILKIN, *supra* note 35, at 35.

39. See text accompanying notes 126-135 *infra*.

40. 183 Ill. 373, 55 N.E. 685 (1899).

41. *People v. St. Francis Academy*, 233 Ill. 26, 84 N.E. 55 (1908); *People v. Ryan*, 138 Ill. 263, 27 N.E. 1095 (1891).

42. ILL. REV. ACT OF 1872, Law of June 16, 1909, §2, [1909] Ill. Laws 309. The clause was amended to exempt

. . . all property of schools, including the real estate on which the schools are located, not leased by such schools or otherwise used with a view to profit.

43. See *People v. Deutsche Evangelish Lutherische Gemeinde*, 249 Ill. 132, 94 N.E. 162 (1911).

passed in 1919 exempting<sup>44</sup> any other real estate used by such schools for school purposes, and in 1928 exempting "all lands, moneys, or other property heretofore or hereafter donated, granted, received or used for public school, college, seminary, university, or other public educational purposes, and the proceeds thereof, whether held in trust or absolutely."<sup>45</sup> The school clause was amended again in 1939 to exempt school property, whether owned by residents or non-residents or by Illinois or other state incorporated corporations,<sup>46</sup> and in 1957 to exempt "student residence halls, dormitories, and other housing facilities for students and their spouses and children, and staff housing facilities . . ."<sup>47</sup> Finally, in 1967 the legislature attempted to reverse prior court decisions prohibiting the exemption of sorority and fraternity houses<sup>48</sup> by specifically providing that the occupancy of a school-owned and operated dormitory or residence hall by students belonging to fraternities, sororities, or other campus organizations would not defeat the school exemption.<sup>49</sup>

In addition to increasing the amount of exempt property by amending each exemption clause of the Illinois Revenue Act of 1872, the legislature has removed more property from the tax rolls by enacting many new exemption sections.<sup>50</sup> A few examples of

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44. ILL. REV. ACT OF 1872, Law of June 28, 1919, §2, [1919] Ill. Laws 770.

45. ILL. REV. ACT OF 1872, Law of June 8, 1928, §2, [1928] Ill. Laws 2d Spec. Sess. 90.

46. ILL. REV. ACT OF 1939, Law of June 8, 1939, §19, [1939] Ill. Laws 1007.

47. ILL. REV. ACT OF 1939, Law of June 13, 1957, §19, [1957] Ill. Laws 614.

48. See, e.g., *People v. Phi Kappa Sigma*, 326 Ill. 573, 158 N.E. 213 (1927); *Knox College v. Board of Revenue*, 308 Ill. 160, 139 N.E. 56 (1923).

49. ILL. REV. ACT OF 1939, Law of June 24, 1967, §19.1, [1967] Ill. Laws 1977. While there is no reason to believe that this amendment is valid in light of earlier supreme court decisions, see note 48 *supra*, no taxing district, tax collector, taxpayer, or reviewing agency has challenged an exemption based on it and allowed the question to be decided conclusively by the courts.

50. See, e.g., ILL. REV. ACT OF 1872, Law of May 18, 1905, §2, [1905] Ill. Laws 357 (exempting all funds and monies collected and kept within the state by fraternal beneficiary societies and used exclusively for the purpose of such societies). *But see* *Supreme Lodge Modern Am. Fraternal Order v. Board of Review*, 223 Ill. 54, 79 N.E. 23 (1906) (holding that this addition to the statute was not within the wording of the exemption provisions of the 1870 constitution). See also ILL. REV. ACT OF 1872, Law of July 13, 1938, §2, [1938] Ill. Laws 1st Spec. Sess. 67 (exempting certain property owned by public housing authorities). This addition was upheld in *Krause v. Peoria Housing Auth.*, 370 Ill. 356, 19 N.E. 193 (1939).

Since 1939, the legislature has greatly accelerated the addition of new exemption sections. See, e.g., ILL. REV. ACT OF 1939, Law of April 12, 1945, §19, [1945] Ill. Laws 1291

the legislature's generosity since 1939 have been exemptions granted to property of military academies used for the teaching of military science,<sup>51</sup> property of park districts with at least 500,000 inhabitants,<sup>52</sup> property of railroad terminal corporations,<sup>53</sup> and property of veterans' organizations when used for patriotic, civic, and charitable purposes.<sup>54</sup> These new exemption sections also have been enlarged by amendments.<sup>55</sup> Indeed, only one exemption provision, which exempted "[a]ll lands used exclusively as graveyards or grounds for burying the dead,"<sup>56</sup> has not been amended and elaborated upon.<sup>57</sup>

### SUGGESTED STATUTORY REFORM

Clearly, one must concur with Illinois' Governor's Revenue Study Committee which unanimously recommended almost ten years ago that the general assembly not only study the area of

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(property of municipal transportation corporations); Law of July 11, 1955, §19, [1955] Ill. Laws 1572 (property of public buildings corporations); Law of July 15, 1955, §19, [1955] Ill. Laws 1805 (parking areas when used as part of another exempt use); Law of July 23, 1959, §19.18, [1959] Ill. Laws 2219 (property of public water districts); Law of July 17, 1959, §19.19, [1959] Ill. Laws 1554 (property of the Chicago Regional or any other statutory port district); Law of Aug. 28, 1963, §19.20, [1963] Ill. Laws 3473 (property of airport authorities used for authority purposes). Among the most recent exemption provisions added to the Revenue Act are ILL. REV. STAT. ch.120, §500.23 (1975) (providing for a partial exemption on a home owned by a disabled veteran, his wife, or widow); *id.* §500.23-(2)&(3) (providing for a homestead improvement exemption).

51. ILL. REV. ACT OF 1939, Law of July 8, 1939, §19, [1939] Ill. Laws 1007 (codified at ILL. REV. STAT. ch.120, §500.11 (1975)).

52. ILL. REV. ACT OF 1939, Law of June 5, 1951, §19, [1951] Ill. Laws 248, *as amended*, ILL. REV. STAT. ch.120, §500.14 (1975) (changing the requirement from 500,000 to 1,000,000 inhabitants). *See also* ILL. REV. STAT. ch.120, §500.17 (1975) (dealing with the exemption provisions for park districts with less than 1,000,000 inhabitants).

53. ILL. REV. ACT OF 1939, Law of June 19, 1957, §19, [1957] Ill. Laws 803 (codified at ILL. REV. STAT. ch.120, §500.17 (1975)).

54. ILL. REV. ACT OF 1939, Law of July 23, 1959, §19.18, [1959] Ill. Laws 2223 (codified at ILL. REV. STAT. ch.120, §500.18(b) (1975)).

55. *See, e.g.*, ILL. REV. STAT. ch.120, §§500.14, 500.18 (1975). In 1970, the original provisions of these two sections exempting park district property were amended, raising the population requirements to 1,000,000. Further amendments to these sections were made in 1973 to exempt conservation district property. Also in 1973, section 500.18 was amended to exempt all property of public school districts not used with a view to profit. Another exemption, for property of public community college districts, was added to section 500.18 in 1974.

56. ILL. REV. ACT OF 1872 *found in* T. WILKIN, *supra* note 35, at 33.

57. ILL. REV. STAT. ch.120, §500.3 (1975).

property tax exemptions, but also correct any abuses and improve the statutory material.<sup>58</sup> One major problem in attempting to reform exemptions is that “[n]o one knows the extent of tax exemptions in Illinois, nor the value of tax exempt property, nor the cost of tax exemption to individual local governments.”<sup>59</sup> Therefore, as an initial step, legislation should be enacted to require local officials to assess exempt property and to submit their compilation of totals for each type of exemption to the Illinois Department of Local Government Affairs which would organize the information according to taxing districts.<sup>60</sup> Legislation requiring such assessments has been enacted in at least 17 states since the Governor’s Revenue Study Commission made its recommendations,<sup>61</sup> and the valuation process could easily be implemented in Illinois since there appears to be no public policy against such assessments.<sup>62</sup>

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58. REPORT OF GOVERNOR’S REVENUE STUDY COMMITTEE 1968-69, at 31.

59. *Id.* Approximately 27 Illinois counties assign an index number to parcels of real estate, and some of these can report a count of the exempt parcels. For example, there are about 1,300,000 parcels in Cook County of which at least 50,000 can be identified as exempt by the county assessor’s office. However, these numbers cannot be broken down by the type of exemption, and homestead exemptions are not included. Interview with Dr. Dennis Dunne, Director of Public Relations for Cook County Assessor’s Office, County Building, Chicago, Ill., April 1, 1976. Parcels to which index numbers are assigned are not of uniform size, but vary from a few square feet to tens of acres and may be vacant or improved. Thus, this statistical information is meaningless to an attempt to estimate the extent of tax exemptions.

60. Because some taxing districts overlap counties, and some counties contain more than one taxing district of the same type, local officials will have to report the proper information which will enable the Department to organize the data into taxing districts.

While the Governor’s study did not specifically recommend the assessment of exempt property, the need for such legislation has been recognized previously by some legislators. See, e.g., Muskie-Percy Property Tax Relief and Reform Bill, S.1255, 93d Cong., 1st Sess. (1973), which would have required all states to value exempt property, but died in committee.

In addition, the Illinois Economic and Fiscal Commission has recognized in a report on the Illinois property tax that the assessment of exempt property “merit(s) serious consideration.” ILLINOIS ECONOMIC AND FISCAL COMMISSION, PROPERTY TAX IN ILLINOIS: SELECTED PROBLEMS AND PROPOSALS 18 (1973).

61. See THE PROPERTY TAX IN A CHANGING ENVIRONMENT, *supra* note 2, at 15-16, for a list of states and a table of value reported by type of exempt property.

62. The only potential disadvantages which might be raised against the assessment of exempt property are: (1) some assessors would find it difficult to place a value on certain types of property, such as libraries and museums; and (2) it is uneconomical to spend time valuing property which produces no revenue. However, it is inefficient and uneconomical

Simultaneously, the legislature should review and revise the format and the structure of the existing exemption sections in the Revenue Act. The continuous additions and various amendments layered and tacked on to the original provisions<sup>63</sup> have resulted in several organizational inconsistencies which make exemptions difficult to comprehend and to administer.<sup>64</sup> There is a lack of continuity in the numbering system presently used to identify the sections,<sup>65</sup> and an absence of uniformity in the language employed to describe some of the exemptions.<sup>66</sup> The provisions should be revised to describe each exemption in a clear and consistent manner. The legislature should then restructure the numbering system and reorganize the sections so that the exemptions are presented according to specific categories of property. This would entail a consolidation of similar groups of exempted property now found in different sections,<sup>67</sup> and the separation of single sections exempting unrelated types of property.<sup>68</sup> During this process, ex-

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to continue in our ignorance as to the extent and effects of exemptions. The problems and difficulties in valuation are not unique to exempt property, but depend on the competence and professionalism of assessors. The valuation of land should present no problem, since a comparison to surrounding land can be made. A market value of an improvement on the land could be difficult in certain situations, but not impossible, and the total property assessment would be a reasonable indication of value.

63. See generally the section of this Article entitled Constitutional and Statutory History *supra*.

64. See notes 65-70 and accompanying text *infra*.

65. For example, different types of numbering used to describe various sections range from simple decimal point figures, e.g., 500.1, 500.7, to numbers with letters, e.g., 500.21(b), 500.9(a), 500.18(b), to numbers dash numbers, e.g., 500.23-1, 500.23-2.

66. For example, the homestead exemption is a reduction from the *assessed value* as equalized, ILL. REV. STAT. ch.120, §500.23-1 (1975), whereas the homestead improvement exemption is a reduction from the *actual value* of the property, *id.* §§500.23-2, 500.23-3. Because property is assessed at one-third of actual value, the effect of the two clauses in terms of actual dollar value is obscured by the use of different terminology.

67. Compare *id.* §500.12 (1975) (exempting property of certain housing authorities), with *id.* §§500.6, 500.7 (exempting property of cities or villages and public charities). *Krause v. Peoria Housing Auth.*, 370 Ill. 356, 19 N.E. 193 (1939), upheld the validity of the exemption of certain property owned by certain housing authorities as merely a restatement of the existing provision exempting property owned by a city, village or public charity. See also *id.* §500.16 (exempting certain property used for parking purposes if it is used by an entity exempt under another section). The provision is unnecessary since the parking property already would be exempt by the section exempting the entity.

68. See, e.g., *id.* §500.18, which deals primarily with the exemption of property of park and conservation districts. It also includes the exemption for property owned by public community colleges and school districts. The latter exemption should be placed in the section which contains the exemptions of school property, *id.* §500.1.

emptions which have been held to be unconstitutional should be omitted,<sup>69</sup> and exemption provisions contained in other chapters of Illinois law should be incorporated into the Revenue Act.<sup>70</sup>

After exempt property is assessed and the revision and restructuring of the current exemption provisions are completed, Illinois will have a basis for knowing exactly what exemptions exist and will have a means for gauging their impact. However, effective use of this information to reform the exemption system requires the legislature to articulate clearly and specifically the basic policies underlying the granting of exemptions. It will then be possible to examine the effect of particular exemptions in light of the policy behind them in order to determine whether the exemptions successfully achieve their intended purpose.<sup>71</sup>

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69. See, e.g., *id.* §500.10, part of which exempts property of mechanical and philosophical societies and which was held to be unconstitutional in *International College of Surgeons v. Brenza*, 8 Ill.2d 141, 133 N.E.2d 269 (1956). See also notes 48-49 *supra* and notes 131-35 and accompanying text *infra* for other examples of unconstitutional exemptions still part of the statutes.

70. See, e.g., ILL. REV. STAT. ch.85, §930 (1975), which exempts certain medical service facilities and should be placed in chapter 120 with the other exemptions. Also, the exemption from property of the Highway Authority appears in chapter 121. ILL. REV. STAT. ch.121, §100-22 (1975).

There are also provisions in the Revenue Act which result in a reduction in assessment because they call for the use of valuation methods other than the "fair market value" used for other Illinois real property. See ILL. REV. STAT. ch.120, §§501a-1 to -3 which provide for the valuation of farming or agricultural property, which encompasses over 40 acres and has been used for such purposes for the three immediately preceeding years, at its value if sold for farming or agricultural purposes. In no event may such land be assessed at a level higher than residential property in a county which classifies property. This valuation method is used only upon application of the person liable for the property taxes and, thus, would be used only to reduce an assessment. See also *id.* §§501b-1 to -3, which provide that land which is used for airport purposes in counties with over 200,000 population shall be valued, upon application, at the value it would bring if sold for airport purposes; *id.* §§502a-1 to -8, which provide for the valuation of pollution control facilities, upon application, according to the value of their economic productivity, taking into account the net earnings attributable to the facilities and the net realizable value of the facilities, if sold, with a deduction for the expense of removal.

Although these three provisions of the Revenue Act operate exactly like exemptions in substance, they are not subject to the same procedures necessary to obtain exemptions and, thus, no reviewing agency at the county or state level can check to prevent potential abuses. See notes 82-84 and accompanying text *supra*. The legislature should examine these provisions and determine if some adjustment is needed to bring them into line with other exemption law as to format, application, and reviewing procedures.

71. For a discussion of the policy decisions behind granting property tax exemptions, see generally A. BALK, *supra* note 3; C. HARRISS, PROPERTY TAXATION IN GOVERNMENT

There are some useful and beneficial changes which the legislature can make without the aid of a full scale reevaluation. Improvements in the present legislation may be achieved by revising several exemption provisions which raise inconsistencies in their application and which fail to reflect the policy decisions behind them. For example, Illinois law presently exempts both profit-making and not-for-profit cemeteries.<sup>72</sup> This exemption should be revised to apply exclusively to not-for-profit cemeteries, because taxpayers should not subsidize property used for profit. Another provision revealing an inconsistency in policy goals exempts property owned by veterans' organizations used for civic, patriotic, and charitable purposes.<sup>73</sup> This exemption has almost been nullified by Illinois Supreme Court decisions requiring that such property be used exclusively for charitable purposes.<sup>74</sup> There is no justification for exempting the property of veterans' groups while the property of other social groups used for charitable purposes is still taxable.

Another area requiring reevaluation is the exemption granted to disabled veterans who own homes.<sup>75</sup> No exemption is granted to non-home owning disabled veterans in the form of a rent tax credit or an exemption for the owner of a home where a disabled veteran lives. Assuming the policy behind this exemption is to aid *all* disabled veterans, the exemption is incomplete. There is no apparent reason why disabled veterans who own homes need a subsidy more than those who rent their residence.

The homestead exemption<sup>76</sup> currently in effect also needs revi-

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FINANCE 54-61 (1974); A. STAUFFER, PROPERTY ASSESSMENT AND EXEMPTIONS: THEY NEED REFORM (1973).

72. ILL. REV. STAT. ch.120, §500.3 (1975). See *Glen Oak v. Board of Appeals*, 358 Ill. 48, 192 N.E. 673 (1934) (exempting a profit-making cemetery). Although most states do grant cemeteries some type of exemption, TAX POLICY, *supra* note 3, at 50, less than 20 states extend the exemption to those chartered for profit. A. BALK, *supra* note 3, at 168.

73. ILL. REV. STAT. ch.120, §500.18(b) (1975).

74. *North Shore Post No. 21 of American Legion v. Korzen*, 38 Ill.2d 231, 230 N.E.2d 833 (1967); *Rogers Park Post No. 108 v. Brenza*, 8 Ill.2d 286, 134 N.E.2d 292 (1956).

75. ILL. REV. STAT. ch.120, §500.23 (1975).

76. *Id.* See generally TAX POLICY, *supra* note 3, at 74-76, for an analysis of the problems with the homestead exemptions.

The homestead exemption is not to be confused with the homestead improvement exemption which is a four-year reduction from assessment increase due to certain improvements to residential property. ILL. REV. STAT. ch.120, §§ 500.23-2, 500.23-3 (1975).

sion to produce a consistent application of its underlying policies. A partial reduction in the assessment of certain property used as a residence by certain persons over the age of 65 is granted by statute without regard to their economic status.<sup>77</sup> Thus, the taxpayers may subsidize an elderly person with an annual income in excess of \$30,000, as well as a person living on several hundred dollars a month from Social Security payments. If the policy behind the exemption is to subsidize low income elderly homeowners, the statute should reflect this by restricting the amount of income an exemption holder may earn.

The agricultural valuation,<sup>78</sup> which was designed as an incentive to keep land in agricultural use and restrain development for other purposes, also fails to achieve its intended purpose. According to a recent study, it does not help to preserve land for farming because it does nothing to affect basic market factors and opportunities for large capital gains through sale and development.<sup>79</sup> In particular, the valuation affords no special protection to those lands which are located nearest to population centers and thus most susceptible to development and speculation.<sup>80</sup> Because the agricultural valuation does not control or regulate the pattern or timing of land development, it is possible for developers and land

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However, it should be noted that this exemption also requires a reconsideration. Because this exemption only begins in the 1976 tax year, there is not yet any evidence of this provision's impact on Illinois homeowners. However, a recent study of homeowners in 10 cities where such tax abatement exists found that there was little evidence that it encouraged upgrading which otherwise would not have occurred. On the contrary, the study found that homeowners treated it as a windfall. DEP'T OF HOUSING AND URBAN DEVELOPMENT, 1 A STUDY OF PROPERTY TAXES AND URBAN BLIGHT 163 (1973).

In light of these findings in other states, these exemptions should not have been instituted. One may predict that the Illinois homestead improvement exemption probably will be unsuccessful in its purpose to stimulate improvements. See generally ILLINOIS ECONOMIC AND FISCAL COMM'N, PROPERTY TAX IN ILLINOIS 39 (1973).

77. ILL. REV. STAT. ch.120, §500.23-1 (1975).

78. *Id.* §23-1. See note 70 *supra*.

79. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, USE-VALUE FARMLAND ASSESSMENTS 54 (1974).

80. The only way that land can be held in agricultural use where there is a wide disparity between market and agricultural values is by handing it from one generation to the next. Any transfer of such land at the market price would be too expensive for a purchaser intending to farm it. See *id.* at 38-52. See generally R. WELCH, *Assessment of Farmland at Agricultural-Use Value*, PROCEEDINGS, NATIONAL ASSOCIATION OF TAX ADMINISTRATORS 90 (1972), for a thorough discussion of the agricultural valuation of real property.



speculators to take advantage of this tax relief, thus defeating the purpose of the provision. The agricultural valuation needs to be restructured to insure that the opportunity for abuse is minimized.

Most of the areas mentioned above are attempts to relieve some pressure through the use of exemptions. The advantages of granting tax concessions to special groups and classes of property through the use of property tax exemptions ultimately will be outweighed by the detrimental effects. "Such exemptions and special treatment increase the tax burdens of the rest of the community and, if allowed to multiply, can make their burdens oppressive. In addition, they greatly complicate the administration of the tax."<sup>81</sup>

#### ADMINISTRATIVE PROCEDURES AND REFORMS

A taxing system which provides for checks and balances seems the best way to insure fairness and equity in the exemption process. A two-step reviewing procedure in which exemption applications must be screened by a local agency and then approved by a statewide agency, not encumbered by local interests, provides an ideal way to obtain these benefits. Because a local agency generally should be familiar with the property, organizations and individuals in its area, it should be able to determine whether or not specific property for which an exemption is sought meets the necessary requirements. Any local lack of objectivity, professionalism or legal knowledge should be overcome by the necessary review and approval of the statewide agency. However, in such a two-step administrative process any problems in either agency or in their interaction will obstruct the advantages of such a system and provide fewer checks and balances.

Illinois statutes provide for a type of two-step administrative review of exemption applications. An exemption applicant first must appear before a county board of review,<sup>82</sup> which has the duty

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81. TAX INSTITUTE OF AMERICA, *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 3 (1967).

82. ILL. REV. STAT. ch.120, §589(4) (1975). In Cook County, however, the reviewing board is called the Board of Appeals which is empowered to review and order an assessment corrected upon complaint that any property is exempt. *Id.* §594(1).

to determine whether or not the property in question is exempt.<sup>83</sup> If the board approves an exemption and the question of taxability has not previously been judicially determined, its approval is not final unless the exemption is also approved by the Illinois Department of Local Government Affairs.<sup>84</sup>

Although these provisions seem to provide for the checks and balances which are needed in this area, many problems hinder the effectiveness of Illinois administrative procedures. County reviewing boards and the Department of Local Government Affairs both have internal difficulties<sup>85</sup> which preclude an adequate review of applications at each level. In addition, there is a lack of communication and cooperation between the state and county agencies, which not only has impeded their determination of individual exemptions, but also has negated the advantages provided by a two-stage administrative structure.

Many reviewing boards do not comply with the statutory requirement that exemption applications approved at the county level must be forwarded to the Department of Local Government Affairs for its review and approval. For example, in each of the tax years 1969 through 1973 less than 50 of the state's 101 counties reported non-homestead exemption approvals to the Department.<sup>86</sup> In 1974 approximately 55 counties forwarded such exemptions, and in 1975 just over 60 counties in the state replied to a telephone campaign conducted by employees of the Department in an attempt to have exemption approvals sent to it as required by statute.<sup>87</sup> Despite the requirements of Illinois law that the Department also approve exemption applications before they are final and despite requests for compliance made by departmental personnel at various times, many counties grant exemptions and remove property from the tax rolls at their own discretion.

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83. *Id.* §589(6). See also *id.* §600, which requires the Cook County Board of Appeals to perform the same duty.

84. *Id.* §§600, 589(6).

85. See text accompanying notes 94-102 and 106-21 *infra*.

86. Homestead Exemption Applications, on file as of August 1975, Department of Local Government Affairs, Office of Financial Affairs, Springfield, Ill.

87. *Id.* In 1975, for the first time, all counties reported homestead exemption approvals to the Department. This was due in part to thrice weekly phone calls to non-complying counties and to a simple reporting form requiring only the names and addresses of homestead applicants.

The Department of Local Government Affairs has made no serious effort to insure that county reviewing boards comply with Illinois law. The Department possesses the necessary statutory powers to compel county reviewing boards to forward exemption reports to it. It has the power to require local officials to supply whatever information it needs,<sup>88</sup> the power to adopt rules for the guidance of local officials,<sup>89</sup> and the power to request the institution of proceedings against such officials for failure or neglect in complying with the Revenue Act.<sup>90</sup> However, the Department has refrained from using any of these powers and has not even attempted to persuade county reviewing boards to change their attitude by mentioning the availability of these powers. The only action taken by the Department has been to request compliance by telephone. In addition, the Department allows some counties which do forward exemptions to use their own reporting form instead of the comprehensive state form, although the county form does not contain sufficient information for an adequate review.<sup>91</sup>

Since county reviewing boards have not complied voluntarily and the Department of Local Government Affairs has not enforced compliance with statutory requirements, the self-interests of taxing districts and taxpayers must provide the cornerstone of enforcement. However, in order for enforcement to be demanded by the general public, the necessary information must be made available. One method of providing this information would be for the Department to publish statistical information concerning the number and type of exemptions approved by each county and the percentage of these approvals certified as exempt.<sup>92</sup> An annual

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88. ILL. REV. STAT. ch.120, §612(8) (1975).

89. *Id.* §612(10).

90. *Id.* §612(5).

91. For instance, Cook County exemption form 68A contains only an index number. The Department should require an index number, if available, as well as a legal description of the property and other necessary information for determining whether the property is exempt.

92. ILL. REV. STAT. ch.120, §590 (1975). Presently, a county board of review is required to publish, by township if the county is so organized, a complete list of the assessment changes made by it. The list is a public record which is not only kept in the office of the County Clerk but also is published in a newspaper of general circulation. However, while the list does include all assessment reductions and increases made by a board of review,

public report of this nature would provide a record of the performance of all county reviewing boards and would allow ordinary citizens and taxing districts to evaluate that performance and demand corrective action, if necessary, by local or state officials.<sup>93</sup> Since county reviewing boards could compare their performance with other counties and know that the public had the information to do the same, it would encourage them to comply with all exemption requirements. No new legislation is needed to enable the Department to provide this statistical data. However, because such information is necessary to achieve compliance with statutory requirements, if the Department does not act of its own volition, a statute compelling it to do so should be enacted.

In addition to the general failure of administrative agencies at both the county and state level to follow statutory reviewing procedures, other problems impair the effectiveness of the Illinois system of checks and balances. At the county level, the composition of reviewing boards and the functions of their members need to be reconsidered.

The first problem in the composition of county reviewing boards is their variety of formation. There are four different types of county reviewing boards,<sup>94</sup> which are either elected or ap-

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it does not give any more information than the owner's name and a description or an address of the property. This list is not an adequate source of information about exemptions since one would have to cull this information from previous assessment changes. Each file would have to be retrieved and examined to determine the number in the various categories of exempt property and whether the exemption was properly granted. The Cook County Board of Appeals is under no statutory duty to publish a list detailing property exemptions.

93. The Department voluntarily publishes an annual booklet containing information about counties' assessment levels and its work in the equalization of these levels. See ILLINOIS DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS, ASSESSMENT/SALES RATIO STUDY FINDINGS 1973, PROPERTY TAX SERIES (1975). The information from this publication has made it easier for plaintiffs to persuade reluctant courts to act. See, e.g., *Hamer v. Lehnhausen*, 60 Ill.2d 400, 328 N.E.2d 11 (1975), and *Harte v. Lehnhausen*, 60 Ill.2d 542, 328 N.E.2d 543 (1975), which have forced the Department closer to achieving uniformity in taxation than at any time in its history. An annual booklet containing exemption statistics would be easier for the Department to compile and easier for the ordinary citizen to understand than equalization publications and it would result in a potent weapon for reform of the exemption process.

94. In Cook County there is an elected two-member Board of Appeals; in the 17 commission counties, the members of the elected Board of County Commissioners also serve as the Board of Review; in St. Clair County there is an elected three-member Board of

pointed by elected officials and serve varied terms.<sup>95</sup> Some boards of review function in a dual capacity. For example, in counties not organized by townships, the Board of County Commissioners also serves as the county board of review.<sup>96</sup> In other counties, a board of review must be composed of members affiliated with designated political parties. The majority of the members of these boards must be associated with the political party polling the highest vote for a county office and the minority must be affiliated with the party receiving the second highest vote for that office.<sup>97</sup> In order to be more effective, all county reviewing boards should be independent agencies devoted only to property tax administration and composed of members not encumbered by any other job during their time of service. The duties of a reviewing board demand full time participation. In addition, political party affiliation requirements should be repealed in order to obtain the broadest range of qualified candidates.

Illinois statutes also allow the members of reviewing boards to possess differing degrees of expertise and training in property taxation. While members of some boards of review are required to be "qualified, experienced and trained in property appraisal and property tax administration," only appointed boards in counties with a population of 100,000 or more are required to pass a test to determine their competence administered by the Department of Local Government Affairs.<sup>98</sup> Elected board members are not required to possess any prior training or expertise, nor must

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Review and in the remaining 83 township counties, there are three-member boards of review appointed by the president of the county boards.

95. The Board of Appeals commissioners in Cook County are elected to simultaneous four-year terms. ILL. REV. STAT. ch.120, §492 (1975). The Revenue Act provides for the election of board members for six-year terms staggered every two years in counties organized by townships with a population between 150,000 and 1,000,000. *Id.* §491. However, only one county, St. Clair, chooses its Board of Review in this manner because the section allows this method to be used only if approved under a part of the Revenue Act which was repealed in 1969. Law of July 19, 1941, ch.120, §10(a), ILL. REV. STAT. ch.120, §491(a) (repealed 1969). The remaining 83 township counties appoint their reviewing board for staggered two-year terms.

96. In the 17 commission counties of the state, the reviewing board is composed of the members of the Board of County Commissioners who receive no additional compensation for also serving on the board of review. ILL. REV. STAT. ch. 120, §490 (1975).

97. *Id.* §489.

98. *Id.*

they undertake any study of the Illinois property tax or its administration after election. County supervisors of assessment are required to have two years experience in the real estate area and also to pass a test administered by the Department.<sup>99</sup> If there is to be an effective property tax system and an efficient uniform exemption application process, boards of review and appeals must be similarly qualified. Therefore, all county reviewing board members, including those elected, should be required to pass a test administered by the Department of Local Government Affairs within a short time after their selection.

Another problem in the composition of county reviewing boards is that statutory provisions require the county supervisor of assessments or county assessor to act as clerk for these boards.<sup>100</sup> Even though Illinois law provides that he is only their clerk, his presence results in a dilution of the boards' reviewing role because they rely on his opinion and expertise in determining whether property is exempt. It has been the author's experience that supervisors of assessment or county assessors also tend to allow more exemptions than strictly permitted by statutory provisions. The only way to insure that reviewing boards function as independent and impartial reviewing agencies is to remove the county supervisor of assessments or the assessor from his post as clerk of these boards. Since county reviewing boards already have the statutory power to request any information from the county assessing official,<sup>101</sup> and may even summon and question him under oath,<sup>102</sup> they should rely on these powers to obtain any necessary information about property which is the subject of an exemption application.

In addition to rendering decisions on applications before them, county reviewing boards should be trained to give guidance on property tax exemptions. For example, in some counties property has been removed from tax rolls by assessing officials without applications for exemptions being filed with the county reviewing

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99. *Id.* §484(a). Cook and St. Clair counties are not encompassed by this section and have no such requirement.

100. *Id.* §484(b). Cook and St. Clair counties are not encompassed by this section.

101. *Id.* §496.

102. *Id.* §607.

board.<sup>103</sup> The Cook County Assessor's Office intends to grant tax relief under the new homestead improvement exemption simply by checking building permits and reducing assessments,<sup>104</sup> despite the requirement that homeowners must file exemption applications with the Cook County Board of Appeals.<sup>105</sup> County reviewing boards should enforce the statutory requirement that assessing officials remove property from the tax rolls *only* after application to the board, its approval of the exemption, and the Department's confirmation of the approval, in order to halt illegal reductions in the county's assessment base.

Another example of the assistance an active, knowledgeable board could render to local officials concerns charter exempt property which is used for non-exempt purposes. The *Northwestern University* case illustrates how such exemptions can be handled best administratively.<sup>106</sup> The University relied on its charter exempt statute until 1968 when it applied for a zoning

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103. See Cook, *Strengthening the Property Tax Through Relief Policies*, PROPERTY TAX REFORM 135, 140 (1973); ILLINOIS GOVERNOR'S TASK FORCE ON SCHOOL FINANCES, REPORT ON THE FINANCIAL MANAGEMENT AND EXPENDITURE POLICIES OF THE CHICAGO Bd. OF EDUC. 58 (1975).

104. Chicago Daily News, Jan. 3-4, 1976, at 37. The article quotes the Cook County Assessor, Thomas M. Tully as follows:

We will simply check new building permits and notify by mail those homeowners who qualify for the tax savings that the exemption is being applied to their property.

105. ILL. REV. STAT. ch.120, §600 (1975).

106. There are two possible alternatives to remedy charter exemptions. The first is at the local government level as described in the text. The other is through legislation amending existing taxation provisions of the Use Tax Act. *Id.* §§439.1-439.22. Illinois law provides for a leasehold tax which can be used to tax the leasehold value of exempt property which is used for nonexempt purposes. *Id.* §507. See *Chicago v. University of Chicago*, 302 Ill. 455, 134 N.E. 723 (1922). However, because the value of a leasehold interest is much smaller than the actual value of property, see *People ex rel. Korzen v. American Airlines, Inc.*, 39 Ill.2d 11, 233 N.E.2d 568 (1967), the legislature attempted to broaden this section of the statute to include the *use* of property made available to and used by a private individual, association or corporation for a use which is not otherwise exempt. The Illinois Supreme Court held this amendment to be a use tax, not a property tax, and invalid as part of the Revenue Act. *Dee-El Garage v. Korzen*, 53 Ill.2d 1, 289 N.E.2d 431 (1972). Perhaps if the legislature enlarged the Use Tax Act to include such a provision, exempt property used for nonexempt purposes could be taxed.

A similar Michigan law, MICH. STAT. ANN. §§7.7(5), (6) (1950), permitting the taxation of public property used by a private business, was upheld by the Michigan and United States Supreme Courts. *United States v. City of Detroit*, 345 Mich. 601, 77 N.W.2d 79 (1956), *aff'd*, 355 U.S. 466 (1958).

permit to build high rise dormitories on part of its property. No permit was granted by the City of Evanston, however, until the University agreed to purchase fire equipment for the city as a *quid pro quo* and "gesture of appreciation" for the tax-free services it received on account of its charter privileges.<sup>107</sup> Boards of review or appeals could remedy some of the abuses of charter exempt property by providing the necessary information and encouragement to local officials to handle similar situations.

Although a great many changes are necessary at the county level, the responsibility for the lack of proper exemption procedures throughout the state must be borne by the Department of Local Government Affairs. Indeed, it is the Department's statutory duty to direct and supervise all aspects of property taxation in Illinois, including the review of exemptions and guidance to local officials.<sup>108</sup> Unfortunately, the Department has been lax in fulfilling this statutory responsibility<sup>109</sup> because of its inefficient use of manpower and its failure to require trained personnel to review exemption applications. The checks and balances of the Illinois system cannot function effectively if the Department does not enforce compliance with Illinois law, due to its own internal problems.<sup>110</sup>

Statistics concerning the number of non-homestead exemption applications approved by the Department illustrate the necessity of an efficient use of trained personnel. For example, in each year from 1969 to 1973 there were approximately 1,450 non-homestead exemption applications approved by county boards of review or appeals and forwarded to the Department; yet, in each year the Department certified its disapproval of less than 75 and approved all the others.<sup>111</sup> In 1974 the Department adopted procedures which resulted in a more rigorous review of exemption applications. Each application, which formerly was reviewed by one individual, was reviewed by at least two people, one of whom

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107. A. BALK, *supra* note 3, at 121, 122.

108. ILL. REV. STAT. ch.120, §611(1), (2), (3).

109. REPORT ON THE FINANCIAL MANAGEMENT AND EXPENDITURE POLICIES OF THE CHICAGO Bd. of EDUC., *supra* note 103.

110. See text accompanying notes 94-102 *supra*.

111. Homestead Exemption Applications, on file as of August, 1975, Department of Local Government Affairs, Office of Financial Affairs, Springfield, Ill.



was an attorney. This allowed a more thorough consideration of each application and permitted discussions which lessened the possibility of any misinterpretation of exemption provisions. Consequently, with only a slight increase in the number of applications forwarded to it, the Department certified over 350 disapprovals, which in some instances represented approximately 40 percent of the applications approved by a county reviewing board.<sup>112</sup> However, in January of 1976 the Department returned to an exemption staff which consisted of one person without any legal training or any experience in the exemption area. In order to function properly as the final reviewing agency for exemptions, the Department should return to its policy of reviewing non-homestead exemptions by trained staff members.

In the area of homestead exemption applications, the Department fails to make a review of any kind. As in all previous years, it processed 1975 homestead exemptions merely by having a secretary stamp "exemption approved" on all forms and return them to the counties. Since homestead exemption applicants need satisfy only age and ownership interest requirements,<sup>113</sup> a random field check of such applications forwarded to the Department should be a sufficient review in light of the tremendous number of applications. This type of review, as compared with the current automatic approval, would demonstrate to county reviewing boards the Department's concern for compliance with statutory requirements and would encourage them to review applications in a diligent manner.

In the event that the legislature fails to enact legislation requiring the listing and valuation of exempt property,<sup>114</sup> the Department should initiate its own examination of property which is not on the tax rolls.<sup>115</sup> Pursuant to the Department's supervisory responsibility and its enforcement powers,<sup>116</sup> it should obtain from

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112. REPORT ON THE FINANCIAL MANAGEMENT AND EXPENDITURE POLICIES OF THE CHICAGO Bd. OF EDUC., *supra* note 103, at 53.

113. ILL. REV. STAT. ch.120, §500.23-1 (1975).

114. See text accompanying notes 60-62 *supra*.

115. The State of New Jersey has undertaken an examination of all tax exempt properties in the state. It could serve as an example for Illinois' Department of Local Government Affairs. See 24 NEW JERSEY DEPARTMENT OF THE TREASURY, LOCAL PROPERTY AND PUBLIC UTILITY BRANCH NEWS, No. 1 (1976).

116. ILL. REV. STAT. ch.120, §612(8) (1975), allows the Department to require any

each county a list of exempt property and a general estimate of the total value by various categories. By such a complete examination of exempt property, the Department can begin to take an active role and advise local assessors to return improperly exempted property to the tax rolls. A specific identification of such exempt property is necessary because, in the past, general memos and bulletins sent to assessors by the Department have not had any noticeable effect. For example, despite Departmental memos which advised that certain property, such as V.F.W. and American Legion posts, is not exempt, such property remains off the tax rolls in some counties. In 1974 two of the smaller counties in the state furnished this author with lists which were represented to contain all property off the counties' tax rolls. These lists showed a significant number of properties which were improperly taken off the tax rolls and have remained off ever since.<sup>117</sup> The results of a survey of exempt property by the Department should be employed to insure that property which became exempt prior to 1976 will be reviewed and any necessary corrections made.

In addition to problems in processing and reviewing exemption applications by the Department of Local Government Affairs, there is a statutory problem which could result in a non-uniform treatment of exemptions. Presently, the only avenue of redress used by exemption applicants rejected at the county level is the Illinois court system. Rejected applications are not forwarded to the Department's Office of Financial Affairs<sup>118</sup> because it only reviews exemptions approved by county reviewing boards.<sup>119</sup>

However, in 1967 a three member Property Tax Appeal Board was created as another division of the Department,<sup>120</sup> allowing any taxpayer from a county with a population under 1,000,000 to appeal from an unsatisfactory assessment decision at the county level.<sup>121</sup> The difficulty with this provision is that it can be interpreted to permit the Property Tax Appeal Board to review disapproved exemption applications. This interpretation would allow

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necessary information from all local officers. See also *id.* §§612(1), (6).

117. See text accompanying notes 69, 73 *supra*.

118. ILL. REV. STAT. ch.120, §§675, 716 (1975).

119. ILL. REV. STAT. ch.127, §63b14.13(c) (1975).

120. ILL. REV. STAT. ch.120, §592.1 (1975).

121. *Id.*

two branches of the Department to make decisions regarding exemptions. The possibility of conflicting administrative policies and practices is apparent, as is the development of two different standards of appeal for disapproved applicants, depending on the population of the county. In counties with a population under 1,000,000, applicants could be disapproved by the county reviewing board, yet obtain an exemption from the Department; whereas, in counties over 1,000,000, disapproved applicants would be required to go through the courts. The provisions governing the Property Tax Appeal Board should be clarified so that exemption applications are excluded from the Board's review of taxpayer complaints.

It is clear that the Department must improve its performance and change its attitude about exemptions in order to make the system's checks and balances function properly. It must increase the size of its exemption staff and improve the training given to them.<sup>122</sup> The Department also must use a portion of the time spent by its field personnel to assist local officials with all exemptions and to check on a small number of exemption applications selected at random. Such an increased departmental presence at the county level, as well as a survey of exempt property, would create effective communication links with county reviewing boards and encourage responsible performance by all local officials in the exemption area.

#### THE ROLE OF THE JUDICIARY

The judiciary in Illinois will be the final arbiter on determinations which affect property tax exemptions. It can either review disapproved exemptions or initially grant injunctions against the collection of taxes. It also could be the means to remedy improper property tax exemptions. Since the Illinois Supreme Court generally construes exemption statutes narrowly, taxpayers or county officials could petition the courts to enjoin exemptions granted

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122. In addition to the other reasons set forth in the text, it is the author's opinion that one person cannot handle all the present exemption duties and certainly could not review the increased number of exemption applications resulting from the new homestead improvement exemption beginning this year and from counties that have not complied with the law in prior years.

through improper administration or through improper legislation. But the full force of judicial review can be released only through taxpayer or county official initiative and persistence.

In the exemption area, the judiciary is confined to acting on petitions brought before it. For example, an applicant whose exemption is not approved by the Department can seek review under the Illinois Administrative Review Act.<sup>123</sup> However, it has been the author's experience that this type of judicial relief never is sought. More frequently, a disapproved applicant either will object to the county collector's annual application in the circuit court for tax judgments<sup>124</sup> or seek to enjoin the collection of taxes on the ground that the property in question is exempt.<sup>125</sup> Both methods, injunctions and objections to the collector's application for judgment, also are used as alternative avenues to obtain property tax exemptions in the first instance, instead of applying to a county reviewing board. If taxpayers or taxing officials used the judicial system more vigorously than at present to protest improper legislative or administrative exemptions, the judicial system could become a powerful weapon to remedy many legislative and administrative deficiencies.

While there has been some difference of opinion among authors concerning whether the Illinois judiciary has narrowly or permissively construed exemption statutes,<sup>126</sup> a comprehensive review of

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123. ILL. REV. STAT. ch.120, §619 (1975).

124. *Id.* §§675, 716 (1975).

125. *See, e.g.,* Clarendon Assoc. v. Korzen, 56 Ill.2d 101, 306 N.E.2d 299 (1973); American College of Surgeons v. Korzen, 36 Ill.2d 340, 224 N.E.2d 7 (1967); Hodge v. Glaze, 22 Ill.2d 294, 297, 174 N.E.2d 873, 874 (1961); Lakefront Realty Corp. v. Lorenz, 19 Ill.2d 415, 417, 167 N.E.2d 236, 238 (1960).

126. Compare REPORT OF GOVERNOR'S REVENUE STUDY COMMITTEE 1968-69, *supra* note 58, at 31 and *Arkis, supra* note 19, at 276 (courts have strictly construed and interpreted the constitution and exemption laws), with Note, *The Exemption of Charitable Institutions from Real Property Taxation in Illinois*, 45 CHI.-KENT L. REV. 207, 210 (1968) (charitable exemption requirements were not tested very stringently). It should be noted that in Note, *supra*, the case cited to illustrate permissive interpretation, *People v. Catholic Bishop*, 311 Ill. 11, 142 N.E. 520 (1924), concerns property owned by major religious orders, which is the exemption category most permissively construed by the supreme court. A more recent example of the supreme court's willingness to allow religious exemptions concerns a convent owned by a group of Roman Catholic nuns which was held exempt by the supreme court even though leased for return. *Children's Development Center, Inc. v. Olson*, 52 Ill.2d 332, 288 N.E.2d 388 (1972). However, these are but examples of occasional permissive construction on the part of the court. One could as easily cite the area of homes

exemption decisions shows that throughout its history the supreme court has set down strict standards and guidelines. It is not within the province of this Article to analyze specific judicial decisions relating to the various exemption provisions of Illinois law. However, it is necessary to state briefly the general judicial principles which govern exemptions in order to illustrate the potential for successful utilization of the court system in resolving exemption problems. In Illinois, taxation is the rule and exemption is the exception;<sup>127</sup> all debatable questions must be resolved in favor of taxation.<sup>128</sup> A party claiming a tax exemption must state provable facts rather than conclusions in order to obtain an exemption.<sup>129</sup> Moreover, an exemption provision should not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all that it intended to grant.<sup>130</sup>

The legislature, however, has contravened strict judicial principles through legislative amendments. For example, the second clause of the exemption section of the 1872 General Revenue Act originally had exempted only church property actually and exclusively used for public worship, as well as parsonages and church residences owned by a church.<sup>131</sup> After the Illinois Supreme Court held in 1908 that exemptions of parsonages or residences were

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for the aged, where the court continues to apply more stringent tests with each new decision. See, e.g., *Small v. Pangle*, 60 Ill.2d 510, 328 N.E.2d 285 (1975); *Willows v. Munson*, 43 Ill.2d 203, 251 N.E.2d 249 (1969); *People v. Association of Winnebago Home for the Aged*, 40 Ill.2d 91, 237 N.E.2d 533 (1968); *Methodist Old People's Home v. Korzen*, 39 Ill.2d 149, 233 N.E.2d 537 (1968).

127. *Rogers Park Post No. 108 v. Brenza*, 8 Ill.2d 286, 134 N.E.2d 292 (1956); *In re Swigert*, 119 Ill. 83, 6 N.E. 469 (1886). However, each claim for a tax exemption must be determined on the individual facts presented. *Coyne Elec. School v. Paschen*, 12 Ill.2d 387, 146 N.E.2d 73 (1957); *City of Lawrenceville v. Maxwell*, 6 Ill.2d 42, 126 N.E.2d 671 (1955); *People v. Univ. of Ill. Found.*, 388 Ill. 363, 58 N.E.2d 33 (1949).

128. *City of Lawrenceville v. Maxwell*, 6 Ill.2d 42, 126 N.E.2d 671 (1955); *Turnverein "Lincoln" v. Bd. of Appeals*, 358 Ill. 135, 192 N.E. 780 (1934); *In re Walker*, 200 Ill. 566, 66 N.E. 144 (1903).

129. *People v. Deutsche Evangelish Lutherische Gemeinde*, 249 Ill. 132, 94 N.E. 162 (1911).

130. *City of Lawrenceville v. Maxwell*, 6 Ill.2d 42, 126 N.E.2d 671 (1955); *Chicago Home for Girls v. Carr*, 300 Ill. 478, 133 N.E. 344 (1922); *People v. Anderson*, 117 Ill. 50, 7 N.E. 625 (1886).

131. ILL. REV. ACT OF 1872, §2, ¶2, cited in T. WILKIN, *supra* note 35, at 37.

unconstitutional,<sup>132</sup> the legislature in 1909 amended the clause to exempt "all property used exclusively for religious purposes, or used exclusively for school and religious purposes and not leased or otherwise used with a view to profit."<sup>133</sup> Under this amended clause parsonages became exempt once again, until the supreme court decided the question once more and held that neither parsonages nor convents were exempt under the constitution.<sup>134</sup> In 1957 the legislature passed still another amendment exempting parsonages or other housing facilities provided for ministers.<sup>135</sup> There has been no constitutional or judicial change in the intervening years, nor is there any reason today to conclude that the housing of religious personnel has changed from a secular use of property to a religious use. Yet for almost twenty years this type of property has been declared exempt by the legislature and has been exempted by local assessing officials without a single challenge, although in all likelihood the 1957 legislation is unconstitutional.

The failure of administrative officials in the property tax area to bring actions protesting improper legislative exemptions precludes the judicial system from correcting legislative deficiencies in the exemption area. Moreover, when exemptions are adjudicated, county officials fail to advocate strict exemption principles. It has been the author's experience that circuit court judges throughout the state often grant exemptions which do not meet statutory requirements because county officials through their attorney, the state's attorney of each county, do not argue exemption matters forcefully. Because no appeal is taken from such improper circuit court decisions, the appellate divisions of the judicial system are prevented from enforcing their strict principles on lower levels.

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132. *People v. First Cong. Church*, 232 Ill. 158, 83 N.E. 536 (1908), in which the supreme court held that a residence, even one directly connected with a pastor's work or the work of a church, had a secular purpose and, therefore, was not exempt as property used for religious purposes.

133. ILL. REV. ACT OF 1872, Law of June 16, 1909, §2, [1909] Ill. Laws 309.

134. *People v. Methodist Episcopal Church*, 315 Ill. 233, 146 N.E. 165 (1925); *People v. Muldoon*, 306 Ill. 234, 137 N.E. 863 (1923); *First Cong. Church v. Board of Review*, 254 Ill. 220, 98 N.E. 275 (1912); *Muldoon v. Bd. of Review*, 254 Ill. 336, 98 N.E. 673 (1912).

135. ILL. REV. STAT. ch.120, §500.2 (1975).

Local property tax officials and the Department of Local Government Affairs must be shown that adherence to the strict principles of judicial decisions in the exemption area is necessary for the operation of an equitable taxing system. Because elected public officials are involved, one method of attaining such strict adherence to judicial decisions is through public pressure by taxpayers and taxing districts. However, another method to achieve the same result is to utilize the Illinois court system. For example, in those counties which have failed to forward exemption approvals to the Department as required, the local assessing officials, county reviewing board and county clerk can be enjoined by any affected taxpayer or taxing district from removing property from the tax rolls unless it has been judicially determined to be exempt.<sup>136</sup> Reviewing boards in other counties and the Department of Local Government Affairs can be similarly enjoined from exempting parsonages and other properties which the supreme court has held invalid under the constitution. These same agencies can be compelled to fulfill their statutory duties and cease such practices as automatic approval of applications without review through suits of mandamus or mandatory injunctions.<sup>137</sup> The author does not know of any such suits ever being brought to remedy problems in the exemption area, but they are a simple method of insuring that corrective action is taken quickly by local and state administrative agencies to cease the unwarranted reduction of the property tax base through exemptions improperly granted. It is important that all such court actions include a plea for continuing court supervision because without such scrutiny the practices to be remedied would no more be changed by court order than they have been by statutory mandate.<sup>138</sup>

### CONCLUSION

Illinois has chosen exemptions as an integral and ever-increasing part of its property tax system. Because the extent and effect of exemptions are unknown, and the policies behind many exemptions are unclear, it is impossible to determine whether

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136. *Id.* §§600, 589(6).

137. *Id.*

138. *See, e.g., Hamer v. Lehnhausen*, 60 Ill.2d 400, 328 N.E.2d 11 (1975).

exemptions are achieving proper goals in tax administration or simply rewarding pressure groups seeking tax relief. Information is the key to reform in this area. The assessment of exempt property, publication of actions taken by county reviewing boards, and annual reports by the Department of its own actions in the exemption area would provide such information. Consolidation and revision of current statutory exemption sections and changes in administrative reviewing procedures also are necessary.

The taxpaying public has a right to know how much it is paying and to what purpose. Today in Illinois these questions cannot be answered. If property tax rates continue to increase as a result of more property tax exemptions, taxpayers will inevitably protest and demand explanations and legislative action. Consequently, the general assembly will be forced to reevaluate the exemption system if the property tax is to remain a viable revenue producer.