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# Grounds and Procedures for Attacking Real Property Tax Assessments in Minnesota

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## GROUNDS AND PROCEDURES FOR ATTACKING REAL PROPERTY TAX ASSESSMENTS IN MINNESOTA

*Disputes concerning the valuation of real estate for property tax purposes generate a surprising amount of litigation in Minnesota each year. This specialized area of the law has been given little attention by Minnesota commentators, yet the procedural and substantive problems that arise can be quite complex. The complexities in large part are the result of an antiquated and uncoordinated statutory scheme and of unauthorized practices by government assessors. The Minnesota Supreme Court and Legislature have taken steps in recent years to remedy these problems, but in so doing have created other problems that must be resolved. This Note analyzes present Minnesota property tax assessment law and suggests changes necessary to eradicate existing complexities and inequities. The substantive grounds for attacking assessments, including overvaluation, inequality, and illegality, are discussed in detail. Moreover, the numerous procedures available for objecting to assessments, which are set forth in a random fashion in the statutes, are collected here in a manner that should assist the practitioner.*

I.	INTRODUCTION .....	372
II.	AN OVERVIEW OF THE MINNESOTA PROPERTY TAX SYSTEM .....	373
III.	GROUNDS FOR OBJECTING TO PROPERTY TAX ASSESSMENTS .....	377
	A. <i>Overvaluation</i> .....	377
	1. <i>The "All Relevant Factors" Doctrine</i> .....	378
	2. <i>Expert Testimony</i> .....	381
	B. <i>Unequal Assessments</i> .....	383
	1. <i>Inequality Resulting From Unauthorized Practices By Local Assessors</i> .....	383
	a. <i>General Constitutional Principles</i> .....	383
	b. <i>Property in the Same Class Assessed at Varying Percentages of Market Value</i> ...	385
	i. <i>Minnesota Supreme Court Decisions</i> ..	385
	ii. <i>Legislative Action</i> .....	390
	c. <i>Inequality Resulting From Inconsistent Use of Formulas or Factors By Assessors When Determining Market Value</i> .....	393
	d. <i>Disparities Among Taxing Districts</i> .....	394
	2. <i>Legislative Classifications</i> .....	396
	C. <i>Illegality</i> .....	398
	1. <i>Statutory Procedures Not Followed</i> .....	399
	2. <i>Fraud or Mistake</i> .....	399
	3. <i>Ambiguous Authority for Assessment</i> .....	400

IV. PROCEDURES FOR ATTACKING PROPERTY TAX ASSESSMENTS	400
A. <i>Administrative Review</i>	401
1. <i>County Assessor</i>	401
2. <i>Boards of Review and Equalization</i>	401
3. <i>Commissioner of Revenue</i>	402
4. <i>Tax Court Review</i>	403
5. <i>Supreme Court Review</i>	405
B. <i>District Court Review—Tax Court Review</i>	406
1. <i>District Court Review</i>	406
2. <i>Tax Court Review</i>	408
C. <i>Tax Abatement</i>	409
D. <i>Injunctive and Other Extraordinary Relief</i>	410
E. <i>Delinquent Tax Proceedings</i>	411
V. CONCLUSION	412

### I. INTRODUCTION

Valuation of real estate for property tax purposes in Minnesota is an area that receives little attention from legal commentators,<sup>1</sup> but the volume and complexity of the cases involving real property tax assessments indicate the need for a thorough review of this area.<sup>2</sup> In Minnesota, the substantive and procedural problems that can arise in litigation over property tax assessments often are subtle and difficult to resolve. The Minnesota Legislature, through periodic enactments, has developed a statutory scheme that frequently is confusing, disorganized, and conflicting.<sup>3</sup> The purpose of this Note is to analyze that statutory scheme, and the interpretations given it by the Minnesota Supreme Court, in a manner that will render it more understandable to the Minnesota practitioner. First, for background purposes, this Note will pre-

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1. For exceptions, see Johnson, *Administrative Procedures in the Minnesota Department of Taxation*, 41 MINN. L. REV. 435 (1957); *The Minnesota Supreme Court, 1964-65*, 50 MINN. L. REV. 479, 551-58 (1966).

2. In most years at least two cases concerning property tax assessments reach the Minnesota Supreme Court. Compare, e.g., *Halla v. County of Hennepin*, 306 Minn. 533, 237 N.W.2d 348 (1975) (per curiam) and *Hedberg & Sons v. County of Hennepin*, 305 Minn. 80, 232 N.W.2d 743 (1975) with *State v. Fridley Recreation & Serv. Co.*, 288 Minn. 218, 179 N.W.2d 172 (1970) and *Alstores Realty, Inc. v. State*, 286 Minn. 343, 176 N.W.2d 112 (1970). Moreover, there were 1,091 pending tax cases, most of them involving property tax assessments, in Hennepin County as of August 11, 1977. See Minutes of the Special Meeting of the Judges of District Court, Hennepin County, Minnesota (August 11, 1977). See also Phipps, *Proving Overassessments in Property Taxes*, 44 FLA. B.J. 446, 450 (1970) (approximately 22,000 petitions for reduction of property assessments filed in Dade County, Florida in 1970).

3. Compare, e.g., MINN. STAT. § 270.22 (1976) (decision of state commissioner of revenue can be appealed to Minnesota Supreme Court) with, e.g., *id.* § 271.06 (1976 & Supp. 1977) (decision of state commissioner of revenue can be appealed to state tax court), as amended by Act of Mar. 28, 1978, ch. 672, § 4, 1978 Minn. Sess. Law Serv. 424 (West).

sent an overview of the general Minnesota statutory approach to property taxation.<sup>4</sup> Then the various grounds for objecting to property tax assessments will be analyzed,<sup>5</sup> followed by a discussion of the numerous procedures available for objecting to assessments.<sup>6</sup> Finally, suggestions will be made as to how Minnesota law on property tax assessments can be improved and simplified.<sup>7</sup>

## II. AN OVERVIEW OF THE MINNESOTA PROPERTY TAX SYSTEM

The assessment, levy, and collection of real property taxes in Minnesota are governed primarily by chapters 270 through 284 of Minnesota Statutes.<sup>8</sup> Under these statutes the commissioner of revenue has the responsibility for supervising the property taxation process and ensuring that the local assessors perform their duties correctly,<sup>9</sup> but the actual determination of assessments is made principally by local assessors and boards of review and equalization.<sup>10</sup>

The property tax process commences with the assessment by the local assessor. The term "assessment" refers to the valuation of real estate for property tax purposes.<sup>11</sup> Every parcel of real property within the state must have its value assessed for property tax purposes at least once every four years.<sup>12</sup> The property is appraised with reference to its market value as of the January 2 preceding the assessment.<sup>13</sup> The local assessor

4. See notes 8-50 *infra* and accompanying text.

5. See notes 51-210 *infra* and accompanying text.

6. See notes 211-300 *infra* and accompanying text.

7. See notes 301-25 *infra* and accompanying text.

8. The subjects governed by the chapters are as follows:

*chapter 270*: the department of revenue generally;

*chapter 271*: the Minnesota Tax Court;

*chapter 272*: general provisions on property taxation;

*chapter 273*: the listing and assessment of property taxes;

*chapter 274*: the review, equalization, and correction of property tax assessments;

*chapter 275*: the levy and extension of property taxes;

*chapter 276*: the collection, accounting, and distribution of property taxes;

*chapter 277*: delinquent personal property taxes;

*chapter 278*: objections and defenses to real property taxes;

*chapter 279*: delinquent real property taxes;

*chapter 280*: real property tax judgment sales;

*chapter 281*: redemption following real property tax judgment sales;

*chapter 282*: tax-forfeited land sales;

*chapter 283*: refunding property taxes;

*chapter 284*: actions involving tax titles.

9. See MINN. STAT. § 270.06(1) (Supp. 1977).

10. *Id.* § 273.08 (1976) (local assessor shall determine market value of all real property within his jurisdiction at least once every four years); *id.* § 274.01 (1976 & Supp. 1977) (local board of review shall review the valuations made by the local assessor); *id.* § 274.13 (county board of equalization shall review valuations made by local assessors and examined by local board of review).

11. See, e.g., *Fichtner v. Schiller*, 271 Minn. 263, 266-67, 135 N.W.2d 877, 879-80 (1965).

12. MINN. STAT. §§ 273.01, .08 (1976).

13. *Id.* § 273.01. See *Spitzmann v. County of Ramsey*, \_\_\_ Minn. \_\_\_, 251 N.W.2d

must complete the assessment list, which contains the valuation of each parcel of taxable property within his jurisdiction,<sup>14</sup> at least two weeks prior to the meeting date of the local board of review.<sup>15</sup>

The local board of review<sup>16</sup> meets between April 1 and June 30 to review the assessments made by the local assessor.<sup>17</sup> The board of review is required to determine whether all parcels of taxable property have been included on the assessment list and valued at market value and to hear and resolve complaints from taxpayers concerning valuation or classification of their property.<sup>18</sup> Between July 1 and July 15<sup>19</sup> the assessment list is reviewed by the county board of equalization,<sup>20</sup> which hears grievances and equalizes the valuation of the property assessed by the various taxing districts within the county.<sup>21</sup> Finally, on August 15<sup>22</sup> the state board of equalization<sup>23</sup> reviews all the assessment lists within the state and equalizes them so that, at least theoretically, all property within the state is assessed at market value.<sup>24</sup> Unless an appeal is taken,<sup>25</sup> the determination of the state board of equalization establishes the market value of each parcel of taxable real property in the state.<sup>26</sup>

The amount of property tax payable depends upon both the taxable value of the property and the levy by the various taxing authorities.<sup>27</sup> To determine taxable value, the property's market value, limited market value, and property tax classification first must be established. Market value basically means the usual selling price of the property.<sup>28</sup> Lim-

130 (1977) (taxpayer whose property was damaged by fire after the January 2 assessment date cannot have the property's valuation for that year lowered as a result).

14. See MINN. STAT. § 273.03(1) (1976).

15. *Id.* § 273.01.

16. MINN. STAT. § 274.01(1)(a) (Supp. 1977) provides that the town board of each town and the city council of each city, except a city whose charter provides for a board of equalization, shall constitute the board of review; however, MINN. STAT. § 274.01(2) (1976) also provides that the governing body of any city, including cities whose charters provide for a board of equalization, may create a special board of review in lieu of the board of review provided for in section 274.01(1)(a).

17. *Id.* § 274.01(1)(a) (Supp. 1977).

18. *Id.*

19. *Id.* § 274.14 (1976). This time period may be extended by the commissioner of revenue to July 31. *Id.*

20. The county board of equalization is usually composed of the county commissioners and the county auditor. See *id.* § 274.13(1)(a) (Supp. 1977). The county board of equalization may appoint a special board of equalization to perform its duties. *Id.* § 274.13(2) (1976).

21. *Id.* § 273.13(1).

22. *Id.* §§ 270.11(1), 12(2).

23. The commissioner of revenue is the sole member of the state board of equalization. *Id.* § 270.12.

24. *Id.* § 270.12(2).

25. See notes 235-51, 267-70 *infra* and accompanying text.

26. See MINN. STAT. § 270.12(2) (1976).

27. See, e.g., *id.* § 275.09, as amended by Act of Mar. 28, 1978, ch. 706, § 64, 1978 Minn. Sess. Law Serv. 554 (West); Phipps, *supra* note 2, at 446.

28. See MINN. STAT. § 272.03(8) (1976).

ited market value refers to the restrictions placed by the legislature upon increases in the value of property for tax purposes. Section 273.11(2) of Minnesota Statutes provides that the value of property for tax purposes cannot be increased from year to year by more than certain specified percentages.<sup>29</sup> Thus, if the actual market value increases faster than the permissible percentages under section 273.11(2), a valuation for tax purposes of less than market value will result; this valuation is referred to as "limited market value."<sup>30</sup> A final factor in determining taxable value is the property's tax classification. The Minnesota Legislature has determined that different types of real property should be treated differently for assessment purposes.<sup>31</sup> The result is that some classes of property bear a greater share of the property tax burden than others. For example, most commercial and industrial real estate is classified as class 4 property and is valued for tax purposes at forty-three percent of limited market value.<sup>32</sup> In contrast, urban homestead property is classified as class 3c property and has a taxable value of twenty-two percent of limited market value.<sup>33</sup> Consequently, to arrive at taxable value the assessor determines first the market value of the property, then whether the property has a limited market value under section 273.11(2), and finally the property's tax classification.

The levy is the decision by the governing bodies of the school district, city, county, and state as to the total number of tax dollars each of those governmental units intends to raise in the tax year in question.<sup>34</sup> The tax liability of each parcel of real estate is then determined by the county auditor,<sup>35</sup> who computes the proportionate amount needed from each parcel, based on its taxable value, to generate the tax dollars levied by the various taxing authorities.<sup>36</sup>

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29. See notes 196-200 *infra* and accompanying text.

30. No specific statutory reference can be found to the term "limited market value," except in MINN. STAT. § 273.121 (1976), which refers to the market value of the property as "limited by section 273.11 . . . ." The term "limited market value" has been adopted by Minnesota assessors to describe the valuation as affected by section 273.11. See, e.g., MINNESOTA DEP'T OF REVENUE, 1976 REAL ESTATE ASSESSMENT/SALES RATIO STUDY 1 (1977) [hereinafter cited as 1976 ASSESSMENT/SALES RATIO STUDY].

31. See notes 189-200 *infra* and accompanying text.

32. See MINN. STAT. § 273.13(9) (1976).

33. *Id.* § 273.13(7) (Supp. 1977).

34. See, e.g., *State ex rel. Minneapolis Fire Dep't Relief Ass'n v. City Council*, 161 Minn. 103, 105, 200 N.W. 932, 933 (1924) ("As applied to the amount to be raised by taxation, [the term levy] . . . means the formal and official action of a legislative body, invested with the power of taxation—whether national, state, or local—whereby it determines and declares that a tax of a certain amount, or of a certain percentage of value, shall be imposed on property subject thereto.") In Minnesota, the state, MINN. STAT. § 275.02 (1976), counties, *id.* § 275.03, cities, *id.* § 275.07 (Supp. 1977), towns, *id.*, and school districts, *id.*, are authorized to levy property taxes.

35. See MINN. STAT. § 275.28 (1976).

36. See *In re Summit House Apartment Co.*, \_\_\_ Minn. \_\_\_, \_\_\_, 253 N.W.2d 127, 129 (1977) ("the auditor has the duty of calculating and assessing the taxes once the taxable value has been determined by the assessor").

The process outlined above occurs between January 2 and December 31 of each year. By the end of the year the tax list, which specifies the tax liability of each parcel of real estate,<sup>37</sup> is completed and given to the county treasurer.<sup>38</sup> He sends real property tax statements to the owners of the taxable property within the county by January 31 of the following year.<sup>39</sup> The county treasurer also is responsible for collecting the property taxes<sup>40</sup> and distributing the proceeds to the various taxing authorities.<sup>41</sup>

Property taxes not paid by the first Monday in January after the year in which they are payable are delinquent.<sup>42</sup> A list of delinquent properties within the county is filed with the clerk of district court on or before February 15.<sup>43</sup> Following published notice in a designated local newspaper, the district court acquires jurisdiction to enforce, against the delinquent parcels of real estate, all taxes, interest, and penalties resulting from the delinquency.<sup>44</sup> If no answer is made to the published notice, or if no valid defense is raised at the delinquency hearing,<sup>45</sup> judgment is entered against the delinquent property.<sup>46</sup> That property then is deemed purchased by the state on the second Monday in May<sup>47</sup> and the former owner has five years from that date to redeem the property if it is homesteaded, agricultural, or seasonal recreational property, and three years if it is not.<sup>48</sup> To redeem, the former owner must pay the county treasurer all accrued taxes, penalties, and interest.<sup>49</sup> If the property is not redeemed and if the former owner has no valid grounds for attacking the validity of the tax judgment,<sup>50</sup> the property tax cycle can be said to have come to its completion.

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37. See MINN. STAT. § 275.28 (1976).

38. See *id.* § 276.01 (Supp. 1977).

39. See *id.* § 276.04.

40. *Id.* § 276.02 (1976).

41. *Id.* § 276.10.

42. *Id.* § 279.02.

43. *Id.* § 279.05.

44. *Id.* § 279.14.

45. See notes 297-300 *infra* and accompanying text.

46. See MINN. STAT. §§ 279.18-.19 (1976).

47. *Id.* § 280.001 (all tax-forfeited land for which a tax judgment has been rendered is deemed bid in for the state by the county auditor); *id.* §§ 280.01-.02 (tax-judgment sale in which land is bid in for the state occurs on the second Monday in May). The effect of these provisions, although not entirely clear, is to eliminate the practice of selling tax-forfeited land at tax-judgment sales to private purchasers. *But see* Note, *The Minnesota Tax Title: An Argument for Its Marketability—The 1874 Forfeiture System from a 1974 Perspective*, 1 WM. MITCHELL L. REV. 1, 10 n.89 (1974) (author erroneously assumes that MINN. STAT. § 280.01 did not eliminate the sale of tax-forfeited land to private purchasers at tax-judgment sales).

48. MINN. STAT. § 281.17 (Supp. 1977).

49. See *id.* § 281.02 (1976).

50. See generally Note, *supra* note 47.

### III. GROUNDS FOR OBJECTING TO PROPERTY TAX ASSESSMENTS

Numerous grounds have been urged as bases for reduction of property tax assessments. The three most common grounds are discussed below: overvaluation,<sup>51</sup> unequal assessment,<sup>52</sup> and illegality.<sup>53</sup>

#### A. Overvaluation

The most frequent objection to property tax assessments is that the property was valued in excess of market value. Section 272.03(8) of Minnesota Statutes defines market value as "the usual selling price at the place where the property to which the term is applied shall be at the time of the assessment; being the price which could be obtained at private sale and not at a forced or auction sale." In addition, section 273.12 requires that every assessor and board of review or equalization "consider and give due weight to every element and factor affecting the market value of the property being assessed." Thus, the touchstone of the assessment process is market value.

At the outset, the distinction between a claim of overvaluation and a claim of unequal assessment must be understood. A claim of overvaluation involves an assertion by the taxpayer that his property was valued at more than its market value.<sup>54</sup> Historically, however, assessors, without legislative approval, have valued property for tax purposes at amounts less than market value.<sup>55</sup> Although this trend has been reversed significantly in recent years, it has resulted in most property still being valued at less than market value.<sup>56</sup> Consequently, a parcel of real estate quite possibly could be overassessed in relation to other real estate in the same taxing district, but nonetheless be assessed at less than market value.<sup>57</sup> In this situation an objection by a taxpayer must be based on a claim of unequal assessment, for his property is not being valued at more than market value. Despite this difference between a claim of overvaluation and one of unequal assessment, the following discussion is relevant to both; to make a successful argument that his property was unequally assessed, the taxpayer must still establish the market value of the property.<sup>58</sup>

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51. See notes 54-95 *infra* and accompanying text.

52. See notes 96-200 *infra* and accompanying text.

53. See notes 201-10 *infra* and accompanying text.

54. See, e.g., *Northerly Centre Corp. v. County of Ramsey*, \_\_\_ Minn. \_\_\_, 248 N.W.2d 923 (1976).

55. See notes 112-46 *infra* and accompanying text.

56. See 1976 ASSESSMENT/SALES RATIO STUDY, *supra* note 30, at 159-82 (statistical analysis).

57. See note 116 *infra* and accompanying text.

58. See, e.g., *Renneke v. County of Brown*, 255 Minn. 244, 248, 97 N.W.2d 377, 380 (1959) (to prove unequal assessment, taxpayer must establish market value of his property and percentage applied by the assessor to that market value as compared to percentage applied to other property in the same assessment district).



### 1. The "All Relevant Factors" Doctrine

In an action challenging an assessment as excessive, the assessor's determination of market value is prima facie valid.<sup>59</sup> The prima facie validity of the assessment, however, is rebutted if the taxpayer establishes that the assessor failed to consider all relevant factors when the market value determination was made.<sup>60</sup> The leading statement on the relevant factors appears in *In re Delinquent Real Estate Taxes, Waseca County*:<sup>61</sup>

Location, cost of construction, cost of reproduction, purpose for which the building was used, the intrinsic value or worth of the building, the price at which buyers who may use the property for some purpose are willing to buy, the price at which similar property if any has sold and many other things are all proper elements of consideration for the purpose of determining the ultimate result, namely the sale value.

*Waseca County* has been supplemented by subsequent Minnesota Supreme Court decisions which have expanded the list of relevant factors to include present and potential future use,<sup>62</sup> income produced by the

59. *E.g.*, *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 186, 235 N.W.2d 390, 392 (1975); *cf.* MINN. STAT. § 272.06 (1976) (assessments of property for purposes of taxation are presumed to be "legal").

60. *See* *Schleiff v. County of Freeborn*, 231 Minn. 389, 394-95, 43 N.W.2d 265, 268 (1950); *cf.* *Xerox Corp. v. County of Hennepin*, \_\_\_ Minn. \_\_\_, \_\_\_, 244 N.W.2d 135, 138 (1976) (assessor must consider all relevant factors in determining market value of personal property for purposes of taxation).

61. 182 Minn. 543, 544-45, 235 N.W. 22, 22 (1931).

62. *See, e.g.*, *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 187, 235 N.W.2d 390, 392 (1975). This factor brings into play the "highest and best use" doctrine. Taxing authorities sometimes attempt to invoke this doctrine to justify an assessment higher than what the taxpayer believes to be the property's market value. The Minnesota Supreme Court has considered this issue in two recent cases. In *Hedberg & Sons v. County of Hennepin*, 305 Minn. 80, 232 N.W.2d 743 (1975), the taxpayer owned land that it used for gravel mining. The land was located in an area being rapidly developed for commercial uses, but the land was not zoned commercial. The future permissible uses of the land were speculative because of the uncertainty of future zoning. The county argued that the land should be valued at its highest and best use, which would have been industrial, multifamily residential, office, or commercial. The court rejected this argument, holding that future zoning and highest and best use were relevant factors in determining market value, but only to the extent they have an impact on the present market value of the property. *Id.* at 92, 232 N.W.2d at 750-51 (quoting *State v. Pahl*, 254 Minn. 349, 356, 95 N.W.2d 85, 90 (1959)).

Similarly, the taxpayer in *Village of Burnsville v. Commissioner of Taxation*, 295 Minn. 504, 202 N.W.2d 653 (1972) owned property that had a peculiar value to the taxpayer because of its special business needs. The taxing authority argued that this justified an assessment that would otherwise be excessive. The court disagreed and affirmed the tax court's holding that the special value of the land to the taxpayer was relevant only to the extent the special value increased the present market value and rendered the land more attractive to potential purchasers. *Id.* at 508, 202 N.W.2d at 657. Thus, the court has made clear that the potential highest and best use of property to the taxpayer are only probative factors to the extent they affect the property's present market value.

property,<sup>63</sup> access to the property,<sup>64</sup> adjacent development,<sup>65</sup> and zoning restrictions.<sup>66</sup> The relevancy of each factor depends upon the facts of the particular case,<sup>67</sup> and the decision of the trial court concerning the relevant factors will be considered conclusive unless clearly erroneous.<sup>68</sup>

The factors stated in *Waseca County* and other Minnesota cases provide some assistance in deciding whether the assessor correctly determined the property's market value. These cases, however, neither require that every factor be considered in each case<sup>69</sup> nor specify the weight to be given each factor.<sup>70</sup> More helpful to an understanding of the types of factors which must be considered by the assessor is the court's discussion of the three most common methods of appraising the market value of real estate: the comparable sales or market method, the cost of replacement method, and the capitalization of income method.<sup>71</sup>

The comparable sales or market method determines value by comparison to sales of similar property.<sup>72</sup> This method is the most accurate measure of market value when many substantially similar properties are

63. See, e.g., *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 187, 235 N.W.2d 390, 392 (1975); *Crossroads Center, Inc. v. Commissioner of Taxation*, 286 Minn. 440, 444-48, 176 N.W.2d 530, 534-36 (1970); *In re Taxes of Potlach Timber Co.*, 160 Minn. 209, 211-12, 199 N.W. 968, 969 (1924).

64. See *Halla v. County of Hennepin*, 306 Minn. 533, 534, 237 N.W.2d 348, 349 (1975); *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 187, 235 N.W.2d 390, 392 (1975).

65. See, e.g., *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 187, 235 N.W.2d 390, 392 (1975); *In re Taxes of Potlach Timber Co.*, 160 Minn. 209, 211, 199 N.W. 968, 969 (1924).

66. See *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 187, 235 N.W.2d 390, 392 (1975); *Hedberg & Sons v. County of Hennepin*, 305 Minn. 80, 92, 232 N.W.2d 743, 750-51 (1975).

67. See, e.g., *Great Plains Supply Co. v. County of Goodhue*, 268 Minn. 407, 409, 129 N.W.2d 335, 336 (1964).

68. See, e.g., *Northerly Centre Corp. v. County of Ramsey*, \_\_\_ Minn. \_\_\_, \_\_\_, 248 N.W.2d 923, 926-27 (1976) (trial court's finding of fact on issue of valuation must be affirmed unless clearly erroneous in the sense of being not reasonably supported by the evidence as a whole).

69. See note 67 *supra* and accompanying text.

70. See, e.g., *In re Delinquent Real Estate Taxes, Waseca County*, 182 Minn. 543, 544-45, 235 N.W. 22, 22 (1931). *But see* *Minnesota Entertainment Enterprises, Inc. v. State*, 306 Minn. 184, 188, 235 N.W.2d 390, 393 (1975) (recent sales price of property is one of the most important elements of market value).

71. See generally *ENCYCLOPEDIA OF REAL ESTATE APPRAISING* (E. Friedman ed. 1959) [hereinafter cited as *ENCYCLOPEDIA*]. Minnesota property tax assessment cases discussing these three methods of appraisal include *Northerly Centre Corp. v. County of Ramsey*, \_\_\_ Minn. \_\_\_, \_\_\_, 248 N.W.2d 923, 925-26 (1976) (cost of replacement, market, and income methods invoked); *Independent School Dist. No. 99 v. Commissioner of Taxation*, 297 Minn. 378, 383-87, 211 N.W.2d 886, 889-91 (1973) (cost of replacement method); *Alstores Realty, Inc. v. State*, 286 Minn. 343, 176 N.W.2d 112 (1970) (cost of replacement, market and income methods discussed); *Crossroads Center, Inc. v. Commissioner of Taxation*, 286 Minn. 440, 176 N.W.2d 530 (1970) (income and market methods).

72. *E.g.*, *Alstores Realty, Inc. v. State*, 286 Minn. 343, 345, 176 N.W.2d 112, 114 (1970).

sold at about the same time as the assessment.<sup>73</sup> Consequently, it is the primary method used in determining the market value of urban residential property.<sup>74</sup> The major deficiency of the market approach is that no two parcels of property are identical and therefore the assessor must make adjustments when using the sales price of some property to determine the market value of other property.<sup>75</sup> Thus, a subjective element is introduced into the appraisal process which can lead to valid disagreement as to the property's value.

The cost of replacement method often is employed for "specialty" property for which, generally, there are few comparable sales.<sup>76</sup> Under this approach, the value of the underlying land is first determined through the market approach by comparison to the sales prices of comparable vacant lots.<sup>77</sup> The value of the building then is determined by calculating the cost of reconstructing the building, with appropriate deductions made for depreciation.<sup>78</sup> Proper calculation of the cost of reconstruction under this approach often requires the services of a professional engineer to determine the appropriate reproduction costs.<sup>79</sup>

The capitalization of income method can be a useful and often accurate gauge of the market value of rental property.<sup>80</sup> Although there are a number of variations of this appraisal technique,<sup>81</sup> they all attempt to compute market value by capitalizing the net rental income of the property at a reasonable rate of return.<sup>82</sup> Basically, the net rental income is

73. See, e.g., Note, *The Road to Uniformity in Real Estate Taxation: Valuation and Appeal*, 124 U. PA. L. REV. 1418, 1431-32 (1976).

74. See, e.g., Santemma, *Review of Real Estate Tax Assessments*, 2 REAL ESTATE L.J. 685, 685 (1974); Note, *supra* note 73, at 1431.

75. See, e.g., Santemma & Murphy, *Fair Market Value in Condemnation and Realty Tax Proceedings*, 6 REAL ESTATE L.J. 46, 51 (1977).

76. See generally Johnson, *Cost Approach to Value*, in ENCYCLOPEDIA, *supra* note 71, at 37.

77. See, e.g., Santemma, *supra* note 74, at 686; Santemma & Murphy, *supra* note 75, at 52.

78. See, e.g., G. SCHMUTZ, *CONDEMNATION APPRAISAL HANDBOOK* 51-58 (1963).

79. See Santemma, *supra* note 74, at 686-87.

80. See, e.g., *Crossroads Center, Inc. v. Commissioner of Taxation*, 286 Minn. 440, 445-46, 176 N.W.2d 530, 534-35 (1970). See generally Hollebaugh, *Income Approach to Value*, in ENCYCLOPEDIA, *supra* note 71, at 54. In *Crossroads*, the Minnesota Supreme Court stated that, in using the income approach for property which was subject to a long-term lease, the fair rental value should control over the existing rental rate under the long-term lease, at least where the lease rate is less than fair rental value. See 286 Minn. at 447, 176 N.W.2d at 535. This approach has been criticized on grounds that a long-term lease at less than the fair rental value lowers the sales price, and hence the market value, of the property subject to the lease; thus by assessing at fair rental value rather than actual rental value the taxpayer is being assessed at more than actual market value. See Note, *supra* note 73, at 1435-36.

81. For a discussion of several variations of the capitalization of income method of determining market value, see G. SCHMUTZ, *supra* note 78, at 47-48.

82. See, e.g., *Alstores Realty, Inc. v. State*, 286 Minn. 343, 346, 176 N.W.2d 112, 114

first determined and then the market value is computed by using a reasonable rate of return, which is applied to the net rental income to calculate market value.<sup>83</sup> In essence, the market value is determined by computing the present value of the future stream of income that the property is likely to produce.

When discussing these appraisal methods the Minnesota Supreme Court has emphasized that, generally, no single method can be utilized to measure market value, for that would violate the statutory requirement that the assessor consider all relevant factors.<sup>84</sup> The court has stated that all three methods should be utilized where applicable,<sup>85</sup> at least to the extent of using them as checks on the accuracy of the primary method invoked.<sup>86</sup> This requirement appears to be consistent with good real estate appraisal practices, at least when valuing commercial or industrial property.<sup>87</sup> However, it is doubtful that the court would require assessors to use all three methods when determining the market value of most homesteads, for to do so would be administratively impossible. Moreover, the comparable sales method alone normally will produce sufficiently accurate results.<sup>88</sup> Thus, an understanding of all three methods is most important in cases involving commercial or industrial property.

## 2. *Expert Testimony*

To establish market value, the taxpayer normally must present expert appraisal testimony. The lack of an expert appraiser has been pointed to by the court with disfavor on several occasions,<sup>89</sup> while the use of a good expert has proved to be pivotal in numerous cases.<sup>90</sup> Consequently, if the taxpayer cannot afford to hire an expert appraiser, the case probably is not worth litigating.

The need for expert testimony undoubtedly precludes many taxpayers

83. See, e.g., G. SCHMUTZ, *supra* note 78, at 45-46.

84. See *Crossroads Center, Inc. v. Commissioner of Taxation*, 286 Minn. 440, 443-44, 176 N.W.2d 530, 533-34 (1970).

85. See *Alstores Realty, Inc. v. State*, 286 Minn. 343, 351-52, 176 N.W.2d 112, 117-18 (1970).

86. See *Crossroads Center, Inc. v. Commissioner of Taxation*, 286 Minn. 440, 444, 176 N.W.2d 530, 534 (1970) (court affirmed decision where income approach was used as a check on market approach).

87. See *Santemma*, *supra* note 74, at 685-86; Note, *supra* note 73, at 1430.

88. See *Santemma*, *supra* note 74, at 685.

89. See *State v. Fridley Recreation & Serv. Co.*, 288 Minn. 218, 221, 179 N.W.2d 172, 174 (1970) (court, holding against the taxpayer, noted that the taxpayer only submitted vague, indirect, and inconclusive evidence of market value); *Great Plains Supply Co. v. County of Goodhue*, 268 Minn. 407, 410-12, 129 N.W.2d 335, 337-38 (1964) (taxpayer relied solely on evidence of recent sales price of property in question; court ruled for county, emphasizing that valuation testimony was undisputed).

90. See, e.g., *Alstores Realty, Inc. v. State*, 286 Minn. 343, 346, 176 N.W.2d 112, 114 (1970) (court noted that taxpayer's appraisal witness was both qualified and experienced).

from obtaining relief for excessive assessments. The Minnesota Legislature has attempted to remedy this problem by creating a special small claims division of the Minnesota Tax Court, with informal procedures and rules of evidence.<sup>91</sup> Moreover, the legislature has encouraged the department of revenue to prepare data to assist residential taxpayers in proving excessive valuation<sup>92</sup> and has declared that this data is admissible without foundation in cases before the small claims division of the tax court.<sup>93</sup> Despite these reforms, the need for expert testimony in most cases remains, and it is doubtful that much can be done to alleviate this need because the determination of market value is a specialized art which normally can be performed only by a qualified expert.

In summary, the valuation problem is a factual one and the basic issue is the market value, or usual selling price, of the property. Although many factors are relevant in determining market value,<sup>94</sup> the fundamental objective is to convince the trial court, through the use of expert witnesses, that the market value is something less than that urged by the local taxing authorities.<sup>95</sup>

91. See notes 241-45 *infra* and accompanying text.

92. See MINN. STAT. § 278.01(b) (Supp. 1977).

93. *Id.* § 271.21(6).

94. An interesting example of the diversity of factors that must be considered when determining market value appears in an article from the *Wall Street Journal*:

The nation's Bicentennial has given rise to all sorts of patriotic celebrations, some of them tacky and nonsensical but many of them ingenious and laudatory. Still, one man's patriotism may be another man's burden, a fact of which we were reminded by reading that county assessors recently reduced by almost \$14,000 the assessed valuation of a residence in the retirement community of Sun City, Arizona.

The assessors did so after hearing complaints from the home owner that the value of his property had been reduced because his next-door neighbor chose to celebrate the Bicentennial by:

Painting a front yard palm tree red, white and blue and stringing flags from it to the front of the home. Erecting 13 red, white and blue poles up to 18 feet high and flying flags from some of them. Putting a 10-foot red, white and blue tripod on the roof. Painting an 8-by-16 foot American flag on the roof. Erecting a 70-foot tower in the backyard, from which fly 18 flags.

As if that were not enough, the neighbor reportedly painted his rooftop air conditioner red, white and blue, and placed a large red, white and blue cattle watering container in his front yard, equipping it with a fountain that splashes water 20 feet in the air. Moreover, he illuminated the entire display with lights and installed outdoor loudspeakers to blare musical accompaniment.

*Patriotism and Property Values*, Wall St. J., Apr. 7, 1976, at 20, cols. 1 & 2.

95. The success of taxpayers in attacking property tax assessments has not been insubstantial. A judge of the Minnesota Tax Court has estimated that the court grants relief to the taxpayers in approximately 40% of the cases presented to it. Address by the Honorable Earl Gustafson, Judge of the Minnesota Tax Court, given to the Hennepin County Bar Association, Local Government Section (Dec. 13, 1977). Indeed, in close cases trial courts have been known to compromise, basically splitting the difference between the opposing valuations, and have been affirmed on appeal. See *Northerly Centre Corp. v. County of Ramsey*, \_\_\_ Minn. \_\_\_, \_\_\_, 248 N.W.2d 923, 927 (1976) (supreme court

## B. Unequal Assessments

Inequality of assessments can stem from one of two basic sources: first, from practices by local assessors that are not authorized by statute and that result in similarly situated property taxpayers receiving different treatment, and second, from specific legislative classifications that require certain classes of property to be treated differently from others for assessment purposes. Whether these sources of inequality are unlawful depends primarily upon the application of the equal protection clause of the United States Constitution, the uniformity clause of the Minnesota Constitution, and to some extent upon enactments by the Minnesota Legislature. The following sections will discuss separately these two basic sources of inequality. With regard to unauthorized practices by local assessors, certain general constitutional principles will first be discussed,<sup>96</sup> then specific recurring problems will be analyzed. These specific problems concern the assessment of property in the same class at varying percentages of market value,<sup>97</sup> discrimination through inconsistent use of certain formulas or factors when determining market value,<sup>98</sup> and disparate assessment practices among taxing districts.<sup>99</sup>

### 1. Inequality Resulting From Unauthorized Practices By Local Assessors

#### a. General Constitutional Principles

The United States Supreme Court on a number of occasions has analyzed the role of the equal protection clause in cases involving the unequal assessment of property for state property tax purposes. The Court has been consistent in holding that inequality resulting from mere errors by local assessors does not rise to the level of a violation of the equal protection clause.<sup>100</sup> Rather, to violate equal protection the discrimination must be intentional or "purposeful,"<sup>101</sup> and not merely the result of a mistake by an assessor.<sup>102</sup> The apparent justification for this require-

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recognized that district court in effect had reached a compromise but held that the compromise was justified and probably required by the conflicting expert testimony); *Halla v. County of Hennepin*, 306 Minn. 533, 534, 237 N.W.2d 348, 349-50 (1975) (supreme court affirmed, holding that compromise reached because of conflicting evidence was not unreasonable or clearly erroneous).

96. See notes 100-11 *infra* and accompanying text.

97. See notes 112-63 *infra* and accompanying text.

98. See notes 164-69 *infra* and accompanying text.

99. See notes 170-88 *infra* and accompanying text.

100. See *Township of Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946); *Snowden v. Hughes*, 321 U.S. 1, 9-10 (1944) (dictum); *Cumberland Coal Co. v. Board of Revision of Tax Assessments*, 284 U.S. 23, 28-29 (1931); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445 (1923); *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350 (1918).

101. *Snowden v. Hughes*, 321 U.S. 1, 9 (1944) (dictum).

102. *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 353 (1918) ("It is also clear that mere errors of judgment by officials will not support a claim of discrimina-

ment of intent to discriminate is federal-state comity; if taxpayers could obtain federal court relief for mistakes in judgment by assessors the federal courts could be placed in the position of tax review boards, thus disrupting the state property tax system.<sup>103</sup> This concern for federal-state comity in the property tax area also has caused Congress to enact legislation that requires taxpayers who allege discriminatory assessments to exhaust all reasonable state remedies before they can obtain federal court relief.<sup>104</sup> Consequently, unintentional but unequal assessments must be remedied under state law in the state courts, and to obtain federal relief systematic or intentional discrimination must be proved and state remedies exhausted.

In addition to the federal equal protection clause, unequal assessments also can be attacked under the state uniformity clause, which requires that taxes be uniform.<sup>105</sup> Unlike many other state courts,<sup>106</sup> the Minnesota Supreme Court has applied the same standards to the uniformity clause of the state constitution as the United States Supreme Court does to the federal equal protection clause.<sup>107</sup> Thus, the Minnesota court has stated that the requirement of uniformity is violated if the taxpayer is assessed in a manner substantially unequal to other taxpayers of the same class.<sup>108</sup> Moreover, the court has clarified that mere errors of judgment in estimating market value do not create a constitutional violation and that something approaching intentional discrimination is required.<sup>109</sup> The court has noted, however, that good faith on the part of assessors does not justify an assessment that is "discriminatory in fact."<sup>110</sup> The court presumably meant by this statement that intent refers to the absence of a mistake in the valuation. Thus, substantially unequal treatment which is not the result of mistake violates the Minnesota Constitution, even if done in good faith.<sup>111</sup>

Although the principles enunciated by the United States Supreme Court and followed by the Minnesota Supreme Court appear to be quite straightforward, an analysis of their application in various distinct fac-

103. *Southland Mall, Inc. v. Garner*, 455 F.2d 887, 889 (6th Cir. 1972).

104. 28 U.S.C. § 1341 (1970); see Clement, *Discrimination in Real Property Tax Assessment: A Litigation Strategy for Pennsylvania*, 36 U. PITT. L. REV. 285, 286 (1974).

105. MINN. CONST. art. X, § 1 ("Taxes shall be uniform upon the same class of subjects. . .").

106. See notes 124-25 *infra* and accompanying text.

107. See *Elwell v. County of Hennepin*, 301 Minn. 63, 75-76, 221 N.W.2d 538, 546-47 (1974); *In re Taxes on Property of Cold Spring Granite Co.*, 271 Minn. 460, 466, 136 N.W.2d 782, 787 (1965).

108. See, e.g., *Hamm v. State*, 255 Minn. 64, 70-71, 95 N.W.2d 649, 654-55 (1959).

109. *Id.* at 70, 95 N.W.2d at 655.

110. *Id.* at 71, 95 N.W.2d at 655.

111. The court in *Hamm* cited the Arizona case of *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791 (1955), in which the Arizona Supreme Court stated that systematic and intentional discrimination in assessment practices is unlawful even if the assessors believed their conduct was valid. *Id.* at 20, 291 P.2d at 794.

tual settings indicates the simplicity of those principles often is deceptive.

*b. Property in the Same Class Assessed at Varying Percentages of Market Value*

A relatively frequent source of litigation, both in Minnesota<sup>112</sup> and elsewhere,<sup>113</sup> involves the situation where the taxpayer's property is assessed at a higher rate than most others of the same class. This problem has arisen because of the widespread and unauthorized practice by assessors, at least in the past, of valuing property at less than actual market value,<sup>114</sup> sometimes referred to as fractional value assessment.<sup>115</sup> Thus, it is possible for some property in a taxing district to be valued at less than market value, for example at eighty percent of market value, yet be assessed at a higher rate than most other property in that district, which for example might be assessed at sixty percent of market value.<sup>116</sup> As a consequence, the property assessed at a higher rate would bear more than its share of the property tax burden. This problem has been addressed both by the Minnesota Legislature and by the Minnesota Supreme Court in recent years. The supreme court has been concerned primarily with determining what remedy should be given the taxpayer who is treated unequally,<sup>117</sup> while the legislature's efforts in this area

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112. See, e.g., *Dulton Realty, Inc. v. State*, 270 Minn. 1, 132 N.W.2d 394 (1964); *Wagner v. Commissioner of Taxation*, 258 Minn. 330, 104 N.W.2d 26 (1960); *Renneke v. County of Brown*, 255 Minn. 244, 97 N.W.2d 377 (1959); *Hamm v. State*, 255 Minn. 64, 95 N.W.2d 649 (1959).

113. See, e.g., *E. Ingraham Co. v. Town & City of Bristol*, 144 Conn. 374, 132 A.2d 563 (1957); *Switz v. Township of Middletown*, 23 N.J. 580, 130 A.2d 15 (1957).

114. See, e.g., *Dulton Realty, Inc. v. State*, 270 Minn. 1, 132 N.W.2d 394 (1964). The *Dulton* court made the following observation:

From the foregoing it can be ascertained that the solution of the problem before us is difficult, not only because our statutory scheme of assessment is antiquated and inadequate, but also because its basic requirements have to a great extent been ignored. Instead of using the market or true and full value of property to be assessed as the basis for its taxation, as the statutes require, each assessor has established a formula under which only a percentage of such value is used for assessment purposes. These percentages vary greatly from one taxing district to another even within counties.

*Id.* at 20, 132 N.W.2d at 407-08.

115. See, e.g., Note, *supra* note 73, at 1422.

116. The court in *Dulton Realty, Inc. v. State*, 270 Minn. 1, 132 N.W.2d 394 (1964) stated:

In the case before us, percentage variations prevailed not only between taxing districts within St. Louis County, but also as to various properties and types of properties within the city of Duluth. There for tax purposes assessors arbitrarily based their appraisals on percentages of market value ranging between 30 percent and 90.3875 percent thereof, a procedure for which there is no statutory authority whatever.

*Id.* at 20-21, 132 N.W.2d at 408.

117. See notes 119-46 *infra* and accompanying text.



have concentrated on abolishing the practice of fractional value assessment.<sup>118</sup>

*i. Minnesota Supreme Court Decisions*

For many years the Minnesota Supreme Court took the position that a taxpayer had no standing to complain if his property was not assessed in excess of market value.<sup>119</sup> Following the mandate of the United States Supreme Court,<sup>120</sup> however, the Minnesota court in the 1959 decision of *Hamm v. State*<sup>121</sup> reversed its prior position. *Hamm* and its progeny have established that where a taxpayer's property is intentionally and arbitrarily assessed at a rate substantially higher than most other property in the same taxing district, even though less than market value, the taxpayer has a constitutional right to have the assessed value reduced.<sup>122</sup>

The court in *Hamm* held that proof of intent to discriminate was required both under the uniformity clause of the Minnesota Constitution and the equal protection clause of the federal Constitution.<sup>123</sup> This interpretation of the state uniformity clause differs from the interpretation given by many other state courts to the uniformity clauses of their respective state constitutions in cases where the taxpayer's property is assessed at less than market value, but at a greater rate than most other property.<sup>124</sup> These other state courts require only a showing of lack of reasonably uniform treatment in assessment practices, without the requirement of intent to discriminate.<sup>125</sup>

The state courts not requiring intent to discriminate in this situation appear to be on sound footing. The primary reason the federal courts require intent to discriminate in property tax assessment cases brought under the equal protection clause is federal-state comity.<sup>126</sup> This concern is not present when a state court interprets a state constitutional provision requiring uniformity in property tax assessment practices. Consequently, reliance by the *Hamm* court upon federal equal protection cases requiring intent seems misplaced.

118. See notes 147-63 *infra* and accompanying text.

119. See *State v. Cudahy Packing Co.*, 103 Minn. 419, 425-27, 115 N.W. 1039, 1039-40 (1908) (on rehearing).

120. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445-46 (1923).

121. 255 Minn. 64, 95 N.W.2d 649 (1959).

122. See cases cited in note 112 *supra*.

123. 255 Minn. at 70, 95 N.W.2d at 655.

124. See, e.g., *McKnight Shopping Center, Inc. v. Board of Property Assessment*, App. & Rev., 417 Pa. 234, 240-42, 209 A.2d 389, 392-93 (1965); Note, *supra* note 73, at 1421-22. But see *McCluskey v. Sparks*, 80 Ariz. 15, 19-20, 291 P.2d 791, 793-94 (1955) (systematic and intentional discrimination must be proved under uniformity clause of Arizona Constitution).

125. See, e.g., *Robinson v. State Tax Comm'n*, 216 Or. 532, 536-37, 339 P.2d 432, 434-35 (1959) (assessments that are not relatively uniform with other assessments violate the state uniformity clause).

126. See notes 103-04 *supra* and accompanying text.

The intent requirement also contradicts the Minnesota cases providing relief when an assessment is greater than the property's market value. Under these cases, intent need not be established; the taxpayer only must prove that the valuation given his property exceeded the property's actual market value.<sup>127</sup> The obvious reason for not requiring intent to discriminate in these cases is that a taxpayer should not be required to bear more than his share of the tax burden, whether the result of inadvertent or intentional overvaluation. This reasoning should also apply where the taxpayer's property is assessed at less than market value but at a greater percentage of market value than other property of the same class in the same taxing district. Consequently, as most other courts hold, unequal treatment resulting in the taxpayer paying more than his share of property taxes should be sufficient grounds, without proof of intent to discriminate, for relief under the state uniformity clause.

Although the Minnesota unequal assessment cases since *Hamm* have reaffirmed the intent requirement,<sup>128</sup> the Minnesota Supreme Court has not strictly enforced that requirement. For example, the court in *Renneke v. County of Brown*,<sup>129</sup> after discussing *Hamm*, ruled that the trial court must make two essential findings of fact in unequal assessment cases: (1) the actual market value of the property in question at the time of the assessment and (2) the percentage applied by the assessor to the market value of the property as compared with the percentage applied to other property of the same class in the same assessment district.<sup>130</sup> Thus, the *Renneke* court did not require that trial courts make a specific finding of intent to discriminate. Other Minnesota cases also indicate *Hamm* was not designed to restrict severely the right of aggrieved taxpayers to obtain state court relief.<sup>131</sup> Thus, the *Hamm* court may have simply followed federal equal protection law without considering whether different standards might be appropriate under the uniformity clause of the Minnesota Constitution.<sup>132</sup> Nonetheless, the intent requirement does linger as a threat to taxpayers with otherwise meritorious claims.

A second problem raised by *Hamm* and subsequent Minnesota cases is the amount of reduction in valuation that should be received by taxpayers whose property has been assessed at a greater percentage of

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127. See notes 54-95 *supra* and accompanying text.

128. For a listing of some of those cases, see note 112 *supra*.

129. 255 Minn. 244, 97 N.W.2d 377 (1959).

130. *Id.* at 248, 97 N.W.2d at 380.

131. See, e.g., *Dulton Realty, Inc. v. State*, 270 Minn. 1, 132 N.W.2d 394 (1964) (applying *Hamm* to provide relief from unequal assessments).

132. The court in *Hamm* discussed the United States Supreme Court cases on point in some detail, but did not discuss cases from other jurisdictions construing the uniformity clauses of their respective state constitutions. See 255 Minn. at 69-71, 95 N.W.2d at 654-55.

market value than most other property. Once again the *Hamm* court ruled differently from courts in most other jurisdictions, but on this issue the court was more liberal than most others. The majority of courts permit a reduction in valuation to the average percent of market value applied to all property of the same class in the assessment district.<sup>133</sup> Consequently, if the objecting taxpayer's property is assessed at fifty percent of market value and the average for all property of the same class in the taxing district is fifty percent of market value, in most states the taxpayer is denied relief, even if some taxpayers are assessed at less than fifty percent. This was also the rule in Minnesota prior to *Hamm*.<sup>134</sup>

In *Hamm* the taxpayer's property was assessed at the average percentage of market value in the assessment district,<sup>135</sup> thus most courts would have denied him relief. The *Hamm* court, however, held that the taxpayer had a right to have his assessment reduced to the lowest rate applied to property of the same class within the same assessment district.<sup>136</sup> The effect of this standard is illustrated by another leading Minnesota decision, *Dulton Realty, Inc. v. State*.<sup>137</sup> In *Dulton*, the city assessor applied varying ratios ranging from sixty-nine percent to ninety percent of actual market value to determine the market value of the plaintiffs' commercial property for property tax purposes.<sup>138</sup> Most other commercial real estate in the city, however, was valued at about forty percent of market value, with some commercial property assessed as low as thirty percent.<sup>139</sup> The court held that the plaintiffs' property must be assessed at thirty percent of market value, the lowest ratio applied to other commercial property in the city.<sup>140</sup> In effect, therefore, the *Hamm* rule allows taxpayers who can overcome the burden of proving intentional or systematic discrimination to receive the windfall of having their property assessed at a lower rate than most other property in the same assessment district.

The *Hamm* rule concerning reduction in the amount of assessment

133. See, e.g., *Campbell Chain Co. v. County of Alameda*, 12 Cal. App. 3d 248, 253-58, 90 Cal. Rptr. 501, 504-08 (1970); *Brooks Bldg. Tax Assessment Case*, 391 Pa. 94, 100-01, 137 A.2d 273, 276 (1958) (quoting *Cumberland Coal Co. v. Board of Revision of Tax Assessment*, 284 U.S. 23, 29 (1931)). See generally Cheng, *The Common Level of Assessment in Property Taxation*, 23 NAT'L TAX J. 50 (1970).

134. See *State v. Thayer*, 69 Minn. 170, 71 N.W. 931 (1897).

135. 255 Minn. at 67, 95 N.W.2d at 653.

136. *Id.* at 67-68, 95 N.W.2d at 653. The holding in *Hamm* on this point is not entirely clear, but the court did make clear that an assessment based on the average percentages of market value in the taxing district was constitutionally infirm if that average percentage was not consistently followed. *Id.* In *Dulton Realty, Inc. v. State*, 270 Minn. 1, 132 N.W.2d 394 (1964), the court interpreted *Hamm* as requiring a reduction to "the lowest percentage" of market value applied to other property within the taxing district. *Id.* at 21, 132 N.W.2d at 408.

137. 270 Minn. 1, 132 N.W.2d 394 (1964).

138. *Id.* at 5, 132 N.W.2d at 398.

139. *Id.*

140. *Id.* at 21, 132 N.W.2d at 408.

has been criticized as promoting inequality, threatening the financial resources of local governmental units, providing an unwarranted windfall to litigious taxpayers, and going beyond what is necessary under the federal and state constitutions.<sup>141</sup> Each of these criticisms undoubtedly has merit. *Hamm* can be viewed differently, however. The case was decided at a time when arbitrary and unauthorized classifications by assessors were widespread in this country.<sup>142</sup> Assessors, without the sanction of the legislature, often would make policy decisions as to what class or particular parcels of property should carry a greater share of the tax burden than others and would apply varying percentages of market value accordingly.<sup>143</sup> *Hamm* appears to have been designed to attack this practice rather than the less reprehensible situation where the property of a single taxpayer is inadvertently assessed at a higher percentage of market value than most other property.<sup>144</sup> If this explanation of *Hamm* is accepted, the court's decision to reduce the assessment to the lowest percentage applied within the assessment district is more understandable; it serves as a strong incentive for assessors to eliminate arbitrary and unauthorized practices as well as significant punishment for those who do not.<sup>145</sup> Moreover, under this interpretation of *Hamm* the requirement of showing intentional or systematic discrimination is less harsh, for the types of assessment practices involved almost invariably are intentional or systematic. *Hamm* therefore can be viewed as an effective judicial effort to eliminate arbitrary and discriminatory assessment practices.

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141. See Note, *Inequality in Property Tax Assessments: New Cure for an Old Ill*, 75 HARV. L. REV. 1374, 1391-92 (1962).

142. See, e.g., *E. Ingraham Co. v. Town & City of Bristol*, 144 Conn. 374, 132 A.2d 563 (1957); *Bettigole v. Assessors of Springfield*, 343 Mass. 223, 178 N.E.2d 10 (1961); *In re Kents 2124 Atlantic Ave., Inc.*, 34 N.J. 21, 166 A.2d 763 (1961). The *Kents* case provides a good example of the extent of discrimination that existed in some localities. In one city, valuation of residential property varied from 4.13% to 86% of market value, vacant land from 2.25% to 88% of market value, and other property from 5.13% to 79.38% of market value. 34 N.J. at 27, 166 A.2d at 766.

143. See Lesnick, *Does Full Value Mean Full Value? Prospects for Assessment Reform in New York in Light of the Experience of Other States with Hellerstein's Progenitors*, 5 HOFSTRA L. REV. 235 (1977). The author states:

[F]ractional assessment in large part reflected policy decisions by assessors and, to a lesser extent, by reviewing courts, responding to a variety of social and economic needs. These have included the need to maintain municipal fiscal integrity in periods of depression and to restrain municipal spending during periods of inflation, the desire to subsidize unprofitable industries important to the local economy and, in some cases, an attempt to make the tax less regressive.

*Id.* at 237-38.

144. See 255 Minn. at 70, 95 N.W.2d at 654-55 (1959) (court emphasizes that arbitrary practices by assessors of assessing property at different percentages of market value are illegal).

145. See *The Minnesota Supreme Court, 1964-65*, *supra* note 1, at 555.

The *Hamm* approach may be an effective way to combat arbitrary and intentional discriminatory assessment practices, but it does little to resolve the problems of a taxpayer whose property is inadvertently assessed at a proportionately higher rate than most others, yet at less than market value. Such a taxpayer still must bear a disproportionate share of the property tax burden under *Hamm*. The soundest solution might be to combine the best aspects of both *Hamm* and the majority approach. When a taxpayer establishes widespread<sup>146</sup> arbitrary, intentional assessment practices he should be permitted a reduction of market value to the lowest rate applied by the assessors in the assessment district, thus providing an incentive to stop such practices. However, where the taxpayer is subjected to unequal treatment because of unintentional error by assessors, the taxpayer should be permitted a reduction in valuation only to the average rate for the assessment district.

### ii. Legislative Action

The Minnesota Legislature has long required that property be assessed at market value,<sup>147</sup> but that requirement went unheeded by local assessors who, as discussed above, designed their own schemes for as-

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146. The court has been more reluctant to grant relief where most taxpayers are assessed at a uniform, higher rate than a few select taxpayers of the same class who are given unjustified special treatment. As Mr. Justice Mitchell once noted, if one of the many taxpayers assessed at the higher rate was permitted a reduction to the lower, preferential rate, equality would not be achieved but rather the inequality would be magnified. *State v. Lakeside Land Co.*, 71 Minn. 283, 287, 73 N.W. 970, 971 (1898). Moreover, if a substantial number of the taxpayers assessed at the higher rate were granted a reduction to the preferential rate, the local government revenues could be seriously affected. *Id.* Apparently for these reasons, the court has required a showing that the discriminatory assessment practices involve more than just a few parcels. See *Ploetz v. County of Hennepin*, 301 Minn. 410, 414, 223 N.W.2d 761, 764 (1974) ("While we do not believe that it was necessary to compare the subject property with a substantial number of other properties in order to prove assessment discrimination, we deem it inadvisable to base such a finding upon the few parcels about which testimony was offered in this case."). This requirement is not necessarily inconsistent with *Hamm*, for the court in *Hamm* stated: "Uniformity of taxation does not permit the systematic, arbitrary, or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property of the same class." 255 Minn. at 70, 95 N.W.2d at 654.

A possible solution to this problem might be to grant all petitioning taxpayers a reduction to the lower, preferential rate if the preference was intentional, but to give the government the option of reassessing the property granted preferential treatment, which could be done pursuant to MINN. STAT. § 270.16 (1976). This solution would guarantee equality, either by lowering the assessment rate of most taxpayers or by raising the rate for the few preferred taxpayers, yet would give the taxing authority an option that would protect its treasury. This solution would be constitutional, however, only if the burden was on the state to raise the rate for the preferred taxpayers. See *Township of Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946). Consequently, if the local taxing authority is informed of the preferential treatment given to some taxpayers but refuses to remedy the inequality, then the nonpreferred taxpayer should be allowed by the court to have his property valuation reduced.

147. See, e.g., *State v. Thayer*, 69 Minn. 170, 71 N.W. 931 (1897).

sessing property at varying percentages of market value. Probably due in large part to the attention drawn to this problem by the Minnesota Supreme Court in *Hamm* and later cases, the Minnesota Legislature has taken steps in recent years to supplement the standards established in those cases.

The primary concern of the legislature has been to make certain that all property is valued by local assessors at full market value. In 1967, the legislature amended Minnesota Statutes, section 273.11, to make clear that property must be assessed initially at its actual market value.<sup>148</sup> However, the legislature also legalized the practice of assessing at less than market value, but only if actual market value first was determined, a uniform percentage rate was applied to all property within the assessment district, and that rate was reported annually to the state commissioner of revenue.<sup>149</sup> As a result, uniformity in the valuation of real estate for property tax purposes was required, although not at market value.

In 1971, section 273.11 was further amended to eliminate the practice of assessing at less than market value.<sup>150</sup> The statute now provides that "[a]ll property . . . shall be valued at the market value of such property and not at . . . some lesser value than its market value."<sup>151</sup> Thus, the legislature clearly intended to eliminate the practice of fractional value assessments. This change in theory should have no effect on the amount of tax each property owner must pay.<sup>152</sup> For example, the tax burden of each taxpayer will not vary if all property is valued for tax purposes either at one-third of market value or at full market value. Equality is achieved if all property is assessed uniformly, even if at less than market value.<sup>153</sup> The 1971 amendment eliminating fractional assessments is significant, however, because it provides the taxpayer with more effective notice of unequal treatment; inequality should be more readily identified when the taxpayer's property is supposed to be assessed at full market value rather than a fraction of market value.<sup>154</sup>

The Minnesota Legislature took further steps to achieve equality in 1977, when it enacted section 278.01(b).<sup>155</sup> This section provides that where a homeowner's property is assessed at more than a ten-percent

148. See Tax Reform and Relief Act of 1967, ch. 32, art. 7, § 3, 1967 Minn. Laws 2161 (amended 1971) (codified at MINN. STAT. § 273.11).

149. *Id.* at 2162.

150. Act of May 21, 1971, ch. 427, § 1, 1971 Minn. Laws 736 (codified at MINN. STAT. § 273.11).

151. MINN. STAT. § 273.11(1) (1976).

152. See Aaron, *Some Observations on Property Tax Valuation and the Significance of Full Value Assessment*, in *THE PROPERTY TAX AND ITS ADMINISTRATION* 156-57 (A. Lynn ed. 1969).

153. See, e.g., *State v. Thayer*, 69 Minn. 170, 174-75, 71 N.W. 931, 932-33 (1897).

154. See Aaron, *supra* note 152, at 157-58.

155. Act of June 2, 1977, ch. 423, art. 4, § 8, 1977 Minn. Laws 1045 (amended 1978) (codified at MINN. STAT. § 278.01(b)).

variance from the "average assessment/sales ratio" for homesteaded property in the same area of the county, as determined by the commissioner of revenue, the taxpayer can have the validity of the assessment determined in district court or tax court.<sup>156</sup> The average assessment/sales ratio is a ratio that compares the sales prices of recently sold homesteaded properties with the value given those properties for tax purposes.<sup>157</sup> The ratio is designed to measure how close to market value the assessors are valuing property and the extent of inequality in assessment practices.<sup>158</sup> For example, if the average assessment/sales ratio for a certain area is .80, this means that the homesteaded property in that area is on the average assessed at eighty percent of market value and therefore is not in compliance with the legislative mandate that property be assessed at full market value. Under section 278.01 a homeowner must compare the market value of his homestead with the assessed value, and if that ratio exceeds by ten percent the average assessment/sales ratio for homesteaded property in his area he presumably is entitled to relief.

Section 278.01(b) seems to be designed to provide homeowners with a means of correcting unequal treatment, with definite standards and minimal proof problems.<sup>159</sup> Whether the legislation achieves this result, however, is uncertain. The statute is not clear as to what the taxpayer's remedy is if his property is assessed at a greater than ten-percent variance from the applicable average assessment/sales ratio. It merely provides the right to "have the validity of his claim" determined. However, the taxpayer had the right to bring an inequality claim in district court prior to the enactment of section 278.01(b).<sup>160</sup> Therefore, the statute probably was intended to effect some change from the prior law.<sup>161</sup> The statute apparently is designed to provide homeowners relief whenever they can establish that their property was assessed at greater than a ten-

156. See MINN. STAT. § 278.01 (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West).

157. See generally 1976 ASSESSMENT/SALES RATIO STUDY, *supra* note 30; 2 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1972 CENSUS OF GOV'TS, TAXABLE PROPERTY VALUES AND ASSESSMENT-SALES PRICE RATIOS pt. 2 (1973).

158. See 1976 ASSESSMENT/SALES RATIO STUDY, *supra* note 30, at 1.

159. The Minnesota act appears to have been designed after the provision of the model act prepared by the federal Advisory Commission on Intergovernmental Relations, but the provisions of the model act are explicit that a 10% variance from the relevant assessment/sales ratio establishes that the assessment was incorrect. See ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, NEW PROPOSALS FOR 1971 STATE LEGISLATIVE PROGRAMS app. § 15-41-40, at 6 (Nov. 1970) (Assessment Notification, Review and Appeal Procedure Act § 9(b)) (document M-53) [hereinafter cited as ADVISORY COMM'N].

160. Prior to the addition of subdivision b in 1977, section 278.01 permitted an action for allegedly unequal assessments. This prior provision was not altered by the 1977 amendment, but rather is still located in section 278.01(a).

161. See, e.g., MINN. STAT. § 645.17(2) (1976) (In determining the intent of the legislature, the courts should presume that "[t]he legislature intends the entire statute to be effective and certain.").

percent variance from the average assessment/sales ratio.<sup>162</sup> Thus, the statute should be amended to make clear that when the taxpayer has met this burden he has a right to have his assessment reduced to the average assessment/sales ratio level. If the statute is not so amended, the courts should interpret it to provide homeowners such a right, since this is the apparent intent of the section.

The recent enactments of the Minnesota Legislature, as outlined above, have not altered the standards and principles established in *Hamm* and its progeny, except that where section 278.01(b) applies a homeowner may be able to obtain relief from an unequal assessment without proving intent to discriminate. Rather, the actions of the supreme court and legislature can be viewed as complementary; the supreme court has concentrated on the relief available to taxpayers who have suffered from discriminatory assessments, while the legislature has concentrated primarily upon eliminating discriminatory assessment practices, particularly in requiring full-value assessments. The extent to which the efforts of the court and legislature have succeeded in eliminating unequal assessments is not yet clear,<sup>163</sup> but if the statutory mandates are enforced vigorously by both the courts and the commissioner of revenue, and if the legislative and judicial changes suggested above are made, many of the problems and inequities in this area can be eradicated.

c. *Inequality Resulting From Inconsistent Use of Formulas or Factors By Assessors When Determining Market Value*

As was explained in the earlier section concerning overvaluation, an assessor must consider many factors and methods of valuation when computing the market value of property.<sup>164</sup> If the factors or methods of valuation are utilized by the assessor in an inconsistent manner, thus resulting in unjustified differences in valuation for tax purposes, aggrieved taxpayers may argue that their equal protection rights have been violated. The *Hamm* court addressed this problem in dicta, when it stated that the equal protection and uniformity clauses do not "permit the adoption of an arbitrary yardstick of valuation which ignores their differences in actual market value."<sup>165</sup> In general, the resolution of this problem turns on whether the different manner of assessment resulted from bona fide differences in the properties involved. A

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162. See note 159 *supra*.

163. Statistics compiled by the Minnesota Department of Revenue indicate that valuations presently vary from 50% to 140% of actual market value. 1976 ASSESSMENT/SALES RATIO STUDY, *supra* note 30, at 1. Moreover, a comparison of statistics from 1956 through 1976 indicates evidence of improvement in uniformity of assessments over that period is inconclusive. See *id.* at 223.

164. See notes 59-88 *supra* and accompanying text.

165. 255 Minn. at 70, 95 N.W.2d at 654.



good illustration of this principle is provided by *Wagner v. Commissioner of Taxation*.<sup>166</sup>

In *Wagner*, the property in question was a 133-acre family farm bordering Lake Bemidji. The property always had been assessed on an acreage-use basis, as was normal for farm land. In 1952, however, the taxing district assessed the property on a front-foot basis, as if it were residential property. The surrounding farms, not bordering Lake Bemidji, continued to be assessed on the acreage-use basis. The change in the method of valuation resulted in an increase in valuation of the taxpayer's property from \$1,730 to \$13,646. The taxpayer claimed she was unlawfully discriminated against because her property was assessed on the front-foot basis. The supreme court rejected the taxpayer's argument, reasoning that the different manner of assessment was justified because the property's location bordering Lake Bemidji had made it attractive for residential use.<sup>167</sup> The court stated that even though the property was used as farm land it was in demand as residential property, which justified it being assessed as residential property.<sup>168</sup> The lesson to be learned from *Wagner*, therefore, is that many factors must be considered in determining market value, and so long as the different method of assessment used has a rational relationship to the determination of actual market value, equal protection is not violated. If, however, the different manner of assessment bears no rational relation to differences in market value, then the taxpayer's equal protection rights probably have been violated.<sup>169</sup>

#### d. Disparities Among Taxing Districts

Another difficult problem arises where all taxpayers in the same class are treated equally within the same taxing district, but unequally in relation to taxpayers in other districts. The Minnesota Supreme Court has recognized that, ideally, equality in property taxation should be statewide,<sup>170</sup> but as yet it has been reluctant to require statewide or even countywide equality because of the practical problems involved<sup>171</sup> and

166. 258 Minn. 330, 104 N.W.2d 26 (1960).

167. *Id.* at 333, 104 N.W.2d at 28.

168. *Id.* at 333-34, 104 N.W.2d at 28-29. Two justices dissented, arguing that "the present use to which the land is being put should be controlling in determining valuation where that use is consistent with the use to which the majority of adjoining property is being devoted." *Id.* at 335, 104 N.W.2d at 29. *Wagner* illustrates well a problem that many farmers near growing urban areas face—increased valuation of their farms, and thus increased taxation, because of urban growth. The legislature has responded to this problem by enacting the "green acres" law, which requires assessors to value farm land according to the land's value as a farm, regardless of its potential highest and best use as residential property. See MINN. STAT. § 273.11 (Supp. 1977).

169. The taxpayer probably also must prove substantial inequality and intent to discriminate. See notes 108-09 *supra* and accompanying text.

170. See *Dulton Realty, Inc. v. State*, 270 Minn. 1, 17, 132 N.W.2d 394, 406 (1964).

171. See *Johnson v. County of Ramsey*, 290 Minn. 307, 314, 187 N.W.2d 675, 679 (1971)

the potential effect on state and local government finances.<sup>172</sup> The court has limited itself to requiring substantial equality only among taxpayers within the same taxing district, while urging the legislature to take steps to ensure statewide equality.<sup>173</sup> For example, in the leading case of *Dulton Realty, Inc. v. State*<sup>174</sup> the court condemned the practice of assessing property within the same taxing district at different rates, yet reluctantly refused to extend its ruling to the county as a whole.<sup>175</sup> Similarly, in *Bethke v. County of Brown*<sup>176</sup> the court struck down the practice of reassessing only a portion of a taxing district, holding that all property within a district must be placed upon the tax rolls at the new valuations at the same time.<sup>177</sup> Yet in *Johnson v. County of Ramsey*<sup>178</sup> the court held that some taxing districts within a county could be reassessed in a given year even if others within the same county were not.<sup>179</sup> Consequently, Minnesota case law to date does nothing to ensure statewide, or even countywide, equality in assessment practices.

The legislature has taken steps to eliminate unequal treatment among taxing districts. As discussed earlier, all assessors now must value property at its actual market value; administratively determined percentages of market value can no longer be utilized.<sup>180</sup> Consequently, all property within the state should be valued at market value.<sup>181</sup> If this statutory mandate is heeded, substantial equality in assessment practices on a statewide basis should be achieved. Furthermore, the commissioner of revenue has been given the power by the legislature to compel local assessors to assess property uniformly<sup>182</sup> and can intervene to correct the assessments if the local assessors do not assess uniformly.<sup>183</sup> Finally, the legislature in 1971 passed legislation requiring all assessors to be licensed by a state board of assessors, thus ensuring that at least

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(countywide equality in the same tax year not required because impracticable and impossible to achieve).

172. See *Dulton Realty, Inc. v. State*, 270 Minn. 1, 21, 132 N.W.2d 394, 408 (1964) (requiring equality among taxing districts, by judicial mandate, "most certainly would result in a chaotic situation as to revenues required for the operation of various units of our state government").

173. See *Johnson v. County of Ramsey*, 290 Minn. 307, 308-11, 187 N.W.2d 675, 676-77 (1971) (discussion of legislature's reaction to past suggestions by the court).

174. 270 Minn. 1, 132 N.W.2d 394 (1964).

175. *Id.* at 20-21, 132 N.W.2d at 407-08.

176. 301 Minn. 380, 223 N.W.2d 757 (1974).

177. *Id.* at 385, 223 N.W.2d at 760. Minnesota appears to be in the minority on this issue, with the majority of cases permitting annual reassessment of less than all the property within the assessment district. See Annot., 76 A.L.R.2d 1077 (1961).

178. 290 Minn. 307, 187 N.W.2d 675 (1971).

179. See *id.* at 313-14, 187 N.W.2d at 678-79.

180. See notes 150-51 *supra* and accompanying text.

181. In actuality, most property in Minnesota is presently assessed at between 75% and 90% of market value. See 1976 ASSESSMENT/SALES RATIO STUDY, *supra* note 30, at 159-92.

182. See MINN. STAT. § 270.06(1) (Supp. 1977).

183. See *id.* § 270.06(2)-(3); *id.* § 270.16 (1976).

a minimum degree of expertise is possessed by all assessors within the state.<sup>184</sup> This requirement should encourage more uniform statewide assessment practices.<sup>185</sup>

The measures taken by the Minnesota Legislature represent a significant improvement. More can be done, however. A major improvement would be to centralize more effectively the responsibility for assessing real estate.<sup>186</sup> The Advisory Commission on Intergovernmental Relations suggests that no assessment district be less than one county in size and that the assessment function be done on a multicounty basis in sparsely populated areas.<sup>187</sup> The purpose of such a change would be to make assessment districts large enough to justify better trained, more specialized personnel to assess property.<sup>188</sup> With this improvement and those already made by the Minnesota Legislature, equitable and uniform statewide assessment practices can be realized.

## 2. Legislative Classifications

The Minnesota Legislature classifies real estate into different classes and treats each class differently from the others. The primary statute is Minnesota Statutes, section 273.13, which separates real estate into different classes and provides that the different classes shall have taxable values of varying percentages of actual market value.<sup>189</sup> In addition, other statutes either explicitly<sup>190</sup> or implicitly<sup>191</sup> classify property for property tax purposes.

Although legislative tax classifications have been attacked relatively

184. Act of Oct. 30, 1971, ch. 31, art. 25, § 10, 1971 Minn. Laws 2647 (amended 1974, 1975, and 1977) (codified at MINN. STAT. § 270.50).

185. See, e.g., Note, *Real Property Tax Assessment: A Look at Its Administration Practices and Procedures*, 38 ALB. L. REV. 498, 512 (1974). Minnesota was praised for initiating this system of training and certifying assessors. See ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL FINANCES: SIGNIFICANT FEATURES AND SUGGESTED LEGISLATION 8 (1972) (document M-74).

186. Minnesota authorizes, but does not require, valuation of property for tax purposes to be done on a countywide basis by county assessors rather than by local assessors. See MINN. STAT. § 273.052 (1976).

187. See ADVISORY COMM'N, *supra* note 159, app. § 15-41-20, at 7-8 (Property Tax Organization and Administration §§ 15-16).

188. See, e.g., Back, *Potential for Organizational Improvement for Property Tax Administration*, in THE PROPERTY TAX AND ITS ADMINISTRATION 35-42 (A. Lynn ed. 1969); Note, *The Michigan Property Tax: Assessment, Equalization, and Taxpayer Appeals*, 17 WAYNE L. REV. 1397, 1470 (1971).

189. Classifications include iron ore (50% of market value); mobile homes (40% of market value); agricultural homestead land (18% of market value; 16% of market value for taxes payable after 1978); other homesteads (22% of market value; 20% of market value for taxes payable after 1978); residential rental property (40% of market value); and all other property not specifically classified (43% of market value). MINN. STAT. § 273.13 (Supp. 1977).

190. See, e.g., *id.* § 273.15 (1976) (low-grade iron ore).

191. See notes 196-200 *infra* and accompanying text.

frequently on equal protection grounds, the Minnesota Supreme Court has been extremely reluctant to strike down such classifications.<sup>192</sup> A good example of the court's approach is contained in *Elwell v. County of Hennepin*,<sup>193</sup> where the court upheld the constitutionality of the "green acres" statute, which provides preferential assessment treatment to certain agricultural land:<sup>194</sup>

Further, the power to classify property for taxation purposes is primarily with the legislature, and such laws will not be declared invalid unless it clearly appears that they are unreasonable, arbitrary, or capricious. Every presumption is invoked in favor of the constitutionality of an act of the legislature, and we will not declare it unconstitutional unless satisfied, after careful study, that it conflicts with some provision of the Minnesota or United States Constitution.

Thus, although the court has come down hard on unauthorized classifications by local assessors,<sup>195</sup> it has given the legislature great leeway to classify. Consequently, to attack a legislative property tax classification successfully, the taxpayer must overcome the substantial burden of proving that there are no reasonable grounds for making a distinction between the different classes of real estate.

In general, legislative classification of property for assessment purposes is justified. It allocates the tax burden based on the views of the electorate, through its elected representatives, as to what classes of property should bear a greater proportion of the tax burden than others, rather than permitting this decision to be made by local assessors. So long as the different treatment is based upon legitimate distinctions among the classes, such classifications should be upheld. The Minnesota Legislature adopted a statute in 1973, however, that perpetuates inequality and is not based on legitimate distinctions among classes of property. Section 273.11(2), as originally adopted, limited any increase in valuation of property for tax purposes to five percent of the previous assessment.<sup>196</sup> The section was amended in 1975 to permit a ten-percent increase or an increase of not more than one-fourth of the total increase

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192. See, e.g., *Elwell v. County of Hennepin*, 301 Minn. 63, 73-76, 221 N.W.2d 538, 545-47 (1974); *In re Taxes on Property of Cold Spring Granite Co.*, 271 Minn. 460, 136 N.W.2d 782 (1965); *State v. Donovan*, 218 Minn. 606, 16 N.W.2d 897 (1944).

193. 301 Minn. 63, 221 N.W.2d 538 (1974).

194. *Id.* at 75-76, 221 N.W.2d at 546. The approach of the Minnesota Supreme Court is basically the same as that taken by the United States Supreme Court. For example, in *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973), a case involving the elimination of personal property taxes for individuals but not for corporations, the Court stated: "Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have great leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Id.* at 359.

195. See notes 142-45 *supra* and accompanying text.

196. See Act of May 24, 1973, ch. 650, art. XXIII, 1973 Minn. Laws 1682 (amended 1975 and 1977) (codified at MINN. STAT. § 273.11(2)).

in market value from the previous assessment, whichever is greater.<sup>197</sup>

Section 273.11(2) obviously is designed to mitigate the results that rapidly increasing property values during an inflationary period can have on the owner's property taxes. It also has the effect, however, of causing inequality; potentially, property within the same class can have taxable values at dramatically different percentages of actual market value. This is so because property increasing rapidly in value is not required to bear its proportionate share of the property tax burden when compared to property that is not increasing in value as rapidly.<sup>198</sup> This result, of course, is antithetical to the recent trend toward equality in the property tax area. Moreover, the statute is apparently intended to mitigate possible hardship resulting from rapidly increasing property values, yet it makes no distinction between property owners who can afford to pay the increased taxes and those who cannot. This distinction is drawn in other statutes such as the income-adjusted property tax refund legislation<sup>199</sup> and provisions for relief to elderly homeowners for special assessments.<sup>200</sup> If rapidly increasing property values are creating hardships in particular instances, this problem should be resolved in a manner which provides relief only to those property taxpayers who are in special need of the relief. As presently drafted, section 273.11(2) paints with too broad a brush; it can operate to reduce the tax burden of wealthy taxpayers with valuable property by shifting the tax they would otherwise pay to owners of property that may be located in a depressed area and is not increasing in value. Consequently, while section 273.11(2) might be politically attractive, it perpetuates rather than alleviates inequality and frustrates other recent attempts by the legislature to achieve equality in assessment practices.

### C. Illegality

In a sense, every overvaluation or unequal assessment of real estate is illegal, and consequently a separate section discussing illegal assessments is somewhat artificial.<sup>201</sup> This section therefore basically repre-

197. Act of June 6, 1975, ch. 437, art. 8, § 5, 1975 Minn. Laws 1610 (amended 1977) (codified at MINN. STAT. § 273.11(2)).

198. This is so because placing a limit on the taxable value of some property does not reduce the total amount of tax levied by the taxing authorities. See notes 34-36 *supra* and accompanying text. Therefore, because the properties given special treatment under section 273.11(2) have to pay less tax than they otherwise would, the properties that are not given the special treatment must pay more than they otherwise would.

199. MINN. STAT. ch. 290A (1976 & Supp. 1977).

200. *Id.* § 435.193 (1976) (special assessments charged to homesteads owned by elderly persons can be deferred if payment would cause a hardship and if the local government unit establishes a deferral program).

201. Minnesota cases and statutes do, however, refer to illegality as something different from overassessment or unequal assessment. See, e.g., *Lindahl v. State*, 244 Minn. 506, 509-10, 70 N.W.2d 866, 869 (1955); MINN. STAT. § 278.01 (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West).

sents a residuum, encompassing illegal assessments other than overvaluations and unequal assessments. Specifically, the following types of illegal assessments are discussed: (1) assessments not made in accordance with statutory procedures; (2) assessments based on fraud or mistake; and (3) assessments based on ambiguous statutory authority.

### 1. *Statutory Procedures Not Followed*

At times taxpayers have claimed that an assessment was invalid because not performed in accordance with statutory procedures. Such a claim generally carries little weight, especially in light of the legislature's mandate that all assessments are presumed valid and that no assessment shall be found invalid for failure to follow statutory procedures unless the taxpayer first establishes that he was prejudiced thereby.<sup>202</sup> The court in the leading case of *Lindahl v. State*<sup>203</sup> interpreted this legislative mandate as requiring affirmance of a technically improper assessment so long as the taxpayer was not overassessed or unequally assessed, and was only required to bear his fair share of the tax burden.<sup>204</sup> Thus, *Lindahl* establishes the reasonable rule that a taxpayer cannot raise technical objections to an assessment unless he has suffered some actual financial injury as a result of the technical deficiencies.

### 2. *Fraud or Mistake*

An argument sometimes is made that an assessment is invalid because of fraud or mistake. The court has followed the same practical approach in this area as on the issue of failure to follow statutory procedures. In *Red Owl Stores, Inc. v. Commissioner of Taxation*,<sup>205</sup> the supreme court held that neither fraud nor mistake is grounds for objecting to an assessment unless the taxpayer proves the fraud or mistake resulted in an overvaluation or unequal assessment of his property.<sup>206</sup> Consequently, proof of fraud, mistake, or failure to follow statutory procedures is generally of little assistance to a taxpayer unless he can prove, normally based on expert appraisal testimony,<sup>207</sup> that he was damaged as a result of the transgression.

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202. See MINN. STAT. §§ 272.06, 279.19 (1976).

203. 244 Minn. 506, 70 N.W.2d 866 (1955).

204. See *id.* at 511-13, 70 N.W.2d at 870-71.

205. 264 Minn. 1, 117 N.W.2d 401 (1962).

206. *Id.* at 8, 117 N.W.2d at 407.

207. See *id.* The court observed:

Since a taxpayer alleging mistake, fraud, or other irregularity in the assessment of his lands and property must show that the assessment is discriminatory or excessive or that the alleged wrongful act, if any, has in some way caused financial injury to him, relator had the burden of proving by a preponderance of the evidence that the mistake or fraud it alleged has occurred and that it has been damaged thereby. However, relator called no witnesses to show that the

### 3. *Ambiguous Authority for Assessment*

Situations conceivably can arise in which the taxing authority attempts to do something in the assessment process which arguably is not authorized by statute and which could result in the taxpayer paying a higher property tax. For example, a statute might be ambiguous as to when the government has a right to appeal an adverse assessment ruling.<sup>208</sup> In these situations the court has at times applied a general presumption that an ambiguous property tax statute is to be interpreted in favor of the taxpayer.<sup>209</sup> This presumption, therefore, might be of value in cases of first impression involving interpretations of ambiguous property tax statutes. It should be noted, however, that the court has refused to apply the presumption where the taxpayer is seeking an exemption from taxation, applying instead a presumption that all property is subject to taxation unless an exemption clearly is available.<sup>210</sup>

## IV. PROCEDURES FOR ATTACKING PROPERTY TAX ASSESSMENTS

Minnesota Statutes contain a number of procedures for objecting to property tax assessments. These procedures are not set forth in the statutes in a manner which is easily comprehended; they have been described by the Minnesota Supreme Court as "antiquated and inadequate."<sup>211</sup> The Minnesota Legislature has taken steps in recent years to remedy this procedural morass, but, as will be seen, it has not yet alleviated the confusion.<sup>212</sup> This section will discuss these procedural statutes in the following sequence: (1) administrative review,<sup>213</sup> (2) dis-

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assessment was excessive or to show valuations of other similar properties in the area.

*Id.*

208. See *Mondale v. Commissioner of Taxation*, 263 Minn. 121, 116 N.W.2d 82 (1962).

209. See, e.g., *Mondale v. Commissioner of Taxation*, 263 Minn. 121, 126-27, 116 N.W.2d 82, 86 (1962); *State ex rel. Western Union Tel. Co. v. Minnesota Tax Comm'n*, 132 Minn. 93, 99, 155 N.W. 1061, 1064 (1916).

210. See, e.g., *Christian Business Men's Comm. v. State*, 228 Minn. 549, 555, 38 N.W.2d 803, 809 (1949); cf. *In re Estate of Abbott*, 213 Minn. 289, 296, 6 N.W.2d 466, 469 (1942) (presumption in favor of taxpayer does not apply where taxpayer is seeking a deduction).

211. *Dulton Realty, Inc. v. State*, 270 Minn. 1, 20, 132 N.W.2d 394, 407 (1964); accord, *Independent School Dist. No. 99 v. Commissioner of Taxation*, 282 Minn. 425, 428, 165 N.W.2d 250, 253 (1969) (in interpreting the procedure for reviewing decisions of the commissioner of revenue and state board of equalization, the court stated its conclusion was based on the statutes "as best we can understand these singular statutes").

212. In fact, the legislature has enacted some statutes in recent years that have added to the confusion rather than alleviating the confusion. For example, in 1975 the legislature passed a statute that created a special district court review process solely for mobile home assessments, despite the existence of an adequate district court review procedure in chapter 278 that could have been utilized. See Act of June 4, 1975, ch. 376, § 2, 1975 Minn. Laws 1254 (amended 1978).

213. See notes 218-55 *infra* and accompanying text.

strict court and tax court review;<sup>214</sup> (3) abatement process;<sup>215</sup> (4) injunctive and other extraordinary relief;<sup>216</sup> and (5) delinquent tax proceedings.<sup>217</sup>

### A. *Administrative Review*

#### 1. *County Assessor*

The administrative review process encompasses several stages, some formal and others informal. The first stage is the most informal: a request to the assessor that he correct an error in valuation. The county assessor, or the city assessor in any city of the first class, is authorized to correct any errors made in the valuation of property for tax purposes.<sup>218</sup> The statute granting this authority is not clear as to when the assessor can make a correction in valuation. It seems to contemplate that the correction normally will occur prior to the meeting of the local board of review, but the statute also states that the corrections may be made "either before or after" the time when all assessments are completed.<sup>219</sup> Thus, the assessor conceivably can correct an error in valuation at any time. Such power, however, would clash with the intricate review process described hereafter. Moreover, after the various boards of review and equalization have approved the accuracy of an assessment the assessor probably would be reluctant to change the assessment unless the error was glaring. Consequently, an appeal to the assessor to lower the valuation of property probably is most effective if made prior to the meeting of the local board of review, even though the assessor technically may have the power to alter an erroneous valuation after that time.

#### 2. *Boards of Review and Equalization*

The local board of review meets between April 1 and June 30 of the year the assessment is made to review the assessor's valuation.<sup>220</sup> The board is empowered, if petitioned by an aggrieved taxpayer, to review the taxpayer's assessment and "correct it as shall appear just."<sup>221</sup> This apparently broad power to correct an assessment based on justice arguably implies that the board can reduce an assessment for reasons other than overvaluation, inequality, or illegality, such as inability to pay.

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214. See notes 256-77 *infra* and accompanying text.

215. See notes 278-85 *infra* and accompanying text.

216. See notes 286-96 *infra* and accompanying text.

217. See notes 297-300 *infra* and accompanying text.

218. MINN. STAT. § 273.01 (1976).

219. *Id.* The assessor is to complete all assessments, except for permissible corrections, at least two weeks before the meeting of the local board of review. *Id.* Not more than two percent of the total parcels in the assessor's jurisdiction can be corrected by him thereafter. *Id.*

220. *Id.* § 274.01(1)(a) (Supp. 1977).

221. *Id.*



Such a broad power, however, probably was not intended, especially in light of the legislature's mandates that all property be valued at market value<sup>222</sup> and that all taxpayers receive equal treatment.<sup>223</sup> Consequently, the taxpayer probably must prove his property was overvalued, unequally assessed, or otherwise illegally assessed.

The county board of equalization, which meets between the first and the fifteenth of July,<sup>224</sup> also is empowered to correct erroneous assessments.<sup>225</sup> However, a taxpayer who does not petition the local board of review for a reduction in valuation normally is precluded from seeking relief from the county board of equalization.<sup>226</sup> Thus, the county board of equalization in effect operates as an appellate board, although it is not limited in its scope of review and can hear testimony and receive evidence as does the local board of review.<sup>227</sup>

### 3. Commissioner of Revenue

The commissioner of revenue wears two hats in the assessment process; besides acting as the commissioner, he sits as the sole member of the state board of equalization<sup>228</sup> and in that capacity reviews most decisions of the county boards of equalization.<sup>229</sup> When sitting as the state board of equalization he is precluded from reducing any assessments approved by a county board of equalization.<sup>230</sup> However, when sitting as the commissioner of revenue he does have the authority to reduce assessments approved by the county boards.<sup>231</sup> In fact, the Minnesota Supreme Court has held that the commissioner can decide at will

222. *See id.* § 273.11(1) (1976).

223. MINN. STAT. § 273.12 (1976) provides in part:

It shall be the duty of every assessor and board, in estimating and determining the value of lands for the purpose of taxation, to consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination . . . .

224. *Id.* § 274.14.

225. *Id.* § 274.13, subd. 1(a)(1)-(2) (Supp. 1977). However, the county board of equalization cannot reduce the aggregate valuation of all real property within the county by more than one percent of the aggregate valuation of the assessor and local board of review. *Id.* § 274.13, subd. 1(a)(5).

226. *Id.* § 274.01(1)(b). The only exceptions are when the assessment was made after the board of review met or when the taxpayer can establish that he did not receive notice of his market value at least five days before the meeting of the board of review. *Id.*

227. The exact nature of the meetings of the local board of review and the county board of equalization are not described in the statutes. However, the taxpayer may appear either in person, by his attorney, or by written communication. *Id.* §§ 274.01(1)(b), .13(1)(b).

228. *Id.* §§ 270.11(1), .12(1) (1976).

229. *Id.* § 270.12. The state board of equalization meets on August 15 and reviews and equalizes the assessments approved by the county boards of equalization and corrects any errors made by those boards. *Id.* § 270.12(2).

230. *Id.* § 270.12, subd. 2(7).

231. *Id.* § 270.11(6).

which hat he is wearing at any given time;<sup>232</sup> therefore, even when sitting as the state board of equalization he can reduce an assessment in his capacity as commissioner of revenue.<sup>233</sup> A taxpayer normally can obtain review by the commissioner only if his claim first is presented to the county board of equalization.<sup>234</sup>

#### 4. Tax Court Review

A taxpayer who receives an unfavorable ruling from the commissioner of revenue may take an appeal to the state tax court<sup>235</sup> within sixty days of the commissioner's order.<sup>236</sup> The tax court, normally with one judge sitting,<sup>237</sup> hears the case de novo without a jury, although an optional advisory jury can be empaneled by the court.<sup>238</sup> Venue for appeals to the tax court from the commissioner of revenue is determined by the rules governing venue in district courts.<sup>239</sup> The tax court is instructed by statute to follow the rules of civil procedure for district courts where practic-

232. See *Independent School Dist. No. 99 v. Commissioner of Taxation*, 282 Minn. 425, 426, 165 N.W.2d 250, 252 (1969).

233. See *Village of Tonka Bay v. Commissioner of Taxation*, 242 Minn. 23, 26, 64 N.W.2d 3, 6 (1954) (“[T]he commissioner was necessarily acting in his capacity as commissioner since the case involved a reduction in the assessed valuation of a corporation's real estate.”).

234. See MINN. STAT. § 274.13(1)(b) (Supp. 1977). The only exception is when the taxpayer is not duly notified of the meeting of the county board of equalization. *Id.*

235. *Id.* § 271.06, as amended by Act of Mar. 28, 1978, ch. 672, § 4, 1978 Minn. Sess. Law Serv. 424 (West). Chapter 271 of Minnesota Statutes, relating to the Minnesota Tax Court, is entitled “Tax Court of Appeals.” Moreover, various sections in chapter 271 refer to the court as the tax court of appeals. See, e.g., MINN. STAT. § 271.01 (1976 & Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 1, 1978 Minn. Sess. Law Serv. 423 (West). However, an obscure provision of the act creating the court changes the name of the tax court of appeals to the tax court. See Act of May 27, 1977, ch. 307, § 29, 1977 Minn. Laws 618. The revisor of statutes is instructed to make this name change in the 1978 volume of Minnesota Statutes. *Id.*

236. MINN. STAT. § 271.06(2) (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 4, 1978 Minn. Sess. Law Serv. 424 (West). The time period for appeal may be extended an additional 30 days by a tax court judge for good cause, and an appeal is perfected by serving a notice of appeal upon the commissioner of revenue and filing the original with the tax court or district court with proof of service. MINN. STAT. § 271.06(2) (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 4, 1978 Minn. Sess. Law Serv. 424 (West).

237. MINN. STAT. § 271.04 (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 3, 1978 Minn. Sess. Law Serv. 424 (West). Provision is made, however, for an en banc hearing by all three tax court judges, if a majority of the court approves. MINN. STAT. § 271.04 (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 3, 1978 Minn. Sess. Law Serv. 424 (West).

238. MINN. STAT. § 271.06(6) (Supp. 1977).

239. *Id.* § 271.04, as amended by Act of Mar. 28, 1978, ch. 672, § 3, 1978 Minn. Sess. Law Serv. 424 (West). If the taxpayer is a nonresident of Minnesota, venue is in Ramsey County. MINN. STAT. § 271.04 (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 3, 1978 Minn. Sess. Law Serv. 424 (West).

able but also is authorized to promulgate additional rules to govern its proceedings.<sup>240</sup>

Owners of homesteaded property or taxpayers with disputes involving less than \$2,500 may, at their option, appeal to a special small claims division of the tax court.<sup>241</sup> The hearings of the small claims division are informal and without a jury, and they are designed to provide an inexpensive remedy for taxpayers with smaller claims.<sup>242</sup> The decisions of the small claims division are conclusive on the parties and cannot be further appealed.<sup>243</sup> The statute specifically provides that an appeal to the small claims division cannot be taken unless the taxpayer first appeals to the local board of review and the county board of equalization, except where the commissioner of revenue determines the original assessment.<sup>244</sup> This requirement also implicitly applies to most appeals from orders of the commissioner to the regular division of the tax court, for the local and county boards normally must review a taxpayer's complaint before the taxpayer can appeal to the commissioner.<sup>245</sup>

The present tax court was established by the 1977 legislature.<sup>246</sup> It is a full-time court consisting of three judges<sup>247</sup> and replaces a part-time tax court.<sup>248</sup> The small claims division also was established in 1977 and

240. MINN. STAT. § 271.06(7) (Supp. 1977).

In addition, for regular tax court cases a verbatim stenographic record is kept, *id.* § 271.07, and the tax court judge must make written findings of fact and a memorandum explaining the reasons for his decision. *Id.* § 271.08. The decision must be filed by the court within three months after the matter is submitted by the taxpayer. *Id.* § 271.20.

241. *Id.* § 271.21(2).

242. *See id.* § 271.21(6). A taxpayer commences an action in the small claims division by filing a petition with the tax court clerk, in the form prescribed by the tax court, explaining the nature of his claim. *Id.* § 271.21(5). The judge may receive whatever testimony and other evidence he deems necessary or desirable, and sales ratio studies done by the department of revenue are admissible without foundation. *Id.* § 271.21(6). All testimony is received under oath, the taxpayer may appear on his own behalf or by his attorney, and no transcript is kept of the proceedings. *Id.* If the small claims division docket becomes overburdened, the tax court is empowered to appoint referees to decide cases. *Id.* § 271.21(10).

243. *Id.* § 271.21(8). The judge has broad power to order a reduction in the assessment or a refund of a tax, or to take any other necessary measures. *Id.* The court's decision has no precedential value. *Id.*

244. *Id.* § 271.01(5). This requirement potentially could eliminate much of the utility of the small claims division because the local board of review meets very soon after the proposed assessment is first determined by the assessor. Undoubtedly, many homeowners do not appear before the local board of review and therefore are precluded from utilizing the route of the small claims appeal. The legislature dealt with this problem in part by requiring that the taxpayer be notified, at the same time he is notified of his assessment, of his right to appeal to the small claims division and of the fact that he must first appear before the local board of review and the county board of equalization. *Id.* § 271.21(4).

245. *See notes 226, 234 supra* and accompanying text.

246. *See Act of May 27, 1977, ch. 307, §§ 1-32, 1977 Minn. Laws 606 (amended 1978) (codified at MINN. STAT. §§ 271.01-.22).*

247. MINN. STAT. § 271.01(1) (Supp. 1977).

248. The legislature had created a part-time tax court in 1939. *See Act of Apr. 22, 1939,*

has no previous counterpart.<sup>249</sup> The creation of a full-time tax court and a small claims division represents a potentially major reform in Minnesota property tax law. Valuation of property requires special expertise of an essentially nonlegal nature; therefore, litigants should be assured of a fair and technically sound decision by a full-time, impartial,<sup>250</sup> specialized tax court. Moreover, the small claims division represents a major improvement for taxpayers whose claims do not merit the expense of a full, formal trial. Thus, with regard to appeals from orders of the commissioner of revenue, the statute on tax court review is relatively clear and should create few problems. However, as will be discussed in relation to district court review,<sup>251</sup> the tax court also has jurisdiction in other property tax assessment cases and the rules and jurisdiction of the tax court in these cases are somewhat ambiguous.

### 5. Supreme Court Review

Tax court decisions are appealable to the Minnesota Supreme Court by certiorari within sixty days after notice of filing of the tax court's decision.<sup>252</sup> The appeal is treated in the same basic manner as other appeals to the supreme court.<sup>253</sup> The supreme court will consider the tax court decision *prima facie* valid<sup>254</sup> and will reverse only upon a clear showing that the tax court was without jurisdiction, that the order of the tax court was not supported by the evidence, or that the tax court committed a prejudicial error of law.<sup>255</sup>

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ch. 431, art. VI, § 10, 1939 Minn. Laws 932 (repealed 1977).

249. See Act of May 27, 1977, ch. 307, § 4, 1977 Minn. Laws 607 (codified at MINN. STAT. § 271.01(5)).

250. Tax court judges are selected on the basis of experience with and knowledge of the tax laws; they shall be nonpartisan to the extent possible, and no more than two can be affiliated with the same political party. *Id.* § 2, 1977 Minn. Laws 606. When this section of the session laws was codified, the requirements that the judges be nonpartisan and that no more than two be affiliated with the same political party were excluded, apparently inadvertently. See MINN. STAT. § 271.01(1) (Supp. 1977). Although the court is designed to be impartial, it nonetheless is an agency of the executive branch of state government, not the judicial branch. *Id.*

251. See notes 271-77 *infra* and accompanying text.

252. MINN. STAT. § 271.10(2) (Supp. 1977). The taxpayer must obtain a writ of certiorari from the supreme court and serve it upon the commissioner of revenue, the attorney general, and all parties to the tax court proceeding. *Id.* Moreover, the taxpayer must pay the appeal fee and post bonds in the same manner as in the case of an appeal from district court. *Id.*

253. The Minnesota Supreme Court recently held that appeals from the tax court are appealable either under MINN. STAT. § 271.10(2) (Supp. 1977) or under Rules 115 and 125 of the Minnesota Rules of Civil Appellate Procedure. *Oster & Pederson, Inc. v. Commissioner of Taxation*, \_\_\_ Minn. \_\_\_, \_\_\_, 266 N.W.2d 162, 164 (1978). Thus, although the two procedures are substantially similar, the taxpayer nonetheless has an option to appeal under either process.

254. See, e.g., *Village of Burnsville v. Commissioner of Taxation*, 295 Minn. 504, 508, 202 N.W.2d 653, 657 (1972) (tax court is a specialized tribunal; on appeal its decision will be upheld if the evidence reasonably supports the tax court's determination of value).

255. MINN. STAT. § 271.10(1) (1976).

## B. District Court Review—Tax Court Review

### 1. District Court Review

The administrative review process described above gives the taxpayer a number of opportunities to obtain redress for overassessments, unequal assessments, or other illegal assessments. The administrative process, however, has at least one major drawback: if a taxpayer does not object to the assessment before the local board of review, which meets shortly after the proposed valuation is determined by the local assessor, he normally is precluded from appealing further within the administrative review process. This is so because every stage of that process usually is predicated upon the taxpayer having presented his claim at the previous stage.<sup>256</sup> Consequently, the requirement that the taxpayer apply to the local board of review for a reduction in valuation, in effect, establishes an extremely short statute of limitations insofar as administrative review is concerned. For this reason a large number of property tax assessment cases, at least in the past, have been decided through the district court review process.

A taxpayer may bring a district court action by serving copies of his petition upon the county auditor, treasurer, and attorney and filing the petition, with proof of service, in the district court prior to June 1 of the year the tax becomes payable,<sup>257</sup> which is the year after the year the assessment is made.<sup>258</sup> If the petition is not filed by June 1, the taxpayer's district court remedy is forfeited.<sup>259</sup> Moreover, the taxpayer must pay fifty percent of the disputed tax by June 1, unless the court grants permission to do otherwise.<sup>260</sup> Cases are tried in the district court of the

256. See notes 226, 234 *supra* and accompanying text.

257. MINN. STAT. § 278.01 (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West).

258. Compare MINN. STAT. § 273.01 (1976) with *id.* § 276.04 (Supp. 1977).

259. *Id.* § 278.01, as amended by Act of Mar. 28, 1978, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West); see *In re Cancellation of Ditch Assessments*, 213 Minn. 70, 71-72, 5 N.W.2d 64, 65-66 (1942) (filing of petition by June 1 is a condition precedent to the granting of the requested relief).

260. MINN. STAT. § 278.03 (1976), as amended by Act of Mar. 28, 1978, ch. 672, § 10, 1978 Minn. Sess. Law Serv. 426 (West). To receive permission to continue the action past June 1 without paying one-half of the taxes, or with paying a reduced amount, the taxpayer must make the application to the court at least 10 days before June 1 and must give the county attorney and county auditor at least 10 days notice of the application. The taxpayer must establish that the action has been taken in good faith; that there is probable cause to believe that the tax may be determined to be less than 50% of the amount levied; and that payment of 50% of the amount levied would work a hardship upon the petitioner. MINN. STAT. § 278.03 (1976), as amended by Act of Mar. 28, 1978, ch. 672, § 10, 1978 Minn. Sess. Law Serv. 426 (West).

If the action is not completed by November 1 of the year the tax is due the taxpayer must then pay 50% of the remaining amount due, unless he again files an application following the same procedure described above. MINN. STAT. § 278.03 (1976), as amended by Act of Mar. 28, 1978, ch. 672, § 10, 1978 Minn. Sess. Law Serv. 426 (West).

If payment of taxes is not made when due, the action is automatically dismissed unless

county in which the tax was levied.<sup>261</sup> The trial is before the court, sitting without a jury,<sup>262</sup> and ordinary rules of evidence and procedure are not strictly followed as the court is instructed to disregard all technicalities not affecting the substantial merits of the proceedings.<sup>263</sup> The district court is empowered to decide claims that the property was unequally assessed, assessed at greater than its market value, illegally assessed, or exempt from taxation.<sup>264</sup> Decisions of the district court are appealable to the supreme court in the same manner as other district court actions.<sup>265</sup>

District court jurisdiction appears to be very broad; the taxpayer is not required to exhaust his administrative remedies and any person with any interest in the property can obtain district court review.<sup>266</sup> Nonetheless, limitations on the district court's jurisdiction do exist. For example, a taxpayer who appeals a decision of the commissioner of revenue to the tax court is precluded from bringing the same action in district court.<sup>267</sup> Moreover, prior to the 1977 amendments creating the new tax court the supreme court stated, based on a former statute,<sup>268</sup> that appeal to the tax court was the sole method for objecting to a decision of the commissioner of revenue.<sup>269</sup> Thus, district court review of the commis-

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the court waives payment and permits the petitioner to continue the action without payment of the taxes. MINN. STAT. § 278.03 (1976), *as amended by Act of Mar. 28, 1978*, ch. 672, § 10, 1978 Minn. Sess. Law Serv. 426 (West). The court has modified this potentially harsh result, however, by holding that excusable mistake or neglect are grounds for vacating the dismissal, thus reinstating the action. *See Thunderbird Motel Corp. v. County of Hennepin*, 289 Minn. 239, 240, 183 N.W.2d 569, 570 (1971).

When the taxpayer is required to pay part of the tax pursuant to section 278.03 and prevails on the merits, he is entitled to interest on the amount of payments refunded at six percent from the date of filing the petition for review or from the date of payment of the taxes, whichever is later. *E.g., Hedberg & Sons v. County of Hennepin*, 305 Minn. 80, 94-96, 232 N.W.2d 743, 752-53 (1975).

261. MINN. STAT. § 278.01 (Supp. 1977), *as amended by Act of Mar. 28, 1978*, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West).

262. *See* MINN. STAT. § 278.05 (Supp. 1977) ("The court shall . . . hear and determine the claims, objections, or defenses made by the petition and shall direct judgment accordingly . . .").

263. *Id.* The court is further instructed to give the case precedence over all other matters before the court. *Id.*

264. *Id.* § 278.01(a), *as amended by Act of Mar. 28, 1978*, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West).

265. *See* MINN. STAT. § 278.13 (1976).

266. *Id.* § 278.01(a) (Supp. 1977), *as amended by Act of Mar. 28, 1978*, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West). Unlike Minnesota, some states do require exhaustion of administrative remedies before judicial review can be obtained. *See, e.g., Traverse Beach Ass'n v. Township of Elmwood*, 142 Mich. 297, 298, 105 N.W. 768, 769 (1905).

267. MINN. STAT. § 271.09(1) (Supp. 1977) (all decisions of tax court, unless appealed further to the supreme court, are final and conclusive upon all the parties as to all the issues decided).

268. Act of Apr. 22, 1939, ch. 431, art. 6, § 18, 1939 Minn. Laws 936 (repealed 1977).

269. *See Independent School Dist. No. 99 v. Commissioner of Taxation*, 282 Minn. 425, 427 n.5, 165 N.W.2d 250, 252 n.5 (1969).

sioner's decision was precluded. This statement, however, may not be accurate in light of the 1977 legislation, and therefore the district court now may have jurisdiction even if an appeal was taken to the commissioner prior to the district court action.<sup>270</sup>

## 2. Tax Court Review

Besides having jurisdiction to decide assessment cases appealed from the commissioner of revenue, the new tax court also has jurisdiction to decide all cases that the district court is authorized to decide under chapter 278 of Minnesota Statutes.<sup>271</sup> When the present tax court was created in 1977 its jurisdiction in this regard was uncertain. The 1977 legislation purported to give the tax court "sole, exclusive, and final authority" to decide all issues of fact and law arising under the state tax laws,<sup>272</sup> thus suggesting that the legislation implicitly precluded district court review under chapter 278. Other provisions of the legislation, however, indicated that district court review remained available.<sup>273</sup> Further confusion was added by an oblique suggestion that district courts, apparently without the approval of the parties, could transfer property tax cases to the tax court.<sup>274</sup>

The uncertainty of the 1977 legislation was remedied by the legislature in 1978, when it amended section 278.01 to clarify that chapter 278 applies to the tax court as well as the district court.<sup>275</sup> Taxpayers now can bring assessment cases under chapter 278 in either the district court or the tax court. Moreover, the rules, procedures, and time limitations of that chapter, as outlined above for district court review, apply equally to tax court review. The legislature in 1978 also explicitly authorized district courts to transfer property tax cases to the tax court, apparently

270. See MINN. STAT. § 271.09(1) (Supp. 1977) ("*U*nless an appeal is taken to the district court, the right of appeal herein provided shall be the exclusive remedy for reviewing the action of the commissioner of revenue . . ." (emphasis added)). This section replaced a prior provision which stated that an order of the commissioner of revenue could be appealed only to the tax court, with no exception provided for district court actions. See note 268 *supra* and accompanying text. Consequently, the inclusion of the language concerning appeal to district court that was added by the 1977 legislation presumably was intended to alter the prior law and provide a right of appeal of decisions by the commissioner of revenue to the district court as well as the tax court.

271. See Act of Mar. 28, 1978, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West) (section 278.01 of Minnesota Statutes is amended to give tax court same jurisdiction as district court).

272. Act of May 27, 1977, ch. 307, § 4, 1977 Minn. Laws 607 (codified at MINN. STAT. § 271.01(5)).

273. *Id.* §§ 15-16, 1977 Minn. Laws 612 (codified at MINN. STAT. § 271.09(1)-(2)).

274. *Id.* § 4, 1977 Minn. Laws 607 (codified at MINN. STAT. § 271.01(5)). Based on this provision, the Hennepin County District Court voted to transfer its entire backlog of property tax assessment cases to the new tax court. See Minutes of the Special Meeting of the Judges of District Court, Hennepin County, Minnesota (August 11, 1977).

275. Act of Mar. 28, 1978, ch. 672, § 9, 1978 Minn. Sess. Law Serv. 426 (West) (to be codified at MINN. STAT. § 278.01).

without first obtaining the approval of the parties.<sup>276</sup>

The wisdom of permitting review under chapter 278 by either the tax court or the district court can be questioned. Because of the desirability of specialized expertise in this area, limiting appeals to the tax court would go far to ensure uniform and fair treatment for all taxpayers.<sup>277</sup> Moreover, it would encourage judicial efficiency, because the tax court, with its special expertise and rules designed specifically for tax cases, should be able to resolve assessment disputes more quickly than district courts. Consequently, the legislature should give serious consideration to abolishing district court review and granting only the tax court the jurisdiction presently held by both the tax court and the district court under chapter 278 of Minnesota Statutes.

### C. Tax Abatement

Under the administrative, district court, and tax court review processes the taxpayer has the right to have his property tax assessment reviewed according to relatively definite legal standards. Occasions arise, however, when a taxpayer may be precluded from obtaining relief through these review processes. For example, the taxpayer may allow the applicable statutes of limitations to run without objecting to the assessment, or his property may be destroyed by fire after the January 2 assessment cutoff date.<sup>278</sup> In these situations where the taxpayer has no legal recourse yet suffers a hardship because of a property tax or assessment, the commissioner of revenue has broad equitable power to reduce or "abate" the tax or assessment as he deems just.<sup>279</sup> The commissioner's abatement power is purely discretionary and may be reviewed only for abuse of discretion.<sup>280</sup> It is designed to provide a remedy for aggrieved taxpayers where the courts and taxing authorities cannot

276. *Id.*

277. See ADVISORY COMM'N, *supra* note 159, at 4 (Assessment Notification, Review and Appeal Procedure Act § 5) (commission model act establishes specialized tax court to decide assessment appeals).

278. See case cited in note 13 *supra*.

279. MINN. STAT. § 270.07(1) (1976) provides:

Except as otherwise provided by law, [the commissioner of revenue] shall have power to grant such reduction or abatement of assessed valuations or taxes and of any costs, penalties or interest thereon as he may deem just and equitable, and to order the refundment, in whole or in part, of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid.

The policy of the department of revenue, apparently unwritten, is that it will not abate or reduce a property tax or assessment except for taxes payable in the current year or the two prior years. Moreover, each county has its own standards, which may permit abatement for a shorter period of time than the state. Interview with Lyle Ask, Director of the Property Equalization Division of the Department of Revenue, State of Minnesota, in St. Paul (Apr. 4, 1978).

280. See *In re Calhoun Beach Holding Co.*, 205 Minn. 582, 588, 287 N.W. 317, 321 (1939); *In re People's Independent Tel. Co.*, 156 Minn. 87, 89-90, 194 N.W. 317, 318 (1923).



legally do so.<sup>281</sup>

To obtain an abatement the taxpayer must submit an application to the commissioner, accompanied by a statement of facts explaining the basis for the request.<sup>282</sup> Moreover, the taxpayer must obtain the approval of both the county auditor and the county board of commissioners or the board of abatement in any city having such a board.<sup>283</sup> Consequently, the abatement cannot be obtained without the approval of the local taxing authorities as well as the commissioner of revenue.<sup>284</sup>

The commissioner's tax abatement power is obviously a malleable form of relief and provides a needed remedy to avoid the injustices that might otherwise result under the Minnesota property tax laws. Applications for abatement constitute a major portion of the petitions received by the commissioner each year;<sup>285</sup> the abatement process thus provides a potentially valuable, last-chance remedy for taxpayers who have not otherwise been able to obtain adequate relief.

#### D. Injunctive and Other Extraordinary Relief

Section 275.26 of Minnesota Statutes provides that a taxpayer may obtain injunctive relief to stop the collection of illegally levied property taxes or to have the levy corrected. At least one taxpayer has argued that this statute permits an injunction to stop an illegal assessment, but the Minnesota Supreme Court in *Fichtner v. Schiller*<sup>286</sup> rejected the argument, holding that the statute cannot be invoked when property has been unequally assessed or overvalued.<sup>287</sup> The court distinguished between a levy, which refers to the legislative act of determining the total number of tax dollars to be raised,<sup>288</sup> and an assessment, which refers to the valuation of property for tax purposes;<sup>289</sup> only the former can be enjoined under section 275.26.<sup>290</sup> Thus, no statutory basis appears to exist for obtaining extraordinary relief in property tax assessment cases in Minnesota.<sup>291</sup>

281. *In re Calhoun Beach Holding Co.*, 205 Minn. 582, 588, 287 N.W. 317, 321 (1939).

282. MINN. STAT. § 270.07(1) (1976).

283. *Id.*

284. *Id.*; see *State ex rel. Foley Bros. & Kelly v. Minnesota Tax Comm'n*, 103 Minn. 485, 489-90, 115 N.W. 647, 648-49 (1908) (approval of county board and county auditor is a condition precedent to obtaining an abatement or reduction under this section); *Clarke v. Board of County Comm'rs*, 66 Minn. 304, 308, 69 N.W. 25, 27 (1896) (both county board and county auditor must recommend an abatement or reduction).

285. See *Johnson*, *supra* note 1, at 439.

286. 271 Minn. 263, 135 N.W.2d 877 (1965).

287. *Id.* at 267, 135 N.W.2d at 880.

288. *Id.* at 266-67, 135 N.W.2d at 879-80.

289. *Id.*

290. *Id.* at 267, 135 N.W.2d at 880. The court stated that the taxpayer's exclusive remedy was under chapter 278, relating to district court review. *Id.*

291. See *id.* at 268, 135 N.W.2d at 881 (Declaratory Judgments Act is not available to test questions of valuation and assessment in real estate tax matters). But see MINN. STAT. § 270.11(5), (1976), (commissioner of revenue may institute investigations of allegedly

At various times taxpayers in Minnesota have sought extraordinary, nonstatutory relief for allegedly unequal or excessive assessments. The court consistently has rejected these claims, reasoning that adequate statutory procedures exist for objecting to assessments and that these procedures are the taxpayers' exclusive remedies.<sup>292</sup> Thus, for example, the court has held that injunctions,<sup>293</sup> declaratory judgments,<sup>294</sup> and mandamus<sup>295</sup> cannot be utilized to attack allegedly erroneous assessments. Consequently, unless the taxpayer can show the statutory procedures for relief are inadequate, which is extremely doubtful under present Minnesota law,<sup>296</sup> injunctive and other extraordinary relief is not available.

### E. Delinquent Tax Proceedings

A number of older Minnesota cases hold that the defenses of unequal, illegal, or excessive assessments can be raised in delinquent property tax proceedings.<sup>297</sup> These cases, however, are from a period when delinquent tax proceedings were the only means by which such objections could be raised in a judicial proceeding. In 1935, the legislature enacted chapter 278 of Minnesota Statutes,<sup>298</sup> which grants district courts the jurisdiction to review allegedly unequal, illegal, or excessive assessments before the property tax becomes delinquent.<sup>299</sup> Section 278.13 provides, in part, that "[n]o defense or objection which might have been interposed by proceedings hereunder shall be interposed in delinquent tax proceedings except the defense that the taxes levied have been paid or that the

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discriminatory assessment practices in the state, following complaint by a taxpayer); *id.* § 270.16 (upon complaint by taxpayer or others that considerable real estate in a taxing district has been improperly assessed, the commissioner can order a reassessment of that real estate if to do so would be in the best interests of the state).

292. See *Larson v. Freeborn County*, 267 Minn. 383, 126 N.W.2d 771 (1964); *Rosso v. Village of Brooklyn Center*, 214 Minn. 364, 368, 8 N.W.2d 219, 221 (1943).

293. See, e.g., *Rosso v. Village of Brooklyn Center*, 214 Minn. 364, 369, 8 N.W.2d 219, 221 (1943) (chapter 278 provides adequate remedy, and therefore injunctive relief is not available).

294. See *Land O'Lakes Dairy Co. v. Village of Sebeka*, 225 Minn. 540, 548-49, 31 N.W.2d 660, 665, *cert. denied*, 334 U.S. 844 (1948).

295. See *Evanson v. Commissioner of Taxation*, 280 Minn. 559, 159 N.W.2d 259 (1968).

296. See, e.g., *Larson v. Freeborn County*, 267 Minn. 383, 387, 126 N.W.2d 771, 773 (1964) (taxpayer who allows statute of limitations to run under chapter 278 cannot bring an action for equitable relief; an adequate remedy at law existed, and the taxpayer merely failed to invoke it); *Land O'Lakes Dairy Co. v. Village of Sebeka*, 225 Minn. 540, 548-49, 31 N.W.2d 660, 665 (court states emphatically that chapter 278 was intended to be the exclusive judicial remedy available to object to assessments), *cert. denied*, 334 U.S. 844 (1948).

297. See, e.g., *County of Redwood v. Winona & St. Peter Land Co.*, 40 Minn. 512, 518-19, 42 N.W. 473, 475 (1889), *aff'd sub nom. Winona & St. Peter Land Co. v. Minnesota*, 159 U.S. 526 (1895).

298. Act of Apr. 25, 1935, ch. 300, §§ 1-14, 1935 Minn. Laws 539.

299. See notes 256-70 *supra* and accompanying text.

property is exempt from the taxes so levied." Consequently, the prior case law allowing defenses based on overvaluation or unequal assessments is no longer valid and those defenses cannot be raised in delinquent tax proceedings.<sup>300</sup>

## V. CONCLUSION

This Note indicates that in recent years the Minnesota Supreme Court and Minnesota Legislature have been active in the area of property tax assessments. While this activity has resulted in many improvements, it also has been incomplete and, moreover, has created some additional ambiguities and inequities. Perhaps the best manner to summarize what Minnesota has achieved in the property tax assessment field, and what remains to be achieved, is to compare existing Minnesota law with suggestions that have been made to improve the property tax assessment system.

1. *A Workable Property Tax Assessment Statute.* A recognized prerequisite to an efficient and equitable property tax assessment system is a workable statute.<sup>301</sup> The Minnesota statutory provisions relating to property tax assessments do not adequately fill this need. The provisions on assessments are scattered throughout a number of property tax chapters and the review and appeal provisions are set forth in an almost random fashion.<sup>302</sup> Moreover, antiquated and redundant statutes remain on the books and add confusion to an already confusing statutory scheme.<sup>303</sup> A thorough revision of Minnesota's property tax statutes certainly would not be a simple task, but, if done carefully and with recognition of the procedural and substantive problems Minnesota taxpayers presently face, it would be well worth the time and resources expended.

2. *A Specialized Judicial Tribunal.* The use of a specialized court to resolve property tax assessment disputes frequently is mentioned as a worthwhile reform.<sup>304</sup> Minnesota took a step in the direction of accomplishing this reform when it established a full-time tax court in 1977.<sup>305</sup> However, the legislature has retained the dual jurisdiction of the tax

300. See *State v. Elam*, 250 Minn. 274, 84 N.W.2d 227 (1957) (claim that property was unequally assessed cannot be raised in delinquent tax proceedings).

301. See Back, *supra* note 188, at 33.

302. See MINN. STAT. § 273.01 (1976) (assessor can correct erroneous assessments); *id.* § 274.01 (Supp. 1977) (review by local board of review); *id.* § 274.13 (review by county board of equalization); *id.* § 270.11(6) (1976) (review by commissioner of revenue); *id.* ch. 271 (1976 & Supp. 1977) (tax court review), as amended by Act of Mar. 28, 1978, ch. 672, §§ 1-4, 1978 Minn. Sess. Law Serv. 423 (West); MINN. STAT. ch. 278 (1976 & Supp. 1977) (district court review), as amended by Act of Mar. 28, 1978, ch. 672, §§ 9-10, 1978 Minn. Sess. Law Serv. 426 (West) (amended to include tax court).

303. See, e.g., notes 228-33 *supra* and accompanying text.

304. See, e.g., ADVISORY COMM'N, *supra* note 159, at 4 (Assessment Notification, Review and Appeal Procedure Act § 5).

305. See notes 246-49 *supra* and accompanying text.

court and the district court in most assessment cases,<sup>306</sup> thus diluting the positive effect of the new tax court. Serious consideration therefore should be given to abolishing the district court's jurisdiction in assessment cases.

3. *Expertise of Assessors.* A key reform is to require that assessors have the requisite expertise to perform their jobs adequately. Two complementary steps can be taken to achieve this: (1) requiring certification of assessors<sup>307</sup> and (2) enlarging the property tax assessment districts to justify hiring assessors with the necessary expertise and to encourage specialization.<sup>308</sup> The Minnesota Legislature has provided for the training and certification of assessors,<sup>309</sup> but it has done little to enlarge assessment districts.<sup>310</sup>

4. *Notice and Disclosure of Information.* Notice and disclosure of information are vital for taxpayers to determine whether they have been improperly assessed. These reforms can be achieved by a number of means, none mutually exclusive: require full-value assessment;<sup>311</sup> require publication of assessment/sales ratio studies and permit their use in proceedings to attack assessments;<sup>312</sup> require assessors to disclose to the taxpayer, upon request, how the assessment was determined;<sup>313</sup> and require the assessor to notify the taxpayers, in a timely manner, of the procedures for attacking assessments.<sup>314</sup> Minnesota has taken some action in this area, but has not attempted a comprehensive reform. The legislature requires full-value assessments<sup>315</sup> and has authorized the preparation of assessment/sales ratio studies,<sup>316</sup> although these studies are admissible only in specific types of cases.<sup>317</sup> Assessors are not specifically required to make their files and records relating to determination of assessments open to objecting taxpayers, although the legislature in

306. See notes 271-76 *supra* and accompanying text.

307. See, e.g., Note, *supra* note 185, at 512.

308. See, e.g., Note, *supra* note 188, at 1470. If all assessing were done at the county level, it also would eliminate the need for a local board of review and the county board of equalization could be the first board to review assessments and hear complaints from taxpayers.

309. See note 184 *supra* and accompanying text.

310. See note 186 *supra*.

311. See, e.g., Aaron, *supra* note 152, at 156-57.

312. See, e.g., Ehrman, *Administrative Appeal and Judicial Review of Property Tax Assessments in California—The New Look*, 22 HASTINGS L.J. 1, 6-7 (1970) (discussion of improvements made by California Legislature with suggestions for further improvements).

313. *Id.* at 7-10.

314. See, e.g., ADVISORY COMM'N, *supra* note 159, at 2 (Assessment Notification, Review and Appeal Procedure Act § 1).

315. See notes 150-51 *supra* and accompanying text.

316. See notes 92-93, 155-62 *supra* and accompanying text.

317. See MINN. STAT. § 124.212(11)(b) (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 706, § 32, 1978 Minn. Sess. Law. Serv. 545 (West) (sales ratio studies only admissible in actions brought in small claims division of tax court and in actions brought under chapter 278 involving property described in section 273.13, subdivisions 6, 6a, 7, 7b, 10, and 12).

1978 enacted a statute that allows a taxpayer to gain access to vital information concerning the manner in which the valuation of his property was determined.<sup>318</sup> Finally, taxpayers who can appeal to the small claims division of the tax court must be informed of the procedure for so doing,<sup>319</sup> which represents a major improvement, but other taxpayers need not be informed of their review rights.

5. *Accessibility of Meaningful Review Process.* Accessibility to the review process is important for at least two reasons. First, accessibility maintains fairness and equality among taxpayers. Second, accessibility reduces, to some extent, the already regressive nature of the property tax by affording review to low-income taxpayers as well as wealthy taxpayers.<sup>320</sup> The Minnesota Legislature in 1977 passed two bills to help improve accessibility. It passed an act establishing a small claims division of the tax court<sup>321</sup> and an act suggesting that homeowners can obtain relief when their property is assessed at a more than ten-percent variance from the local assessment/sales ratio.<sup>322</sup> However, accessibility is limited by other statutes and judicial decisions. For example, the statute of limitations for administrative review of assessments, which may be the only review process reasonably available to most taxpayers, is unreasonably short.<sup>323</sup> Moreover, taxpayers normally must pay one-half of the disputed tax before they can obtain judicial review of an assessment, although the statute contains provisions whereby the court can waive this requirement.<sup>324</sup> Finally, the *Hamm* requirement of proof of intent to discriminate unduly restricts the remedy for taxpayers whose property has been unequally assessed.<sup>325</sup>

This Note is intended to clarify much of Minnesota law concerning grounds and procedures for objecting to property tax assessments. Yet, as the above discussion indicates, a clarification of existing Minnesota

318. See Act of Apr. 5, 1978, ch. 766, § 4, 1978 Minn. Sess. Law Serv. 905 (West) (to be codified at MINN. STAT. § 272.70), which classified assessor's field cards as private data under the Minnesota Data Privacy Act. Field cards are defined as cards on which the assessor records his observations and opinions with respect to the property he assesses. *Id.* By classifying the field cards as private data, the legislature has made them available to the objecting taxpayers but not to the public in general. See MINN. STAT. § 15.162(5a) (1976); Note, *Tortious Invasion of Privacy: Minnesota as a Model*, 4 WM. MITCHELL L. REV. 163, 166 n.15 (1978).

319. MINN. STAT. § 271.21(4) (Supp. 1977).

320. See Ross, *The Property Tax Assessment Review Process: A Cause for Regressive Property Taxation?*, 24 NAT'L TAX J. 37 (1971) (empirical study that suggests the property tax can be rendered more regressive because generally only the wealthy with valuable property can afford or justify using the property tax review process; consequently, they tend to have their valuations reduced while the poorer property owners do not).

321. See notes 241-49 *supra* and accompanying text.

322. See notes 155-62 *supra* and accompanying text.

323. See text accompanying note 256 *supra*.

324. See note 260 *supra*.

325. See notes 123-32 *supra* and accompanying text.

**law is not sufficient; the Minnesota Supreme Court and Minnesota Legislature must continue to make the decisions necessary to render Minnesota law on property tax assessments both equitable and efficient.**

