COUNTY TAX EQUALIZATION AND THE PAGE 8 FORMULA: FAIRNESS THE HARD WAY

> The system of equalizing percentage shares by bringing the aggregates as near as may be to the same relative standard of true value is the expedient followed historically by the Legislature in face of the chronic failure of local assessors to assess property at a uniform standard of value. There has been general agreement for over a century that individual property valuations and assessments have been and are marred by the grossest inequities.[1]

INTRODUCTION

In 1972 the 567 municipalities in New Jersey shared the burden of 477,210,000 dollars in county taxes.[2] To meet this burden each municipality is commanded by statute to assess all real property subject to taxation at 100 percent of true value.[3] It is evident that local assessors have failed to perform this command since the statewide average ratio of the assessed value of real property to its true value, as of October 1, 1972, is 74.43 percent.[4] The reasons for this apparent failure to follow the dictate of the statute include inadequate funding, lack of training, lack of adequate personnel, "the frailties of human nature," and, perhaps in some instances, a deliberate attempt to engage in competitive underassessment.[5]

Each county is required by statute to equalize valuations among the taxing districts in the county. The practical difficulty of doing this effectively in light of the variations in local assessment methods has caused the counties to turn to the state's independently prepared table of equalized valuation established each year for the apportioning of

---

[1] City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 378, 113 A.2d 753, 756 (1955).

[2] DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY, ANNUAL REPORT OF THE DIVISION OF TAXATION 102-03 (1972) [hereinafter cited as ANNUAL REPORT.] The total real property tax collected by municipalities was expended as follows:

Contribution to County	$ 477,210,000	19.6%
Municipal Government	$ 525,352,000	21.5%
School	$1,404,172,000	57.5%
Veterans-Senior Citizens	$ 12,899,000	1.4%

[3] N.J. STAT. ANN. § 54:4-2.25 (1960).

[4] ANNUAL REPORT, supra note 2, at 362 (table).

[5] See Gibraltar Corrugated Paper Co. v. Township of North Bergen, 20 N.J. 213, 219, 224, 119 A.2d 135, 137, 140 (1955); City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 379, 113 A.2d 753, 757 (1955).

school aid.[6] The *Table of Equalized Valuations* is published on October 1 each year by the Director of the Division of Taxation and lists the true value and the average ratio of assessed value to true value of real property in each of the 567 local taxing districts. This table is certified to the State Commissioner of Education for his use in calculating and distributing state school aid.[7] These same equalized valuations and the sales study ratio used to develop them are also employed by the counties in preparing their tables of equalized valuation for apportioning county taxes among municipalities.[8]

The county boards of taxation are not obliged to adopt the *Table of Equalized Valuations* as supplied by the Division of Taxation. When a county board elects not to use the Director's ratios, it must, in formulating its own method, adopt a "reasonable and efficient" equalization formula.[9] Failure to provide this "reasonable and efficient" method could result in some municipalities carrying a disproportionate share of the cost of county government.[10] The purpose of this comment is to explore the background, mechanism, and effect of apportionment of county taxes among municipalities in New Jersey.

EQUALIZATION—HISTORICAL PERSPECTIVE

The real property tax in New Jersey traces back to 1670, when a levy of one-half penny per acre was enforced to support the central government.[11] From the beginning, local assessors had the responsi-

---

6 N.J. STAT. ANN. § 54:3-17 (Supp. 1972-73). For the purposes of apportioning the county tax burden, a taxing district is a municipality. BUREAU OF GOVERNMENT RESEARCH, RUTGERS, THE STATE UNIVERSITY, HANDBOOK FOR NEW JERSEY ASSESSORS § 101.3 (rev. ed. 1965) [hereinafter cited as HANDBOOK].

7 N.J. STAT. ANN. § 54:1 (Supp. 1972-73). As the courts have repeatedly recognized, whether using tables prepared by the county board of taxation or independent sources, "[e]qualization by the aggregate method is legislative recognition that local assessors do not always perform their duties as required by statute." Gibraltar Corrugated Paper Co. v. Township of North Bergen, 20 N.J. 213, 221-22, 119 A.2d 135, 139 (1955).

8 N.J. STAT. ANN. § 54:3-17 (Supp. 1972-73) states:
   Each county board of taxation shall annually ascertain and determine according
   to its best knowledge and information, the general ratio or percentage of true value
   at which the real property of each taxing district is in fact assessed according to
   the tax lists laid before the board. It shall prepare an equalization table . . . .
These tables are also used for apportioning the cost of regional school districts, *i.e.*, school districts serving more than one municipality. HANDBOOK, *supra* note 6, §§ 101.4 and 101.42.

9 Township of Woodbridge v. Middlesex County Bd. of Taxation, 96 N.J. Super. 532, 536, 233 A.2d 650, 652 (App. Div. 1967).

10 City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 377, 113 A.2d 753, 756 (1955).

11 THE COMMISSION ON STATE TAX POLICY, SIXTH REPORT: THE GENERAL PROPERTY TAX

bility of determining the value of property subject to taxation, and though that duty required assessment at "true value,"[12] property was, as a matter of policy, taxed at a fraction of its value.[13] The problem was made particularly acute by the inclusion of personal property in the general tax base, thus presenting the opportunity for maximum arbitrariness when intangibles were included within the general tax base in 1851.[14] Because the basis of the state tax was property owner-ship, and because only at the local level could that be adequately determined, the individual municipal assessor was a key figure in as-suring accurate proportionate taxing. With those assessors, however, approaching their tasks with emphasis on varying local considerations,[15] their submitted values of taxable property had to face some review.

Errors could substantially lessen one district's tax burden which would then increase the proportionate shares of the others. Thus, to insure that the aggregate taxable base claimed by the assessors was cor-rect, an equalization method was established in 1799. Under its provi-sions, the assessors were to meet annually.

> *And be it enacted,* That when any money shall be directed to be assessed, collected and paid into the treasury of this state, agree-ably to this act, it shall be the duty of the assessors of the several townships, in every county, to meet . . . to ascertain the amount of the certainties, required by law to be rated in the assessment to be made, and to estimate the estate, real and personal, taken by the assessor of each township, at such valuation as they or a majority of them then present shall think reasonable and just, according to the law for the time being for that purpose, and thereby to adjust and fix the proportion or quota of the tax to be levied and collected in each township.[16]

This original equalization scheme for apportioning the collection

---

IN NEW JERSEY 3 (1953) [hereinafter cited as SIXTH REPORT]. The report gives a compre-hensive survey of the history of the New Jersey property tax. *Id.* at 3-12.

12 N.J. CONST. art. 4, § 7, ¶ 12 (1844). While there is no current constitutional pro-vision requiring assessment at true value, there is a statutory provision, N.J. STAT. ANN. § 54:4-2.25 (1960).

13 SIXTH REPORT, *supra* note 11, at 7-9.

14 Law of March 14, 1851, § 7, [1851] N.J. Laws 271 (repealed 1945). Intangible per-sonal property was removed from the general tax base because, in reality, much of it had never been included in it. Assessors did not know how to assess it, the property was easily hidden, and assessors ignored the intangible holdings of a corporation in order to effec-tively compete to become its domicile. SIXTH REPORT, *supra* note 11, at 9.

15 See note 14 *supra* stating the problems faced in dealing with intangible property, which are exemplary of those faced with all taxable property.

16 Law of June 10, 1799, § 3, [1799] N.J. Laws 465.

of state taxes, carried forward in the tax laws of 1846,[17] was effected for the collection of county taxes as well in 1851.[18]

The equalization responsibility in the early laws had laid with the various municipal assessors of a particular county meeting as a group. It evolved, through implementing legislation in 1900, into optional county equalization boards in some counties.[19] In 1906, with the tax burden becoming increasingly heavy and the taxing scheme increasingly sophisticated, permanent county boards of taxation were established with equalization being one of their duties.[20] That duty remains codified in New Jersey law.[21] Historically, assessments in taxing districts have reflected only a percentage of actual fair market value in order to reduce the proportionate share of county taxes.[22] The tax burden, which municipalities assess on an *ad valorem* basis,[23] is founded on the value of taxable ratables in the municipality. That aggregate value, when added to the aggregate values of the other municipalities in the county, constitutes the basis of taxation. The percentage of the aggregate county ratables that the municipality holds is also the measure of the percentage share of county tax the municipality will pay. Thus, the statutory demand for equalization is a response to the unfair distribution of the county tax burden that would result if the assessor's figures on the total taxable base in his municipality were accepted at face value.[24] When the average assessment ratio (the average of the percentages of true market value at which the different parcels

17 Law of April 16, 1846, § 5, [1846] N.J. Laws 158.

18 Law of March 14, 1851, § 13, [1851] N.J. Laws 271.

19 Law of March 22, 1900, ch. 74, § 1, [1900] N.J. Laws 134. The first county board of equalization was established for Hudson County by the Law of April 4, 1873, ch. 697, [1873] N.J. Laws 794.

20 Law of April 14, 1906, ch. 120, § 5, [1906] N.J. Laws 210. The scheme was carried forward by Law of March 4, 1918, ch. 236, § 507, [1918] N.J. Laws 847 and the supplement to that Act, Law of June 11, 1934, ch. 191, § 2, [1934] N.J. Laws 465.

21 N.J. STAT. ANN. §§ 54:3-17, 3-18 (Supp. 1972-73).

22 City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 379, 113 A.2d 753, 756-57 (1955).

23 An *ad valorem* tax is one based on the value of the taxed property and is assessed at a per dollar of value rate. This is the type of general property tax now used by municipalities in New Jersey. The alternative general property tax is called a specific tax under which a dollar amount or maximum dollar amount of tax is fixed on each item of property in a given class. *See, e.g.*, Law of April 16, 1846, § 3, [1846] N.J. Laws 158 which taxed "[a]ll neat cattle, three years old and upwards, [at] any sum not exceeding four cents."

24 City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 378, 113 A.2d 753, 756 (1955); Township of Woodbridge v. Middlesex County Bd. of Taxation, 96 N.J. Super. 532, 536, 233 A.2d 650, 652 (App. Div. 1967).

of property in the municipality are assessed) varied from town to town, the aggregate of those percentage assessments in the county did not establish a common foundation upon which to assess the county tax burden among the municipalities. Some basis of comparability was needed. Ideally that would have been full true value assessments in every municipality[25] which was, in fact, mandated in the 1875 amendment to the Constitution of 1844.[26]

The Constitution of 1947 continued to mandate that the owners of taxable real property be treated equally.[27] However, it substituted "the same standard of value" for the term "true value." At the Constitutional Convention of 1947,

> it plainly appears that "true" value was abandoned because it was thought to restrict the Legislature to a single, inescapable concept of "value." The term "the same standard of value" was designed to permit flexibility in the approach to the valuation of property. At the same time, to avoid discriminatory treatment, the *Constitution of* 1947 requires that whatever "standard of value" is legislated, that "same" standard shall be applied to all real property taxable for local government (*i.e.,* municipal, county, or regional school districts).[28]

Along with the disregard of the specific command to assess at "full and fair value,"[29] the major difficulty with the current equalization statutes is the lack of statutory guidelines concerning the implementation of equalization. The statute requires only that the county boards of taxation

> annually ascertain and determine, according to its best knowledge and information, the general ratio or percentage of true value at which the real property of each taxing district is in fact assessed . . . . [30]

In *Borough of Totowa v. Passaic County Board of Taxation*[31] the county board equalized the real property values by raising the assessors' real property valuations by ten percent for twelve of the sixteen taxing

---

25 City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 381, 113 A.2d 753, 758 (1955).

26 N.J. CONST. art. 4, § 7, ¶ 12 (1844) (as amended 1875) stated that "[p]roperty shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

27 N.J. CONST. art. 8, § 1, ¶ 1 states in part:

Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value . . . .

28 Switz v. Kingsley, 37 N.J. 566, 572, 182 A.2d 841, 843-44 (1962).

29 N.J. STAT. ANN. § 54:4-23 (Supp. 1972-73).

30 N.J. STAT. ANN. § 54:3-17 (Supp. 1972-73).

31 5 N.J. 454, 75 A.2d 874, *rev'g* 7 N.J. Super. 67, 72 A.2d 217 (App. Div. 1950).

districts in Passaic County. Although the appeal of the twelve munici-
palities was directed at the tax rate that had been computed for them
and not the equalization process,[32] the case is, nevertheless, exemplary
of the lack of any scientific method in that equalization process. None
of the twelve towns challenged the additional assessment which was
based solely upon hearings.[33] However, the very fact that twelve were
raised by ten percent and the other four by nothing at all indicates
that the duty to equalize was approached with no explicit or discernible
guidelines.

Since the statute does not specify any particular way to equalize,
any reasonable and efficient method may be employed.[34] Thus, the
situation in the *Totowa* case with the results based on hearings fulfilled
that standard. Cognizant that a better way existed, the New Jersey
supreme court in *City of Passaic v. Passaic County Board of Taxation*[35]
strongly suggested that the counties consult the tables that had been
prepared by the Director of the Division of Taxation in order to ap-
portion funds to municipalities under the State School Aid Law of
1954.[36] Those tables were based on real property ratables[37] and per-
formed an equalizing task similar to that with which the county boards
were charged.

> It is our view that the county boards of taxation not only may
> but should consult the 1954 law as to the kinds of information
> appropriately to be used in the construction of their own tables
> and also that they should take official notice of the Director's deter-

---

[32] In *Totowa* the proportionate share of county taxes was computed by applying the
ratio of the taxing district's aggregate real property valuation, equalized when necessary,
to the aggregate equalized real property valuations in the county, against the total county
taxes to be generated. To that proportionate share of county taxes was added the municipal
costs. That sum was then divided by the total ratables submitted by that municipality,
before equalization by the county board, to obtain the tax rate per one hundred dollars of
assessed valuation. The towns argued that the equalized valuation should be used to
compute the tax rate which would have resulted in a lower rate. The supreme court held,
however, that the equalization process was used only to insure the fair distribution of
county taxes and, if that figure was employed to compute the municipal tax rate, an
unfair tax burden would pass to holders of other taxable property in the municipality,
specifically, personal and second-class railroad property owners. That property had not
been equalized. This conclusion was based on the court's presumption that all classes of
property in each district had been assessed at the same percentage of true value. 5 N.J. at
463-64, 75 A.2d at 878-79.

[33] 7 N.J. Super. at 70, 72 A.2d at 219 (App. Div.), *rev'd*, 5 N.J. 454, 75 A.2d 874
(1950).

[34] City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 385, 113 A.2d 753,
760 (1955).

[35] 18 N.J. 371, 113 A.2d 753 (1955).

[36] N.J. STAT. ANN. §§ 18A:58-1 *et seq.* (Supp. 1972-73).

[37] N.J. STAT. ANN. §§ 54:1-33 to 1-35.5 (Supp. 1972-73).

mination of aggregate assessed to aggregate true valuation of real estate of each taxing district of the county and give due weight to his conclusions.[38]

Ironically, while the statute does leave the manner of determining true value to the Director's discretion, it suggests that the Director refer to the county equalization tables as a source of information.[39] The systematic approach employed by the Director and strongly endorsed in *Passaic* has come to be relied upon by the county boards.

In the *Passaic* case, the supreme court established the link between two statutory schemes or empowerments whose independent use might otherwise have resulted in inconsistency. With two statutory orders to equalize in effect, one for the county boards of taxation and one for the Director of the Division of Taxation, the basis of a municipality's state school aid and its proportionate share of the county taxes could have come from two sets of tables whose figures did not match or could not be compared. Yet, both were based on the aggregate true value of real estate.[40]

There would have been no objection to the use of both tables, even if each employed different standards and methods, had the result been an essentially fair distribution of both aid and taxes. History, however, indicated otherwise. In the *Totowa* case, the facts showed that ten percent had simply been tacked on to the valuations of twelve towns. In *Passaic,* the Passaic county board's action was so arbitrary that the court had to reverse the board's decision even though that determination carried with it a presumption of correctness.[41] The City of Passaic had revalued and submitted to the county board an assessment for 1954 that was less than the prior year, 1953.[42] The county board accepted every other municipality's aggregates, but rejected Passaic's, not

from any judgment that the average assessment ratio of the city was

---

[38] 18 N.J. at 385, 113 A.2d at 760.

[39] N.J. STAT. ANN. § 54:1-35.3 (1960).

[40] 18 N.J. at 385, 113 A.2d at 760.

[41] Town of West Orange v. Essex County Bd. of Taxation, 18 N.J. Misc. 383, 386, 13 A.2d 555, 557 (State Bd. Tax App. 1940). N.J. STAT. ANN. § 54:1-35.4 (Supp. 1972-73) also provides that the Director's table carries a presumption of correctness and states in part:

> In any such proceeding, the director shall be entitled to be heard, and the assessment ratios as promulgated shall be presumed to be correct, and shall not be revised or modified by the Division of Tax Appeals unless the complainant district shall present that upon all the evidence available such ratio or ratios could not reasonably be justified.

[42] 18 N.J. at 390, 113 A.2d at 763. The City of Passaic's submitted assessments were admitted to be only 40 percent of the true value because that was believed to be the approximate average ratio of assessments throughout the county. *Id.*

> to that extent out of line with the other average assessment ratios,
> but solely to restore the city's aggregate to the amount reported for
> 1953.[43]

The basis for the discrepancy in the results arrived at through the
Director of Taxation's equalization method, employing reliable sales
data, and through the county board's method, relying upon generalized
information and knowledge, is clear. The use of the Director's tables
afforded a means of coping with the inability to enforce the command
to assess at true value.

Assessment at true value was not intended as an end in itself, but
only as the best theoretical basis for distribution of the tax burden.[44]
Thus *Gilbraltar Corrugated Paper Co. v. Township of North Bergen*[45]
stated that, while the legislature had left the command for true value
assessment intact although the 1947 constitution had only called for
assessment at the same standard of value, "the dominant principle now
is equality of treatment and burden."[46] In reality that has always been
the standard.[47]

Nevertheless, in *Switz v. Township of Middletown*,[48] the statute
to assess at true value was the basis for an action in lieu of the preroga-
tive writ of mandamus brought to compel the town assessor to assess at
full and fair value. After indicating that the duty was "both clear and
certain," left no element of discretion as to the mode of performance
and, thus, the action would lie,[49] the court refrained from the im-
mediate enforcement of the order not only because of the time needed
to reassess, but also because of the fear that the impact of reassessment
would disrupt the local economy.[50] The case is illustrative of the diffi-

---

43 *Id.*

44 *See* Gibraltar Corrugated Paper Co. v. Township of North Bergen, 20 N.J. 213, 223,
119 A.2d 135, 140 (1955) (Brennan, J., concurring).

> No one identified with the assessment process will deny that a substantial approxi-
> mation of the true value standard can be reached if those charged with the statu-
> tory duty will only use the tools at hand and make a determined effort to
> accomplish the result. There are doubtless methods for doing the job superior to
> those employed by the Director, but at least conscientious local assessors and
> county boards of taxation should be quick to avail themselves of the product of
> the Director's labors . . . .

Id. at 224-25, 119 A.2d at 141 (Brennan, J., concurring).

45 20 N.J. 213, 119 A.2d 135 (1955).

46 *Id.* at 219, 119 A.2d at 137.

47 Baldwin Constr. Co. v. Essex County Bd. of Taxation, 16 N.J. 329, 340, 108 A.2d
598, 603 (1954). *See* Switz v. Township of Middletown, 23 N.J. 580, 593, 130 A.2d 15, 22
(1957).

48 23 N.J. 580, 130 A.2d 15 (1957).

49 *Id.* at 587-88, 130 A.2d at 19. *See* N.J. CONST. art. 6, § 5, ¶ 4; N.J.R. 4:69-1.

50 23 N.J. at 598-99, 130 A.2d at 25. Those fears were more fully expressed by the

culty the court faces when adjudicating upon the full and fair value statute. The enforcement order to reassess was certainly justified under the statute, yet there was to be a two year delay in enforcing it. With some data perhaps aged by two years at the time of enforcement, there may have only been technical compliance with the mandamus order. Thereafter, the only solution available to update the true value assessments would be a new mandamus proceeding. The real value of an order compelling the assessor to assess at true value would lie when the assessments are only a small fraction of true value, thus making the mathematics of equalization less accurate, or when the assessments among the various property owners are disparate. Both of these elements were present in the *Switz* case.[51]

Switz was a milestone. It demonstrated that the historical noncompliance of assessors with the legislative mandate to assess at full and fair value would no longer be ignored by the judiciary. Thus, it was not the assessor's lack of attention to the statutes which finally goaded the legislature into action, but rather the *Switz* decision's value as precedent to force compliance.

A statute amended in 1955, prior to the *Switz* decision, might be construed as legislative recognition that the assessors were not complying with the full and fair value statute. The amended statute required that the assessor swear that his submitted assessment list was formulated "without favor or partiality."[52] The salient point to be derived is that the former version of the statute required that the assessor swear he had assessed the property "at its full and fair value, at such price as in [his] judgment it would sell for at a fair and bona fide sale by private contract."[53] Certainly the legislature, by revising the oath, recognized the assessor's inability or failure to meet his duty.

Although the oath, as revised, removed the danger of an assessor perjuring himself, the enforcement order in *Switz* brought about the distinct possibility that the assessors could be cited for nonfeasance for not complying with the statute. In 1960, the legislature passed N.J. STAT. ANN. § 54:4-2.25 (1960) which reinforced *Switz's* demand. The

questions posed in the opinion of then Justice Weintraub. *Id.* at 605-07, 130 A.2d at 28-30 (Weintraub, J., concurring).

51 *Id.* at 584-85, 130 A.2d at 17-18. The township property was assessed at an average of 16 percent of the true value and assessments among property owners varied from 6 percent to 80 percent of true value.

52 Law of December 19, 1955, ch. 244, § 1, [1955] N.J. Laws 921, *as amended*, N.J. STAT. ANN. § 54:4-36 (1960). The pertinent part of the current version requires that the assessor swear his assessment list was compiled "without favor or partiality, at its taxable value."

53 Law of March 4, 1918, ch. 236, § 501, [1918] N.J. Laws 847.

statute permitted the assessors to assess at a percentage of true value. That percentage was to be set and used on a county-wide basis. The county board in choosing the percentage was governed by N.J. STAT. ANN. § 54:4-2.26 (1960). Thus, while assessments could still reflect a percentage of full and fair market value, which prior legislation and the *Switz* decision would not have permitted, those submitted assessments under the new legislation still had to be based on full and fair market value which comported with prior legislation and the *Switz* command. N.J. STAT. ANN. § 54:4-2.25 might perhaps be regarded as a political public relations statute, permitting the illusion, at least, that underassessment benefitting the community was still in practice.

While dealing with the legislature's response to chronic underassessment, it is pertinent to discuss legislation which permits municipalities to spread the cost of revaluing or reassessing over five years.[54] This might be construed as a realization that reassessment at full and fair value every year is, if nothing else, financially burdensome, and for that reason not feasible in every community.[55]

The inability of the courts to do more than demand compliance, the county board's reluctance to police true value assessments, and the legislature's inaction has, by default, left the Director's table as the most viable means of equally distributing the tax burden.

THREE RESPONSIBILITIES—THE FORMULATION OF THE DIRECTOR'S TABLE

In practice, the mechanism that results in equitable distribution of the burden of county taxes is divided among the three levels of government. The local assessors, the county board of taxation, and the Director of the Division each have duties and responsibilities in developing the final tool, a table of equalized valuations.

The municipal assessor is charged with the responsibility of assessing every property in his municipality as of October 1 of the pre-tax year on the basis of full and fair value, which means the price at which the assessor believes the property would sell, at fair and bona fide sale by private contract.[56] The sale would be as one between a willing buyer and a willing seller; that is, one not obligated to sell dealing with one

---

54 N.J. STAT. ANN. §§ 40A:4-53, 4-55 (1972).

55 *But see* Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 300 A.2d 129 (1973), which attests to the fact that at least that municipality has an established program of annual reassessment.

56 N.J. STAT. ANN. § 54:4-23 (Supp. 1972-73).

not obligated to buy.[57] The assessor has available to him three recognized methods for estimating the value of property for tax purposes. First, the comparative approach, which involves an analysis of sales prices of comparable properties in an effort to establish the price at which a subject property would sell if it were put on the market.[58] Second, the reproduction cost approach based on the determination of the costs of reproducing a replica of the property at current prices and deducting from that cost the sum representing depreciation or loss in value resulting from the fact that the property is not new.[59] Third, the income approach which requires an analysis of the income produced by a property in order to estimate the sum which a person might prudently invest in the purchase of the property.[60] While the courts accept the three approaches as indicators of value, they invariably point out that the result of a single approach in itself can never be accepted absolutely as the true value of property. Wherever possible, the assessor should use all three approaches and make his final determination of value using the approaches as indicators rather than determinants.[61] Since the nature of all three approaches to value involve substantial investments of time and resources, which typically are not at the disposal of the municipal assessor, an alternative technique of updating assessments has received nearly universal application. This is the periodic revaluation[62] of properties on a professional basis by an outside firm.[63]

---

57 Colwell v. Abbot, 42 N.J.L. 111, 115 (Sup. Ct. 1880).

58 HANDBOOK, *supra* note 6, § 501.31; LOCAL PROPERTY TAX BUREAU, DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY, REAL PROPERTY APPRAISAL MANUAL FOR NEW JERSEY ASSESSORS, 143-44 (table) (2d ed. 1963) [hereinafter cited as APPRAISAL MANUAL]. *See In re* Erie R.R. Sys., 19 N.J. 110, 129-30, 115 A.2d 89, 99 (1955).

59 HANDBOOK, *supra* note 6, § 501.32; APPRAISAL MANUAL, *supra* note 58, at 29-30. *See* Town of Kearny v. Division of Tax Appeals, 137 N.J.L. 634, 636, 61 A.2d 208, 210 (Sup. Ct. 1948), *aff'd*, 1 N.J. 409, 64 A.2d 67 (1949); SIXTH REPORT, *supra* note 11, at 19.

60 HANDBOOK, *supra* note 6, § 501.33; APPRAISAL MANUAL, *supra* note 58, at 147-53. *See* Township of North Bergen v. Bergen Blvd. Holding Co., 133 N.J.L. 569, 574, 45 A.2d 623, 626 (Ct. Err. & App. 1946).

61 *See, e.g.*, Aetna Life Ins. Co. v. City of Newark, 10 N.J. 99, 104-09, 89 A.2d 385, 387-90 (1952); City of Passaic v. Gera Mills, 55 N.J. Super. 73, 85, 150 A.2d 67, 73 (App. Div. 1959); Town of Kearny v. Division of Tax Appeals, 137 N.J.L. 634, 636, 61 A.2d 208, 210 (Sup. Ct. 1948), *aff'd*, 1 N.J. 409, 64 A.2d 67 (1949).

62 "Reassessed" means that the local municipal assessor performs the assessment while "revalued" means that a professional assessing group does it. Both terms will be used interchangeably herein. Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 214 n.8, 300 A.2d 129, 134 (1973).

63 ANNUAL REPORT, *supra* note 2, at 116-17. N.J. STAT. ANN. § 54:4-23 (Supp. 1972-73) states that every municipality must assess every year, and yet N.J. STAT. ANN. §§ 40A:4-53 and 4-55 (1972) allow revaluation to be financed over five years.

A revaluation program frequently is confused with the equalization process. The difference is that a revaluation program seeks to spread the tax burden equitably *within*

However, the expenditure of municipal funds for improving assessment techniques or for frequent professional reappraisals meet with little popular support. The local governing body, in common with the people of the community, presumes that revaluation will increase assessed valuations and, therefore, taxes. The fact that revaluations and reassessments are done to promote equality of taxation is almost universally ignored. Therefore, the municipal assessor finds himself, in the years between revaluations, simply carrying forward the previous assessments altered only by the added assessments resulting from new construction.[64] It is this reluctance of the municipality to revalue, balanced against the loss of school aid, which causes some communities in each county to revalue in a given year while others do not.

A vital step in the sales ratio study is the classification of each property into one of the four broad categories: vacant land, residential property, farm property, and all types of commercial property including industrial and multi-unit dwellings.[65] Each line item of real property is designated in one of these four classes by the tax assessor in preparing his tax duplicate. A summary of the total assessed value in each classification is submitted to the county board of taxation with the assessment list on January 10th of the tax year, on form SR3-A. As sales are recorded, the local assessor is required to complete a sales reporting form, SR1-A,[66] showing the assessment, the sale price of the property as verified by the affidavit attached to the deed,[67] and the property class in which it was assessed. In addition to the sales and the assessment data entered on this form, the assessor may comment on any sale which he deems non-usable (provided that it fits one of the twenty-seven specific categories of non-usuable sales),[68] the effect of which is to screen out

---

a taxing district, making sure that each property is assessed on the basis of its value. This is done by the mass appraisal of each taxable property in the taxing district. The equalization process seeks to insure that each taxing district *as a whole* is treated equitably. This is done by determining the aggregate value of all property within the district through a sampling of sales data by the Division of Taxation.

64 SIXTH REPORT, *supra* note 11, at 19-23.

65 HANDBOOK, *supra* note 6, § 1002.2.

66 APPRAISAL MANUAL, *supra* note 58, at 15.

67 N.J. STAT. ANN. § 46:15-6 (Supp. 1972-73). An affidavit of consideration is required on each deed by statute. *See, e.g.,* City of Bayonne v. Division of Tax Appeals, 49 N.J. Super. 230, 234, 139 A.2d 424, 426 (App. Div. 1958).

68 The following categories of deed transactions are not usable when determining the assessment-sales ratios pursuant to N.J. STAT. ANN. §§ 54:1-35.1 to 35.5 (Supp. 1972-73):

(1) Sales between members of the immediate family.

(2) Sales in which "love and affection" are stated to be part of the consideration.

(3) Sales between a corporation and its stockholder, its subsidiary, its affiliate or another corporation whose stock is in the same ownership.

(4) Transfers of convenience; for example, for the sole purpose of correcting

transactions which would tend to cast doubt on the arms length nature of the transaction.

The county boards of taxation are charged by statute with the responsibility for equalizing the levels of assessed valuations among com-

---

defects in title, a transfer by a husband either through a third party or directly to himself and his wife for the purpose of creating a tenancy by the entirety, etc.

(5) Transfer deemed not to have taken place within the sampling period. Sampling period is defined as the period from July 1, to June 30, inclusive, preceding the date of promulgation, except as hereinafter stated. The recording date of the deed within this period is the determining date since it is the date of official record. Where the date of deed or date of formal sales agreement occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be non-usable.

(6) Sales of property conveying only a portion of the assessed unit, usually referred to as apportionments, split-offs or cut-offs; for example, a parcel sold out of a larger tract where the assessment is for the larger tract.

(7) Sales of property substantially improved subsequent to assessment and prior to the sale thereof.

(8) Sales of an undivided interest in real property.

(9) Tax sales.

(10) Sales by guardians, trustees, executors and administrators.

(11) Judicial sales such as partition sales.

(12) Sheriff's sales.

(13) Sales in proceedings in bankruptcy, receivership or assignment for the benefit of creditors and dissolution or liquidation sales.

(14) Quit-claim deeds.

(15) Sales to or from the United States of America, the State of New Jersey, and/or any political subdivision of the State of New Jersey; including boards of education and public authorities.

(16) Sales of property assessed in more than one taxing district.

(17) Sales to or from any charitable, religious or benevolent organization.

(18) Transfers to banks, insurance companies, savings and loan associations, mortgage companies, when the transfer is made in lieu of foreclosure.

(19) Sales where purchaser assumes more than two years of accrued taxes.

(20) Acquisitions by railroads, pipeline companies or other public utility corporations for right-of-way purposes.

(21) Sales of cemetery lots.

(22) Transfers of property in exchange for other real estate, stocks, bonds, or other personal property.

(23) Sales of commercial or industrial real property which include machinery, fixtures, equipment, inventories, [and] good will when the values of such items are indeterminable.

(24) Sales of property, the value of which has been materially influenced by zoning changes where the latter are not reflected in current assessments.

(25) Transactions in which only 55¢ in revenue stamps are affixed to the conveyance unless the actual consideration has been determined.

(26) Sales which for some reason other than specified in the enumerated categories are not deemed to be a transaction between a willing buyer and a willing seller.

(27) Sales occurring within the sampling period but prior to a change in assessment practice resulting from the completion of a recognized revaluation or reassessment program; i.e. sales recorded during the period July 1 to December 31 next preceeding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll.

HANDBOOK, *supra* note 6, at 227-28.

munities to a common level.[69] While the county is not required to utilize the sales studies and the resulting table of equalized valuations promulgated by the Director of the Division of Taxation for distribution of state aid to schools, if it does not elect to use the Director's ratios, it must, in formulating its own method, adopt a "reasonable and efficient" equalization formula.[70] Further, it is quite clear that the county must take "official notice" of the Director's determination and "give due weight to his conclusions."[71] The court, while discussing this issue in the *Passaic* case, also made the following observation:

> The Director's ratios . . . are of necessity a more reliable indication of actual average assessment ratios than the estimates of the members of the county boards, however informed their judgment based upon generalized information or knowledge. In addition, we must surely imbue to the Legislature an intent as far as possible to avoid the incongruous result of fixing a municipality's share of school aid moneys upon one computation of aggregated true value of real estate, and its share of the county tax burden upon another.[72]

Thus, county boards of taxation may and frequently do utilize the Director's school aid ratios in determining their own tables of equalized valuations.[73] Because of the irregularity of municipalities revaluing and because of the lack of resources to complete their own studies comparing sales prices with assessed values, the counties frequently use all or part of the Director's sales ratio studies and the resulting equalized valuations in setting their own equalized valuation tables for county purposes.[74]

The legislature in 1954 assigned to the Director of the Division of Taxation the responsibility for ascertaining the true value of real property throughout the state for the purpose of apportioning state school aid to the municipalities.[75] He is required to promulgate a table

---

[69] N.J. STAT. ANN. § 54:3-17 (Supp. 1972-73).

[70] Township of Woodbridge v. Middlesex County Bd. of Taxation, 96 N.J. Super. 532, 536, 233 A.2d 650, 652 (App. Div. 1967).

[71] City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 385, 113 A.2d 753, 760 (1955).

[72] *Id.*

[73] *See, e.g.*, Township of Berkeley Heights v. Division of Tax Appeals, 68 N.J. Super. 364, 369, 172 A.2d 453, 456 (App. Div.), *cert. denied*, 36 N.J. 138, 174 A.2d 923 (1961).

[74] For 1970, all twenty-one counties used the sales study data to assist them in equalizing valuation and all, except Middlesex County, made some use of the resulting ratios of the Director. Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 206 n.(*), 300 A.2d 129, 130 (1973).

[75] State School Aid Law of 1954, Law of June 30, 1954, ch. 85, § 4, [1954] N.J. Laws 526, *as amended*, N.J. STAT. ANN. § 18A:58-4 (Supp. 1972-73).

of equalized valuations by October 1 of each year.[76] This table includes, among other things, the aggregate assessed valuation of real property, the average ratio of assessed to true value of such real property, and the aggregate true value of real estate in each taxing district based on such ratios.[77]

To fulfill his statutory assignment of ascertaining true value of real property throughout the state, the Director, through the Local Property Tax Bureau of the Division of Taxation, conducts an extensive sales ratio study program. The sales ratio program supervised by the Division of Taxation is based upon a comparison of the sale price with the assessed value of individual parcels of real property which have been sold and for which deeds have been recorded. It is assumed that the assessments on properties sold will be representative of the assessment practice in the taxing district. Thus, if the assessments of all properties sold in a given class averaged seventy percent of the sales price, the assumption is that all similar properties in the taxing district are being assessed at an average of seventy percent of their true value.

Information on sales prices, assessed values and other pertinent facts concerning the sales transaction is collected by the county boards of taxation, the local assessor and the Local Property Tax Bureau on form SR1-A. Sales found to be usable are divided into four classes of property. The process of dividing sales into four categories, determining "sub-ratios" for each category, and then dividing each class ratio into the aggregate total for that classification as announced by the tax assessor on January 10 of the tax year, using form SR3-A, is called weighted averaging. The need for this step in developing a table of equalized valuations is to recognize the wide-spread practice of assessing different classes of property at different nominal percentages of true value within the community.[78]

A weighted average assessment to sales ratio is calculated for each class of real property by dividing the total assessed value of all "usable sales" in that class during the sampling period, by the total sales price of the properties in the class.

The sampling period for the Director's sales ratio study for normal

---

[76] N.J. STAT. ANN. §§ 54:1-35.1 (Supp. 1972-73). *See* Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 211, 300 A.2d 129, 133 (1973); City of Bayonne v. Division of Tax Appeals, 49 N.J. Super. 230, 232-33, 139 A.2d 424, 425-26 (App. Div. 1958).

[77] N.J. STAT. ANN. § 54:1-35.2 (1960).

[78] SIXTH REPORT, *supra* note 11, at 39-43. For example, a community, by favoring industrial ratables over residential, may seek to attract industry. Conversely, a community may consistently underassess residential property as compared to commercial properties.

districts runs from July 1 of the year preceding to June 30 of the year in which the study is completed. For revalued districts, the sampling period is limited to sales recorded during the period January 1 to June 30 of the year of the study.[79] Sales outside of the sampling period and sales found by the Director's staff to be in one of the twenty-seven non-usable categories are excluded from the study.[80]

The Director assembles all usable sales and forwards to the local assessor a summary called the grantor listing. This list summarizes the information supplied on form SR1-A by the assessor and the county board of taxation, which has been verified by members of the Local Property Tax Bureau staff. The list includes for each separate sale the grantor's name, the date the deed was recorded, the location of the property, the property class, the assessed value, the sale price, and the ratio of the assessed value to sales price.[81]

The local assessor is expected to check the accuracy of these listings. Prior to the completion of the table of equalized valuation on October 1 by the Director, the assessor must notify the Local Property Tax Bureau of any included sales which he feels should have been excluded. The assessor completes this information on Local Property Tax Bureau form SR-6.[82] Failure to file his complaint in a timely manner will bar his action and the questionable sale will be included in subsequent equalization ratio calculations.

The usable sales for each taxing district are then categorized by class of property and the class sales ratios calculated.[83] To illustrate:

	Classification	Number of Sales	Total Assessed Value		Total Selling Price		Class Ratio
(1)	Vacant Land	23	$ 54,350	÷	$125,650	=	43.25%
(2)	Residential	19	$285,600	÷	$343,100	=	83.24%
(3)	Farm (regular)	2	$ 43,150	÷	$ 73,750	=	58.51%
(4)	Other	1	$ 17,150	÷	$ 20,000	=	85.75%

The class ratios are developed by dividing the total of the assessments for all usable sales in the class, by the total of those usable sales

79 *See* Letter from Alan F. Hart, State Supervisor, Local Property Tax Bureau, to the Secretary of each County Board of Taxation, all Municipal Assessors, and all Municipal Clerks, July 30, 1970.

80 See note 68 *supra* which lists the categories of sales which are not included in the determination of the ratio.

81 *See, e.g.,* HANDBOOK, *supra* note 6, at 239 (table) and § 1002.41.

82 *Id.,* § 1002.37.

83 *Id.,* § 1002.2.

prices. The results are the class ratios for the year.[84] The ratios are applied to the entire aggregate assessed value for all properties in the class, to develop class true values, as follows:

	Classification	Aggregate Assessed Value ($)	Ratio (%)	True Value ($)
(1)	Vacant Land	2,574,400 ÷	43.26 =	5,950,994
(2)	Residential	12,649,050 ÷	83.24 =	15,195,879
(3)	Farm (Regular)	4,111,600 ÷	58.51 =	7,027,175
(3a)	Farm (Qualified)	1,745,650 ÷	83.24* =	2,097,129
(4)	Other (Commercial, Apartments, Industrial)	2,213,550 ÷	85.75 =	2,581,399
		$23,294,250		$32,852,576

$23,294,250   ÷ $32,852,576 = 70.91%

Sum of Aggregate   Sum of Class   Average
Assessed Values   True Values   Ratio

This Average Ratio of Assessed to True Value of Real Property is developed by dividing the sum of the aggregate assessed values by the sum of the class true values as shown above. The ratio from the current year sales ratio study *is* the district weighted ratio.[85] The average ratio for the current year is divided into the total of ratables to give the current true value.[86] Note that the sum of the class values is *not* the current true value, but that this further step is necessary:

$23,294,250 ÷   70.91%   = $32,850,444

Aggregate   District Weighted Ratio   Current True Value
Assessed
Value

---

* Farmland (Qualified) is land qualified under the Farmland Assessment Act. For equalization purposes, it receives the same ratio as that developed for residential property. HANDBOOK, *supra* note 6, § 504.1.

84 The true value of real property in each class is calculated by dividing the total assessed value of each class as reported in January by the assessor, by the class ratio for the class. Where no sales are developed during the sampling period for a given class of property, the ratio for the largest valued class of property (usually residential) is used.

85 This one year district weighted ratio would be used in the page 8 formula in place of the final average ratio from the previous October 1 in a county that elects to use the one-year (weighted) method of equalization rather than the more common two-year (average) method.

86 The current true value from the previous October 1 would be used in the page 8 formula as item 2 for a revalued district if the county elected to use the one-year (weighted) rather than the two-year (average) method of equalization.

In addition to current year value, a value as of the end of the prior year is included. This adjusted true value for the prior year is determined as follows:

Prior Year Aggregate True Value of Real Property
from Director's Table, Prior Year, Column 3 $21,641,703

PLUS: Equalized Added and Omitted Assessments
from Prior Year:

$$\$898,350 \quad \div \quad 77.98\% \quad = \quad \$1,152,026$$

Added and Omitted   Prior Year Final
    Assessments   Average Ratio

EQUALS: Prior Year Adjusted True Value $22,793,729

The Current Year True Value is then averaged with the Prior Year Adjusted True Value to obtain the Average True Value:[87]

$$(\$32,850,444 \quad + \quad \$22,793,729) \quad \div \quad 2 = \$27,822,087$$

Current True Value   True Value   Average True
              Previous Year   Value

The Final Average Ratio to be used in the Director's Table of Equalized Valuation is computed by dividing the Current Year's Aggregate Assessed Value by the developed Average True Value:

$$\$23,294,250 \quad \div \quad \$27,822,087 \quad = \quad 83.73\%$$

Aggregate Assessed   Average True Value   Final Weighted
     Value   Ratio

The final average ratios for the several districts in the county constitute column 2 of the Director's Table of Equalized Valuation (school aid). The aggregate assessed values form column 1, and the Aggregate Assessed Value divided by the Final Weighted Ratio equals the Aggregate True Value of Real Property in column 3.

The Final Average Ratio is divided into the subsequent year's Aggregate Assessed Value to arrive at the county equalized valuations for the non-revalued districts in the county.[88] For the revalued districts,

---

[87] Formerly, the practice (1969 and prior years) was to actually include in the average two years sales data. Note that the more recent practice includes the previous year's true value. *See* Letter, note 79 *supra*.

[88] Once the district average true value is determined, the tables of true values are forwarded to the State Commissioner of Education for determining school aid. For school aid purposes, the district average ratio is ignored, the developed true value being the basis for the distribution of state school aid.

the ratios and the true values are inserted in the page 8 formula to arrive at a substitute Final Average Ratio and the Equalized True Value for county tax purposes.[89]

THE TABLE IN PRACTICE

With the availability of the Director's table and its use in most counties as the basis for apportioning county taxes, the attacks of various municipalities have centered primarily on two areas: one, the formulation of the table by the Director;[90] and two, the use or failure to use the data from the table by county tax boards.[91]

Among the cases attacking the formulation of the table is *City of Bayonne v. Division of Tax Appeals.*[92] In that case, Bayonne protested the computation of its 1956 ratio. The first ground was the use of sales for computing the 1956 ratio by the Director which also had been used for computing the 1955 ratio. The first Director's table had been issued in 1955 and it was based on a sales sample of one year. In 1956, a two-year sales sample was used to broaden the statistical basis for computing the ratio. The second ground centered on one sale that had not been included in the 1955 sales sample for use in computing Bayonne's ratio, but which, it was conceded, could have been used. Had it been utilized, it would have been beneficial to Bayonne's ratio. The city argued that if the Director could use sales from the computation of the prior year's ratio, then the Director should at least amend that

---

[89] *See* Letter from Director of the Division of Taxation to the Secretary of each County Board of Taxation and Municipal Assessors, July 31, 1968. This letter outlines the manner in which the Director's Table of Equalized Valuations for 1968 should be computed in order to facilitate the distribution of state school aid. For an example of the formula for state aid to schools, *see* HANDBOOK, *supra* note 6, at 244 (table).

[90] Town of Kearny v. Division of Tax Appeals, 35 N.J. 299, 173 A.2d 8 (1961); Township of Berkeley Heights v. Division of Tax Appeals, 68 N.J. Super. 364, 172 A.2d 453 (App. Div.), *cert. denied*, 36 N.J. 138, 174 A.2d 923 (1961); City of Bayonne v. Division of Tax Appeals, 49 N.J. Super. 230, 139 A.2d 424 (App. Div. 1958). An attack directly against the Director's table could be for the purpose of increasing the amount of school aid the municipality might derive from the state or to lessen the tax burden due to the use of the tables. Any change in the table has a common beneficial or detrimental effect on taxes and school aid for the municipality.

[91] Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 300 A.2d 129 (1973); Township of Little Falls v. Passaic County Bd. of Taxation, 115 N.J. Super. 115, 278 A.2d 424 (App. Div. 1971); *In re* Township of Millburn, 110 N.J. Super. 330, 265 A.2d 550 (App. Div. 1970); Township of Woodbridge v. Middlesex County Bd. of Taxation, 96 N.J. Super. 532, 233 A.2d 650 (App. Div. 1967); City of Perth Amboy v. Middlesex County Bd. of Taxation, 91 N.J. Super. 305, 220 A.2d 119 (App. Div.), *cert. denied*, 48 N.J. 112, 223 A.2d 491 (1966).

[92] 49 N.J. Super. 230, 139 A.2d 424 (App. Div. 1958).

prior year's sales sample to include sales that were subsequently proven usable.[93]

The court accepted both the Director's justification for expanding the sampling period and the justification for using the 1955 sales study (used for the 1955 ratio without the sale in contention) as final despite the discovery of sales that would have been usable if known.

> The task imposed upon the Director is one of great administrative complexity, involving, each year, literally scores of thousands of subordinate determinations. So long as his methods are fair and reasonably related to the ultimate objective of achieving fairly accurate approximations of the ratios between true and assessed valuations in each taxing district (ratios which, of course, can never be known with certainty), his ultimate determination as to an average ratio for a given municipality cannot be challenged merely because a different method in any part of the complex process could be equally reasonably defended.[94]

Bayonne's standard of "reasonableness" and realization that the ratios did not establish an absolute standard for the Director's purposes would certainly apply to the county boards of taxation when employing those same ratios.

In *Town of Kearny v. Division of Tax Appeals*,[95] the statutory presumption of correctness was successfully challenged. Kearny sought to have several sales included in the determination of its ratio for industrial property which the Director had excluded on the basis that they were split-off sales.[96] The difference between the successful prosecution in *Kearny* and the unsuccessful attempt in *Bayonne* was that in the *Kearny* case the appealing municipality presented its case for inclusion before the equalization tables had been finalized. The administrative burden, accepted as a justification in *Bayonne* for excluding the sales, was held not to be as onerous, particularly in light of the difference the sales would have made in Kearny's ratio.[97]

The significance of these two cases lies in the illustration that, though the Director enjoys a quasi-legislative role and his decisions carry a presumption of correctness, his discretion is subject to challenge and has its bounds.

Township of Berkeley Heights v. Division of Tax Appeals[98] pre-

---

[93] *Id.* at 236, 139 A.2d at 427.

[94] *Id.* at 239, 139 A.2d at 429.

[95] 35 N.J. 299, 173 A.2d 8 (1961).

[96] *See* note 68 *supra*.

[97] 35 N.J. at 314-15, 173 A.2d at 17.

[98] 68 N.J. Super. 364, 172 A.2d 453 (App. Div.), *cert. denied*, 36 N.J. 138, 174 A.2d 923 (1961).

sented the interesting situation of a tax assessor advocating the use of a consent judgment between the town and its major industrial ratable accepted as the basis for computing the ratio of that class of property. The entered consent judgment had provided for an assessment of twenty percent of true value. The municipality wanted the county tax board to apply that agreed upon ratio to the property held by the ratable.[99] In evaluating the evidence presented, the court wisely held that the consent judgment had no evidential value in establishing a ratio between the sales price and the assessed value and was, in reality, binding only between the property owner and the township.[100] Had the court decided otherwise by permitting a different standard for determining the ratio for some property, that result would have had a crippling effect upon the distribution of the tax burden for which the Director's table is used.

> [T]he application of the sale price to assessment uniformly establishes a fair ratio, and avoids a race among the several districts to conceive of intricate and ingenious plans to obtain individual advantages.[101]

While the *Berkeley Heights* case presented somewhat of a unique attack on the formulation of the Director's table, generally such attacks are directed towards the exclusion of a particular sale that would have benefited the municipality's tax burden and share of state school aid.[102] More interesting cases have been presented when the attack has been on the county board's use or failure to use the Director's table.

Though the supreme court in the *City of Passaic v. Passaic County Board of Taxation* had strongly endorsed the Director's table,[103] it did not command its use because statutory law left the method used for equalization to the county's discretion.[104] In *City of Perth Amboy v. Middlesex County Board of Taxation*[105] and *Township of Wood-*

---

[99] 68 N.J. Super. at 367, 172 A.2d at 455. The chief ratable was Bell Laboratories, which owned 82 percent of the Class IV property in Berkeley Heights. *Id.* at 368, 172 A.2d at 455. The use of any percentage less than 20 percent would obviously have increased the municipality's county tax burden substantially.

[100] *Id.* at 371, 172 A.2d at 457.

[101] *Id.* at 373, 172 A.2d at 458. A similar problem dealing with the application of different standards to municipalities in the same county arose in two cases. *See* Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 300 A.2d 129 (1973); Township of Little Falls v. Passaic County Bd. of Taxation, 115 N.J. Super. 115, 278 A.2d 424 (App. Div. 1971) discussed in notes 139-55 and 133-38 respectively *infra* and the accompanying text.

[102] *See* note 90 *supra*.

[103] 18 N.J. at 385, 113 A.2d at 760.

[104] N.J. STAT. ANN. § 54:3-17 (Supp. 1972-73).

[105] 91 N.J. Super. 305, 220 A.2d 119 (App. Div.), *cert. denied*, 48 N.J. 112, 233 A.2d 491 (1966).

bridge v. Middlesex County Board of Taxation[106] several municipalities attacked the county board's use of an unweighted method in distributing the tax burden. Middlesex County had used the weighted or classified sales method.[107]

The unweighted method's heritage apparently lies in the sales study method used in developing the Director's table. It also develops an assessment to sales ratio, but does so for each sale. Unlike the Director's computations, there is no classifying of sales according to the type of property and, thus, no single ratio for all the sales in a particular class. Instead, the individual ratios are summed and divided by the number of sales; the resulting average ratio is applied to all of the municipality's ratables.[108] In both the *Perth Amboy* and *Woodbridge* cases, the municipalities failed to demonstrate to the court's satisfaction that the unweighted method was arbitrary, unreasonable or capricious.[109]

The municipalities involved faced certain attendant difficulties in prosecuting their cases. The process of preparing an equalization table is quasi-legislative[110] and the result, therefore, carries with it a higher burden of persuasion. The county board can adopt any "reasonable and efficient method."[111] The adoption of the equalization table by the county board imbues the tables with a presumption of correctness.[112] Perhaps most damaging of all to any case, the judicial acceptance that precision is not possible and some degree of imperfection must be tolerated.[113]

---

106 96 N.J. Super. 532, 233 A.2d 650 (1967).

107 Middlesex County has employed the unweighted method since 1955. Borough of Carteret v. Division of Tax Appeals, 40 N.J. Super. 439, 451, 123 A.2d 559, 565 (App. Div.), *cert. denied sub nom.* Borough of Sayreville v. Division of Tax Appeals, 22 N.J. 224, 125 A.2d 235 (1956). The *Perth Amboy* case incorrectly indicates that the unweighted method was adopted in 1965. 91 N.J. Super. at 307, 220 A.2d at 120.

108 *Woodbridge,* 96 N.J. Super. at 535, 233 A.2d at 652; *Perth Amboy,* 91 N.J. Super. at 307, 220 A.2d at 120.

109 *Woodbridge,* 96 N.J. Super. at 537, 233 A.2d at 653; *Perth Amboy,* 91 N.J. Super. at 309, 220 A.2d at 121.

110 Borough of Little Ferry v. Bergen County Bd. of Taxation, 18 N.J. 400, 404, 113 A.2d 768, 771 (1955); City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 384, 113 A.2d 753, 759 (1955).

111 Township of Woodbridge v. Middlesex County Bd. of Taxation, 96 N.J. Super. 532, 536, 233 A.2d 650, 652 (App. Div. 1967).

112 Borough of Carteret v. Division of Tax Appeals, 40 N.J. Super. 439, 448, 123 A.2d 559, 563 (App. Div.), *cert. denied sub nom.* Borough of Sayreville v. Division of Tax Appeals, 22 N.J. 224, 125 A.2d 235 (1956).

113 *In re* Township of Millburn, 110 N.J. Super. 330, 335-36, 265 A.2d 550, 552 (App. Div. 1970); Borough of Carteret v. Division of Tax Appeals, 40 N.J. Super. 439, 446-47, 123 A.2d 559, 563 (App. Div.), *cert. denied sub nom.* Borough of Sayreville v. Division of Tax Appeals, 22 N.J. 224, 125 A.2d 235 (1956).

SETON HALL LAW REVIEW [Vol. 4:576

The complicated process of preparing an equalization table does demand some flexibility. However, the justification that individual assessments are not affected[114] by the table, while correct, has lead to the erroneous conclusion that a taxpayer would not pay any more county taxes than he would have otherwise. As between taxpayers in the same town this is true, but not as between taxpayers in different towns. If one equalization scheme passes more of a tax burden to a municipality than another scheme would impose, a closer degree of judicial scrutiny is called for. As then Justice Weintraub noted in an earlier case:

> [S]o far as the tax for county purposes is concerned, each taxpayer is entitled to equality, not merely as against other taxpayers within his own municipality, but also as against all other taxpayers of the county. It is no answer to say that the taxpayer is paying no more than his just share. He is entitled to enforcement of the legislative scheme that all taxable property be taxed equally for the purposes of county government.[115]

An in depth mathematical analysis of the weighted and unweighted ratio is certainly beyond the scope of this paper. However, to lock municipalities into a taxing system that disproportionately burdens them, and ultimately their tax paying residents, because of the presumption of correctness and acceptance of imprecision may be violative of the judicial duty enunciated in *Hillsborough Township v. Cromwell*.[116] If two taxing schemes result in essentially the same distribution of burden, even though one scheme gives preeminence to considerations that the other does not, a municipality's burden in proving the scheme arbitrary, unreasonable and capricious should, justifiably, be heavy. But when one scheme shifts the tax burden so that the results of the two schemes are disparate, then perhaps the use of the scheme by the county board should be questioned. Above all else, the taxation mandate calls for equal treatment.[117]

---

[114] Township of Woodbridge v. Middlesex County Bd. of Taxation, 96 N.J. Super. 532, 536, 233 A.2d 650, 652 (App. Div. 1967). *See* City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 377, 113 A.2d 753, 756 (1955) which first made the observation that individual assessments were not affected by changes in the equalization table.

[115] Switz v. Township of Middletown, 23 N.J. 580, 609, 130 A.2d 15, 31 (1957) (Weintraub, J., concurring).

[116] 326 U.S. 620 (1946).

[117] Gibraltar Corrugated Paper Co. v. Township of North Bergen, 20 N.J. 213, 219, 119 A.2d 135, 137 (1955); Baldwin Constr. Co. v. Essex County Bd. of Taxation, 16 N.J. 329, 340, 108 A.2d 598, 603 (1954).

> The standard of value is but a means of achieving uniformity and equality. Such is the preeminent consideration in the distribution of the tax burden.

Id.

In re Township of Millburn,[118] contrary to the two previous cases, alleged that the use of the Director's tables by the county board had resulted in an inaccurate calculation of the ratio that should be applied against its ratables. Millburn had revalued in 1969 and, because of that, the usual method for computing the ratio, which would have been applied against all of the ratables, could not be used.[119] Instead, the page 8 formula was employed which was the Director of the Division of Taxation's suggested alternative for computing the ratio for re-valued and reassessed municipalities.[120]

Millburn claimed that it should be allowed to deduct not only those ratables lost since the prior year which the page 8 formula per-mitted, but also those ratables lost by successful appeals for assessment reductions by the owners in the prior year.[121] The applicable ratio resulting from those deductions, if permitted, would have reduced Millburn's true value aggregate and, thus, its tax burden. Relying on the established discretion of the county board and the administrative burden that would have resulted if the reduction in assessments had to be reviewed, the court ruled that "[t]he page 8 formula here used is an accepted method of arriving at equalization ratios."[122]

As significant, however, as the administrative burden that would have resulted from reviewing reduced assessments or the impairment of the discretion that lies with the county board, was Millburn's at-tempt to have its ratio figured on a basis separate from any other town in Essex County.[123] All the ratios of the other communities in Essex County were computed using the Director's table. As the *Millburn* court and many others have stated, the purpose of equalization is to spread the tax burden as equally as possible. If Millburn had been allowed to bring elements into the computation of its ratio that other municipalities could not, the taxing scheme with its admitted imperfec-tions would have been so much the more imperfect. The *Millburn*

---

[118] 110 N.J. Super. 330, 265 A.2d 550 (App. Div. 1970).

[119] See notes 56-89 *supra* and accompanying text for the explanation of how the ratio for non-reassessed and non-revalued districts were determined for the Director's tables.

[120] See notes 125-32 *infra* and accompanying text for an explanation of the origin of the page 8 formula, how it works, and the reason it is used in lieu of the usual computa-tion.

[121] 110 N.J. Super. at 333, 265 A.2d at 551.

[122] *Id.* at 335, 265 A.2d at 552.

[123] *Id.* at 334, 265 A.2d at 551-52:

Millburn contends that the refusal to permit it to deduct the loss in assessments due to reductions granted as a result of tax appeals during 1968 was error which required the county board to promulgate a new table. We are thus confronted with a single question—whether it was error for the county board to follow the Director's formula.

court recognized that a separate standard could not be applied even if the municipality's argument had merit.[124]

THE PAGE 8 FORMULA

For non-revalued districts, the county board of taxation can, and frequently does, apply the ratios developed by the Director to the subsequent year's assessed value to arrive at a county equalized true valuation. For 1970, fifteen of the twenty-one counties used the final average ratios of the Director, the full two-year study. Some used the one-year weighted ratio studies for non-revalued districts. For non-revalued districts, using the previous year's ratio with the new year's assessments does not create any appreciable distortion, because assessed valuations are largely repeated from one year's local assessment list to the next.

Revalued districts, on the other hand, will normally show substantially increased values over the sum of the prior year's assessed value plus added assessments because revaluations normally pick up improvements to property not previously listed and increases in property value that have occurred since previous revaluations. The remedy for this potential inequality of treatment between revalued and non-revalued districts, set forth by the Director of the Division of Taxation in 1957, was the page 8 formula. The purpose of the page 8 formula is to avoid the distorting effect of applying the Director's ratio, unaltered, to the new higher assessments of the revalued districts.

In effect, the page 8 formula compares the new revalued assessments with updated, equalized assessments from the prior year. The prior year equalized assessments use comparable sales data, a nearly comparable sales sampling period,[125] and the same equalization method used by non-revalued districts. The new ratio which results is substituted for the one shown for the district in the Director's tables of equalization, when computing the district's new true value.

Using this method avoids the bizarre result of again increasing new true values (by dividing by an outmoded low ratio) which have already been fully increased by revaluation.

The process of equalization increases old assessed values to a true

---

124 *Id.* at 335, 265 A.2d at 552. *See* Township of Cherry Hill v. Director, Div. of Taxation, 119 N.J. Super. 256, 291 A.2d 28 (App. Div. 1972).

125 The sampling period for non-revalued districts normally includes sales which took place between July 1 of the previous year and June 30 of the year in which the table is prepared. In the case of districts certified as revalued, the sampling period for comparing sales to assessments is limited, from January 1 to June 30 of the current year, in order to avoid comparing sales with assessments which have since been changed by revaluation.

value measured by actual sales data. The process of revaluation includes updating values to the level indicated by actual sales. Either method will, for equalization purposes, produce the desired result. Both, applied in the same year to the same district, would have the effect of increasing values twice.

The Page 8 Formula

*The Complete Formula for Determining the New Average
Ratio of Revalued or Reassessed Districts*

(1) *Total real property assessments for the new year, after revaluation as shown in column one, County Equalization Table.* $300,000,000

This is the sum of all individual property assessments as reported to the county by all the local assessors for the new year, including all changes in value resulting from revaluation. With this total, the assessor submits his breakdown of property values into the four classes of property, Form SR3-A, to be utilized in the future sales ratio studies.

(2) *True value of real property for the preceding year from the Table of Equalized Valuations, School Aid, column three.* $250,000,000

The table of equalized valuations is prepared by the Director of the Division of Taxation for the apportionment of school aid on October 1, each year. Since the page 8 formula computation is prepared by the county in January, the table from the preceding October 1 is utilized. Column 3 contains the *aggregate average true value*[126] resulting from the Director's sales ratio study. It is computed by dividing the assessments reported by the assessor for that year by the average sales ratio from the sales ratio study.[127] This study determines the comparative ratio of sales price to assessed value in each of the four categories of real property: vacant land, residential land, farm land and industrial-commercial land. Using these ra-

---

[126] For a county using the one-year "weighted" basis in equalizing for county tax purposes, the *one-year district weighted true value* is utilized for item (2). This is computed by the Director of the Division of Taxation as part of the process of arriving at average true value. The ratio of all usable sales prices to assessed value in each of the four categories of real property is determined, and the ratios thus determined are divided into the total assessed values, as shown on SR3-A, of the respective categories of assessments. The sum of the four "category" true values is divided into the total assessed value of all property to obtain the district weighted ratio. This ratio divided into the total assessed value equals the district weighted true value. Note that the averaging with the previous year's true value is omitted in this case. The weighted true value of each district is furnished to each county board of taxation by the Director in tabular form as part of the sales ratio study. At present, this tabular run is the only source of the district weighted ratios. They are not published or furnished directly to the municipalities.

[127] In the Director's sales ratio study for a revalued district, a shorter sales sampling period is employed in determining which sales will be used. Only the period from January 1 to June 1 of the year in which revaluation is completed is used.

tios, a weighted true value for the year is determined.[128] The "true value" for the previous year is added to this. The sum of the two true values is divided by two to yield the average true value.

(3) *True value of added and omitted assessments,* computed as follows:

$6,000,000   ÷   .80   = $7,500,000

Total Added and   Final Average Ratio
Omitted Assessments   (Preceding Oct.1)[129]

Added and omitted assessments are the *annualized* total as submitted by the tax assessor on the preceeding October 1. The final average ratio, by which this total is divided to arrive at equalized true value of the added and omitted assessments, is the final ratio shown in the Director's table (school aid) from the preceding October 1. It is computed, as in step 2 above, by determining a weighted true value from the Director's sales ratio study for the preceding year, adding to it the true value for the year preceding that, and dividing by two. This equals the average true value. The aggregate assessed value divided by the average true value gives the final average ratio.

(4) *True value of additional assessed ratables other than reported on added and omitted assessment lists,* computed as follows:

$100,000   ÷   1.00   = $100,000

Assessed Ratables of New   Claimed Ratio Used
Construction, Improvements,   by the Assessor
Transfers from Exempt
Property List

Item (4) allows for the inclusion, in the page 8 computation, of items such as the new construction or improvements completed after October 1 (and therefore, too late to be included in added assessments) which would ordinarily be included in the following year's tax list. This ordinarily would be a relatively insignificant figure, and in many instances will be zero. The only source of this information is the local assessor's office. The claimed ratio is the tax assessor's ratio applied to new construction, to correct values to an earlier base year which he maintains for all properties. If no base year correction is used, the common level established by the county is used

---

128 See note 87 *supra* and the accompanying text for a discussion of the computation of the weighted true value in the Director's sales ratio section.

129 For a county using the one-year weighted basis, the district weighted ratio is substituted in the formula for the final average ratio shown. The district weighted ratio is determined by the Director by dividing usable sales in each of the four categories of real property into their respective assessment totals. The class ratios, thus determined, are divided into the total of assessments for each of the four categories, from SR3-A, to give the class true value. The sum of the four assessed value totals divided by the sum of the class true values equals the district weighted ratio.

here. Twenty of the twenty-one counties now use one hundred percent as
their common level of assessment.[130]

    (5) *Total of items (2), (3) and (4)*   = $257,600,000

    (6) *True value of loss of assessed ratables,*
       computed as follows:

          $50,000   ÷   .80   = $62,500

  Loss in Ratables from Fire,   Final Average Ratio
  Demolition, Exemption   (Preceding October 1)[131]

Item (6), like item (4), allows for the inclusion in the page 8 formula,
computation of the changes in ratables, not elsewhere recognized, which
would ordinarily be reflected in the new year's tax list, such as property lost
by fire or demolition, or property transferred to exempt lists. Typically, this
will be a relatively insignificant factor in computing the page 8 formula.
The only source of these data is the local assessor. Since the property here
was assessed during the year, the district's average ratio is applied to
equalize the values to true value, which is similar to the process followed
in item (3).

    (7) *Net value at the beginning of the tax year:* item
       (5) minus item (6)   = $257,537,500

    (8) *New average ratio for revalued districts,*
       computed as follows:

       $300,000,000 ÷ $257,537,500   =   116.49%
         item (1)   item (7)

This ratio is substituted by the county board of taxation for the ratio
shown as the final average ratio for the revalued district in the Director's
table of equalized valuations (school aid).

    (9) *New true value for revalued districts,*
       computed as follows:

       $300,000,000 ÷ 116.49%   = $257,532,835
         item (1)   item (8)

This new true value substitutes for the average true value in the Direc-
tor's table for equalized valuations (school aid) for purposes of county tax
equalization. Note that the higher the ratio shown in item (8), the lower
true value, and the lower the proportionate share of the county tax a
municipality will pay. Further, the ratio in item (8) is controlled by the net
true value at the beginning of the year, item (7), so the lower the value of
item (7), the lower the share of county taxes a municipality will pay.[132]

---

    [130] ANNUAL REPORT, *supra* note 2, at 195 (table). *See* N.J. STAT. ANN. § 54:4-2.25 (Supp.
1972-73).

    [131] For a county using the one-year weighted basis, the district weighted ratio is
substituted in the formula for the final average ratio shown. *See* note 129 *supra.*

    [132] The page 8 formula was formulated by the Director of the Division of Taxation

THE WILLINGBORO CASE

In *Township of Little Falls v. Passaic County Board of Taxation*,[133] the municipality alleged that the county board had discriminated against the revalued districts by employing different methods and standards for determining aggregate true value.[134] The county board had assigned to each revalued district a ratio of 100 percent, while the non-revalued districts received the ratio shown for them in the Director's table.

The revalued districts would have had ratios over 100 percent if the page 8 formula had been applied. While that formula was used in the preliminary table, it was not used in the final county equalization table. Instead, each revalued district was assigned a 100 percent ratio. This higher ratio, when divided into the current aggregate assessments, would have yielded a smaller aggregate true value than through the use of the 100 percent final ratio assigned to them.[135]

The reduction of the revalued districts' ratios had the effect of equating the aggregate true value with current aggregate assessment; thus, the benefit of dividing by a ratio over 100 percent to obtain a smaller aggregate true value was lost. When the aggregate true values of the revalued districts were then added to the values of the other municipalities in the county, to apportion county tax burden, the disparity between the use of the 100 percent and the 100 percent plus ratio was apparent. Because the revalued districts contributed more to the county aggregate true value, they bore an increased share of the county taxes.[136]

The court held that the revalued districts had not shown that the assigned 100 percent ratio was arbitrary, unreasonable and discriminatory and reasoned that "[t]he hard fact of this case is that the 100% ratio used for the revalued districts represents true value."[137] Furthermore, once the judicial mandate to utilize a reasonable and efficient method of equalization was complied with, the county board's decision was entitled to a presumption of correctness:

in a memorandum which was sent to all of the county boards of taxation. Letter from Samuel Temkin, Chief of Statistical Section, Local Property Tax Bureau, to all the County Boards of Taxation, July 1, 1953.

    [133] 115 N.J. Super. 115, 278 A.2d 424 (App. Div. 1971).

    [134] *Id.* at 119, 278 A.2d at 425.

    [135] *Id.* at 118, 278 A.2d at 425.

    [136] *See, e.g.,* Township of Willingboro v. Burlington County Bd. of Taxation, 62 N.J. 203, 215-16, 300 A.2d 129, 135 (1973).

    [137] 115 N.J. Super. at 121, 278 A.2d at 427.

The Division . . . determined that petitioners had not overcome the presumption of the correctness of the table. We will not interfere with the Division's determination in the absence of an affirmative showing that it acted arbitrarily or unreasonably.[138]

The identical issue was presented in *Township of Willingboro v. Burlington County Board of Taxation*.[139] However, the opposite result was reached. Concerning the different methods of computing the aggregate true value between revalued and non-revalued districts, the court held:

The crucial issue concerns the *interrelated effect* of each of these decisions on the proportionate county tax burden of all the districts. The failure to apply a common standard to each district necessarily distorted the burden-sharing balance of all.[140]

With the aid of a computer program, Willingboro had conducted an annual reassessment of all real property in the community and had been certified by the Director of the Division of Taxation as a reassessed district for each of the years 1968, 1969, and 1970.[141]

In 1970, Willingboro's weighted ratio, according to the Director's calculations, was 107.32 percent and its final average ratio was 120.39 percent. Using the same rationale used by the Passaic County Board of Taxation in *Little Falls*, the Burlington County Board of Taxation fixed the ratios of all revalued districts at 100 percent.[142] Any non-revalued district whose weighted ratio from the Director's table was over 100 percent was also set at 100 percent. This was done, according to the testimony of the secretary of the county board, "as a matter of policy" so that no district's county equalization ratio would be set in excess of 100 percent, and so that every revalued district's ratio would be set at exactly 100 percent. The board, nevertheless, used the Director's weighted ratios for those non-revalued districts with ratios under 100 percent.[143]

Several municipalities benefitted at the expense of others in the county. Those revalued districts whose ratios were reduced to 100 percent, suffered the same detriment as the petitioning municipalities in

---

138 *Id.* at 121, 278 A.2d at 426.

139 62 N.J. 203, 300 A.2d 129 (1973).

140 *Id.* at 221, 300 A.2d at 138.

141 *Id.* at 213, 300 A.2d at 134.

142 *Compare id.* at 214, 300 A.2d at 134 *with* 115 N.J. Super. at 121, 278 A.2d at 427. Of the ten districts which revalued for 1972 in Burlington County, four were ordered by the county board of taxation to do so, five had received notification of such an impending order, and one had an annual reassessment program.

143 62 N.J. at 214-15, 300 A.2d at 134-35.

Little Falls. The calculation of their aggregate true valuations did not benefit from the use of ratios over 100 percent. Non-revalued districts with ratios over 100 percent suffered similarly. However, revalued districts whose weighted ratios were under 100 percent benefitted from from the assigned 100 percent ratios at the expense of others. The effect of utilizing the assigned 100 percent ratio was to decrease the aggregate true valuations and in turn their share of the county tax burden. The non-revalued districts with ratios under 100 percent also benefitted since the districts with ratios over 100 percent absorbed a larger portion of the county tax burden.[144]

Willingboro contended that it was arbitrary for the county to fix its ratio at 100 percent merely because it was attempting to assess at true value, unless an effort was made to consider the relative current position of non-revalued districts. Further, the districts which had been assigned the Director's weighted ratios of October 1, 1969 (all of which were less than 100 percent) were receiving the benefit of calculations based on substantially lower average sales prices since the Director was using a sampling period of July 1, 1967 to July 1, 1969.[145] This period of July 1, 1967 through July 1, 1969 represented substantially lower average sales prices (and therefore higher sales ratios) than those developed from January to November, 1969 which were the data from which Willingboro's revaluation for 1970 came, and on which its 100% current values were based. As a result, Willingboro's equalized valuations were inflated in comparison with those of the non-revalued districts with a consequent allocation of an unfair share of the county tax burden.[146]

Willingboro contended that the county board of taxation had failed to utilize a reasonable and efficient method to equalize the county tax burden; that placing a 100 percent ceiling on all municipal equalization ratios was arbitrary; that the requirement that individual property assessments reflect 100 percent of true value did not preclude the assignment of an equalization ratio in excess of 100 percent in a county equalization table; and that the county board, by removing the equalization factor from the Director's formula, produced an inequitable and deficient table.[147]

---

144 *Id.* at 215-16, 300 A.2d at 135.

145 January 1 to June 30, 1968 was excluded. This period was from the expiration of the Federal Documentary Stamp Tax Act, 26 U.S.C. § 3482 (1955) on December 31, 1967, to July 3, 1968, when the New Jersey Realty Transfer Fee Act, N.J. STAT. ANN. §§ 46:15-5 *et seq.* (Supp. 1972-73) became effective. The Director felt that sufficiently reliable data could not be gathered for the sales ratio study during this period. Letter, note 89 *supra*.

146 62 N.J. at 215-16, 300 A.2d at 135.

147 *Id.*

The New Jersey supreme court stated that "[t]he basic attack by Willingboro on the County board action is soundly grounded."[148] The court felt that the county as well as the Division abrogated their statutory duty to equalize the tax burden fairly among the districts.

> The substantial dissimilarity of the underlying data and standards in the respective categories of districts is here quite obvious. The fact that *nominally* the standard was the same percentage of true value for both sets of districts cannot hide the crucial fact that actually a differently constructed standard of "true value" was applied to each group, operating discriminatorily *against* the revalued districts with Director's ratios over 100 (and equally discriminatorily *in favor* of revalued districts with Director's ratios under 100).[149]

The dissimilarity of the standards and the data should have alerted the Division and the county board to the disparities and they in turn should have conducted a hearing to determine how the problem could have been alleviated.[150] The court recognized that the county and the Division of Tax Appeals only had the duty to assure that a reasonable and efficient method be used, but also stressed that the primary purpose behind the county equalization of taxation was to assure equal and fair apportionment of the county tax burden among the various districts. If this were not accomplished by the present system, then the county and the Division had a statutory duty to adopt a system which would distribute the tax burden uniformly among all the districts.[151]

The court stated that the one hundred percent ratio assigned to the various districts as mandated by statute was not an accurate depiction of the current sales prices in relation to the various assessed values. The court further held that because of subjective elements in assessing, it is inevitable that ratios will vary above and below 100 percent depending on the accuracy of judgment and good faith of assessors, but also depending on the relative time periods of sales studies used.[152]

> A county board should therefore never reject a municipal ratio arising from a sales study by the Director for no better [sic] reason than that it exceeds 100.[153]

It is interesting to note what the court elected not to decide.

> While we thus approve and encourage the use of the page 8 formula . . . we are unable at this time to say it is the only tenable

---

[148] *Id.* at 216, 300 A.2d at 136.
[149] *Id.* at 219, 300 A.2d at 137.
[150] *Id.*
[151] *Id.* at 220-21, 300 A.2d at 138.
[152] *Id.* at 225-26, 300 A.2d at 140-41.
[153] *Id.* at 226, 300 A.2d at 141.

approach. It is settled that no particular method of equalization is mandatory for a county board of taxation. "*** [A]ny reasonable and efficient mode may be adopted."[154]

The court, in refusing to mandate the page 8 formula, let earlier precedent and legislative guideline stand. Further, it rejected Willingboro's request that it summarily be accorded either one of two ratios from the Director's table, and remanded to the Division of Tax Appeals for a new hearing and determination of the Burlington County Tax Equalization Table. On remand, the Division of Tax Appeals was required to stand in the shoes of the county board and make a determination of the correct table.[155]

CONCLUSION

An early effect of this decision was that twenty of twenty-one counties in New Jersey have adopted the Director's ratios including the page 8 formula for 1973. For 1973 Burlington County used a weighted ratio basis (one year study) as in past years, but included the page 8 provisions for revalued municipalities.

The effect of the decision, while narrowing the county board's options, still leaves room for flexibility. Municipalities will undoubtedly see the need for more frequent revaluations. The wider swing of county ratios allowed will place a heavier burden than was formerly so on non-revalued districts, whose ratios have deteriorated.

Perhaps the true answer to equalization is full "true value" valuations each year. Obviously the assessor in the taxing district cannot do this without outside help. To date the help has come in the form of periodic (every four to ten years) revaluation by outside professionals. The input of all the data as to construction, acreage, and sales prices that go to make up the assessed value calculation, are now typically fed to a computer for calculation of reassessments as part of most larger communities' revaluations. If the computer program were enlarged to allow the updating of data required by new construction, demolition, and new comparative sales data, the process could readily be adapted to annual reassessment, with accuracy comparable to that of a complete revaluation. Since the additional data required is presently part of the information used by an assessor to complete added assessments and

---

154 *Id.* at 227, 300 A.2d at 141 (quoting from City of Passaic v. Passaic County Bd. of Taxation, 18 N.J. 371, 385, 113 A.2d 753, 760 (1955)).

155 62 N.J. at 227-28, 300 A.2d at 141-42.

sales studies, the additional load on an assessor's office staff should not be inordinate.[156]

The computer, a tool of the twentieth century, may just be the means necessary to finally make a material improvement in a problem which was first recognized at law in New Jersey in 1799.

William G. Skelly

---

[156] *See* ANNUAL REPORT, *supra* note 2, at 116-17.