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Florida's Property Appraisers

David M. Hudson*

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Abstract

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Florida's Property Appraisers

David M. Hudson*

I. Introduction

The property appraiser today plays a central role in the imposition of ad valorem taxes by Florida's local governmental units. The amount of ad valorem taxes imposed on a parcel of property is computed by multiplying the *tax rate*, expressed in mills,¹ times the *tax base*, which is the value of property not exempt or immune from the levy. The taxing authority establishes the rate for levying its tax,² while the property appraiser determines the value of property in the tax base. In the process of valuation, the property appraiser initially determines whether the property is exempt or immune from ad valorem taxation, or qualifies for special treatment.³ Next, he determines the "just value" of each item or parcel of taxable property,⁴ prepares the assessment rolls listing

* Associate Professor of Law, University of Florida. B.S. Wake Forest University 1968; J.D. Florida State University 1974; LL.M. (Taxation) University of Florida 1975; LL.M. London School of Economics, University of London 1980. The author would like to thank Daniel C. Turner, a student in the Graduate Tax Program of the University of Florida, for his invaluable assistance in the preparation of this article.

1. A mill is one one-thousandth of a United States dollar, FLA. STAT. § 192.001(10) (Supp. 1982). A rate of 10 mills produces a tax of 1% of the value of the property in the tax base. Although statutes refer to "millages" and "millage rates," the tax rates are to be expressed in dollars and cents per every thousand dollars of assessed property value for purposes of public notice. FLA. STAT. § 200.001(6) (Supp. 1982). For example, a rate of 10 mills is published as a tax of \$10.00 per \$1,000.00 of assessed value.

2. Local governmental bodies must observe procedures and limitations in the setting of millages. FLA. STAT. CH. 200 (Supp. 1982).

3. *E.g.*, land properly qualified as agricultural is valued solely on its agricultural use. FLA. STAT. § 193.461(6)(a) (Supp. 1982).

4. FLA. CONST. art. VII, § 4 (1968) provides in pertinent part: "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation. . . ." A similar provision appeared in FLA. CONST. art IX, § 1, (1885). The term "just valuation" has been defined as "fair market value," the classic formula being the amount a "purchaser willing but not obliged to buy, would pay to

all real and tangible personal property within his jurisdiction,⁵ and furnishes these rolls to the appropriate taxing authorities.⁶ After the taxing authorities set millage rates,⁷ the property appraiser performs the above described mathematical computation⁸ to determine the amount of ad valorem tax imposed on each item and parcel of taxable property. Finally, the property appraiser certifies the rolls to the tax collector,⁹ who collects the taxes due¹⁰ and distributes the funds to the proper taxing entities.¹¹

The role of the property appraiser has remained essentially the same throughout Florida's history, but at times swirling political currents and shifts in fiscal policy of state and local governments have caused the role to undergo change. From the time of Florida's statehood until 1974 the property appraiser was referred to as the "tax assessor,"¹² but the title was constitutionally changed in that year to

one willing but not obliged to sell." *Root v. Wood*, 155 Fla. 613, 622, 21 So.2d 133, 138 (1945).

5. FLA. STAT. § 193.114 (Supp. 1982).

6. FLA. STAT. § 200.065 (Supp. 1982). The certification provides the taxing authorities a close estimate of the total value of property in the tax base for preparing budgets and determining the millage rate at which the ad valorem tax will be levied. The tax rolls must be submitted to the executive director of the Department of Revenue for review to determine if the rolls meet all requirements relating to form and just value, and for approval or disapproval. *Id.* § 193.1142 (Supp. 1982).

7. The millage rate levied must be provided for in a resolution or ordinance approved according to proper statutory procedure by the governing body of the taxing authority. FLA. STAT. § 200.065(2) (Supp. 1982). A copy of the resolution or ordinance must be furnished to the property appraiser. *Id.* § 200.065(4) (Supp. 1982).

8. This computation is referred to as an extension on the tax roll, *see* FLA. STAT. §§ 192.001(6), 193.122(2) (Supp. 1982), and is purely a ministerial duty. *State ex rel. Neafie v. Board of Comm'rs of Everglades Drainage Dist.*, 139 Fla. 559, 567, 190 So. 712, 716 (1939).

9. FLA. STAT. §§ 193.116(1) (1981), 193.122(1) (Supp. 1982).

10. FLA. STAT. § 197.012 (Supp. 1982).

11. *Id.* § 197.0126(2) (Supp. 1982).

12. 1845 Fla. Laws 23, ch. 10, § 9, provided "[t]hat there shall be an Assessor of the Revenue appointed yearly by the General Assembly, and commissioned by the Governor of this state for each and every county in this state. . . ." References also were made variously to "the Assessor of taxes," *id.* at § 16, and "the County Assessors" *id.* at § 18. The most prevalent title, however, was that of "Tax Assessor" *e.g., id.* at §§ 17, 30, and §§ 9, 10, 11 (in marginal notes). The title of "Tax Assessor" quickly became adopted; the other terms falling into disuse. *See, e.g.,* 1846 Fla. Laws 47, ch. 92;

“property appraiser.”¹³ This article will use the two terms in their proper chronological context; while the article discusses the history of the “tax assessor,” it should be remembered this character has metamorphosed into the “property appraiser.”

The thesis of this article is that the changes in the stage setting upon which the property appraiser plays his role have been of sufficient magnitude to demote the character from the exalted status of an elected, constitutional officer to the more appropriate position of a functionary employee of the Department of Revenue. After more than a century of experience, it is clear that equality and uniformity in ad valorem taxation will not be forthcoming so long as the valuation of property is within the discretionary authority of sixty-seven autonomous property appraisers. Recently, the legislature has dramatically increased the Department of Revenue’s supervision and control over property appraisers in a variety of ways, with the laudable objective of securing the valuation of all property at its full cash value in all sixty-seven counties. At the same time, the historical reasons for the local election of property appraisers are no longer timely. It is a sham to ostensibly maintain the independence of property appraisers, while simultaneously prescribing not only the procedures and methods for them to follow in the valuation of property, but also the minutiae of the day-to-day operations of their offices. The time has come to transfer the duties of the property appraiser to the Department of Revenue so that they may be carried out statewide in a more even-handed, straightforward manner on a state-wide basis.

II. History of the Property Appraiser in Florida

A. Early Statehood

The tax assessor was a central figure in tax administration when Florida first became a state. In ad valorem taxation, the term “assessment” refers to the determination of property taxes, and encompasses the processes of *valuing* the taxable property, and *levying* the tax at a particular rate.¹⁴ In the early days of statehood, the most significant ad

1848 Fla. Laws 10, ch. 212, § 1; and 1855 Fla. Laws 8, ch. 715, § 9.

13. H.J. Res. 1907, 1973 Fla. Laws; adopted in the general election of 1974.

14. Jackson Lumber Co. v. McCrimmon, 164 F. 759, 763-64 (M.D. Fla. 1908).

valorem tax was imposed not by local government, but by the state.¹⁵ The legislature typically would enact a law providing for the imposition of a state tax at a certain rate. The owner of taxable property (or his agent) would be required to provide the tax assessor an annual list (commonly referred to as a "return") of the taxable property, with a "description of the situation and quality of the same. . . ."¹⁶ The rate of state tax imposed on various items of property would already be known to the tax assessor, who would be required simply to "state in the last column of his book the total amount of taxes due from such person."¹⁷ The law encouraged the owner to be truthful in valuing his property by requiring certification under oath that his list was complete and accurate.¹⁸ If the list was incomplete or inaccurate, the owner became subject to pay a double tax.¹⁹ The tax assessor, however, was not merely a passive actor, for it was his duty "diligently to seek out and list all the property liable to taxation in his county to the best of his skill and ability."²⁰

As might be expected, property owners tended to act in their economic self-interest, with the value of property listed on a return often being lower than the price which it might bring in the marketplace. In 1858, the Legislature provided that if the tax assessor should "have any doubt of the correctness of any return . . . either as to number or value," he was to bring the matter before the county commissioners who, in turn, were to appoint "three discreet persons to enquire into the correctness of said return or returns . . . and the valuation made by

15. See, e.g., 1845 Fla. Laws 21, ch. 10, § 3 (imposing a state tax upon, *inter alia*, real property located within any town, ville or city, at a rate of ten cents upon every hundred dollars value (one mill)). Counties were required to "levy a county tax . . . upon the same persons and species of property as [were] subject to State tax," *id.* at § 32, and municipalities were "authorized to levy and collect a tax . . . upon all the kinds of property . . . recognised [sic] by [the] act as subjects of State taxation; *Provided*, The tax so assessed and collected . . . [did] not exceed fifty per centum upon the amount of the State Tax," *id.* at § 33.

16. 1845 Fla. Laws 24, ch. 10, § 13.

17. *Id.*

18. *Id.* at § 14.

19. *Id.*

20. *Id.* In 1855 a statute was enacted requiring the tax assessor to certify under oath that all returns submitted to him had been sworn by the taxpayer to be correct. 1855 Fla. Laws —, ch. 715, § 9.

said Commission [would] be deemed and taken as the true assessment in such cases. . . ."²¹

During this period, the state ad valorem tax was a general property tax, imposed on tangible and intangible personal property as well as real property.²² The bulk of the unimproved real property in the state, however, was within the plantation system,²³ and "the value of the slave property in the state exceeded the combined value of every other form of property listed—including land, buildings outside of towns, [and] household furniture."²⁴ Therefore, in practice, the ad valorem tax was imposed primarily on agricultural land and slaves.²⁵

With Florida's participation in the Civil War generating an increased need for revenue, legislation was enacted in 1862 to strengthen the property tax.²⁶ In addition, this legislation shifted the task of valuing property from the tax assessors to the county commissioners.²⁷ This legislation was repealed the next year,²⁸ however, "without reviving any pre-existing law or providing any new method of assessment of *valua-*

21. 1858 Fla. Laws 11, ch. 859, § 1.

22. 1855 Fla. Laws 7, ch. 715, § 2. Florida derived significant state revenue from two other types of taxes: the capitation, or poll tax, *e.g., id.* at § 1 (imposing an annual tax of fifty cents on "every free white male inhabitant of this State, above the age of twenty-one years and under the age of fifty years, except paupers and idiotic and insane persons"); and license taxes, *e.g., id.* at § 6 (imposing a tax of \$200 on Hawkers and Pedlars "for each county in which he or they so hawk and peddle").

23. Edwin L. Williams, Jr., *Florida in the Union, 1845-1861*, at 109 (unpublished doctoral dissertation, University of North Carolina, 1951), *cited in* 1 J. DOVELL, *FLORIDA* 333 n.44 (1952).

24. Williams, *Negro Slavery in Florida*, 28 *FLA. HISTORICAL Q.* 93, 202 (1950), *cited in* 1 J. DOVELL, *FLORIDA* 348 n.104 (1952).

25. E. SELIGMAN, *ESSAYS IN TAXATION* 11, 17 (1925).

26. 1862 Fla. Laws 27, ch. 1,345.

27. [I]t shall be the duty of Tax Assessors and Collectors to make a list of all the taxable property in their respective counties as provided by law, with such statistical facts concerning the same as may be requisite in estimating the value of such taxable property and make a return of the same to the Board of County Commissioners of their respective counties . . . , and the County Commissioners [shall] thereupon proceed to value and assess the taxes on such property as provided in the first section of this Act. . . .

Id. at § 2.

28. 1863 Fla. Laws 25, ch. 1,405, § 3.

tions, but [thereafter] the assessors [were directed] to assess taxes upon all taxable property."²⁹ The apparent hiatus in the law³⁰ was somewhat bridged because the assessor was required to apportion taxes with reference to "equality and uniformity," and he can do this only by making an estimate of the value of property taxed, and apportioning the taxes accordingly."³¹ The property owner thus continued to have the initial task of valuing property for ad valorem taxation, subject to the review and independent judgment of the tax assessor.

B. The Post-Civil War Era

At the conclusion of the Civil War, President Andrew Johnson appointed William Marvin, formerly a federal judge in Key West, to be the provisional governor of Florida.³² Governor Marvin called a convention which was held in Tallahassee in October and November of 1865. The convention annulled the Ordinance of Secession of January 10, 1861,³³ and adopted a new constitution becoming effective on November 7, 1865, without submitting it to the people for ratification.³⁴ The constitution made no provision for tax assessors; the General Assembly was directed to "devise and adopt system of revenue, having regard to an equal and uniform mode of taxation, throughout the State."³⁵ In addition, the constitution authorized counties and municipalities to impose taxes, provided that "all property [was to] be taxed upon the principles established in regard to State taxation."³⁶

In 1867, the Congress expressed its dissatisfaction with the reconstruction efforts of President Johnson by placing Florida and other southern states under martial law and directing the federal military

29. *King v. Gwynn*, 14 Fla. 32, 34 (1871).

30. The hiatus continued with the enactment of 1866 Fla. Laws 65, ch. 1,501.

31. *King*, 14 Fla. at 37 (1871).

32. Proclamation of President Andrew Johnson, July 13, 1865, *cited in* 2 J. DOVELL, FLORIDA 535 (1952).

33. 1865 Fla. Laws 149 Ordinance No. 1.

34. 3 FLA. STAT. HELPFUL AND USEFUL MATTER 163 (1941). Although the franchise was extended only to Floridians subscribing to an amnesty oath, liberal enforcement resulted in a convention whose membership "included a goodly number of the Confederate leaders." 2 J. DOVELL, FLORIDA 537 (1952).

35. FLA. CONST. art. VIII, § 1 (1865).

36. FLA. CONST. art. VIII, § 4 (1865).

authorities to oversee a new constitutional convention.³⁷ This convention was a tumultuous affair,³⁸ first having met in January, 1868, with a constitution ultimately being adopted on February 25, 1868, and ratified by the people at an election held May 4, 1868. This constitution was modeled after the constitutions of mid-western states in force at the time,³⁹ with one unusual provision—the product of compromise—which called for virtually all state and local executive offices to be filled by gubernatorial appointment rather than by election.⁴⁰ The “assessor of taxes” for each county was among the officers to be appointed.⁴¹

During the next fifteen years, the political forces which initially had been swept from power as a consequence of martial law⁴² were able to regroup and regain their influence. In 1884, Brigadier-General Edward A. Perry, a Democrat and Confederate War hero, was elected

37. Act of March 2, 1867, 14 Stat. 428. Congress was disturbed by steps taken in Florida and other southern states to keep blacks disenfranchised and treated as second-class citizens. The crowning blow was the rejection of the fourteenth amendment by all of the old Confederate states except Tennessee (Florida's legislature having rejected it unanimously). It was necessary for the Congress to override President Johnson's veto in order to enact the reconstruction bill. 2 J. DOVELL, FLORIDA 539-40, 548 (1952).

38. See 2 J. DOVELL, FLORIDA 550-57 (1952).

39. 2 J. DOVELL, FLORIDA 555 (1952).

40. “The executive appointment compromise had been accepted as a means toward white supremacy in ‘black belt’ counties during the period of Republican rule.” *Id.* at 651.

41. FLA. CONST. art. V, § 19 (1868) provided:

The Governor shall appoint, by and with the consent of the Senate, in each county an assessor of taxes and a collector of revenue, whose duties shall be prescribed by law, and who shall hold their offices for two years, and be subject to removal upon the recommendation of the Governor and consent of the Senate.

42. The ex-Confederates and Democrats who held power under the administration of Provisional Governor Marvin in the mid-1860's were replaced during the martial law period by Republicans and “carpetbaggers.” The elections held in May, 1868, produced a Republican Governor, Lieutenant Governor and Representative to Congress. The Florida Legislature was comprised of sixteen Republicans in the senate and thirty-seven in the house; there were only eight Democrats in the senate and fifteen in the house. Martial law was lifted on July 4, 1868, and on July 25 of that year the Congress readmitted Florida into the Union. 2 J. DOVELL, FLORIDA 556-64 (1952).

Governor.⁴³ At the same election, voters overwhelmingly supported a proposal for a constitutional convention to overhaul the 1868 constitution.⁴⁴ There were many issues involved, but the gubernatorial power to appoint practically all state and county officials was of paramount concern to the populace.⁴⁵ The constitution, which was adopted by the convention in 1885,⁴⁶ returned selection of most local officials to the voters of the jurisdiction.⁴⁷

The constitution granted the tax assessor the stature of a "constitutional officer,"⁴⁸ but did not change the duties and powers of the office.⁴⁹ The preceding thirty years had seen a gradual shift of responsibility from the property owner to the tax assessor in the valuation of property. As an example, legislation enacted in 1855 required owners to submit to the tax assessor, under oath, a list of real, or tangible or intangible personal property subject to taxation.⁵⁰ The tax assessor had

43. *Id.* at 647-49.

44. *Id.* at 594, 650; 1883 Fla. Laws 169, J. Res. No. 1 (resolution calling for referendum on a constitutional convention).

45. 2 J. DOVELL, FLORIDA 651 (1952).

46. The constitution was submitted for ratification in the general election of 1886, and became effective on January 1, 1887. Ordinance No. 1 of the Constitutional Convention of 1885.

47. FLA. CONST. art. VIII, § 6 (1885) provided: "The Legislature shall provide for the election by the qualified electors in each county of the following County Officers: A Clerk of the Circuit Court, a Sheriff, Constables, a County Assessor of Taxes, a Tax Collector, a County Treasurer, a Superintendent of Public Instruction and a County Surveyor." Curiously, county commissioners continued to be appointed by the Governor. *Id.* § 5. The appointment of the commissioners was a promised compromise protection to the 'black belt' counties whereby a Democratic governor could select Democratic officeholders. A further protection was secured in the requirement that county officeholders were to give surety bond and be commissioned by the governor. Bonds were made subject to the approval of the county commissioners and the state comptroller. 2 J. DOVELL, FLORIDA 656 (1952). In 1900, the 1885 constitution was amended to provide for the election of county commissioners. 1899 Fla. Laws S.J.Res. No. 44.

48. The status is of uncertain importance. *Compare* District School Bd. of Lee County v. Askew, 278 So. 2d 272, 275 (Fla. 1973) ("tax assessors are constitutionally created officers"), *with* Department of Revenue v. Markham, 396 So. 2d 1120, 1121 (Fla. 1981) (property appraisers, i.e. tax assessors, are governmental officials bound by statutory duty).

49. *See* 1887 Fla. Laws 9-11, ch. 3,681, §§ 15-22.

50. 1855 Fla. Laws 8, ch. 715, § 9.

no power to initiate the valuation process. In 1858, the tax assessor was directed to notify the county commissioners of any perceived instance of undervaluation, and with respect to all other property on the assessment roll, to give oath that "he verily believe[d] that the said property ha[d] been returned at its true value."⁵¹ The commission would determine the value of property it found to have been undervalued.⁵²

In 1874, legislation was passed eliminating the owner's determination of value of *real* property, requiring "the assessor [to] visit and inspect all real estate before he affixe[d] a valuation thereon, unless he [was] previously personally acquainted with its value."⁵³ The owner continued to return under oath and specify the value of personalty.⁵⁴ The tax assessor was not authorized to determine the value of personalty independently, unless the owner either failed to make a return, or failed or refused to "make oath before [the tax assessor] that the [return was] full and correct."⁵⁵

Five years later, the legislature again changed the relationship between the property owner and the tax assessor. This time, the property owner was required to submit not only a return of personalty, but of real property, including "a statement of the value of each parcel of land."⁵⁶ The tax assessor's duty was to "call to the attention of the Board of County Commissioners . . . all cases in which property [was], in his judgment, . . . assessed below its cash value;"⁵⁷ and the Board was authorized to "raise or lower the valuation of any real or personal property."⁵⁸ In 1881, there was another change again obliging the tax assessor to visit each parcel of real property and determine its value.⁵⁹ Personalty was still returned, under oath, by its owner;⁶⁰ the tax assessor became involved only if no return was filed, or if the return was

51. 1858 Fla. Laws 12, ch. 859, § 2.

52. *Id.* at § 1.

53. 1874 Fla. Laws 14, ch. 1,976, § 17.

54. *Id.* at § 24.

55. *Id.* at §§ 24-26.

56. 1879 Fla. Laws 24, ch. 3,099, § 24.

57. *Id.* at § 26.

58. *Id.* at § 29.

59. 1881 Fla. Laws 28, 29, ch. 3,219, §§ 17, 24.

60. *Id.* at § 24.

not properly made under oath.⁶¹ This last change in valuation of realty and personalty was to remain basically the same up to the present.⁶²

C. The First Attempts at State Oversight of Tax Assessors

Over the years, the tax assessor has been accorded a great deal of discretion in valuing property for taxation;⁶³ however, this discretion has not been unbridled or total. Beginning in 1869, the Board of County Commissioners was required to meet with the tax assessor on or before the first Monday of June in each year, in order to review the assessment rolls.⁶⁴ Subsequently,

[t]he county commissioners of each county shall meet at the clerk's office on the first Monday of June of each year, for the purpose of equalizing the assessment of the real estate of their respective counties, and to hear all persons who may be aggrieved, and the board of county commissioners may alter the valuation of any real estate.⁶⁵

The "equalization" process authorized to the county commissioners was restricted jurisdictionally to the valuations of property within the commissioner's county. The board was unconcerned, for example, that farmland might be valued at \$1.00 an acre in its county, and contiguous farmland lying in an adjacent county might be valued at \$5.00 an acre—even though both parcels were subject to the same rate of state ad valorem tax. Instead, the board's primary concern was ensuring that the ad valorem tax imposed by the county was distributed *inter se* in a uniform and equal manner. This aim could be accomplished whether the valuation of property was at full price or some fraction of the price which it could bring in the marketplace ("cash value").⁶⁶ With local officials deciding the amount of revenue desired from the ad valorem tax, and levying the tax at the highest rate (millage) author-

61. *Id.* at § 25.

62. *See* FLA. STAT. § 193.052 (Supp. 1982).

63. *German-American Lumber Co. v. Barbee*, 59 Fla. 493, 52 So. 292 (1910).

64. 1869 Fla. Laws 11, ch. 1,713, § 27.

65. *Id.* at § 28.

66. "Cash value" was defined "to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment." *Id.* at § 5.

ized, they could adjust downward (equalize?) the valuation of taxable property without regard to full cash value.⁶⁷ Indeed, keeping the valuations low worked to the advantage of the property owners and electors within the board's county, because that correspondingly lowered the amount of the state imposed ad valorem tax.⁶⁸

This antagonism between state and local tax objectives produced a vicious cycle. The state would increase the state ad valorem tax rate, while the local officials reduced the local valuations of property which thereby eroded the tax base available to the state. In 1877, the state ad valorem tax rate reached twelve and one half mills,⁶⁹ and yet revenues were less than expected. When the legislature rebuffed the governor's request to reduce the millage, he acted by executive orders to reduce the 1877 millage to ten, and the 1878 millage to nine.⁷⁰ In 1879, apparently following the governor's previous examples, the legislature further reduced the millage to seven and also suspended the levy for the redemption of bonded indebtedness.⁷¹ This reduction caused state ad valorem tax receipts to fall far short of necessary revenues, even as the governor was recommending state-wide uniformity of taxation.⁷² Subsequent decreases (after a brief increase) in the state millage rate during the early 1880's were accompanied by increases in the assessed valuation of taxable property.⁷³

By 1913, the state ad valorem tax rate had fallen to a relatively moderate two mills,⁷⁴ and yet the vexatious problem of undervaluation persisted. In that year, the legislature took the first step leading to state

67. Significantly, the board of county commissioners would establish the rate of the county levy at the same meeting which was required to be held for the purpose of equalizing assessments. *Id.* at § 38.

68. It had long been noted that "the utilization for general state purposes of a locally assessed tax on property inevitably leads to an under-assessment of the property." E. SELIGMAN, *ESSAYS IN TAXATION* 666 (10th ed. 1925).

69. 2 J. DOVELL, *FLORIDA* 590 (1952).

70. *Id.*

71. 1879 Fla. Laws 39, ch. 3,100, §§ 2, 3.

72. 2 J. DOVELL, *FLORIDA* 590-91 (1952).

73. *Id.* at 593. However, it should be noted that a major factor, in both the increase in total assessed valuations and in the ability to reduce the millage rate, was the success in finally bringing railroad property into the tax base. *Id.* at 594.

74. 1913 Fla. Laws 280-81, ch. 6,474, § 1. In addition to the levy for state governmental purposes, there was a school tax levied at a state-wide rate of one mill.

regulation of the ad valorem taxing process by creating a state Tax Commission, whose primary duty was

[t]o have and exercise general supervision over the administration of the tax laws of the State, over Assessors, and over Boards of County Commissioners in the performance of their duties as boards of tax equalization, to the end that all assessments of property be made relatively just and equal at the true and substantial value in compliance with law.⁷⁵

And yet, the Tax Commission was a rather toothless watchdog posted as sentry over the tax assessors and boards of county commissioners. It had not been empowered to make or force changes in the valuation of property made by the tax assessors or county commissioners, even though such action might have been necessary to fulfill the mission of the Commission.⁷⁶

Because the enabling legislation creating the Tax Commission was not passed until June of 1913, the Commission was not able to actively oversee the assessment process for that year. The Commissioners, however, did spend time traveling throughout the state, observing and learning about the status of ad valorem taxation in the state.⁷⁷ The Tax Commission's first step in corrective action was the call for a convention of tax assessors for the purposes of having

75. 1913 Fla. Laws. 329-31, ch. 6,500, § 9.

76. The Tax Commission requested that it be given such authority, but the legislature failed to act affirmatively. The Commission also recommended the adoption of an income tax and an inheritance tax so that the state's reliance on the ad valorem property tax could be reduced. TAX COMMISSION, FIRST BIENNIAL REPORT 35-36 (1915).

77. Through these investigations we found the conditions to be extremely bad, everything in the matter of taxation and values being in chaos. We found no two counties assessing property on the same basis of valuation; we found great inequalities even among the same classes of property in the same county; the per centage of values ranged from as low as ten per cent of true value to full cash value; and great quantities of property were not even on the tax books. This condition existed in the face of the fact that the law is plain and emphatic that all property shall be assessed at true cash value or full cash value.

Id. at 12.

the assessors confer among themselves and to discuss with the Tax Commission and one another steps to get the property on an equal basis in the State and to discuss the necessary steps to be taken to improve the tax conditions in Florida; it was the desire of the Tax Commission that the Assessors get together and agree on a definite percentage of true value upon which all the assessors in the State would agree to value the property in Florida for the year 1914, so that a step toward equalization might be taken and something in that direction begun to be accomplished.⁷⁸

By the Tax Commission's own admission, the convention was not a success: "[T]he Assessors adjourned the convention, or rather went away before the convention had completed its work, without taking any action in regard to uniform valuation for assessment and the convention then seemed to be a failure and the efforts of the Commission to have come to nothing."⁷⁹

Because the Tax Commission was unable to persuade the tax assessors to agree to value property at some uniform percentage of full cash value, the Commission believed it was left with no choice but to instruct the assessors to comply with the law "and assess all property at its full cash value."⁸⁰ The tax assessors met again a few months later and this time adopted a resolution agreeing to value real estate "at fifty per cent of its true cash value, leaving the true cash value with the discretion of the Assessor of his county."⁸¹ The Tax Commission accepted this compromise, acknowledging that "[t]his was in violation of law, but was done by custom and consent among the Assessors."⁸²

Even though fifty per cent and not full cash value was used, valuations rose dramatically. In 1914, real property valuations increased almost twenty-five per cent and personal property valuations increased twenty-one per cent over what they were in 1913.⁸³ As a consequence, state ad valorem levies were reduced by two mills.⁸⁴ It is significant that this progress was achieved without infringing upon the tax as-

78. *Id.* at 15.

79. *Id.* at 16.

80. *Id.* at 19.

81. *Id.* at 21.

82. *Id.*

83. *Id.* at 165.

84. *Id.* at 32.

essor's discretion in valuing property.

Instead of accepting the Tax Commission's suggestions for strengthening its powers and authority to have property assessed at its full cash value throughout the state,⁸⁵ the legislature abolished the Tax Commission in 1918.⁸⁶ Three years later, however, many of the duties and functions which the three person Tax Commission had performed were given to a single individual, the State Equalizer of Taxes.⁸⁷ The State Equalizer was authorized to examine the tax assessment rolls throughout the state, and

[i]f it shall appear to said Equalizer that in any one or more of the counties of this State the taxable values fixed upon any one or more classes of property are not uniform with the values fixed upon the same classes of property in other counties, the said Equalizer shall investigate and inquire as to the reason therefor, and, after making such investigation and comparison, shall have authority to point out to the County Assessor of Taxes such inequalities and direct the said Assessor to adjust, equalize and assess the same in accordance with the findings of the said Equalizer as to what would be an equitable assessment, either by adding a fixed per centum to the county valuation of any classe [sic] of property in any county, if he finds the county valuation is too low, or by deducting a fixed per centum from the county valuation if he finds the county valuation is too high, as may appear to be just and right between the counties; or to raise or lower the valuations and assessments of any or all classes of property in the State in order to more equally make each class of property bear its just proportion of taxation.⁸⁸

The State Equalizer, however, did not have the final word. If the Board of County Commissioners was dissatisfied with the changes ordered by the State Equalizer, it could appeal to the State Board of Equalizers, comprised of the Governor, the Treasurer and the Attorney General.⁸⁹ It is unclear how well this scheme worked;⁹⁰ it was repealed

85. *Id.* at 34-35.

86. 1918 Fla. Laws 65, ch. 7,751.

87. 1921 Fla. Laws 403, 406-07, ch. 8,584 §§ 6, 7.

88. *Id.* at § 3.

89. 1921 Fla. Laws 405-06, ch. 8,584, § 5.

90. There were no reported decisions under this act regarding the duties of the

in 1931⁹¹ and for a period thereafter the tax assessors exercised their discretion in valuing property for taxation without any meaningful review or control from the state.

D. The Tax Assessor's Discretion in Valuation

Throughout this period, the discretion of the tax assessor in valuing property appeared virtually sacrosanct. The Florida Supreme Court, in first addressing the issue of discretion, held that a circuit court judge exceeded his authority in reviewing the assessor's discretionary judgment of the value of property determined for purposes of taxation.⁹² In *German-American Lumber Co. v. Barbee*,⁹³ the plaintiff asserted that the value placed on its property by the tax assessor was excessive. The court noted that the plaintiff had not complained to the board of county commissioners, sitting as the board of equalizers, which had the power to reduce the assessor's valuation if found excessive.⁹⁴ The parameters of judicial review of the tax assessor's valuation of property were summarized as follows:

The law contemplates that a wide discretion be accorded to the tax assessor in the valuation of property for the purposes of taxation. In the absence of a clear and positive showing of fraud or of an illegal act or of an abuse of discretion rendering an assessment authorized by law so arbitrary and discriminating as to amount to a fraud upon a taxpayer or to a denial of the equal protection of the laws, the courts will not in general control the discretion of the tax assessor in making valuations for taxing purposes. The burdens of

State Equalizer of Taxes and his supervision by the Board of Equalizers of the State. In *State v. State Bd. of Equalizers*, 84 Fla. 592, 94 So. 681 (1922), the court fended off an attack on 1921 Fla. Laws 406-07, §§ 6 and 7 which authorized the State Comptroller, rather than the county tax assessors, to value certain railroad and telegraph property, and the Board of Equalizers to review such valuations.

91. 1931 Fla. Laws 940, ch. 15,027.

92. *Shear v. County Comm'rs of Columbia County*, 14 Fla. 146 (1872). The valuation subject to review in that case had been made by the board of county commissioners rather than the tax assessor. However, the court's discussion regarding the judicial review of executive discretion is germane.

93. 59 Fla. 493, 52 So. 292 (1910).

94. *Id.* at 497-98, 52 So. at 294.

taxation cannot be made exactly equal.⁹⁵

In *Graham v. City of West Tampa*,⁹⁶ the taxpayer asserted that the value set for his land by the assessor was not only excessive, but had been arbitrarily and intentionally made.⁹⁷ The Court, holding that the jurisdiction of the circuit court was proper, noted that

[w]hile the law accords a range of discretion to the officer authorized to ascertain and determine valuations of property for purposes of taxation, when the officer proceeds in accordance with and substantially complies with the requirements of law designed to ascertain such values, yet, if the steps required to be taken in making valuations are not in fact and in good faith actually taken, and the valuations are shown to be essentially unjust or unequal abstractly or relatively, the assessment is invalid. Valuations of property for taxation must be ascertained in the manner required by law and must have relation to the actual value of the property; and there must be no substantial inequality in valuations.⁹⁸

Again in *Camp Phosphate Co. v. Allen*,⁹⁹ the taxpayer demonstrated that the excessive valuation of his property resulted from the assessor's arbitrary and discriminatory actions, so that the circuit court properly had jurisdiction to review the assessor's exercise of discretion in valuation.¹⁰⁰

95. *Id. Accord Wade v. Murrhee*, 75 Fla. 494, 78 So. 536 (1918); *City of Tampa v. Kaunitz*, 39 Fla. 683, 23 So. 416 (1898).

96. 71 Fla. 605, 71 So. 926 (1916).

97. *Id.* at 607, 71 So. at 926.

98. *Id.* at 611-12, 71 So. at 927-28.

99. 77 Fla. 341, 81 So. 503 (1919).

100. The Court noted that the board of county commissioners had approved the tax assessor's improprieties:

The law does not contemplate that the assessor is infallible nor that his valuations shall be conclusive, but presumes that he will err, and provides the means for correcting his errors and equalizing his values by statute which requires the commissioners to give notice by publication or posting of the time when the board will be in session to have complaints and receive testimony as to values of any property as fixed by the assessor, and, after hearing testimony, to raise or lower such values, that the assessment may be equal and uniform. The board of county commissioners in this state is an essential part of the taxing system, their duties as such are

Finally, in *City of Tampa v. Palmer*,¹⁰¹ the court “held mistaken judgment, and unaffected by any element of illegality in matter of law, or intentional or other abuse of authority, or fraud, express or implied, will not suffice as a ground of equitable jurisdiction.”¹⁰²

Although the tax assessor was accorded wide discretion in valuing property, he was bound by the constitutional directive, appearing first in the 1868 constitution, to value property at its “full cash value.”¹⁰³ “The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal. . . .”¹⁰⁴

E. Just Valuation vs. Equal Valuation

If a property owner could show that he had not been treated *equally*—that his property had been determined to have a higher value than similar property—then the emphasis would be focused on equalizing the two values, rather than on ensuring each property was valued at “full cash value.” The Board of County Commissioners was empowered to change the assessor’s valuation of a parcel of property in order to equalize the valuation of the same class of property within the county.¹⁰⁵ Therefore the Tax Commission did not feel bound by the “full cash value” requirement when directing tax assessors to value

prescribed by law, and when the members of that board, sitting as a board of equalizers, deliberately, intentionally, and arbitrarily sustain an assessment which they know is unjust, unequal, and discriminatory, they perpetuate a fraud upon the injured taxpayers.

Id. at 363-64, 81 So. at 511.

101. 89 Fla. 514, 105 So. 115 (1925).

102. *Id.* at 529-30, 105 So. at 120.

103. *E.g.*, 1881 Fla. Laws 28-29, ch. 3,219, § 18. “Cash value” was defined “to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment.” *Id.* at § 5.

104. FLA. CONST. art. XII, § 1 (1868). Earlier constitutions had been silent regarding the valuation of property for taxation. FLA. CONST. art. VIII, § 1 (1861), merely provided that “[t]he General Assembly shall devise and adopt a system of revenue, having regard to an equal and uniform mode of taxation to be general throughout the State.” Identical language appeared in FLA. CONST. art. VIII, § 1 (1838). The “just valuation” provision was retained in FLA. CONST. art. IX, § 1 (1885), and is currently contained in FLA. CONST. art. VII, § 4 (1968).

105. *E.g.*, 1881 Fla. Laws 30, ch. 3,219, § 28.

property at fifty per cent of actual value.¹⁰⁶ Nor were courts bound when confronted with valuations clearly less than full cash value:

The purpose of the statute in requiring property to be assessed at its full cash value is to secure uniformity and equality of burden upon all property in the state, and if all the taxable property of Citrus county was assessed on a basis of 50 per cent. of its true cash value, the purpose of the constitutional provision has not been defeated, nor has the appellant been injured. . . .

The adoption of full value has no different effect in distributing the burden than would be gained by adopting 75 per cent., or 50 per cent., or even 10 per cent., as the basis, so long as either was applied uniformly. The only difference would be that, supposing the requirements of the treasury remained constant, the rate of taxation would have to be increased as the percentage of valuation was reduced. Therefore the principal, if not the sole reason for adopting "full cash value" as the standard for valuations is as a convenient means to an end; the end being equal taxation.¹⁰⁷

However, even as the above quoted passage was being penned, seeds had already been planted which would disrupt the status quo of allowing property to be valued at something less than full cash value, so long as all property within a county was valued at the same percentage of full value. Those seeds were constitutionally authorized exemptions from ad valorem taxation for certain property—exemptions expressed in terms of flat dollar amounts. First, the constitution adopted in 1885 provided that "[t]here shall be exempt from taxation property to the value of two hundred dollars to every widow that has a family dependent on her for support, and to every person that has lost a limb or been disabled in war or by misfortune."¹⁰⁸ This exemption apparently did not significantly affect the distributive burden of the ad

106. *See supra*, discussion of the Tax Commission, text and note 75.

107. *Camp Phosphate Co. v. Allen*, 77 Fla. 341, 349, 81 So. 503, 506 (1919). The Court noted that the valuations had been made at 50 per cent of the full cash value pursuant to instructions from the Tax Commission. *Id.* at 347, 81 So. at 505. The approach of favoring equality and uniformity over full valuation was found in other jurisdictions as well. *See, e.g., Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

108. FLA. CONST. art. IX, § 9 (1885).

valorem tax because there are no reported decisions addressing it. In 1924, the Constitution was amended to provide:

No tax upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, *and there shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of Five Hundred (\$500.00) Dollars.*¹⁰⁹

The effect of this exemption, obviously of more widespread utility than the earlier exemption for widows and certain disabled individuals, was to exacerbate deviations from valuations at other than full cash value. The Court, although noting this effect in *Hackney v. McPenney*,¹¹⁰ concluded:

In this case the taxing unit is the county; and, if all taxable property in the county is assessed at the same percentage of its true cash value and such assessment operates to "secure a just valuation of all property" for taxation, within the meaning of the Constitution, the court will not adjudge the assessment to be void; there being no showing by proper parties that the rule of valuation adopted and applied throughout the county would be illegal if not uniformly applied in a larger taxing unit which includes the county.¹¹¹

The plaintiff in *Hackney* obviously had not raised the point that

109. FLA. CONST. art. IX, § 11 (1885), as amended in the general election of 1924 (emphasis supplied); S.J. Res. 135, 1923 Fla. Laws 483.

110. The court observed:

The organic provision means that, in making assessments of personal property for taxation, the head of a family residing in this state shall be allowed an exemption of "household goods and personal effects to the value of five hundred dollars"; such value of \$500 to be deducted from the total assessable value of the household goods and personal effects of the head of a family residing in this state. For example, if the head of a family residing in this state has "household goods and personal effects" of the value of \$1,200 and the assessment value is 50 per cent. thereof, or \$600, the exempt value of \$500 is to be deducted from the \$600 assessment value, leaving the remainder of \$100 to be assessed for taxation.

113 Fla. 176, 188-89, 151 So. 524, 529 (1933).

111. *Id.* at 193, 151 So. at 530 (on petition for rehearing).

the state was also levying at a uniform state-wide rate an ad valorem tax on the assessed value of (*inter alia*) household goods and personal effects in excess of five hundred dollars belong to resident heads-of-household.¹¹² If valuations in all counties were at a uniform fifty per cent of full cash value, no unequal treatment would be imposed with the constitutional school tax of one mill. However, if, for example, property were valued at fifty per cent in one county, but only twenty-five per cent in another, identical household goods and personal effects with a full cash value of \$1,200 after application of this exemption would result in \$100 assessed for taxation in the first county, and none in the second.¹¹³ It seems likely that the relatively small dollar amount of this exemption kept the issue from being brought before the courts.¹¹⁴

In 1934, the constitution was amended, adopting the homestead tax exemption and thereby ending the era of complacency with valuations at less than full cash value:

There shall be exempted from all taxation, other than special assessments for benefits, to every head of a family who is a citizen of and resides in the State of Florida, the homestead as defined in Article X of the Constitution of the State of Florida up to the valuation of \$5,000.00; provided, however, that the title to said home-

112. The tax year before the Court in the *Hackney* case was 1932. In 1931, the legislature resolved to reduce the state's reliance on ad valorem taxation of real and tangible personal property by turning to some alternative tax sources, such as an inheritance tax (adopted by ch. 15,746), an excise tax on documents (ch. 15,787), an additional tax on gasoline (ch. 15,788), and an intangibles tax (ch. 15, 789). In 1929, the legislature had levied state ad valorem taxes on real and tangible personal property at a rate of eight mills for general revenue purposes, one-half mill for the state board of health, one and one-quarter mills for the state prison fund, and one mill for schools, ch. 14,578, § 1, Laws of Fla. 1126-27 (1929). By comparison, in 1931 only the one mill for school purposes was levied, as was then required by article XII, section 6 of the Florida Constitution (1885) (repealed in 1940).

113. At the time of the *Hackney* decision, *supra* note 110, in 1932, the revenue derived from the state-wide constitutional school tax of one mill was distributed "among the several counties of the State in proportion to the average attendance upon schools in the said counties respectively." FLA. CONST. art. XII, § 7 (1885) (as amended in 1894).

114. The constitutional school tax of one mill, if imposed on property of a taxable value of five hundred dollars, would produce a tax liability of only fifty cents.

stead may be vested in such head of a family or in his lawful wife residing upon such homestead or in both.¹¹⁵

The dollar amount of the homestead tax exemption was not *de minimus*—in many situations it had the effect of completely removing tax liability from a homestead.¹¹⁶ The unfairness of valuations at less than full cash value became apparent on both a statewide and county level. If county valuations were uniform at fifty per cent of full value, homestead property with a full value of \$10,000 would bear no tax while non-homestead property of equal value would be taxable. If, on the other hand, the valuations were at full cash value, both the homestead and non-homestead property would shoulder some portion of the tax burden. The unfairness resulting from discrepancies in valuations between counties, described above in the context of the household goods exemption, was exacerbated by an exemption 1,000 per cent greater in amount. The court in *Cosen Investment Co. v. Overstreet*¹¹⁷ addressed these issues:

Appellant relies upon our opinion, *Camp Phosphate Co. v. Allen*, 77 Fla. 341, 81 So. 503. This case does not support appellant because, as was pointed out there, the purpose of the law was to render the tax burden uniform, equal and just and if all property was assessed at fifty per cent of its cash value the purpose of the law was carried out. Such logic is not now tenable because, by the adoption of Art. X, Sec. 7, to the Florida Constitution, homesteads to the extent of \$5,000 are exempt from taxation.

To perpetuate the practice of assessing all property at a less percentage than [full cash value] would necessarily result in favoring the homesteads. The logic of the opinion in *Camp Phosphate Co. v. Allen*, supra, is no longer applicable because the reduced

115. FLA. CONST. art. X, § 7 (1885), added in general election 1934; amended general election 1938 and 1964. The homestead tax exemption is contained today in FLA. CONST. art. VII, § 6 (1968).

116. See *Lersch v. Board of Public Instruction for Orange County*, 121 Fla. 621, 164 So. 281 (1935); *Schleman v. Connecticut General Life Ins. Co.*, 9 So. 2d 197 (Fla. 1942); and Note, *Assessment Standards and Property Tax Equity in Florida*, 17 U. FLA. L. REV. 83 (1964). The exemption was not applicable to the extent ad valorem taxes had been pledged for the payment of interest and principal on bonded indebtedness incurred prior to the adoption of the homestead tax exemption. *State v. Boring*, 121 Fla. 781, 164 So. 859 (1935).

117. 17 So. 2d 788 (Fla. 1944).

value, even though uniformly lower, is no longer just. . . .¹¹⁸

It was no longer possible simply to note that tax assessors had “wide discretion”, or to uphold valuations based on discretion if the board of county commissioners properly equalized assessments within a county. Steps were needed to encourage, if not force, the tax assessor to raise the level of valuations to “full cash value” because political disincentives still existed impeding him doing so voluntarily. The tax assessor was an elected official. A voter who understood that the ad valorem tax imposed on his property was not only a function of the valuation made by the assessor, but of the millage levied by the taxing authorities, might nonetheless focus on the clear and direct relationship between an increase in value placed on his property by the assessor and the amount of tax he had to pay. The tax assessor thus was placed in a situation where judicious exercise of his “wide discretion” could improve, if not ensure, the likelihood of his re-election.¹¹⁹

F. The Drive Towards “Full Cash Value” = Restrictions on Discretion

Recognizing the unfairness resulting from undervaluations, and taking effective steps producing “full cash value” valuations of property are two very different things.¹²⁰ Nonetheless, one inducement for local officials to provide low valuations of property¹²¹ was removed with the 1940 constitutional amendment prohibiting the state from imposing ad valorem taxes on real property and tangible personal property.¹²² In

118. *Id.* at 788.

119. In *Dickinson v. Geraci*, 190 So. 2d 368 (Fla. 2d Dist. Ct. App. 1966) the court noted: “We think we can take judicial notice that in the past most Tax Assessors knew the people of their county looked favorably on low ratios of assessment, and this would redound favorably in the Tax Assessors’ election returns.” *Id.* at 385 (quoting *Glynn v. McNayr*, 133 So. 2d 312 (Fla. 1961)).

120. The Court in *Cosen*, 17 So. 2d 788 (1944), was willing to assume that property was being valued at full cash value: “Subsequent to the adoption of Art. X, Sec. 7, the practice of assessing property has been in conformity with the statute, that is at one hundred per cent of its true cash value.” *Id.* at 788.

121. See *supra* note 68 and accompanying text.

122. FLA. CONST. art. IX, § 2 (1885), was amended in the general election of 1940, S.J. Res. 69, 1939 Fla. Laws 1651, to add the phrase: “but after December 31st,

addition, the assessor was provided an incentive to value property at full cash value with enactment of legislation in 1941 requiring local taxing authorities to reduce, or "roll-back," their millage levies in proportion to the increase in the level of valuations made by the tax assessor.¹²³ In theory, property owners no longer should have expected to find their tax liabilities rise with a rise in the valuation of their property because increased valuation accompanied a decrease in the tax rate. Therefore, a tax assessor could feel free to value property at "full cash value" because the onus of determining the amount of taxes had shifted to the proper taxing authorities.¹²⁴

Also in 1941, the legislature enacted legislation to provide increased state control of ad valorem taxation.¹²⁵ The state comptroller was given "general supervision of the assessment and valuation of property so that all property [would] be placed on the tax rolls and the valuation thereof [would] be uniform and equal, as required by the Constitution. . . ." ¹²⁶ In furthering this general objective, the legislation required the comptroller to provide all necessary forms for tax assessors;¹²⁷ granted the comptroller power to review assessors' budgets;¹²⁸ directed the comptroller to investigate the conduct and performance of tax officials' duties for recommendation to the governor the removal of any derelict official for "willful failure to properly perform" his duties;¹²⁹ and authorized the comptroller to approve each assessment roll before being submitted to the local taxing authorities for

A.D. 1940, no levy of ad valorem taxes upon real or personal property except intangible property, shall be made for any State purpose whatsoever. . . ." The same amendment repealed the constitutional state-wide school millage required by FLA. CONST. art. XII, § 6 (1885), *see supra* note 112 and accompanying text.

123. 1941 Fla. Laws 1965-66, ch. 20,722, § 54.

124. The defect of this scheme was that it compared the total value of property on the assessment roll with the millage to be levied. It was later noted, although in a different context, that "the mere fact that the aggregate total valuation of a tax roll reflects the full cash value of all property in the county, does not necessarily lead to the conclusion that the roll is equal and that just valuations have been obtained for each separate parcel." *State ex rel. Glynn v. McNayr*, 138 So. 2d 312, 316 (Fla. 1961).

125. 1941 Fla. Laws 1934, ch. 20,722.

126. *Id.* at 1962-63, § 46.

127. *Id.* at 1962.

128. *Id.* at 1966-67, § 56.

129. *Id.* at 1967.

use in levying their respective ad valorem taxes.¹³⁰

Unfortunately, the comptroller's extended grant of authority to effectuate full valuation proved to be insufficient because the tax assessor still had "wide discretion" in valuing property.¹³¹ The county board of equalizers, however, was empowered to disturb the assessor's discretion in order to equalize the valuations of property within the county.¹³² In addition, the comptroller had the authority, in proper circumstances and under the supervision of the State Budget Commission, to direct an assessor to make "a complete re-evaluation and re-assessment of a tax roll."¹³³ Yet, assessments at "full cash value" remained the exception, not the rule.¹³⁴

Since 1941, quickening legislative action has been steadily been directed toward the fundamental source of the problem of undervaluation—the assessor's discretion in determining just value. In 1957, the legislature partially limited this discretion by requiring land used for "agricultural purposes" to be valued on a per acre basis.¹³⁵ In 1963,

130. *Id.* at 1937-38, § 5.

131. *State ex rel. Kent Corp. v. Board of County Comm'rs of Broward County*, 37 So. 2d 252 (Fla. 1948). The valuation made by the tax assessor was presumed to be correct, and would be struck down only if "affirmatively overcome by appropriate and sufficient allegations and proofs excluding every reasonable hypothesis of a legal assessment." *Folsom v. Bank of Greenwood*, 97 Fla. 426, 430, 120 So. 317, 318 (1929).

132. *Sanders v. Crapps*, 45 So. 2d 484 (Fla. 1950). *Compare Sanders v. State ex rel. Shamrock Properties*, 46 So. 2d 491 (Fla. 1950) (board of county commissioners, sitting as a board of equalization, did not have power to reduce valuations placed upon personal property by tax assessor when return of property owner did not specify such personal property under oath). Indeed, there was a presumption that the board of equalization would correct any overvaluation if properly brought before the board. *City of Tampa v. Palmer*, 89 Fla. 514, 531, 105 So. 115, 121 (1925).

133. *Burns v. Butscher*, 187 So. 2d 594 (Fla. 1965).

134. A 1965 survey made by the Railroad Assessment Board, which determined the value of railroad property throughout the state, noted that in eight counties valuations were 100 per cent of full cash value, but in the other 59 counties, valuations ranged down to a low of 17.54 per cent. *Id.* at 595.

In *Blumberg v. Petteway*, 91 So. 2d 297, 298 (Fla. 1956), the tax assessor "testified point blank that he had not assessed the property on the basis of its full cash value, but that he had attempted to take 'a happy medium' between the low of 1932 and the high of 1952. When asked if the City Charter did not provide for assessment of full cash value, the Assessor answered that, 'the charter did not say what year—present, past or future.'"

135. FLA. STAT. § 193.11(3) (1957) as enacted by 1957 Fla. Laws 356, ch. 57-

after several unsuccessful attempts,¹³⁶ the legislature required the assessor to consider a series of factors in determining the just value of property.¹³⁷ The legislation eliminated the assessor's selection of valuation method or procedure by requiring that he now

take into consideration the following factors:

- (1) The present cash value of the property;
- (2) The highest and best use to which the property can be expected to be put in the immediate future; and the present use of the property;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property.¹³⁸

The Florida Supreme Court, in the landmark case of *Walter v. Schuler*,¹³⁹ held the statutory and constitutional phrase "just valuation" to be "legally synonymous" with "fair market value," which is "the amount a purchaser willing but not obliged to buy, would pay to

195, § 1. This provision was upheld in *Tyson v. Lanier*, 156 So. 2d 833 (Fla. 1963). The constitution currently in effect contains express authority for special classification and valuation of agricultural property in FLA. CONST. art. VII, § 4(a) (1968).

Earlier legislation, 1943 Fla. Laws 875, ch. 22,079, § 22, had authorized the Comptroller to promulgate "standard measures of value" to be followed by the tax assessors in valuing property. Even though this might seem to affect the discretion of the tax assessor, the court has held "that any standard measure of value promulgated by the State Comptroller would not destroy the right of the tax assessor to exercise his discretion or judgment in reaching the ultimate conclusion of just value." *Powell v. Kelly*, 223 So. 2d 305, 309 (Fla. 1969).

136. See Note, *Assessment Standards and Property Tax Equity in Florida*, 17 U. FLA. L. REV. 83, 96-100 (1964).

137. 1963 Fla. Laws § 1, 600 ch. 63-250.

138. FLA. STAT. § 193.021 (1963). An eighth factor was added by 1967 Fla. Laws 336, ch. 67-167, § 1:

- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing.

139. 176 So. 2d 81 (Fla. 1965).

one willing but not obliged to sell.’”¹⁴⁰ The Court stated that the new statute

was not intended to give assessors an almost unbridled discretion in the performance of their duty to establish just valuation. Rather, we regard the Act as an attempt by the legislature to pin the assessors more firmly to the Constitutional mandate. The result of such a construction is not to deprive these officers completely of their discretion for there is bound to be some tolerance in the execution of their task as they receive, weigh and evaluate varying information on the subject from different sources they consider reliable, but this opinion is designed to put at rest the procedure of setting assessable values at a percentage of “X”. It is apodictic that a percentage of “X” cannot be computed without first establishing “X” and the assessors upon reaching the first figure are enjoined not to proceed to the second.¹⁴¹

This statute’s constraint on the assessor’s discretion in requiring consideration of the statutory factors proved somewhat illusory. Cases held the assessor’s valuation invalid when the assessor *failed to consider* one or more of the factors.¹⁴² Customarily, however, the assessor’s “judgment [was not] disturbed if it [could] be arguably contended that [the assessor had] abided by the criteria” required by law.¹⁴³ In a recent decision, the Court held the assessor need not give each factor equal weight, if “EACH FACTOR IS FIRST CAREFULLY CONSIDERED AND SUCH WEIGHT IS GIVEN TO A FACTOR AS THE FACTS JUSTIFY.”¹⁴⁴

A 1968 constitutional revision granted the legislature authority to reduce the assessor’s discretion in valuing land used for agricultural or non-commercial recreational purposes, and valuing livestock or tangible

140. *Id.* at 85-86 (quoting from *Root v. Wood*, 155 Fla. 613, 21 So. 2d 133 (1945)).

141. *Id.* at 85. *Accord* *Keith Investments, Inc. v. James*, 220 So. 2d 695, 696 (Fla. 4th Dist. Ct. App. 1969).

142. *Palm Corp. v. Homer*, 261 So. 2d 822 (Fla. 1972); *accord* *Exchange Realty Corp. v. Hillsborough County*, 272 So. 2d 534 (Fla. 1973).

143. *Miller v. Tax Assessor*, 31 Fla. Supp. 194, 196 (Cir. Ct. Pinellas County 1968).

144. *Lanier v. Walt Disney World Co.*, 316 So. 2d 59, 62 (Fla. 4th Dist. Ct. App. 1975) (emphasis original).

personalty held as inventory.¹⁴⁵ Provision remained for the election of a county tax assessor,¹⁴⁶ but the revision provided nothing for enhanced state supervision of valuations or constraints on the assessor's discretion. The legislature, however, continued to enact legislation increasing state supervision of tax assessors.

The Governmental Reorganization Act of 1969 created and transferred to the Department of Revenue all of the powers and duties previously held by the comptroller with respect to supervision of assessors and uniformity of valuations.¹⁴⁷ In 1969, the legislature also passed an act representing an important, albeit indirect, step in inducing assessors to increase their valuations up to the standard of full just valuation.¹⁴⁸ This act modified the formula for distributing state funds¹⁴⁹ among the sixty-seven school districts throughout the state.¹⁵⁰ Under the act, each school district's allotment of state funds was determined, in part, by reference to the level of assessment of taxable property made by the tax

145. FLA. CONST. art. VII, § 4 (1968). In 1980, this section was amended to authorize the total exemption of inventory from taxation, S.J. Res.12-E, 1980 Fla. Laws 1779. Each of these provisions has been implemented: FLA. STAT. § 193.461 (Supp. 1982) (agricultural lands); *id.* § 193.501 (1981) (recreational lands); *id.* § 192.001(11)(c) (Supp. 1982) (“[a]ll livestock shall be considered inventory”); and *id.* § 196.185 (1981) (exempts all items of inventory from ad valorem taxation after December 31, 1981; prior to that date, inventory was to be assessed “at 10 percent of just valuation,” *id.* § 193.511) (1981). Earlier statutory authorization for valuation of inventory at 25 percent of cost was held violative of the 1885 constitutional provisions requiring uniform and equal rates of taxation and just valuation of all property. *Franks v. Davis*, 145 So. 2d 223 (Fla. 1962).

146. FLA. CONST. art. VIII, § 1(d) (1968). A provision was also added by the 1968 constitutional revision to permit counties to abolish any county office and transfer all of the duties of that office to another office. A provision in the Dade County charter abolished the office of property appraiser and transferred the functions to the county manager. *See State ex rel. Glynn v. McNayr*, 133 So. 2d 312 (Fla. 1961).

147. 1969 Fla. Laws 527-28, ch. 69-106, § 21. *See Department of Revenue v. Bell*, 227 So. 2d 684 (Fla. 1st Dist. Ct. App. 1969).

148. 1969 Fla. Laws § 1, 16, ch. 69-1735. This act was initially passed during the regular session, but was vetoed by the Governor on June 28, 1969. The veto was overridden during a special session of the legislature in early December, 1969.

149. In 1969, \$43.6 million was appropriated for this purpose. 1969 Fla. Laws, 380-81, ch. 69-100, § 1 (item 347).

150. The school districts are separate governmental entities whose geographical boundaries are co-extensive with those of the counties. FLA. CONST. art. IX, § 4(a) (1968).

assessor. As such, the lower the level of assessment within a county, the less that county's school district would receive from the state.¹⁵¹ The annual level of assessments for each of the sixty-seven counties was to be determined by the auditor general.¹⁵² It was believed that this scheme would not only produce a more equitable distribution of state funds,¹⁵³ but would improve the level of valuations of property throughout the state.

However, in *District School Board of Lee County v. Askew*,¹⁵⁴ the Court held this scheme to be unconstitutional. The Court, in finding the auditor general's independent ascertainment of property values to be an impermissible usurpation of the duties and powers of the tax assessor, stated:

[W]e hold that the State has no power to ignore the presumption of correctness attendant to the official assessments. To rely on the findings of the Auditor-General . . . ignoring the official assessments, is to negate the discretion granted to the assessors, the discretion necessary to the job, attendant to all educated estimates, and uniformly recognized in the opinions of this Court. We conclude that a finding by the Auditor-General different from that reached by a county tax assessor is, therefore, insufficient to override the official assessment in the absence of a showing that the official assessment represented a departure from the requirements of law and not merely the differences of opinion to be expected when experts approach the subjective business of assessing property.¹⁵⁵

151. FLA. STAT. § 236.07(9)(a) (1969).

152. The Auditor General is an employee of the Legislature, appointed by the legislative auditing committee. FLA. STAT. § 11.42(1) (1969).

153. Under the previous formula, a county whose level of assessment was relatively low received a relatively larger share of state funds, and thus needed to raise a correspondingly lower amount of revenue locally from its ad valorem tax. Therefore, it was to the advantage of property owners within a county to have a low level of valuation made by the tax assessor. A similar approach was later employed to determine, in part, the allocation of state funds to counties and municipalities under state revenue sharing. FLA. STAT. § 218.245 (1973).

154. 278 So. 2d 272 (Fla. 1973).

155. *Id.* at 277.

G. The Past Ten Years

The legislature quickly responded to *District School Board of Lee County* by enacting the Property Assessment Administration and Finance Law, commonly referred to as the "Truth in Taxation Act."¹⁵⁶ This multi-faceted act increased the state's supervision of valuations by restricting the discretion of the tax assessors. The act required assessors to break down the assessment rolls into thirteen different classifications of real property and six classifications of personal property.¹⁵⁷ The act provided for the exchange of information between the Department of Revenue and the tax assessors. In addition, the assessor's records, including worksheets and property record cards, were to be made available to the Department and the auditor general.¹⁵⁸ The assessors were required to submit office budgets to the Department for determination of whether they adequately provided for the performance of the assessors' duties. The Administration Commission, made up of the Governor and cabinet, was given final authority to resolve disputes and to "amend the budget if it [found] any aspect of the budget . . . unreasonable in light of the work load of the assessor's office in the county. . . ."¹⁵⁹ The Department was authorized to standardize contracts for assessment services and computer systems.¹⁶⁰ The act established procedures for the audit of assessment rolls by the auditor general,¹⁶¹ and increased the Department's authority to approve or disapprove assessment rolls.¹⁶² The act establishes an Assessment Re-

156. 1973 Fla. Laws 331, ch. 172. The opinion in the *School Board of Lee County* case was handed down on April 4, 1973, and rehearing was denied on June 20; 172 was signed by the Governor on June 13.

157. FLA. STAT. § 195.073 (1973), as enacted by 1973 Fla. Laws 335, ch. 172, § 3.

158. FLA. STAT. § 195.084 (1973), as enacted by 1973 Fla. Laws 336, ch. 172, § 5.

159. FLA. STAT. § 195.087(1) (1973), as enacted by 1973 Fla. Laws 336-37, ch. 172, § 6.

160. FLA. STAT. § 195.095 (1973), as enacted by 1973 Fla. Laws 338-39, ch. 172, § 7.

161. FLA. STAT. § 195.096 (1973), as enacted by 1973 Fla. Laws 339-40 ch. 172, § 7.

162. FLA. STAT. § 195.097 (1973), as enacted by 1973 Fla. Laws 340-41, ch. 172, § 7; FLA. STAT. §§ 193.114(6), (7) (1973), as enacted by 1973 Fla. Laws 334-45, ch. 172, § 10.

view Commission to hear complaints regarding the approval or disapproval of rolls, allowing direct appeal to the Florida Supreme Court.¹⁶³ Finally, the act included a millage roll-back provision preventing taxing entities reaping a windfall in increased revenues from the anticipated increase in valuations.¹⁶⁴ The legislature also proposed a constitutional amendment changing the name from "tax assessor" to "property appraiser."¹⁶⁵

The "Truth by Taxation Act," in improving the assessor's valuation methods and procedures, as well as the state's supervision and control of property valuation, was striving for valuation of all taxable property at "just value."¹⁶⁶ In addition to placing the property appraiser's exercise of discretion under closer scrutiny, the act, by including elements such as the millage roll-back provision and the name change, provided property appraisers a less politically sensitive environment within which to operate. The focus of attention for property owners and voters was shifted from the property appraiser's valuation of property, the determination of the *tax base*, towards the local government's setting of the millage, the determination of the *tax rate*.

The legislature's action, while achieving progress towards full valuation, fell short of resolving the problem. A county's assessment rolls were to be reviewed in depth only once every three years,¹⁶⁷ reduced to once every four years in 1975.¹⁶⁸ Further, the streamlined, centralized

163. FLA. STAT. § 195.098 (1973), as enacted by 1973 Fla. Laws 341-43, ch. 172, § 7. Members of the Commission were to be appointed by the Governor, with the consent of three members of the cabinet and subject to approval by the senate. The appointees were to be "three persons knowledgeable in any of the following three general areas: property tax law, determination of property values, or statistics." See *infra* note 170 and accompanying discussion.

164. FLA. STAT. § 200.065 (1973), as enacted by 1973 Fla. Laws 346-48, ch. 172, § 13.

165. H.R.J. Res. 1907, 1973 Fla. Laws 1305-06, ratified in the general election held November 4, 1974, amending FLA. CONST. art. VIII, § 1(d) (1968).

166. This was later described as a legislative decision "to expand the tools made available to the Department for it to 'ride herd' on county officials. . . ." Spooner v. Askew, 345 So. 2d 1055, 1058 (Fla. 1976).

167. FLA. STAT. § 195.096(2) (1973), as enacted by 1973 Fla. Laws 339-40, ch. 172, § 7.

168. FLA. STAT. § 195.096 (1975), as amended by 1975 Fla. Laws 488-89, ch. 211, § 2. This effectively reduced the potential for the disapproval of a roll to once every four years; or, viewing the situation from another perspective, in any one year

scheme for reviewing the Department's disapproval of an assessment roll fell apart at the seams with the decision in *Slay v. Department of Revenue*.¹⁶⁹ The Court held that a county's circuit court could hear issues relating to the disapproval of an assessment roll, thereby circumventing the Assessment Administration Review Commission. The Commission had been created in part to expedite and consolidate the review of the disapproval of an assessment roll by the Department. Although the Department had long held that power to disapprove an assessment roll because of undervaluations of property, it was reluctant to exercise the power because of the financial chaos it would bring to the taxing entities within the county whose roll had been disapproved. Without a valid roll, the taxing entities could not levy or collect ad valorem taxes. To ameliorate this problem, the 1973 legislation created a procedure which alerted assessors early in the year that rolls of the current year might be disapproved unless defects in rolls of the prior year were corrected.¹⁷⁰ The disapproval of a roll could be appealed to the Assessment Administration Review Commission, with subsequent judicial review in the Florida Supreme Court.¹⁷¹ But because the court held that the county circuit court also had jurisdiction of a disapproved roll, the hope of rapidly resolving controversies disappeared, and the Department was again placed in the politically untenable position of being able to employ its ultimate sanction—disapproving a roll—only with the finesse of a nuclear warhead.

In 1979, the Governor directed the Department of Revenue to strictly enforce the full valuation requirement.¹⁷² The legislature re-

only one-fourth of the counties' rolls were at risk for disapproval. Pajic, Weber & Francis, *Truth or Consequences: Florida Opts for Truth in Millage in Response to the Proposition 8* Fla. St. L.U. Rev. 593, 603 (1980). [hereinafter cited as *Truth or Consequences*.] In addition, the duty of conducting these reviews was shifted from the Auditor General to the Department of Revenue. FLA. STAT. § 20.21 (1975), as amended by 1975 Fla. Laws 487, ch. 211, § 1.

169. 317 So. 2d 744 (Fla. 1975).

170. FLA. STAT. § 195.097(1) (1973), as enacted by 1973 Fla. Laws 340-41, ch. 172, § 7. See *Spooner v. Askew*, 345 So. 2d 1055, 1059 n.15 (Fla. 1976).

171. FLA. STAT. § 195.098 (1973), as enacted by 1973 Fla. Laws ch. 172, § 7. Only one case was ever filed with the Commission, and it was withdrawn before the hearing commenced. *Slay v. Department of Revenue*, 317 So. 2d 744, 745 n.3 (Fla. 1975). The Commission was abolished in 1980. 1980 Fla. Laws ch. 272, § 7.

172. St. Petersburg Times, July 31, 1979, at B1, col. —, cited in *Truth or Con-*

sponded to the potential problems of disapproved assessment rolls by enacting the "Truth in Millage," or "TRIM" Act¹⁷³ (referring to one of six major elements of the Act). The act aimed to produce a system for levying ad valorem taxes on property valued at full cash value. The portion of the act relating to millage was a continuation of the 1973 legislation shifting taxpayers' attention from the valuation process towards the budget setting and millage levying stage. Under the act, property owners are no longer simply notified by the property appraiser of an anticipated increase in assessed valuation of property. Owners now are furnished with a statement reflecting the valuation of their property, and informing them of their possible tax liability depending on whether the same millage is levied as the preceeding year or whether the tax liability will include any amounts for proposed budget changes.¹⁷⁴ Other portions similiarly focus attention on those aspects of ad valorem taxation relating to budget making and tax rate setting.¹⁷⁵

The Act makes property appraisers more accountable by providing improved conditions for a property owner to have the valuation of his or her property subjected to administrative review by a Property Appraisal Adjustment Board established for each county.¹⁷⁶ The act also enhances state-level review of assessment rolls by increasing to once every two years the frequency of in-depth studies by the Department, and by requiring the auditor general to conduct a performance audit of the Department at least once every three years and report his findings to the legislature.¹⁷⁷

The Act increases the likelihood that the Department will act to

sequences, supra note 168, at 593 n.1.

173. 1980 Fla. Laws 1143, ch. 274. For an excellent analysis of the Act, see *Truth or Consequences, supra* note 168.

174. 1980 Fla. Laws 274, § 20, *as amended by* 1980 Fla. Laws 1080, ch. 261, § 6. See *Truth or Consequences, supra* note 168, at 610-14.

175. *E.g.*, the tax collector is now required to send to each property owner a statement which not only advises the taxpayer of the amount of taxes due, but also which taxing authorities have imposed increased taxes, and which have not. FLA. STAT. § 197.072(5)(b) (Supp. 1982) as enacted by 1980 Fla. Laws 1181-82, ch. 274, § 38.

176. FLA. STAT. §§ 194.011 (Supp. 1982), 194.015 (1981), 194.032 (Supp. 1982), *as amended by* 1980 Fla. Laws 1174-81, ch. 274, §§ 36, 37. See *Truth or Consequences, supra* note 168, at 618-21.

177. FLA. STAT. § 195.096 (Supp. 1982) *as amended by* 1980 Fla. Laws ch. 274, § 18. See *Truth or Consequences, supra* note 168, at 621-23.

disapprove an assessment roll because of undervaluation of property. Procedures were revised for reviewing a roll's disapproval by eliminating the Assessment Administration Review Commission, providing the circuit court of Leon County with initial jurisdiction, and providing appellate jurisdiction in the First District Court of Appeal.¹⁷⁸ To alleviate the likely financial problems to local entities which a roll disapproval would bring, the act provided for imposition and collection of taxes on an "interim roll" contemporaneous with judicial proceedings regarding the disapproved roll.¹⁷⁹

The Act affects property appraisers' discretion also by reintroducing the level of assessed valuations into the formula for distributing state funds to the sixty-seven school districts.¹⁸⁰ This was basically the same scheme held unconstitutional in *District School Board of Lee County v. Askew*,¹⁸¹ because it allowed the determination of property values by the tax assessor to be overridden by a state official. The constitutional infirmity was remedied, however, by an amendment to the Constitution:

State funds may be appropriated to the several counties, school districts, municipalities or special districts upon such conditions as may be provided by general law. *These conditions may include the use of relative ad valorem assessment levels determined by a state agency designated by general law.*¹⁸²

During the preceding ten years, the legislature has responded to the inequities of undervaluation by increasing state supervision and control of property appraisers. The smallest details of the daily func-

178. FLA. STAT. § 195.092(2) (1981), *as amended by* 1980 Fla. Laws 1154, ch. 274, § 6. *See Truth or Consequences, supra* note 168, at 625.

179. FLA. STAT. § 193.1145 (Supp. 1982), *as amended by* 1980 Fla. Laws 1150-53, ch. 274, § 5. *See Truth or Consequences, supra* note 168, at 623-25; and *infra* note 232 and accompanying text.

180. FLA. STAT. § 236.081(4) (1981), *as amended by* 1980 Fla. Laws 1161-63, ch. 274, § 21, effective for fiscal year 1983-84 and thereafter, 1980 Fla. Laws, ch. 274, 9, § § 64(2). *See Truth or Consequences, supra* note 168, at 625-26.

181. 278 So. 2d 272 (Fla. 1973). *See supra* note 152 and accompanying text.

182. FLA. CONST. art. VII, § 8 (1968), *as amended in* the general election of 1980, S.J. Res. 4-B, 1980 Fla. Laws 177. The italicized language was added by the 1980 amendment.

tions of the office are prescribed by statute or administrative rule; but most importantly, the property appraiser's discretion in valuation has been brought under close scrutiny. The Department of Revenue has been provided not only with a well stocked arsenal of carrots and sticks to use in their supervision of the property appraisers, but also with a non-cataclysmic procedure for disapproving all or portions of a roll because of undervaluations. Whether these measures will prove up to the task of "secur[ing] a just valuation of all property for ad valorem taxation,"¹⁸³ only time will tell.

III. Duties of the Property Appraiser

The property appraiser's¹⁸⁴ primary duty is to prepare annual assessment rolls for the county's real property and tangible personal property,¹⁸⁵ and forward them to the Department of Revenue for approval by the first Monday in July.¹⁸⁶ The rolls show the taxable value¹⁸⁷ of all property within the county, and are utilized by local governmental entities for levying ad valorem taxes.¹⁸⁸ There are four major tasks involved in preparing the assessment rolls: the listing, classification and valuation of all taxable property, and the determination of whether property is exempt or immune from taxation.

The property appraiser is required to "assess all property located within his county, except inventory, whether such property is taxable, wholly or partially exempt, or subject to classification reflecting a value less than its just value at its present highest and best use."¹⁸⁹ In complying with this requirement, the property appraiser must *list* on the assessment roll all real property within the county,¹⁹⁰ and all tangible

183. FLA. CONST. art. VII, § 4 (1968).

184. Property appraisers are authorized to appoint deputies to act in their behalf in carrying out the duties of the office. FLA. STAT. § 193.024 (1981).

185. FLA. STAT. § 193.114(1) (Supp. 1982).

186. FLA. STAT. § 193.1142(1) (Supp. 1982).

187. "Taxable value" is defined as "the assessed value of property minus the amount of any applicable exemption provided under ss. 3 and 6, Art. VII of the State Constitution and chapter 196." FLA. STAT. § 192.001(16) (Supp. 1982).

188. FLA. STAT. § 200.065 (Supp. 1982).

189. FLA. STAT. § 192.011 (1981).

190. Governmentally owned streets, roads and highways need not be listed. FLA. STAT. § 193.085(1) (1981).

personal property with a situs¹⁹¹ within the county which has been included on a return,¹⁹² or, if omitted from a return, which has been discovered by the property appraiser.¹⁹³ Unless expressly exempted, all real and personal property located in Florida, and all personal property belonging to Florida residents, is subject to ad valorem taxation.¹⁹⁴ Property generally becomes taxable in the jurisdiction in which it is physically present on January 1 of each year,¹⁹⁵ and its "just value" is to be determined as of that date also.¹⁹⁶

The owner of tangible personal property is required to file a return with the property appraiser of the county in which the property is taxable, listing the items of personalty and the owner's estimate of their value.¹⁹⁷ Such returns must be filed by April 1 each year,¹⁹⁸ and penalties are provided for the failure to file, or late filing of a return, or omission of property from a return.¹⁹⁹ Railroad and railroad terminal companies which maintain tracks or other fixed assets within Florida are required to submit a return to the Department of Revenue by April 1; the Department is charged with the duty of valuing such property and, by June 1, notifying each county of the assessed value of such property within each county.²⁰⁰ No return is required for real property, if the ownership is reflected in the public records of the county in which it is located.²⁰¹

191. Tangible personal property has a situs in the county in which it is permanently located on January 1. FLA. STAT. § 192.032(2) (Supp. 1982).

192. FLA. STAT. § 193.114(3) (Supp. 1982).

193. FLA. STAT. § 193.073 (1981).

194. FLA. STAT. § 196.001 (1981). Leasehold interests in property owned by a governmental entity are also taxable, unless used for an exempt purpose. *Id.*

195. FLA. STAT. § 192.032 (Supp. 1982).

196. FLA. STAT. § 192.042 (1981). In addition, if property was omitted from an assessment roll, it may be assessed for the three years preceding the year in which the omission is discovered at its just value on each of the three preceding first days of January. FLA. STAT. § 193.092 (1981).

197. FLA. STAT. §§ 193.052(1), (3), (4) (Supp. 1982); 195.027(4) (1981).

198. FLA. STAT. § 193.062(1) (1981).

199. FLA. STAT. § 193.072(1) (1981) (penalty of 25% of tax liability for failure to file a return), (2) (penalty of 5% of tax liability for each month a return is late, up to a maximum of 25% penalty), (3) (penalty of 15% of tax attributable to property omitted from a return).

200. FLA. STAT. §§ 193.062(3), 193.085(4) (1981).

201. FLA. STAT. § 193.052(2) (Supp. 1982). There are a few exceptions, requir-

All property required to be listed on the assessment rolls must also be *classified* according to its use.²⁰² Real property is divided into nine classes;²⁰³ personal property, into five.²⁰⁴ These separate classifications allow component parts of the assessment rolls to be scrutinized more carefully, thereby aiding the Department of Revenue in its supervision of the property appraisers and its review of the rolls.²⁰⁵ In addition, certain special classes of property are to be treated differently in the preparation of the assessment rolls. Agricultural property is to be valued with reference to its agricultural use, even though such value might be less than its full just value.²⁰⁶ Land which is environmentally endangered or utilized for outdoor recreational or park purposes may similarly qualify for valuation at less than full just value.²⁰⁷ Improvements

ing a return in order to qualify for special treatment. *E.g.*, FLA. STAT. § 193.621(5) (Supp. 1982), (return required if taxpayer claims the right to have certain pollution control facilities valued at salvage value). *See infra* note 204. Such returns are due by April 1. FLA. STAT. § 193.062(4) (1981). If the owner of real property who also owns the mineral, oil, gas or other subsurface rights so requests, the property appraiser must separately assess such subsurface rights; separate assessment is also required if the subsurface rights are owned by a party other than the party with ownership of the remainder of the fee. FLA. STAT. § 193.481 (1981).

202. FLA. STAT. § 195.073 (Supp. 1982).

203. The nine classes of real property are: residential, commercial and industrial, agricultural, nonagricultural acreage, exempt wholly or partially, centrally assessed, leasehold interests, time-share property, and other. The residential class is further divided into six subclasses: single family, mobile homes, multifamily, condominiums, cooperatives, and retirement homes. FLA. STAT. § 195.073(1) (Supp. 1982).

204. The five classes of personalty are: residential floating structures, nonresidential floating structures, mobile homes and attachments, household goods, and other tangible personal property. FLA. STAT. § 195.073(2) (Supp. 1982). Mobile homes are not subject to ad valorem taxation if they are registered and licensed as motor vehicles pursuant to FLA. STAT. ch. 320 (Supp. 1982). FLA. CONST. art. VII, § 1(b) (1968). Any mobile home without a current motor vehicle license plate properly affixed is presumed to be either real property or tangible personal property; however, if it is permanently affixed to land owned by the person who also owns the mobile home, it is presumed to be real property. FLA. STAT. § 193.075 (1981).

205. *See* FLA. STAT. § 195.096(3) (Supp. 1982), 195.097(1) (Supp. 1982).

206. FLA. STAT. § 193.461 (Supp. 1982). In order to be entitled to such treatment, a return requesting agricultural classification must be filed by March 1 each year.

207. FLA. STAT. § 193.501 (1981). A related provision, *id.* § 193.507, (1981) directs the property appraiser, upon petition by a property owner, to reclassify and

to certain real property, either in the nature of qualified pollution control facilities,²⁰⁸ or to permit access by physically handicapped persons,²⁰⁹ are deemed to not increase the value of the property so improved by more than the salvage value of the materials utilized. Finally, within the proper classifications, there is to be separate identification of property which qualifies for various corporate income tax credits,²¹⁰ or for an economic development ad valorem tax exemption.²¹¹

The *valuation* of property on the assessment rolls has been the most troublesome aspect of the duties of the property appraiser. The Constitution provides that “[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation. . . .”²¹² “Just valuation” has been held to be synonymous with “fair market value,” which is “the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.”²¹³ Provisions of general law must be complied with by the property appraiser in valuing property, their overall objective being to direct the property appraiser in satisfying the constitutional mandate to “secure a just valuation of all property.” Eight factors are enumerated which the property appraiser is required to consider in arriving at the just value of property.²¹⁴ In addition, to ensure that the actual physical condition of real property is being monitored, the property appraiser is

reassess real property which is located in an area designated as an area of critical state concern, if that designation affects the highest and best use to which the property might be expected to be put. The property appraiser is required to separately identify property assessed as environmentally endangered, and property assessed as outdoor recreational or park land. *Id.* § 193.301(7) (1981).

208. FLA. STAT. § 193.621 (1981).

209. FLA. STAT. § 193.623 (1981).

210. FLA. STAT. § 195.073(4) (Supp. 1982) (cross-reference to FLA. STAT. § 220.18 (1981) gasohol development tax incentive credit), (5) (cross-reference to FLA. STAT. § 220.182 (Supp. 1982) economic revitalization tax incentive credit).

211. FLA. STAT. § 195.073(6) (Supp. 1982). The economic development ad valorem tax exemption is authorized by FLA. CONST. art. VII, § 3(c) (1968) and may be implemented pursuant to FLA. STAT. § 196.199 (Supp. 1982).

212. FLA. CONST. art. VII, § 4 (1968).

213. *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965); *see supra* note 139 and accompanying text.

214. FLA. STAT. § 193.011 (1981); *see supra* note 138 and accompanying text.

required to inspect each parcel at least once every three years.²¹⁵ However, the most significant provisions of general law which have been enacted to achieve the constitutional objective of just valuation are contained in Florida Statutes Chapter 195, "Property Assessment Administration and Finance." The general scheme is to provide the Department of Revenue with a great deal of oversight and control over the methods and procedures used by property appraisers in valuing property, culminating with the ultimate authority to disapprove an assessment roll if it does not comply with the just valuation requirement.²¹⁶

In order to assist specifically with the valuation process, the Department is authorized to establish "standard measures of value," which are "guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property."²¹⁷ The standard measures of value are to be included in a manual of instructions prepared by the Department, along with other rules and regulations, forms and regulations relating to the use of forms and maps which have been prepared by the Department, and other information considered by the Department to be useful in the administration of taxes.²¹⁸

As matters of more general supervision, the Department is authorized to have full access to the records of property appraisers;²¹⁹ it is directed to review the annual budget for the operation of each property appraiser's office;²²⁰ it is to establish a list of approved bidders who may provide property appraisers with assessment services or systems or electronic data-processing programs or equipment;²²¹ and the Depart-

215. FLA. STAT. § 193.023(2) (1981).

216. FLA. STAT. §§ 195.0012 (1981), 195.002 (1981); *see supra* notes 156-63, 177-79 and accompanying text.

217. FLA. STAT. § 195.032 (Supp. 1982). The standard measure of value are deemed to be prima facie correct. *See St. Joe Paper Co. v. Conrad*, 333 So. 2d 527, 529 (Fla. 1st Dist. Ct. App. 1976), *cert. denied*, 344 So. 2d 324 (Fla. 1977).

218. FLA. STAT. § 195.062 (1981). The Department is required to make available maps and mapping materials sufficient to ensure that all real property within the state is listed and valued. FLA. STAT. § 193.085(2) (1981).

219. FLA. STAT. § 195.084(2) (1981).

220. FLA. STAT. § 195.087 (Supp. 1982).

221. The Department is also authorized to promulgate standard contracts for the property appraisers to use in obtaining such services or equipment. FLA. STAT. § 195.095 (1981).

ment is required to promulgate rules prescribing uniform standards and procedures for computer programs and operations utilized by property appraisers so that data will be comparable among counties and so that a single audit procedure will be practical for all property appraisers' offices.²²² In order to enforce the performance of any of the duties of the property appraiser, the Department is authorized to bring suit in the circuit court of the errant property appraiser's county, and such court is authorized to order, *inter alia*, "the implementation of a plan of reappraisal to be completed within a prescribed period of time."²²³

Property appraisers are required to submit their assessment rolls to the Department of Revenue by the first Monday in July of each year,²²⁴ and the executive director of the Department is to disapprove all or any part of an assessment roll which is not "in substantial compliance with law."²²⁵ The determination of a property appraiser's non-compliance may be based on information discovered by the Department, including audits prepared by the Department or the auditor general.²²⁶ While a decision to disapprove a roll may be based upon data confined solely to the roll being reviewed in that year, a more solid foundation for disapproval rests upon the authority of the Department to utilize data from the rolls of the preceding year. Under this procedure, the Department may evaluate a roll *after* it has been approved, and then notify the property appraiser of any defects in that roll, and what he or she must do in order to eliminate those defects from the roll for the following year.²²⁷ During a period of approximately six weeks beginning when the Department sends such a notice, the property appraiser must either agree to comply with the suggested corrective action, or meet with the executive director of the Department in an attempt to resolve their differences.²²⁸ In any event, the Department is to issue an administrative order to the property appraiser, either incorporating his or her agreement to comply with the Department's earlier

222. FLA. STAT. § 195.027(2) (1981).

223. FLA. STAT. § 195.092(4) (1981).

224. FLA. STAT. § 193.1142(1) (Supp. 1982).

225. *See* FLA. STAT. § 193.1142 (Supp. 1982).

226. *Id.*

227. FLA. STAT. § 195.097(1) (Supp. 1982). The notice of defects is to be provided to the property appraiser by November 15.

228. FLA. STAT. § 195.097(2) (Supp. 1982).

notice, or directing that specified remedial action be taken.²²⁹

The property appraiser is required to notify the Department of his or her intention to comply with the administrative order, or the basis for intended noncompliance.²³⁰ If noncompliance is indicated, the Department may seek judicial review at that point.²³¹ If compliance is indicated, the Department is to closely supervise the preparation of the assessment rolls to ensure that the order is complied with and that property is valued at its just value.²³² If it appears by May 1 that the property appraiser is not in substantial compliance with the administrative order, the Department is to notify the property appraiser and the governing body of each tax-levying agency in that county of its intention to disapprove all or a portion of that assessment roll.²³³ Then, if the roll which is submitted to the Department is not in compliance with the administrative order, the Department will disapprove the roll, or the defective portions thereof.²³⁴ When a roll is disapproved, in whole or in part, local governmental agencies may levy their ad valorem taxes on the basis of an "interim assessment roll," which, in these circumstances, is the roll which was submitted, even though disapproved.²³⁵ After the deficiencies in the disapproved roll have been corrected, or the judicial review of the disapproval has been concluded, the property appraiser is required to reconcile the differences between the interim roll and the final roll, and any supplemental bills or refunds, as appropriate, are to be sent to taxpayers.²³⁶

The statutes speak broadly of all real and personal property with a situs in Florida, and all personal property belonging to Florida residents, being subject to ad valorem taxation "[u]nless expressly ex-

229. *Id.* The administrative order must be issued no later than January 1.

230. FLA. STAT. § 195.097(3) (Supp. 1982). The notification to the Department must be made no later than January 15.

231. *Id.* See FLA. STAT. § 195.092(4) (1981).

232. FLA. STAT. § 195.097(4) (Supp. 1982).

233. *Id.*

234. FLA. STAT. § 193.1142(2) (Supp. 1982).

235. An interim roll may also be authorized if the current year's roll has not been timely prepared or approved; the interim roll in this circumstance is the last approved roll, adjusted to the extent practicable to reflect additions, deletions and changes in ownership. FLA. STAT. § 193.1145 (Supp. 1982).

236. *Id.*

empted from taxation."²³⁷ However, property which is immune from taxation is also nontaxable, even though no specific statutory mention is made of the concept. Property belonging to the federal government or one of its instrumentalities is immune from taxation under the United States Constitution,²³⁸ as are imports.²³⁹ Similarly, property belonging to the State of Florida, one of its instrumentalities or political subdivisions is immune from taxation.²⁴⁰ By contrast, municipalities²⁴¹ and other public corporate bodies²⁴² are not political subdivisions of the state and thus their property does not enjoy immunity from taxation—property owned by such entities may, however, be exempt from taxation.²⁴³

In preparing the assessment rolls, the property appraiser must determine whether property which is not immune is nonetheless exempt²⁴⁴ from taxation, so that taxes will not be levied on such property.²⁴⁵ Exemptions may be classified into two broad groups: those which are authorized according to clearly stated objective criteria, and those which fall under the broader, less well defined areas of uses for educational,

237. FLA. STAT. § 196.001 (1981).

238. *First National Bank of Homestead v. Dickinson*, 291 F. Supp. 855 (D.C. Fla. 1968), *aff'd*, 393 U.S. 409 (1969). FLA. STAT. § 196.199(1)(a) (Supp. 1982) speaks, confusingly, of such property being "exempt" from taxation.

239. U.S. CONST. art. 1, § 10; *see also* *Michelin Tire Co. v. Wages*, 423 U.S. 276 (1976).

240. *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Dickinson v. Tallahassee*, 325 So. 2d 1 (Fla. 1975). *See generally* 31 FLA. JUR., *Taxation* § 135 (1974).

241. FLA. CONST. art VII, § 3(a) (1968); *State ex rel. Burbridge v. St. John*, 143 Fla. 544, 197 So. 131 (1940).

242. *Hillsborough County Aviation Authority v. Walden*, 210 So. 2d 193 (Fla. 1968).

243. FLA. STAT. § 196.199(1)(c) (Supp. 1982).

244. The exemptions from ad valorem taxation are authorized by FLA. CONST. art. VII, §§ 3, 4, 6 (1968), and implemented by various sections of FLA. STAT. ch. 196 (1981 and Supp. 1982).

245. FLA. STAT. § 196.193, § 196.141 (1981). In addition, for the purposes of assessment roll recordkeeping and reporting, exemptions authorized by each provision of the statutes must be reported separately for each category of exemption, both as to total value exempted and as to the number of exemptions granted. FLA. STAT. § 196.002(2) (1981).

literary, scientific, religious, charitable or governmental purposes.²⁴⁶ The first category includes: exemptions for property owned and used as a homestead;²⁴⁷ the further exemption for property owned and used as a homestead by qualified veterans who are permanently and totally disabled,²⁴⁸ or by veterans who are confined to wheelchairs,²⁴⁹ or by qualified non-veterans who are afflicted with specified physical conditions or who are totally and permanently disabled;²⁵⁰ the exemption of property to the value of \$500 of every Florida resident who is a widow, blind or totally and permanently disabled;²⁵¹ the exemption for real property upon which a renewable energy source device is installed and operated;²⁵² the total exemptions for household goods and personal effects of Florida residents²⁵³ and items of inventory;²⁵⁴ and economic development exemptions for qualifying new businesses and expansions of existing businesses.²⁵⁵ Some of the objective criteria for the exemptions in

246. FLA. CONST. art. VII, § 3(a) (1968) provides that “[s]uch portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.” This is implemented by FLA. STAT. § 196.192 (Supp. 1982):

(1) all property used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

(2) All property used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

“Exempt use of property” is defined, in turn, by FLA. STAT. § 196.012(1) (Supp. 1982) as “predominant or exclusive use of property for educational, literary, scientific, religious, charitable, or governmental use, as defined in [chapter 196].”

247. The homestead exemption is provided by FLA. CONST. art VII, § 6 (1968) and is implemented by FLA. STAT. § 196.031 (Supp. 1982).

248. FLA. STAT. § 196.081 (1981).

249. FLA. STAT. § 196.091 (1981).

250. FLA. STAT. § 196.101 (1981). The exemption is for real property owned and used as the homestead by a person who is a quadriplegic, paraplegic, hemiplegic, legally blind, or otherwise totally and permanently disabled if he or she must use a wheelchair for mobility.

251. FLA. STAT. § 196.202 (1981).

252. FLA. STAT. § 196.175 (1981). Renewable energy source devices are defined in FLA. STAT. § 196.012(13) (Supp. 1982).

253. FLA. STAT. § 196.181 (1981). Household goods and personal effects are defined in F.A.C. § 12D-7.02.

254. FLA. STAT. § 196.185 (1981).

255. FLA. STAT. § 196.1995 (1981). Definitions of a qualifying “new business”

the first category are to be ascertained by the property appraiser,²⁵⁶ but, where appropriate, he may rely on the opinion of others as to the physical condition of an applicant.²⁵⁷

Exemptions in the second category are less well defined and thus are more difficult to apply, although the property appraiser is given some legislative guidance in certain areas. For example, property used by public fairs and expositions chartered by Fla. Stat. ch. 616 is presumed to be used for educational purposes and is thus entitled to exemption.²⁵⁸ Similarly, additional criteria are provided for the determination of whether a charitable purpose is being served by hospitals, nursing homes, and homes for special services.²⁵⁹ If property is devoted to an exempt use on less than an exclusive basis, and if the exempt use is nonetheless the predominant use of the property, exemption is authorized to the extent of the predominant use;²⁶⁰ there is statutory guidance for determining the extent of exempt use of property.²⁶¹ Ex-

and "expansion of an existing business" are provided in FLA. STAT. §§ 196.012(14), (15) (Supp. 1982), respectively.

256. *E.g.*, FLA. STAT. § 196.181 (1981) provides exemption for household goods and personal effects belonging "to every person residing and making his or her permanent home in this state." The property appraiser is provided with nine factors to consider in determining whether an individual has established a permanent residence in Florida. FLA. STAT. § 196.015 (1981).

257. Exemptions for certain veterans with physical disabilities provided by FLA. STAT. §§ 196.081 (1981) and 196.091 (1981) may be based upon a letter from the United States Government or United States Veterans' Administration relating to the appropriate physical condition. FLA. STAT. § 196.24 (1981). Exemptions provided by FLA. STAT. § 196.101 (1981) may be based upon a certificate from the Veterans' Administration or from two doctors licensed to practice in Florida. *See also* FLA. STAT. § 196.012(10) (Supp. 1982). The exemption for blind persons provided by FLA. STAT. § 196.202 (1981) may be based on certification from the Florida Bureau of Blind Services. F.A.C. § 12D-7.03(1)(c). In addition, applications for the economic development ad valorem tax exemption authorized by FLA. STAT. § 196.1995 (1981) are to be *granted* by the governing body of the county or municipality in which the property is located.

258. FLA. STAT. § 196.198 (1981). *See also* FLA. STAT. §§ 196.1985, 196.1986 (1981).

259. FLA. STAT. §§ 196.197 (1981), 196.1975 (Supp. 1982).

260. FLA. STAT. § 196.192(2) (1981). Predominant use of property is defined as "property used for exempt purposes in excess of 50 percent but less than exclusive." FLA. STAT. § 196.012(3) (Supp. 1982).

261. FLA. STAT. § 196.196 (1981).

emptions for the religious, literary, scientific or charitable use of property are available only if the owner of such property is a nonprofit organization, and statutory criteria are supplied for the property appraiser to follow in making that determination as well.²⁶²

The property appraiser is assisted in the task of deciding whether property is entitled to exemption by the requirement that an application for exemption must be filed with the property appraiser by March 1 of each year—the failure to file an application constitutes a waiver of any exemption privilege for that year.²⁶³ The same rule applies to the homestead exemption,²⁶⁴ but because of the political visibility and widespread use of this exemption, the property appraiser is required to remind each person who was entitled to the exemption in the previous year of the need to apply for the exemption in the current year, and to furnish an application form for that purpose.²⁶⁵

IV. Conclusion

The property appraiser today plays a central role in the imposition of ad valorem taxes by Florida's local governmental units. This is a role inherent to the fundamental nature of ad valorem taxation, because such a tax is imposed on property subject to the levy, and it is measured by the value of such property. Therefore, *someone* must determine what property is taxable and ascertain its value. In Florida, the locally elected property appraiser for each county has traditionally been the person charged for those tasks. However, the state no longer imposes a general property tax, and the systems of communication and transportation have been vastly improved since the mid-1800s.

Over the past several years, the courts have prodded the legisla-

262. FLA. STAT. § 196.195 (1981).

263. FLA. STAT. § 196.011(1) (Supp. 1982). There are exceptions to the annual application requirement for the exemption of certain property owned by houses of public worship, household goods and personal effects of Florida residents, public road rights-of-way and borrow pits, and property of the state, any county, any municipality, any school district, or any community college district. FLA. STAT. § 196.011(2), (3) (Supp. 1982). Applications for exemption are to be filed on forms prepared and distributed by the Department of Revenue. FLA. STAT. § 196.193(2) (1981).

264. FLA. STAT. § 196.131 (1981).

265. FLA. STAT. 196.111 (1981). The forms are to be provided to the property appraisers by the Department of Revenue. FLA. STAT. § 196.121 (1981).

ture to take strong action to ensure full valuation, and the Department of Revenue has been provided with a plethora of devices to oversee the property appraisers in the performance of their duties. The ultimate objective is to achieve full valuation so that ad valorem taxes may be imposed equally and uniformly throughout the state. The need for state-wide full valuation has also been accentuated by the homestead exemption, by multi-county special district levies, and the use of the assessment rolls as an appropriate measure, in part, for the distribution of state funds to local governmental entities, including school districts.

The existing scheme of locally elected property appraisers and Department of Revenue supervision is cumbersome and inefficient. Full valuation would be a more reasonably obtainable objective, and the integrity of the tax rolls would be improved if the property appraisers were employees of the Department of Revenue, directly accountable to the Executive Director. Perhaps, for the purpose of assigning valuation responsibilities, the state could be divided into geographical divisions which do not adhere to county lines. However, property owners should continue to be provided with the opportunity for local relief by authorizing the board of county commissioners to hear complaints as to the denial of exemptions and as to valuation, as they do today. The local circuit court should retain jurisdiction as well, but appellate jurisdiction should be consolidated, either in the First District Court of Appeals, or in a separate Appellate Tax Court, with ultimate judicial review in the Supreme Court. The Department of Revenue would be the sole necessary defendant in such proceedings. There would be no need for the Department to disapprove a tax roll, thereby disrupting local finances. Instead, the professional appraiser whose responsibility it was for the preparation of the defective portion of the roll would be subject to dismissal by the Department, rather than being rewarded by re-election as often is the case today.

The ad valorem tax is a practical, useful source of revenue for local governmental entities. However, there is no need for the tax base to be determined by a locally elected official. The ad valorem tax is a good tax only if it is fairly imposed. The best way to ensure that is to have the exemption and valuation duties performed by persons who are subject to uniform, state-wide standards and who are subject to meaningful, immediate review of the performance of their duties. The appropriate place for professional property appraisers in the scheme of ad

valorem taxation is *within* the Department of Revenue, rather than merely being subject to the Department's oversight.