

Full-Value Tax Assessment *(Are Fears Warranted?)*

by Corey Bearak

Mayor Edward Koch of New York takes the position that one-family and two-family homes should not be taxed at the same rate as commercial, income-producing properties.

In practice, localities in the State have been assessing properties at percentages less than the full market value in apparent disregard of a 1788 law mandating that all property must be assessed at full value. A Fire Island property owner, Pauline Hellerstein, sued to have all properties in Islip Town in Suffolk County assessed at full market value. The N.Y. Court of Appeals ordered Islip to make all future assessments at full value by December 31, 1976.

Islip Implementation

When Islip implemented the Court's decision and assessed all property at full value, one Islip homeowner experienced a tax increase of 246 percent. Sixty-four percent of the residential properties had increased assessments while 79 percent of the commercial properties had decreased taxes. The State Board of Equalization and Assessment found that homeowners as a group paid five percent more of the Town's total taxes than previously and that the average tax bill rose four percent.

In Islip, 95 percent of all properties are one-family homes. Many localities in New York, particularly New York City, rely on commercial properties to pay a heavier burden than one-family and two-family homes. Many taxing jurisdictions fear that the Hellerstein decision sets a precedent for successful actions to assess property rolls at full value, because if all tax rates remain equal, the increased value of a home would sharply raise its owner's tax while the burden on commercial property owners would decrease. A New York Times editorial finds such a shift in tax burdens unfair and politically impractical. According to an Assembly study, "Allowing the Hellerstein mandate to stand would result in residential property tax increases so large in many areas that New York could suffer the same angry reaction from taxpayers that led to Proposition 13 in California."

New York City

A State Comptroller's audit released over a year ago found, that throughout New York City, smaller residences are assessed at a significantly lower percentage of market value than are apartment, commercial, industrial and office buildings. According to the State Assembly Task Force on Real Property Taxation, if full value is implemented in New York City, residential property taxes would increase by an average of 114 percent, while commercial property taxes would decrease by 29 percent. Discrepancies between classes of

properties are acknowledged. The discrepancies within the same class, particularly between residential properties of the same type, often in the same neighborhood, are bound to make difficult any governmental response to Hellerstein.

In addition, in New York City, for example, newer homes tend to be taxed more than older homes because properties have not been reassessed recently. Full value assessment therefore would shift the tax burden within the residential class from the owners of new property to the owners of older property. The elderly, often the owners of the older and even more underassessed properties, face a dilemma; many are retired, on fixed incomes, and suffer from inflation. Sharply increased tax bills might be an impossible burden causing them to lose their homes.

Mayor Koch, in an executive order dated September 7, 1978, set in motion a long-term revaluation of real property in New York City aimed at satisfying Hellerstein by assessing all property at 100 percent at full value, but any attempt to shift tax burdens to residential property owners will meet strong political opposition.

Homeowner groups have loudly protested full value assessment. The Federation of Civic Councils of the Borough of Queens met December 13, 1978 to plan rallies and other forms of protest to get the State Legislature to arrest any implementation of 100 percent assessment. More than one-half of New York City's 560,000 small homes are located in Queens. The Federation has distributed petitions and held rallies in June and October to highlight the homeowners' concerns. On July 5, 1979, seventy-three leaders of New York City homeowner groups met to urge a solution that does not result in "skyrocketing" taxes for homeowners. Two thousand homeowners and three bands marched to the Valley Stream Village green where they cheered Republicans supporting a bill to repeal section 306 of the State's Real Property Tax Law which, the Hellerstein court interpreted, mandates full value assessment. According to lawyer Albert Greenblatt, "(h)omeowners fear that if 100 percent assessment is activated, they'll be faced with the loss of their homes." As counsel to the Queens Federation of Civic Councils, and Chairman of the Federation's Committee to block full value assessment, Mr. Greenblatt thinks that a sharply higher property tax coupled with rapidly increasing costs of maintenance, utility and fuel bills, expenses will be so high that the retention of non-income producing residences will become impossibly escalated. Homeowner tax bills in Queens could average increases of nearly \$1,300 per

home. As Mr. Greenblatt pointed out, residential property does not produce income. Mayor Koch, reflecting a similar concern, has stated on more than one occasion: "Residences that are not income-producing should be taxed at a lower rate."

One court noted in *Switz v. Middletown* in 1957, that "urban municipalities traditionally assess industrial property at substantially higher percentages than residential property as a device to delay, if not prevent, the gradual exodus of their residential population to rural and suburban areas." 23 N.J. 580, 130 A.2d 15, 18. New York City's policy of assessing one and two-family homes at less than 30 percent of market value encourages middle class homeowners to stay. With a higher sales tax than most surrounding communities and a City income tax, the lower property tax makes New York City more attractive than outlying areas with attendant commuting costs and higher property taxes.

Increasing the tax burden in New York could have a devastating effect. Any increase in the property tax is bound to encourage the flight of middle class homeowners, considered by many to be the strength of the City and its neighborhoods. Such flight would mean the eventual loss of much needed tax revenues, further racial imbalance in City schools and ultimately, a drop in City real property value.

Some homeowners fear that the City's fiscal problems would present a temptation for N.Y.C. to add tax revenue by reassessment. The Emergency Financial Control Board for New York City, for example, could force the City to take such a politically unpopular step and the City could blame the un-elected officials appointed to the Control Board. "Small homeowners," said Queensborough President Manes, "are justifiably fearful that full value assessment of their homes will result in very sizeable real estate tax increases which will make the sale of their houses extremely difficult or impossible within a very few years. This I am afraid could easily lead to a massive movement to sell homes now."

Tax Assessment—

A Tool in Land Use Planning

Properties have been bought and sold on the basis of tax treatments. Arthur Gordon, Director of the State Comptroller's Office of Audit and Control, observed that discrepancies in assessment attracted business to certain sections of the City and away from others. The property tax can be used as a tool in land-use planning to encourage certain kinds of development in different areas.

The Court in Hellerstein enumerated two vices of fractional assessment. A blatant disregard of the law by public officials and, the difficulties in deter-

mining if there is uniformity in proportion or disproportion through incompetence, favoritism or corruption of assessors. Such discrepancies would force many taxpayers to bear the burdens of others.

Public officials prefer to disregard judicial interpretation of what is full value rather than to risk Proposition 13. In *Bettigole v. Assessors of Springfield*, the court ordered all property to be assessed at full value, and simultaneously ordered the tax rate to be lowered proportionately. 343 Mass. 223, 178 N.E.2d 10 (1961). Localities within New York State depend on the property tax for revenue, but State aid is apportioned among the localities based on assessed valuation. The lower its aggregate of assessed value, the more aid for which a local jurisdiction is eligible.

The Hellerstein decision correctly enumerates the dangers of errors in judgment, and charges of favoritism and influence. We are a people of laws. Without full value assessment, special interest groups can gain favorable assessments without going through the legal tax abatement procedures. Such procedures are public—but, since the public rarely attends, it cannot have an impact on the assessor's decision to grant a more favorable assessment.

In an early decision (1893) on full value, Connecticut's high court opted to disregard the statute ordering full value and granted relief to the taxpayer by lowering his assessment to the same proportionate level of assessment that the locality had utilized. *Randall v. City of Bridgeport*, 63 Conn. 321, 28 A.2d 523. That court determined that the only way "to redress the wrong is to reduce the assessment, (even though) the court seems also to disregard the statute," because "if the wrong is not redressed there is a denial of justice." The very fact that a property was assessed at less than full value but at more than the percentage generally applied caused this problem. Contemporary courts, however, have chosen a path opposite to *Randall*.

(A) hurried general assessment at full value can not be conducive to common and individual rights.

Switz, p. 23.

If full value is the answer to some inequities, it introduces new problems that must be addressed. Judge Wachenfeld, in his dissent in *Switz*, admonished his colleagues in the majority for concluding that the problem of unequal assessments "is basically legislative and administrative and then inconsistently" proceed to a judicial solution. The Hellerstein court wanted to avoid such a result by delaying the implementation of its order until the end of 1976. Unfortunately, the Court failed to anticipate

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Tax Assessment...

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the extent of the adverse effects on every municipality in the State. The court in *Switz* postponed the enforcement of its decree for three years. New York City officials are seeking a moratorium on *Hellerstein* until 1985. Privately, some City officials expect reassessment to take much longer. With over 800,000 parcels in the City and proper physical evaluation costing not less than \$50 per parcel, over \$40 million is needed to reassess. Because reassessing of each property is so costly a process, an alternative is needed.

In New York, many homeowner groups are backing A. 6136, commonly known as the Esposito bill, to push the Governor and the State Legislature into passing a bill that would keep residential taxes down to pre-*Hellerstein* levels.

New York State's Constitution does not forbid fractional assessment. However, without the legislatively-created classes or a mandate that localities create classes for the application of fractional assessments, passage of the Esposito bill would either be unconstitutional or result in a benefit to business interests. Commercial and industrial property owners can sue under the 14th Amendment that they are victims of discriminatory assessments. In *Town of Hillsborough v. Cromwell*, 326 U.S. 620 (1946), the Supreme Court condemned as a denial of equal protection the New Jersey rule of denying relief to a taxpayer whose property was not assessed at full value, but at more than the general level of assessments. Under *Hillsborough*, where no classes of property are created by the state, the courts can determine assessments above the state equalization rates to be discriminatory for subjecting the taxpayer to taxes not imposed on others of the same class.

Business interests could use a bill like A. 6136 to shift assessments to their own advantage, leaving homeowners to pay a greater share of the real estate tax. This is a major reason why the Democratic majority in the Assembly has thus far not acted favorably on A. 6136. Assembly Speaker Stanley Fink (Democrat - Brooklyn) criticizes the Esposito bill (which was not let out of committee), stating "if you appeal the statute (sec. 306) and leave local assessors without guidelines, what you have is an unconstitutional delegation of a basic legislative function." A bill with provisions similar to A. 6136 had passed in 1978 and were subsequently struck down in *Slewett and Farber v. the Board of Assessors and the Board of Assessment Review of the County of Nassau*.

The Temporary State Commission on the Real Property Tax recommended full value assessment with the same tax rate applied on all types of property because it is the least complicated and least vulnerable to court challenge. George S. Gerber, the Temporary Commission's Chairman, said that programs to ease the homeowners' burden could be implemented.

Even without legislative action, there is a definite trend to full value assessment, according to Hofstra Law Professor Irving I. Lesnick. In his Hofstra Law Review article, Prof. Lesnick points out that well developed case rules on valuation (as for example the decision in *Ed Guth Realty, Inc. v. Gingold*, 34 N.Y.2d 440 (1964)) permit a taxpayer to apply the State equalization rate as the sole evidence of the prevailing local assessment, making it easier to obtain a reduced assessment if the taxpayer's property is assessed at a rate higher than the State rate. Continual law suits, contends Prof. Lesnick, would result in effectively lowering the State tax rate and bringing all properties to equal assessments. Reaching equality in assessments among all kinds of property would, however, require a multiplicity of suits and take much time.

Most localities are resisting a move to full value until the Legislature acts on the issue. As of August 1978, 131 of New York's 991 municipalities changed to full value. One year later, only three more had completed reassessment. If the trend toward lower assessments as predicted by Prof. Lesnick continues, localities will have less revenue and will have to either cut spending or raise taxes to make ends meet. Since business property is generally assessed at a higher rate, the downward shift in assessments forces homeowners to bear the brunt of a greater share of the tax burden. Without increased state aid, localities will have to raise the tax rates, therefore additionally increasing the burden on homeowners because of Federal (and in some cases, State) programs that are mandated—but where the locality, nevertheless, must provide the funding. Raising taxes could lead to a coalescing of various elements into a Proposition 13 type movement with wider implications than actually intended. Many needed services could be cut because they lack political support.

Controls and guidelines on local spending, coupled with a State freeze on spending, and the commitment of State aid from future revenue growth, could ease the effects of full value assessment. Governor Carey took a step in this direction by proposing that a Local Government Expenditure Review Board (LGERB) be created by the Legislature. The proposal, not yet enacted, calls for Lt. Governor Mario Cuomo to chair the Board with the State Controller, the Secretary of State, and the State Housing Commissioner also participating. Political partisanship has stymied the LGERB proposal. Republicans fear giving Mr. Cuomo another forum from which he can increase his political strength and popularity (the Lt. Governor is viewed as a leading candidate to succeed Governor Carey). Speaker Stanley Fink, who would normally shepherd Democratic programs through the Assembly, is said to entertain notions of being Governor and thus was not in a hurry to push a plan that benefits the Lt. Governor's standing.

Governor Carey has offered a similar proposal for consideration in 1980. He has recommended the formation of a Local Government Expenditure and Review Commission "to provide local and state officials with professional guidance on the monitoring of local government spending."

If such a solution is accepted, there would have to be an increase in State aid to localities of at least \$1 billion, in order to have a significant impact on local property taxes. This would increase overall aid by 14 percent. To free the \$1 billion from the State budget would require a 30 percent reduction in State operating expenses. The State budget for fiscal year 1979 was projected at almost \$12 billion.

The Governor's budget for 1980-1981 projects reduced expenditures for State operations of about \$100 million, but money needed for local assistance must be found to ease the burden of higher local property taxes. In his Budget Message, the Governor called on local governments to curtail spending. The Governor, as do many others, believes that local governments are spending much more than is necessary and must reduce their budgets.

Governor Carey feels that through partnership and cooperation by State and local governments, control over expenditures and fiscal responsibility can be achieved. As a sign that the Local Government Expenditure and Review Commission would take a bi-partisan approach to reform of local government spending practices, the Governor has asked Comptroller Edward Regan, the State's highest elected Republican, to join the commission.

Reduction of services is unpopular; with New York City being the case on point since its fiscal crisis. Special interest groups would oppose any

budgetary reductions in agencies that "serve" them. Decreasing local spending by mandating lower levels of student-teacher levels, for example (the property tax is used across the State primarily to finance education), would generate complaints of interference with home-rule, not to mention opposition from teacher unions and parent associations.

Since all the other alternatives to *Hellerstein* have major drawbacks, a system of classification in combination with homeowner exemptions and property tax circuit breakers is the best option. With classification, there would be a shift within the classes, without a total shift in the aggregate tax burden from one class to another. Business interests already pay higher taxes. With classification, such interests would generally pay a similar amount and there would not be any tax increases to pass to the homeowners—the consuming public—in the form of higher prices. Without classification, there is no guarantee that businesses will drop their prices because of reduced property taxes; they will only make larger profits.

Recognizing the need for classification, Assembly Speaker Fink has proposed a classified system that would have business and commercial property owners pay a higher tax with small homeowners retaining their de facto advantage. Classification is constitutional in New York since there is no uniformity provision in the State constitution. "The equal protection clause of the constitution (14th Amendment) does not bar classification of real property for local taxation but rather condemns intentional, insidious treatment within a class the state has created." In *Re Kents* 2124 Atlantic Ave., Inc. 34 N.J. 21 (1961).

Fink's legislation followed calls by several major Democrats, such as Mayor Koch and Queens Borough President Manes, for some form of classification. Mr. Manes called for statewide legislation to permit localities to establish different real estate taxes for small homes. In May of 1979, Mr. Koch announced a plan to reassess all business and residential properties at full value. The properties would be categorized according to use and assigned different rates. "A classified system," said Koch, "will not require us to raise or lower the cumulative tax burden now borne by any class of property owners."

The actual reassessment of each property such as that proposed by the Mayor would be costly. The Assembly's alternate legislative proposal recommends mathematical revaluation for computing full value by the use of class equalization rates, similar to the State Board of Equalization and Assessment's equalization rate. Each property's current assessment would be divided by the appropriate ratio for its class. The base value obtained would approximate full value in most cases. The base or full value would be multiplied first by the class assessment percentage to determine the taxable assessment and that, in turn, would be multiplied by the class tax rate in order to determine the tax. The Board of Equalization and Assessment would have to develop new equalization rates for each class because the single current ratio fails to take classification into account and results in an average figure, when what is needed are class values computed by employing large samples of each class of property.

Mathematical revaluation, however, will not remove disparities in assessment among properties similar in type and value, that are located in the same taxing jurisdiction. However, the Legislative Report points out that property owners will be better able to compare base or market values to determine whether any inequities exist. Such disparities would then be more apparent and taxpayers could more easily use established procedures to equalize their tax bills.

Classification cannot, however, provide complete relief. Under

reassessment, older homes are likely to get increased tax bills and newer homes may get small cuts, according to New York City Finance Commissioner Harry Tishelman. Rather than leave the owners of older homes out in the cold, many of whom have lower incomes, having bought their homes when the market was much lower, further relief can be granted in the form of a "homestead exemption":

A homestead exemption grants relief by removing some dollar amount of value from a homeowner's assessment. In terms of targeting aid, it has a distinct advantage since it is based upon a fixed amount, thus giving a higher percentage exemption for owners of low valued homes than to owners of high value homes. To the extent that income and home value are positively correlated, a homestead exemption gives relief to those most in need.

For the senior citizen and anyone else who has owned a house for so long that, because of inflation, assessment at full value would, even with a homestead exemption, result in too great a tax burden, circuit breaker protection can be expanded. A circuit breaker allows a credit on one's State income taxes, based on income, of some part or all of one's property tax.

Prof. Lesnick recognizes one additional problem—the problem of inequity due to differences in assessments often being reflected in the market price of a property. Property which is currently under-assessed often has an "inflated" purchase price, reflecting the lower assessment. Highly assessed homeowners would gain a windfall from the new lower assessment and such houses would be more attractive to buyers.

The uncertainty and windfalls that could occur in the home realty market could easily be relieved by phasing in the new tax. The Legislative Report suggests, for example, that an increase in tax liability in excess of 10 percent of current tax liability could be phased in over a period of time depending on the size of the increased tax liability. Additionally, market uncertainties can be addressed by stipulating the interval, say ten years, over which relative levels of assessments must remain in place. Assessments could be lowered, but not raised, during that period so that property values could begin to stabilize.

No system is so perfect that it can address each and every problem arising under such a classified full value scheme. But this plan, as outlined above, appears to be the best alternative in the aftermath of *Hellerstein*.

New York University Law Professor Jerome Hellerstein, an expert in state and local taxation, complains that it is "political muscle which determines where you stand under classification." What the learned professor fails to recognize is that an undefined system is more subject to abuse, that the effects of a Proposition 13 would occur if full value occurs without the adequate relief which classification can provide, and finally, that any system of taxation should where possible, be geared to a taxpayer's ability to pay. Income-producing properties should pay a greater share of the tax bill than non-income-producing homes.

Both model bills proposed by the Assembly Real Property Task Force suggest nine classes: Residential, Vacant, Agriculture, Apartment, Commercial, Industrial, Railroads, Utility, and Special Franchise. Localities will also be permitted, under either bill, to create one subclass within a class. If this or similar legislation is enacted, income and use will continue to be the major determinants of an individual property's tax bill as before *Hellerstein*, but more equitably.

Footnotes and references for the above piece are available upon request.