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Does Full Value Mean Full Value? Prospects for Assessment Reform in New York in Light of the Experiences of Other States with Hellerstein's Progenitors

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DOES FULL VALUE MEAN FULL VALUE?
PROSPECTS FOR ASSESSMENT REFORM IN NEW YORκ IN LIGHT OF THE EXPERIENCES OF OTHER STATES WITH HELLERSTEIN'S PROGENITORS

Irving I. Lesnick*

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1. RETREAT FROM FULL VALUE—CONNECTICUT, NEW JERSEY AND TENNESSEE .............................. 263

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I. INTRODUCTION

Real property taxation in many states has long been characterized by a conflict between statutory and constitutional requirements of uniform full value assessment and the universal administrative practice of discriminatory fractional assessment.¹

In a series of decisions in seven states, starting with Connecticut and New Jersey in 1957, state supreme courts have announced the necessity of bringing practice into conformity with requirement.² At the same time, and with increasing effectiveness, courts...

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² The decisions, listed in chronological order, are:


Kentucky: Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965). See text accompanying notes 136-146 infra.


New York: Hellerstein v. Assessor of Islip, 37 N.Y.2d 1, 332 N.E.2d 279, 371 N.Y.S.2d 388 (1975). The Hellerstein court referred to the sister-state decisions by stating: "In recent years the high courts in several States, noting the mounting criticism, have held that full value means what it says and that the practice of fractional assessments is illegal." Id. at 13, 332 N.E.2d at 286, 371 N.Y.S.2d at 398 (citations omitted).

and legislatures have dealt with the problems faced by taxpayers assessed at a lower than the mandated full value, but at a higher fraction than the common ratio. In the past two years, the New York Court of Appeals considered both of these issues in two separate cases: *Hellerstein v. Assessor of Islip*, an action in which a taxpayer sought to enforce the public right to have all property assessed at full value, and *Ed Guth Realty, Inc. v. Gingold*, in which a taxpayer sought to vindicate his private right not to be overassessed in relation to other taxpayers.

In a previous piece about the fractional assessment problem, I argued that this universal practice could not be explained entirely by lack of skill, susceptibility to improper political influence, or other failings on the part of assessors. Rather, fractional assessment in large part reflected policy decisions by assessors.

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For a discussion of the problems of measuring and proving common ratio see text accompanying notes 12-14 infra and note 14 infra; for discussion of the statistical measurement of common ratio see notes 19-21 infra.

4. 37 N.Y.2d 1, 332 N.E.2d 279, 371 N.Y.S.2d 388 (1975). *Hellerstein* granted mandamus to require the assessors of Islip to reassess all real property in the town at its full value by Dec. 31, 1976. Id. at 14, 332 N.E.2d at 287, 371 N.Y.S.2d at 400. Islip's time to comply was thereafter extended to July 1, 1978. *Hellerstein* v. Assessor of Islip, 39 N.Y.2d 920, 332 N.E.2d 279, 386 N.Y.S.2d 406 (1976). Proceedings have been brought in a number of other jurisdictions in New York State to require assessors to reassess at full value. Williams, *Lawsuits Filed Against County Assessments*, Utica Observer-Dispatch, Dec. 1, 1976, at 1, col. 1 (three cases in Oneida County); Gerber v. Valenza, No. 3635-76 (Sup. Ct., Rockland County, Aug. 12, 1976)(Town of Orangetown); Aloi v. Doolittle, No. 9647-75 (Sup. Ct., Monroe County, Nov. 25, 1975) (Town of Mendon); Carette Realty Corp. v. Wolven, No. 8705 (Sup. Ct., Greene County, Dec. 29, 1975) (Town of Catskill). In addition, an action of this type has been filed against a county board of assessors, Forte v. Board of Assessors, No. 13535-76 (Sup. Ct., Nassau County).


6. The distinction between "public" and "private" tax assessment litigation is made in Note, 75 Harv. L. Rev. supra note 3, at 1381, 1386.

7. Comment, 68 Yale L.J., supra note 3. While student work was then published in the Law Journal as the collective work of the student editors, I cannot cite or rely on this work without identifying myself as the student author, and, with thanks to the officers and members of the Board of Editors who contributed to it, taking responsibility for its opinions.
and, to a lesser extent, by reviewing courts, responding to a variety of social and economic needs. These have included the need to maintain municipal fiscal integrity in periods of depression and to restrain municipal spending during periods of inflation, the desire to subsidize unprofitable industries important to the local economy and, in some cases, an attempt to make the tax less regressive.8 If these observations are valid, judicial decisions calling attention to the longstanding statutory and constitutional full value requirements are unlikely to be effective, unless the problems underlying fractional assessment are also considered.

Therefore, although Hellerstein and Guth have been widely hailed as likely to revolutionize real property assessment,9 I take a more cautionary, "wait and see" attitude10 and in this article examine the experience in the six other states which have witnessed Hellerstein-type decisions. Their experience makes it clear that implementing the court's simple mandate to obey the law requires strong supporting legislative and administrative action. Indeed, it seems likely that the practical consequences of Guth will, in the long run, do more to achieve full value assessment in New York than the pronouncements of Hellerstein.

II. MEASUREMENT OF ASSESSMENT QUALITY11

The question of full value assessment is highly complex; not the least of the complexities are those which are involved in defining and measuring value. It is now commonplace that "value"
means different things in different contexts.\textsuperscript{12} Even when a particular measure is accepted, such as the standard of actual sales in the open market which has become accepted in full value scholarship,\textsuperscript{13} grave difficulties persist because of the way that the real estate market operates. In contrast to the public sale of securities on a stock exchange or of farm products on a commodities exchange, the sale of real estate is invariably negotiated privately, frequently treated with confidentiality by the parties and often influenced by nonrealty factors. Such factors include financing terms, income tax consequences and the inclusion of personal property—ranging from appliances and furniture in the sale of a one-family home to trade fixtures and good will in the sale of a business property. The difficulty in defining and measuring the full value of all of the property on a given tax roll has resulted in primary reliance on statistical samples by those who review the work of assessors.\textsuperscript{14}

Among the most comprehensive sources of information about real estate tax assessment practices are samples gathered and published every five years by the Census Bureau in its Census of Governments.\textsuperscript{15} In these publications the Bureau reports the re-


13. Actual sales are the basis of the Census of Governments reports discussed at notes 15-17 infra, which have formed the basis of most recent studies of assessment performance. See Bird, \textit{supra} note 1; Shannon, \textit{supra} note 1, at 39. The census relies exclusively on sales, rather than on appraisals to determine market value, because of “the limitations of funding and staff available . . . in attempting to get market values for 112,000 parcels of property transferred during the 1971 sample period.” Crix, \textit{The Census of Government’s Assessment Ratio Study}, in \textit{6 International Property Assessment Administration} 153 (Proceedings of the 39th Annual Int’l Conference on Assessment Admin. 1984).

14. In the public full value litigation discussed in this article, the fact of fractional assessment has been shown in several ways: (1) by stipulation as to the express acts of the assessors, see E. Ingraham Co. v. Town & City of Bristol, 144 Conn. 374, 375-76, 132 A.2d 563, 564 (1957); Bettigole v. Assessors of Springfield, 343 Mass. 232, 225-26, 178 N.E.2d 10, 11-12 (1961); Switz v. Township of Middletown, 23 N.J. 580, 584, 130 A.2d 15, 17 (1957); (2) through “common knowledge,” see Russman v. Luckett, 391 S.W.2d 694, 695 (Ky. 1965); (3) through state board of equalization studies, see id. at 695; Switz v. Township of Middletown, \textit{supra} at 584, 130 A.2d at 17; and (4) through surveys of actual sales, see Southern Ry. v. Clement, 57 Tenn. App. 54, 57, 415 S.W.2d 146, 148 (1967).

The proper measure of the prevailing assessment ratio is one of the principal issues in private inequality cases and is discussed in the text accompanying notes 39-45, 69-67, 98-105 infra.

15. The three Census of Governments reports used in this article are: 2 U.S. BUREAU
sults of a study it conducts of selected assessing jurisdictions in each state during a six-month period in the year prior to publication, in which actual sales are selected, the price and arm's-length nature of the sales are verified by questionnaire, and tabulations of the ratios of market price to assessed value are made. These studies are subject to several caveats as to accuracy, representative quality, reliability and comparability. Notwithstanding these reservations, they are the soundest data I know of to study assessments in a variety of states.

The 1962, 1967 and 1972 Census Bureau figures on assessment quality for the six states which have had Hellerstein-type decisions are summarized in Appendices I, II and III.

Appendix I presents statewide assessed value to market value ratios for properties itemized by use, i.e., residential, commercial and industrial, vacant lots, and farm and acreage. These ratios show the total assessment of the sampled parcels as a percentage of the total of the market value. They give an idea of how assessments in total relate to market value in total, but offer no indication of how individual assessments relate to individual market values. These ratios also give some idea of the degree of uniformity among different use classifications of property. To highlight this, I have computed and shown in Appendix I the ratio of interclass uniformity, which is the difference between the ratios achieved in the highest and lowest classes, expressed as a percentage of the overall value.

Appendix II is concerned with assessed value to market value ratios for single-family, nonfarm residences, presented for selected assessing jurisdictions. Because properties and sales in this class are most numerous, the Census Bureau presents detailed ratios for smaller than statewide areas only for this class. Three ratios are provided: (1) aggregate assessment—sales price ratio;
Prospects for Full Value Assessment

(2) unweighted mean assessment—sales price ratio; and (3) median assessment—sales price ratio. These ratios are usually within a few percentage points of each other. To avoid the necessity of having to choose which ratio to use as the basis for my

with the result expressed as a percentage. 1972 Census Ratios, supra note 15, at 27. This is the method of measuring overall ratio mandated by the New York courts for use in assessment tax review proceedings where a number of nonrandomly selected sample parcels are used. People ex rel. Yaras v. Kinnaw, 303 N.Y. 224, 233-34, 101 N.E.2d 474, 478 (1951). See Koeppel, supra note 3, at 565-66.

20. Unweighted mean assessment—sales price ratio is the sum of the assessment ratios computed separately for each sold parcel, divided by the number of sold parcels. 1972 Census Ratios, supra note 15, at 26-27.

21. Median assessment—sales price ratio is the assessment sales price ratio “above and below which lie an equal number of values. If the array contains an odd number of values, the median is the middle value. If the array contains an even number of values, the median is the mean of the two middle values.” 1972 Census Ratios, supra note 15, at 26.

22. The computation of these values may be illustrated by assuming 10 sales with the following assessed values and sales prices:

<table>
<thead>
<tr>
<th>Sale No.</th>
<th>Assessed Value</th>
<th>Sales Price</th>
<th>Sales Price Assessment Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8,400</td>
<td>84,000</td>
<td>10%</td>
</tr>
<tr>
<td>2</td>
<td>15,000</td>
<td>100,000</td>
<td>15%</td>
</tr>
<tr>
<td>3</td>
<td>5,920</td>
<td>37,000</td>
<td>16%</td>
</tr>
<tr>
<td>4</td>
<td>22,000</td>
<td>100,000</td>
<td>22%</td>
</tr>
<tr>
<td>5</td>
<td>8,960</td>
<td>28,000</td>
<td>32%</td>
</tr>
<tr>
<td>6</td>
<td>27,880</td>
<td>82,000</td>
<td>34%</td>
</tr>
<tr>
<td>7</td>
<td>17,050</td>
<td>31,000</td>
<td>55%</td>
</tr>
<tr>
<td>8</td>
<td>14,030</td>
<td>23,000</td>
<td>61%</td>
</tr>
<tr>
<td>9</td>
<td>22,440</td>
<td>33,000</td>
<td>68%</td>
</tr>
<tr>
<td>10</td>
<td>22,040</td>
<td>29,000</td>
<td>76%</td>
</tr>
<tr>
<td>Totals</td>
<td>163,720</td>
<td>547,000</td>
<td>389</td>
</tr>
</tbody>
</table>

Based on these values:

Aggregate assessment sales price ratio = \( \frac{163,720}{547,000} = 30.0\% \)

Unweighted mean assessment sales price ratio = \( \frac{389}{10} = 38.9\% \)

Median assessment sales price ratio = \( \frac{32 + 34}{2} = 33.0\% \)
conclusions, the range of these ratios is presented in Appendix II.\textsuperscript{23}

Appendix III shows the spread of the coefficient of intra-area dispersions\textsuperscript{24} computed by the Census Bureau for each area that it surveys. This coefficient measures the closeness with which the assessment to sales price ratios for single-family, nonfarm dwellings within the assessing unit cluster around the median assessment to sales price ratio in that unit. The lower the coefficient, the tighter the cluster and the more uniform the assessments are within the area.\textsuperscript{25} A coefficient of intra-area dispersion of more than twenty percent is generally regarded as showing bad, \textit{i.e.}, nonuniform assessment, and one of under ten percent would generally be recognized as resulting from uniform assessments.\textsuperscript{26}

\textsuperscript{23} See Appendix II at page 282 infra.

\textsuperscript{24} "Based on an array of the ratios for individual sales sampled within the jurisdiction, this measure expresses as a percentage the result of dividing the mean of deviations from the median ratio (regardless of sign) by that median ratio." 1972 \textsc{Census Ratios}, supra note 15, at 13. See Appendix III at page 283 infra.

The same figures assumed in note 22 supra, would produce the following coefficient of intra-area dispersion:

<table>
<thead>
<tr>
<th>Sales Price Assessment Ratio</th>
<th>Deviation From Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>-23</td>
</tr>
<tr>
<td>15</td>
<td>-18</td>
</tr>
<tr>
<td>16</td>
<td>-17</td>
</tr>
<tr>
<td>22</td>
<td>-11</td>
</tr>
<tr>
<td>32</td>
<td>-1</td>
</tr>
<tr>
<td>34</td>
<td>+1</td>
</tr>
<tr>
<td>55</td>
<td>+22</td>
</tr>
<tr>
<td>61</td>
<td>+28</td>
</tr>
<tr>
<td>68</td>
<td>+35</td>
</tr>
<tr>
<td>76</td>
<td>+43</td>
</tr>
</tbody>
</table>

Median 33

Sum Disregarding Sign 199

Mean of Deviations $\frac{199}{10} = 19.9$

Coefficient of Intra-area Dispersion $\frac{19.9}{33} = 0.6$

\textsuperscript{25} Appendix III shows only the coefficient of intra-area dispersion for single-family, nonfarm dwellings, which was the only such coefficient reported in all three years. Similar figures for vacant plotted lots and all types of realty were published for the first time in 1972. 1972 \textsc{Census Ratios}, supra note 15, at 62 (Table 11). See id. at 14 (Table J).

\textsuperscript{26} Bird, supra note 1, at 54. The author points out:
Where between these limits the boundary between good and bad assessment lies is a matter of conjecture.\textsuperscript{27} The statistical evidence makes it quite clear that if the Census Bureau figures are accurate, Kentucky alone has achieved both substantial full value assessment and a high degree of uniformity between different classes of property and different taxpayers within the most numerous class of "single-family homes."\textsuperscript{28} Florida made some progress in both particulars, but this progress appears to have been temporary.\textsuperscript{29} Tennessee has

How low the index must be to indicate good quality assessment must be determined largely by what successful local assessment administrations have been able to accomplish. . . . The late Dr. John H. Russell, former director of research for the Virginia Department of Taxation, who emphasized this measure as an "index of assessment inequality" some 20 years ago, is reported to have established that "an index as low as 20 should be considered a goal desirable of achievement and reasonably attainable," that anything below this is to be considered as an excellent degree of equalization for uniformity," and that "an index as high as 45 should be judged cause for the gravest concern."\textsuperscript{30}

Having as a goal an index of 20 appears to be a rather modest objective that still allows the assessor a wide tolerance. . . . There is some opinion that a considerably lower index than 20 is necessary for really acceptable assessment. A Minnesota tax study committee has stated that "a coefficient of dispersion of 10 per cent or less suggests that the assessor is performing his job well." However, it must be kept in mind, as noted earlier, that "sales as well as assessments are not perfect," so that to some degree a coefficient of dispersion is influenced by differences among pairs of buyers and sellers as to the worth of sold properties. Accordingly, some amount of dispersion appears inevitable.\textsuperscript{id}

\textit{Id.} (citations omitted). Professor Netzer characterizes the above statement as "now widely accepted" as "the standard of excellence," but goes on to rather unfairly attribute to Bird the rule that "a jurisdiction does a good job" if its coefficient of intra-area dispersion is 20\% or less. D. NETZER, ECONOMICS OF THE PROPERTY TAX 177 (Brookings Institution 1966). Professor Netzer further suggests that in nonproperty tax administration, such as sales or income tax administration, a range of error of 5\%-10\% would be the standard, and that in any event, performance should be measured with respect to all kinds of property, and not just the easier-to-assess, easier-to-measure, nonfarm residential classification. \textit{Id.} at 177-80. Accord, NEW YORK STATE BOARD OF EQUALIZATION AND ASSESSMENT, IMPROVING REAL PROPERTY TAX ADMINISTRATION 2-5 (1974); contra, Groves, supra note 12, at 18-25 (where the author argues that a 20\% coefficient is deemed acceptable).


27. Based on the same sources cited in note 24 \textit{supra}.

28. Kentucky's overall 1972 assessment ratio of 84\% was the highest reported for any state; its interclass variation was the lowest (Appendix I). While there was a slight slippage from the 1967 level, when all jurisdictions sampled had a single-family assessment ratio of over 80\%, the 1972 figures show all over 60\%, and 93\% over 80\% (Appendix II). In addition, 93\% of the Kentucky jurisdictions sampled had acceptable or better coefficient of intra-area dispersion, of which 20\% were excellent in 1967 (Appendix III).

29. Florida's overall assessment ratio for single-family houses increased from 48\% in 1962 to 78\% in 1967, and then dropped to 69\% in 1972 (Appendix I). The concentration of
made progress in achieving uniformity of the single-family dwelling assessment between jurisdictions, but not between different taxpayers in this class, not between different classes of property, and certainly not at full value.\textsuperscript{30} Progress in the other three states—Connecticut, Massachusetts and New Jersey—has been limited both geographically and temporarily.\textsuperscript{31}

The literature on tax assessments confirms these general impressions. Kentucky prides itself on having solved the full value problem.\textsuperscript{32} Massachusetts, Connecticut and New Jersey are still actively struggling with the problem and are considering alternatives.\textsuperscript{33}

III. THE FULL VALUE DECISIONS AND THE JUDICIAL AND LEGISLATIVE RESPONSE

The continuing differences in assessment patterns in the six states under consideration are the result of variations in assessment laws and practices before their full value decisions, the

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\textsuperscript{30} Assessment ratios for single-family homes likewise moved from the 41%-60% range in 1962 (Appendix II). The percentage of acceptable coefficients of intra-area dispersion moved from 29% to 76% between 1962 and 1972, but had been 88% in 1967 (Appendix III). Moreover, residences are still apparently overassessed (63%) compared with other classes of property (37%-50%) (Appendix I).

\textsuperscript{31} Tennessee showed 100% of its sampled jurisdictions in one class—20%-40%— for single-family home assessment ratios (Appendix II). For a description of legislation requiring 25% assessment, see text at notes 174-175 infra. While the interclass variation declined from 63% in 1962 to 21% in 1972 (due to an increase in the assessment ratio of vacant plotted lots) (Appendix I), the 21% figure is not low and the performance indicated by the coefficient of interclass variation was far worse in 1972 than in 1962 (Appendix III).

\textsuperscript{32} This is apparent from Appendices I, II and III.

\textsuperscript{33} E. D. Ballard, Recent Events in Property Assessments and Taxation in Kentucky 8-11 (La. Mfg. Ass'n 1966); Note, Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84, 103 (1971). For a view that although the 1965 Kentucky full value decision of Russman v. Lckett, 391 S.W.2d 694 (Ky. 1965), resulted in increasing the assessed value of all property in the state from $3.2 billion in 1965 to $12.8 billion in 1968, the traditional defects and inequalities in assessment remain, see Note, Property Tax Assessment Administration in Kentucky, 60 Ky. L.J. 141 (1971).

\textsuperscript{34} E.g., W.C. Wheaton, The Statewide Impact of Full Property Revaluation in Massachusetts (Federal Reserve Bank of Boston 1976); Adv. Comm'N on Intergovernmental Relations, The Property Tax in a Changing Environment: Selected State Studies 88 (Gov't Printing Office 1974) (Florida: 'There has been only partial progress toward the 'full-value' standard of valuation legally specified for most taxable property'), 80-82 (Connecticut: account of 1972 recommendations by Governor's Commission on Tax Reform for, \textit{inter alia}, full value assessment laws, which were not adopted), and 179 (New Jersey: 'Some assessing jurisdictions in the State still fall short of standards of assessment uniformity which have been established as a goal'). As to Connecticut, see note 166 infra (dealing with extension of time to 1978 to go to 70% value); as to New Jersey, see note 218 infra (dealing with refusal of Newark City Council to reassess).
judicial followup to the initial decision, and the legislative response.

A. The Underlying Facts and the Judicial Response

1. The First Wave: Connecticut and New Jersey

   a. Connecticut: No Remedy at All

   Although the Hellerstein court cited the Connecticut decision of E. Ingraham Co. v. Town & City of Bristol as precedent for judicial relief against partial assessment, Ingraham did not really go that far. Connecticut’s statutory requirement of full value assessment originated in 1860. Since 1893 the Connecticut courts have held that a taxpayer assessed at a higher ratio than that illegally prevailing would have its assessment reduced to the prevailing level. In Ingraham it was stipulated that different classes of property throughout the city were assessed at 50%, 90%, and 100% of full value. A taxpayer who owned property in all three classes sought to have the 90% and 100% assessments, which were used for personalty and motor vehicles, reduced to the 50% level which was used only for real estate. The court reversed its longstanding rule, but acknowledged that it was unable to give categorical answers to the questions propounded. We can answer only generally by stating that the assessors acted contrary to law in assessing the plaintiff’s property, save [those assessed at 100%] and that the board of tax review did not act illegally in refusing the plaintiff’s request for reduction of the [90 and 100% assessments]...38

Thus, the Connecticut Court of Errors did not order reassessment; it merely refused to order further reductions of assessments

34. 144 Conn. 374, 132 A.2d 563 (1957).
36. Randell v. City of Bridgeport, 63 Conn. 321, 28 A. 523 (1893), was the first of such cases.
37. E. Ingraham Co. v. Town & City of Bristol, 144 Conn. 374, 376, 132 A.2d 563, 564 (1957).
38. Id. at 383, 132 A.2d at 567. The case had been referred to the Court of Errors on four questions: (1) should taxpayers have been assessed on the basis of the full value of their property, rather than on the assessed value; (2) did the assessors err in establishing different classes of taxable property; (3) did the Board of Tax Review err in refusing to reduce the assessment to 50% of full value; and (4) did the Board err in reducing the assessment to the average level of the entire roll. Id. at 376-77 n.1, 132 A.2d at 564-65 n.1.
to illegal levels, perhaps expecting taxpayers to proceed that way in another case.

In later cases, however, the Connecticut court found it necessary to continue to offer relief to individual taxpayers, even though the assessors still were not complying with statutory standards, by this time revised. In *Lerner Shops v. Town of Waterbury,* the court noted that although the statute then required the assessors to undertake a three-step process—determine full value, establish the uniform percentage to be applied (which could be less than 100%), and compute the assessment—the Waterbury assessors went directly to the third step. In reviewing the assessment, therefore, the court, after finding the "true value," could not apply a ratio established by the assessors, since the assessors had not established a ratio. The court could only, and in fact did, apply the average ratio established by petitioners' conventional proof of assessment ratio. In *Kraus v. Klee,* a group of taxpayers sought to collect a penalty from the assessors for doing "an unlawful act," i.e., assessing at varying percentages of full value. This relief was denied because none of the plaintiffs was an aggrieved party.

b. New Jersey: Remedy Deferred

Of the six decisions cited in *Hellerstein,* only *Switz v. Township of Middletown,* a 1957 case, included dissenting opinions. The majority opinion and a concurrence sustained a mandamus to the assessor of Middletown to assess at full value and ordered

39. See text accompanying notes 158-65 infra.
41. Id. at 85, 193 A.2d at 475-76.
42. Id. at 90-92, 193 A.2d at 477-78. In three other cases coming before the Connecticut courts under the 1957 amendment which required that real property "shall be liable to taxation at a uniform percentage of its present true and actual valuation," see note 162 infra and accompanying text, the uniform percentage was stipulated, thus avoiding any problems. New Departure Div. of Gen. Motors Corp. v. Town & City of Bristol, 25 Conn. Supp. 37, 195 A.2d 770 (1963) (50% of uniform percentages); Bridgeport Gas Co. v. Town of Stratford, 153 Conn. 333, 216 A.2d 439 (1966) (70% uniform percentages; the property involved was tangible personal property of a utility); Federated Dep't Stores Inc. v. Board of Tax Review, 162 Conn. 77, 291 A.2d 715 (1971) (65% uniform percentages).
43. 5 Conn. Cir. 193, 248 A.2d 515 (1968).
44. Id., 248 A.2d at 515. The court cited the relevant part of CONN. GEN. STAT. § 12-170 (1964) which provided: "Each assessor . . . who does any unlawful act . . . connected with the . . . assessment . . . shall forfeit fifty dollars to the person aggrieved thereby . . . ."
the Township to appropriate the funds needed to allow the assessor to comply. The decision, however, postponed the effectiveness of the mandamus for two years in order to allow necessary administrative and legislative reaction.\textsuperscript{47} In his dissent, Justice Wachenfeld quoted the majority's view that \textit{"the problem is basically legislative and administrative,"}\textsuperscript{48} but rather than just "postpon[e] the enforcement of its decree for three years, hoping to be rescued from its own decision by the Legislature in the meantime,"\textsuperscript{49} Justice Wachenfeld opined that the court should have refused to "sweep away almost a century of precedent"\textsuperscript{50} and thus should have refused to grant mandamus. The other dissent, by Chief Justice Vanderbilt and Justice Jacobs, urged that

\begin{quote}
[t]he question before us is whether we will recognize the clear and unmistakable mandate of the statutes for assessment at true value and direct performance of the solemn duty of the defendants to assess at true value or ignore it and make ourselves a party to the positive disregard of the statutes.\textsuperscript{51}
\end{quote}

Faced with this choice, these justices would have made the mandamus effective forthwith.

The New Jersey Supreme Court has considered the question of full value assessment on five occasions since \textit{Switz v. Township of Middletown}. Three of these were "public" cases concerned with the entire roll, while two were "private" actions concerning individual taxpayers who tried to lower their own assessments.

The three public cases were \textit{Switz v. Kingsley}\textsuperscript{52} and two cases each entitled \textit{Bergen County Board of Taxation v. Borough of Bogota}.\textsuperscript{53} In \textit{Switz v. Kingsley}, the court upheld the local option

\begin{quote}
[T]he mandate otherwise shall not apply to the tax years 1957 and 1958, thereby to afford the Legislature the opportunity to take such measures and provide for such administrative procedures as its own inquiry may prove to be essential to the public interest, and to allow the Township time needed for the fulfillment of the project.
\end{quote}

\textit{Id.} at 598, 130 A.2d at 25.

\textit{Id.} at 615, 130 A.2d at 34 (Wachenfeld, J., dissenting) (emphasis added by Justice Wachenfeld).

\textit{Id.} at 616, 130 A.2d at 34-35 (Wachenfeld, J., dissenting).

\textit{Id.} at 617, 130 A.2d at 35 (Wachenfeld, J., dissenting).

\textit{Id.} at 633, 130 A.2d at 44 (Vanderbilt, C.J. & Jacobs, J., dissenting).

\textit{37 N.J. 566, 182 A.2d 841 (1962).}

\textit{In the first case, reported at 104 N.J. Super. 499, 250 A.2d 440 (1969), the court expressed approval of a County Board of Taxation order to jurisdictions with equalized values of less than 85\% and "coefficients of deviation" of greater than 10\% to reassess, but refused to enforce the order because the required approval of the State Director of the
aspect of a 1960 statute passed to substitute for a locally selected uniform ratio for full value. 54 Because local assessments are used only to raise taxes for local services, there was no unlawful discrimination in unequal treatment of equally situated landowners in different counties. The New Jersey Supreme Court, however, limited preferential classification of agricultural property to enforce the state constitutional requirement of "uniformity." In the Bergen County cases, a county board of taxation so seriously viewed its statutory duty to establish a "percent of true value . . . as the level of taxable value to be applied uniformly through the County," 56 that it established a 100% rate, and brought suit to compel local assessors to reassess accordingly. The court granted mandamus after first refusing to do so. 57 In addition, the court issued a directive to the borough to appropriate the necessary funds. 58 Thus, twelve years after Switz v. Township of Middletown, the court was again granting virtually the same relief. This time, however, it was on a county-by-county, rather than on a statewide basis.

The two private cases, In re Kents 59 and Siegal v. City of Newark, 60 represent a significant change in New Jersey law. In

Division of Taxation had not been obtained. In the second case, reported at 114 N.J. Super. 140, 275 A.2d 158 (App. Div. 1971), the court upheld the County Board of Taxation order after such approval had been obtained.


55. The court invalidated Act of June 15, 1960, ch. 51, § 23, [1960] N.J. Laws 444 (current version at N.J. STAT. ANN. § 54:4-1 (West Supp. 1976)), which required that determination of value of land actively devoted to agricultural use "shall not be deemed to include prospective value for subdivisions or non-agricultural use." This was ruled "plainly invalid" because it effectively set up a different standard of value for agricultural land than for other real estate. Switz v. Kingsley, 37 N.J. 566, 585-86, 182 A.2d 841, 851 (1962).

The remaining portions of the legislation which the court upheld granted preferential treatment to agricultural machinery and livestock. This was upheld as a reasonable legislative classification and determination that such benefit conferred would further "the total interest of the public." Id. at 596, 182 A.2d at 851. The invalid portions relating to land were distinguished because here the standard of value was unaffected; the section merely set a different level for "taxable value." Id.


57. See note 53 supra.


59. 34 N.J. 21, 166 A.2d 763 (1961).

60. 38 N.J. 57, 183 A.2d 21 (1962).
these cases, the court reduced challenged assessments to a common ratio, as there was no proof of a level of "taxable value" set as required by the 1960 statute. This suggests that the enactment simply restored the situation as it was prior to Switz v. Township of Middletown. New Jersey had long denied relief to a taxpayer whose property was assessed at less than full value, but at more than the general level of assessments. In 1946 the United States Supreme Court condemned this rule as a denial of equal protection, and in 1954 the New Jersey Supreme Court reversed its prior ruling, granting relief in private actions. The difficulty in proving the prevailing level of assessment, however, still made effective relief hard to achieve when the assessor would not stipulate to a realistic rate. In In re Kents the plaintiff claimed assessment at higher than the common ratio. When the assessors "disavowed consciousness of a specific ratio and portrayed the total picture as the result of the hit-and-miss product of years of inattention," the taxpayer countered by proving the ratio found by the State Board of Equalization for purposes of intermunicipal equality. Accepting this claim, the court granted substantially the same relief as did the New York Court of Appeals in Guth fourteen years later. Thus, for the first time, the court made individual relief easily available to New Jersey taxpayers.
2. Ignoring Full Value: Massachusetts

Massachusetts' full value decision came in 1961 in Bettigole v. Assessors of Springfield.\textsuperscript{68} Twice before Bettigole, in 1959\textsuperscript{69} and in 1960,\textsuperscript{70} the court had adroitly sidestepped the difficult problem of remedy, confining itself to announcing that the statutory requirement that assessors "make a fair cash valuation of all the estate, real and personal, subject to taxation . . ."\textsuperscript{71} required full value, uniform assessment of all taxable property.\textsuperscript{72} In the first case, the court evaded the issue by holding that the collection of the tax on the 1959 tax roll had rendered the question moot for that roll, and that the court could not assume that the assessors would fail to do their clear duty on the then uncompleted 1960 roll.\textsuperscript{73} When the assessors did precisely that in 1960, the court again refused to confront the question of remedy, holding that the record was insufficient to enable the court to fashion effective relief.\textsuperscript{74}

Fast footwork by the parties and the lower courts in Bettigole enabled the 1961 roll to be reviewed by the Supreme Judicial Court after the Board of Assessors had adopted an illegal roll, but before levy or collection of the tax based on roll.\textsuperscript{75} This forced the

\textit{In re Kents}, 34 N.J. 21, 32-33, 166 A.2d 763, 769 (1961).

\textsuperscript{68} 343 Mass. 223, 178 N.E.2d 10 (1961).


\textsuperscript{70} Stone v. City of Springfield, 341 Mass. 246, 168 N.E.2d 76 (1960). It is interesting to note that the plaintiff, Leland A. Stone, was cocounsel with Philip E. Saks in the Carr case. Saks was the attorney for plaintiff in Stone. See Note, 75 HARv. L. REV., supra note 3, at 1380-82.


\textsuperscript{72} The statutory duty of the assessors, of course, is to assess all taxable property in the city at its full and fair cash value as determined in their honest judgment, without discriminatory treatment of any persons or property. "The standard . . . established by G.L. c. 59, § 38, is the fair cash valuation of all the real and personal estate subject to taxation. . . ."


\textsuperscript{73} The court clearly was aware of the practical problems involved in invalidating an entire assessment roll. See Carr v. Assessors of Springfield, 339 Mass. 89, 91 n.3, 157 N.E.2d 880, 893 n.3, where the court cites Switz v. Township of Middletown, 23 N.J. 580, 130 A.2d 15 (1957) and E. Ingraham Co. v. Town & City of Bristol, 144 Conn. 374, 132 A.2d 563 (1957), pointing out their treatment of the problems of wholesale relief.


\textsuperscript{75} Since this case was brought before the court after the town board voted to adopt the illegal assessments, and while "[t]he effort to raise money by this invalid assessment has not gone so far as to make the case moot," it was distinguishable, and distinguished, from Carr. Bettigole v. Assessors of Springfield, 343 Mass. 223, 235, 178 N.E.2d 10, 11 (1961).
court to find a remedy, but a peculiarity of the Springfield assessors' procedure greatly limited the applicability of the relief. The Springfield assessors, it was stipulated, first found the full value of each taxpayer's taxable property and then calculated assessments at the fixed percentages of the already established full value for six different administratively established classes of property. Thus, the remedy was easily constructed: The court ordered the assessors to have their computer skip the last calculation and simply print the full value already established as the assessed value. In this way, the court was even able to avoid a windfall of extra revenue to the taxing municipality: "To the full fair cash values thus fixed, a new tax rate can readily be applied, determined after taking into account the higher aggregate assessments from the use of full and fair cash values . . . ."

The Bettigole remedy appears to have worked well—but only for Springfield, and even there this was only in the shortrun. In the 1962 Census of Governments, the assessment sales price figures for Springfield ranged from 81% to 96% presumably reflecting the corrected roll required by Bettigole. Comparable figures in the 1967 Census had dropped to the 72% to 73% range and by the 1972 tally, the range was down 56% to 58%. Assessment equity, as measured by the coefficient of intra-area dispersion, was also not permanently improved. In the 1962 Census it was 26.2% dropping to an excellent 8.77% in 1967, thereby making Springfield one of only 107 assessing units out of 1,401 surveyed by the Census Bureau in that year to have a lower than 10% coefficient of intra-area dispersion. In 1972 the coefficient of intra-area dispersion was up to 14.9% just at, if not over, the threshold of acceptable quality. The drop in ratio and quality in Springfield presumably reflected the failure of assessments to follow inflation. As one can see from Appendices I and II, Springfield's ratios were virtually unique among the Massachusetts counties.

76. Id., 178 N.E.2d at 11.
77. Id. at 226, 178 N.E.2d at 12-13.
78. Id. at 237-38, 178 N.E.2d at 19.
79. Id. at 238, 178 N.E.2d at 19. Compare this with the legislation passed in Kentucky to achieve this goal, discussed at notes 184-190 infra.
80. 1962 CENSUS RATIOS, supra note 15, at 145 (Table 22).
81. 1967 CENSUS RATIOS, supra note 15, at 133 (Table 19).
82. 1972 CENSUS RATIOS, supra note 15, at 79 (Table 11).
83. 1962 CENSUS RATIOS, supra note 15, at 145 (Table 22).
84. 1967 CENSUS RATIOS, supra note 15, at 133 (Table 19).
85. Id.
86. 1972 CENSUS RATIOS, supra note 15, at 79 (Table 11).
cities surveyed. There was no general or lasting movement to full value assessment.

Subsequent case law confirms the inadequacy of the Bettigole remedy, which the Census studies suggest. In three cases during the fourteen year period which followed Bettigole, the court struggled inconclusively with the problem of full value assessment before it finally relinquished primary responsibility in 1974 to administrative supervision.

In Leto v. Board of Assessors, plaintiff unsuccessfully attempted to obtain a judicially mandated reassessment of an entire roll. Presumably reacting to Bettigole, the assessors had doubled assessments "to approximately 100% of fair cash value for each such parcel." The court found, however, that there was no basis for believing that the prior assessments had been a uniform fifty percent of full value. On the contrary, an actual revaluation of commercial and industrial properties (about twenty percent of the tax roll) had produced increases which were from three to nineteen times the prior valuation. Finding the allegations "diffuse and confusing," the court sustained a demurrer to the bill, largely because there were no allegations of "a deliberate and substantial violation of the . . . requirements that property tax valuations . . . be proportional . . . [and] equitable relief [was not] shown to be practical." It should be noted that these requirements were not unrelated. Relief as exemplified in Bettigole could be practical only where there was a deliberate departure from full value; only if the assessors found and then altered full value could they be ordered to restore the original finding.

88. Id.
89. Id. at 145, 202 N.E.2d at 923.
90. Id. at 149, 202 N.E.2d at 926.
91. Id.
92. Id.
93. Id. at 148, 202 N.E.2d at 925. The court may also have expected the revaluation begun with commercial property to be voluntarily continued to the remaining 80% of the roll without the "drastic" intervention of a court order. If so, it was probably an overly optimistic expectation, since in his 1976 report to the Supreme Judicial Court, discussed in the text accompanying notes 113-116 infra, the State Tax Commissioner reported that the plan Wilmington submitted to achieve a revaluation at full value had been rejected. Defendant's First Progress Report, Feb. 27, 1976, at Appendix 8 (Supreme Judicial Court, No. 73-219 Eq.) (submitted in accordance with Town of Sudbury v. Commissioner of Corps. & Taxation, 74 Mass. Adv. Sh. 2405, 321 N.E.2d 641 (1974)) [hereinafter cited as Sudbury First Progress Report].
In two later cases, the court retreated from the restrictive position of Leto. In 1965, in Coan v. Board of Assessors\(^{94}\) owners of new residential properties sought relief, alleging overassessment in relation to older properties because of the failure of assessments to reflect inflation. The court ordered the assessors to file a comprehensive plan of revaluation to take effect January 1, 1967.\(^{95}\) In Bennett v. Board of Assessors,\(^{96}\) a 1968 decision directing reassessment by 1970, the same approach was followed with an express disclaimer of a requirement of a showing of deliberate violation as prerequisite for injunctive relief.\(^{97}\)

During the same period, the court also considered the problem of individual property owners assessed at amounts higher than the general, albeit illegal, proportion of value. In 1965 Shoppers' World, Inc. v. Board of Assessors\(^{98}\) overruled an earlier Massachusetts case\(^{99}\) requiring a taxpayer seeking a lower assessment to prove assessment at more than full value. The court granted the taxpayer a reduction to the common ratio, based on a showing of a "policy or scheme of valuing properties or classes of property at a lower percentage of fair cash value than that percentage in fact applied to the taxpayer's own property."\(^{100}\) In a 1973 decision, Sears, Roebuck and Co. v. City of Sommerville,\(^{101}\) the court held that a taxpayer seeking individual relief must show individual overassessment and exhaust administrative remedies

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94. 349 Mass. 575, 211 N.E.2d 50 (1965). Plaintiffs alleged assessment at an average rate of 34%, with some assessments as low as 10% and some higher than 60%. Plaintiffs' bills for declaratory and injunctive relief were taken pro confesso, defendants having waived answer. Plaintiffs proposed a decree which would enjoin continued illegal assessment for the future, including 1965 and 1966, but in the same proposed decree suggested that if a comprehensive plan for revaluation were filed within 30 days, the decree should be suspended as to 1965 and 1966 and made effective as to 1967. The court seized upon this suggestion as a means to avoid the difficulties which barred relief in Leto and which were suggested in Bettigole.

95. Id. at 579, 211 N.E.2d at 52-53.


97. Id. at 241, 237 N.E.2d at 9. The court refused to impose a provision of the Coan decree, which had required the use of professional appraisals. The court stated that such outside work would not be required absent a showing that the municipal employees were incapable or could not be trusted to do it on their own.


100. Shoppers' World, Inc. v. Board of Assessors, 348 Mass. 366, 377, 203 N.E.2d 811, 819 (1965). The court, inter alia, relied on Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923), and also reacted to the restrictions which it had two weeks earlier, speaking through the same justice, imposed on public actions in the Leto decision. See text at notes 87-93 supra.

before seeking judicial intervention. In Board of Assessors v. Shop-Lease Co.,\textsuperscript{102} a case decided in the following year, the court sensibly held that in applying the capitalization of income approach\textsuperscript{103} to an overassessment appeal involving a commercial property, the assessors were not estopped from using the actual tax cost resulting from fractional assessment, rather than the theoretical tax cost that would result from application of the actual tax rate to a 100\% assessment.\textsuperscript{104} Board of Assessors v. Sgarzi\textsuperscript{105} reaffirmed the availability of relief to an individual taxpayer to have his assessment reduced to the common ratio.

In 1974, in Town of Sudbury v. Commissioner of Corps. & Taxation,\textsuperscript{106} the Supreme Judicial Court of Massachusetts again sidestepped, but perhaps finally resolved the question of remedy on a general basis. Massachusetts law had long given the Commissioner of Corporations & Taxation the power to visit any town, "inspect the work of its assessors, and give them such information and require of them such action as will tend to produce uniformity throughout the commonwealth in valuation and as-

\textsuperscript{102} 74 Mass. Adv. Sh. 107, 307 N.E.2d 310 (1974). The parties stipulated that assessments in Lynn were made at 30\%. Justice Reardon dissented, objecting that the majority effectively sanctioned the illegal assessment.

\textsuperscript{103} Income capitalization bases value on the present worth of future earnings. Income currently attributable to the property is computed, projected into the future, and then discounted in accordance with the rate of return for investments entailing similar risks. Noncommercial property can be valued under this system by imputing to it rents earned by comparable realty. Comment, 68 Yale L.J., supra note 3, at 345 n.41.

\textsuperscript{104} The calculation of value on the capitalization of income basis involves determination of net income, i.e., income after all expenses, including real estate taxes. Thus, the process as applied to a real estate tax review proceeding is somewhat circular in that the result of the calculation will determine the assessment, which will determine the tax payable, which will determine the results of the calculation. To cut through this circularity, appraisers use a "combined capitalization rate." This rate is the sum of the appropriate interest rate and the equalized tax rate. The latter rate is the nominal tax rate multiplied by the common ratio of assessed to full value. If, for instance, using the figures set forth in Lynn, the appropriate rate of return is 10\%, the nominal tax rate is $20 per hundred, and the common ratio is 30\%, then the combined capitalization rate would be: 10\% + (20\% \times 30\%) = 10\% + 6\% = 16\%. A property with a net income of $154,450, as in Lynn, would produce a full value of $154,450 \div 16\% = 965.312. Applying the 30\% common ratio would yield an assessment of $289,593. Obviously, if, as the taxpayer in Lynn argued, the full nominal tax rate is used, rather than the equalized tax rate, the resultant value, and therefore the assessment, will be much lower. Specifically, this would yield a $514,800 value (10\% + 20\% = 30\%; $154,450 \div 30\% = 514,833) and a $154,440 assessment ($514,800 \times 30\% = 154,440).


assessments, as well as power to supersede local assessors if they "fail to perform their duties." This power apparently had never been used, and the Commissioner was no more eager than the court to tackle the difficult problem of enforcing 100% valuation. Therefore, the Commissioner administratively limited the exercise of his powers to educational and advisory activities. It remained for the Town of Sudbury, which had voluntarily undertaken a full value reassessment and therefore was being discriminated against in allocation of state aid, to ask the Supreme Judicial Court to require the Commissioner to exercise his power. The court denied present injunctive relief because the Commissioner had stated that he would perform any duty which the court found he possessed. The court, however, retained jurisdiction and ordered the Commissioner to make periodic reports on his progress in complying with the decision.

The Commissioner's first progress report, filed fourteen months after the decision, showed a strong, but still largely unsuccessful attempt to enforce full value assessment. The Commissioner soundly established a four-part program aimed at securing revaluation of the approximately 1.8 million parcels in the 351 assessing jurisdictions in the state:

1. compliance programs developed by each community (or by the State in the event of the community's default) pursuant to statewide guidelines;
2. State supervision and management of community compliance programs including public information support and enforcement;

108. Act of Feb. 20, 1786, ch. 50, § 3, [1785] Mass. Acts 525 (current version at Mass. Gen. Laws Ann. ch. 41, § 27 (West 1968)). It is interesting to note that this power to remove and replace local assessors, which also existed in Kentucky, see note 141 infra, has in practice proven to be of little value in forcing local assessors to develop and implement full value assessment programs. Intransigence on the part of the assessor usually reflects the attitude of the local budgetary and governing bodies, which would prevent effective operations by a state imposed successor assessor. See Sudbury First Progress Report, supra note 93, at 26; Note, 60 Ky. L.J., supra note 32, at 148.
110. 321 N.E.2d at 643.
111. Id. at 648.
112. Id. at 649. The six-month period for filing the first such report began when the judgment was entered on Aug. 27, 1975, eight months after the decision.
113. The Sudbury First Progress Report, supra note 93, was filed on Feb. 27, 1976.
114. Id. at 3-12.
(3) general technical assistance; and
(4) long-range upgrading of State and local assessment capabilities.

In reviewing the local plans submitted, the Commissioner took account of "the composition of the tax base and the size of the community and the existing ratio of assessments."\(^{115}\) Despite the moderation of the Commissioner's approach and the flexibility of his standards, the results were very limited. Of the 351 communities, only 126 (36%) had submitted plans which the Commissioner approved, 54 (15%) more had received conditional approval and 67 (19%) were approved subject to affirmative local action, such as appropriation of necessary funds. On the other hand, 76 communities (22%), including two-thirds of the cities in the state, had either no plan at all, or had their plan rejected by the Commissioner. The remaining 28 communities (8%) had submitted, or resubmitted, plans too late for evaluation in the Report.\(^ {116}\)

Thus, Massachusetts' fourteen year experience seems to indicate a judicial inability to deal with fractional assessment except (1) where the assessors cooperate by finding full value from which, in a separate step, they deliberately depart, or (2) in very small municipalities. Fourteen years after the "revolutionary" decision in Bettigole, the court assigned the problem to an administrative agency. The results of administrative supervision are not yet apparent.

3. The 1965 Cases: Florida and Kentucky

a. Florida: The Homestead Exemption

The decision of the Florida Supreme Court in Walter v. Schuler\(^{117}\) starts on a note of almost pungent realism. It exposes in midpoint one of the most serious and practical obstacles to full value assessment in Florida, but ends on a note of utter judicial fantasy, leaving actual implementation of its full value direction to a later case and to strong administrative and legislative action.

The court opens its discussion with the blunt statement that "from all accounts the tax roll of Duval County for 1964 is a mess."\(^ {118}\) The court attributed this condition to a gradual deterio-

\(^{115}\) Id. at 15.
\(^{116}\) Id. at 17.
\(^{117}\) 176 So. 2d 81 (Fla. 1965).
\(^{118}\) Id. at 82.
ration of the assessment roll since 1941, resulting from the assessor's continuation of a system he had inherited from prior assessors.119

The "mess" had two defects. It violated the constitutional mandate of assessment at a "just valuation," but more importantly, because of the Florida homestead exemption of $5,000 of assessed value, it "redound[ed] to the unfair advantage of homestead over nonhomestead property."120 The court emphasized the second point:

The enormousness of circumvention of the command of the Constitution in the assessment of property in Duval County is plain from the figures in the final decree. There were more than 96,000 homestead exemptions in 1964 and 51,000 of these were wholly exempt from taxation.121

Thus the court's problem was to fashion a remedy that would force an elected assessor to suddenly make taxpayers out of 51,000 previously exempt families.

In fashioning the required remedy, the court lost all contact with reality. In the final portion of its opinion, the court acknowledged that although it had spoken much about "just valuation" which it referred to as "X," it had said

nothing about how to set it within the bounds prescribed by the legislature . . . . The more we ponder the problem the more difficult the solution appears. But settle it we must and we have concluded after earnest study that the sensible way to do so is to adopt the chancellor's idea that "fair market value" and "just valuation" should be declared "legally synonymous" and that such is the best way to arrive at the definition of "X." The former term is a familiar one and it, in turn, may be established by the classic formula that it is the amount a "purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell."

If assessors will apply that test and in doing so observe the seven guideposts in § 193.021, justness should be secured to the taxpayer and the tangle that has developed should be unraveled.122

The seven guideposts referred to by the court are a detailed

119. Id. at 85.
120. Id.
121. Id.
122. Id. at 85-86 (quoting Root v. Wood, 155 Fla. 613, 21 So. 2d 133 (1945)).
statutory prescription adopted by the legislature in 1963\textsuperscript{123} two years before Walter. This statute, however, raises as many questions as it answers. The statute requires that assessors consider seven factors in arriving at a just valuation:

(1) the present cash value of the property;
(2) its present use and the highest and best use to which it might be put in the near future;
(3) its location, size or quality;
(4) the cost of the property;
(5) the present replacement value of improvements;
(6) the condition of the property; and
(7) the income it yields.

There are many problems with these statutory standards. First, they are circular. The standard “present cash value” is traditionally defined as the price a willing buyer will pay in cash, and the amount that a willing seller will accept.\textsuperscript{124} Thus, the first factor for consideration becomes the very answer we seek. The other factors are no more helpful— instructing the assessor to consider present and future use, or cost and present replacement value, does not tell the assessor what weight to give to each. Finally, the court ignored the administrative problem of applying these seven standards to each property in the entire tax roll, consisting (as the court noted in another context) of 96,000 homestead parcels\textsuperscript{125} and an unmentioned number of nonhomestead parcels. This massive job, moreover, had to be done between June 28, 1967 (the date of the decision), and completion date of the 1965 roll. The only reference, even oblique, to the administrative problem is the supreme court’s rejection of the trial court’s suggestion that each assessment of the 1964 roll, which was shown to be at “approximately 40% of its value,”\textsuperscript{126} be doubled to produce a full value roll.\textsuperscript{127}

The assessors of Duval County and county assessors in seven of the other sixty-six Florida counties apparently succeeded in applying the admonitions of Walter. In Burns v. Butscher,\textsuperscript{128}

\begin{footnotesize}
\begin{enumerate}
\item[124.] Root v. Wood, 155 Fla. 613, 622, 21 So. 2d 133, 137-38 (1945).
\item[125.] Walter v. Schuler, 176 So. 2d 81, 85 (Fla. 1965).
\item[126.] Id. at 84.
\item[127.] Id. at 86.
\item[128.] 187 So. 2d 594, 595 (Fla. 1966).
\end{enumerate}
\end{footnotesize}
which reached the supreme court a year after Walter, the court cited a 1965 survey which showed "that in [these] eight counties assessments are made on the basis of 100 per cent of valuation while the range is from that figure to 17.54 per cent in a certain county."\textsuperscript{129}

Burns was an action by taxpayers against the Governor and the State Department of Revenue to require the department to seek statewide compliance with Walter by exercising statutory supervisory powers over local assessors in a directory, rather than in a merely educational way.\textsuperscript{130} The state, seeking to justify and maintain its purely educative and advisory role, contended that active supervision of assessors would be an encroachment on the powers of local assessors as state constitutional officers.\textsuperscript{131} The court rejected this position on textual grounds and, more importantly, because "exercise of unbridled discretion by 67 Tax Assessors without their being anchored to any master plan would result in the imbalance already so clearly indicated."\textsuperscript{132} Having found that the State Department of Revenue had power to require 100% assessment, the court specifically held that:

\begin{quote}
[T]he Comptroller is authorized to institute suits to secure obedience by officials of duties devolving upon them in relation to the tax laws and observance of pertinent regulations promulgated by the Comptroller . . . [and] is commanded to investigate the conduct of Tax Assessors . . . dealing with tangible personal property and to recommend to the Governor removal of such of them as willfully fail properly to discharge the duties put upon them by the Constitution, Florida Statutes, . . . and regulations promulgated pursuant to it . . ..\textsuperscript{133}
\end{quote}

Finally, the statute was interpreted "as providing for complete reevaluation and reassessment [by the Comptroller] of a tax roll

\begin{flushright}
\textsuperscript{129} Id. at 596.
\textsuperscript{130} Id. at 595.
\textsuperscript{131} Id.
\textsuperscript{132} Id.
\textsuperscript{133} Id. at 596. The court, quoting \textsc{Fla. Stat. Ann.} § 192.31 (West 1958), further stated:

[T]he Comptroller was declared to have "general supervision of the assessment and valuation of property, under the supervision of the State Budget Commission, so that all property will be placed on the tax rolls and the valuation thereof will be uniform and equal, as required by the Constitution . . .."
\end{flushright}

Burns v. Butcher, 187 So. 2d 594, 595 (Fla. 1966). The statute also gave the Comptroller power to prescribe forms and procedures, to set standards of values, and to publish an assessment manual. These statutory provisions were part of a 1943 enactment, which apparently had never been put into effect by the administrators.
prepared by an assessor" if necessary to achieve “uniformity and equality in taxation between the taxpayers of the several counties as well as throughout the state.”

b. Kentucky: Ripeness for Reform

Kentucky appears to have had substantial success in achieving full value assessment after its court of appeals decided Russman v. Luckett in 1965. Analysis of that decision and its sequel indicates that Kentucky had at least three elements contributing to this notable result.

Procedurally, Russman raised the issues in a broad and ripe manner. The case was a consolidated appeal in three lower court actions. The first was a declaratory judgment and mandamus action by plaintiffs who were “taxpayers, parents of school children, and students who attend school,” all claiming direct injury from illegal fractional assessment. The second was a suit by owners of intangible personal property, demanding declaratory relief against systematic overassessment of that class of taxable property as compared to real property, and raising equal protection as well as state constitutional issues. Finally, a resident property owner and taxpayer brought the third action seeking to enforce a provision of the Kentucky statutes which provides that an assessor may be removed from office “for willful disobedience of any . . . order . . . or for misfeasance or malfeasance . . . or willful neglect in the discharge of his duties . . . .” Faced with this range of plaintiffs who were directly involved and the varying set of requests for relief, the Russman court forcefully attacked the problem of relief, holding that:

134. Id. at 596.
135. Id.
136. 391 S.W.2d 694 (Ky. 1965). See Note, 100% Assessment in Kentucky, 54 Ky. L.J. 98 (1965), for an exceptionally comprehensive and realistic analysis of the factual situation leading to the decision noted, and its probable consequences.
137. Russman v. Luckett, 391 S.W.2d 694, 696 (Ky. 1965).
138. McDevitt v. Luckett, 391 S.W.2d 700 (Ky. 1965).
139. Ky. Consr. § 172 provides:
All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer or other person authorized to assess values for taxation who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law.
140. Miller v. Layne, 391 S.W.2d 701 (Ky. 1965).
Prospects for Full Value Assessment

1. Immediate compliance with . . . the Constitution and the implementing statutes is an impossibility. . . . An attempt to have all property reassessed retroactively poses insurmountable obstacles and would work injustice in many respects. Assessed valuations heretofore made must stand.

2. [A] reasonable time must be allowed within which not only the Commissioner of Revenue and the county tax commissioners may act, but within which taxing authorities, and perhaps the legislature, may prepare themselves, with due consideration for the taxpayers, for this significant revaluation of taxable property.

3. [The constitutional and statutory full value requirements mean full value, and, starting with the January 1, 1966 assessment (six months after the decision), the state and local assessing authorities] will be held strictly accountable for the performance of their . . . duties. . . . Misfeasance or malfeasance in this connection on or after the above designated date would certainly be willful.142

Legislatively, the provisions of the Kentucky Constitution and assessment statutes favored strong enforcement. The full value requirement was firmly embedded in the Constitution, precluding easy legislative overruling of Russman.143 The same constitutional provision contained the above quoted provision for removal of willfully underassessing assessors, which forms the threatened sanction of the decision. Finally, the State Tax Commission had the statutory power not only to find county assessment ratios, but to apply them to each of the assessments in a county to produce equalization.144

Administratively, the court found that:

[T]he Department of Revenue, and other bodies, have already done commendable work which should greatly simplify the task of reassessing property throughout the Commonwealth. Apparently reliable statistics are available which will enable county

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142. Russman v. Luckett, 391 S.W.2d 694, 699-700 (Ky. 1965). The demand for penalty was rejected because although the defendant was guilty of a violation of the law, extenuating circumstances dictated that no penalties should be imposed prior to Jan. 1, 1966, the date by which assessments were to have been corrected in accordance with the Russman opinion. Miller v. Layne, 391 S.W.2d 701, 702 (Ky. 1965).

143. See note 139 supra.

tax commissioners to perform their task without the necessity of new and independent appraisals of each item of taxable property.\textsuperscript{145}

The reference is to an ongoing program of assessment reform, which had been described in glowing terms ten years before Russman. It had begun as a result of legislative action in 1949 and was based on the development of a professionally competent State Department of Revenue to train and assist elected local assessors and their staff. Key areas were development of assessment procedure manuals, assistance in installation of modern assessing and recordkeeping systems, and technical help both with difficult individual assessments and revaluations in particular areas.\textsuperscript{146} Without this administrative readiness, presumably more than six months time would have been required to implement full value.

4. \textit{Interclass Inequality: Tennessee}

Several unusual real property tax situations combined to produce \textit{Southern Railway v. Clement},\textsuperscript{147} the Tennessee decision cited in \textit{Hellerstein}. First, railroad property in Tennessee was assessed directly by the State Board of Equalization while other real property was locally assessed.\textsuperscript{148} By longstanding practice, which had been upheld by the United States Supreme Court in 1940\textsuperscript{149} as a valid de facto classification, state assessments of railroad property were at, or close to, full value, while local assessments of nonrailroad property were fractional.\textsuperscript{150} Second, Tennessee's remedies for complaining taxpayers were also unusual. On the one hand, the State Board of Equalization was authorized by statute to increase or decrease local assessments either on a piece-meal or on a bulk basis\textsuperscript{151} to achieve the uniformity mandated by the state constitution\textsuperscript{152} and the full value assessment mandated by statute.\textsuperscript{153} On the other hand, the Tennessee courts refused to

\begin{itemize}
\item \textsuperscript{145} Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965).
\item \textsuperscript{146} F.L. Bird, \textit{The General Property Tax: Findings of the 1957 Census of Governments 74-75} (Brookings Institution 1966)(citing Martin, Progress in Assessment Administration; A Case Study (National Ass'n of Assessing Officers 1955)).
\item \textsuperscript{147} 57 Tenn. App. 54, 415 S.W.2d 146 (1967).
\item \textsuperscript{148} \textit{Id.} at 57, 415 S.W.2d at 147-48.
\item \textsuperscript{149} Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362 (1940).
\item \textsuperscript{150} Southern Ry. v. Clement, 57 Tenn. App. 54, 61, 415 S.W.2d 146, 149 (1967).
\item \textsuperscript{152} TENN. CONST. art. II, § 28 (1955)(amended 1971).
\end{itemize}
grant relief to a taxpayer who is assessed at more than the prevailing rate, but at less than full value.\textsuperscript{154}

The combination of these factors led the Tennessee railroads to launch a two-pronged attack in 1966. The Louisville and Nashville Railway Co. commenced a private action in federal court, which led to a decision that federal due process required that railroad assessment be lowered to the prevailing level of local assessments.\textsuperscript{155} At the same time, the Southern Railway began a public action in state court (which resulted in the decision cited in \textit{Hellerstein}) to require the State Board to increase to full value the assessments of locally assessed property in the two counties where the railroad’s property was taxed. The petition in \textit{Southern Railway} was granted, but because the taxes for the years in question had already been assessed and collected, it was granted on a prospective basis only.\textsuperscript{157}

**B. The Legislative Responses**

1. **Retreat From Full Value: Connecticut, New Jersey and Tennessee**

   a. **Connecticut**

In order to understand the legislative response to \textit{Ingraham},\textsuperscript{158} one must keep in mind that Connecticut subjected to its property tax personal property used for commercial, industrial and agricultural purposes, and all motor vehicles.\textsuperscript{159} The discrimination complained of in \textit{Ingraham} was the tax inequity between classes: motor vehicles assessed at 100%, business personally assessed at 90% and real property assessed at 50%.\textsuperscript{160} The initial legislative response was to amend the provision affecting assessment of real property revising the original mandate that real property “shall be liable to taxation at its present true and actual valuation,”\textsuperscript{161} to read that real property “shall be liable to taxation at a uniform percentage of its present true and actual valuation.”

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{154} Carroll v. Alsup, 107 Tenn. 257, 64 S.W. 193 (1901).
\item\textsuperscript{155} Louisville & N. R.R. v. Public Serv. Comm’n, 389 F.2d 247 (6th Cir. 1968).
\item\textsuperscript{156} Southern Ry. v. Clement, 57 Tenn. App. 54, 415 S.W.2d 146 (1967).
\item\textsuperscript{157} \textbf{Id.} at 75, 415 S.W.2d at 155-56.
\item\textsuperscript{158} E. Ingraham Co. v. Town & City of Bristol, 144 Conn. 374, 132 A.2d 563 (1957).
\item\textsuperscript{159} CONN. GEN. STAT. §§ 1733, 1750 (1949) (current version at CONN. GEN. STAT. §§ 12-57 to 12-58 (1975)).
\item\textsuperscript{160} E. Ingraham Co. v. Town & City of Bristol, 144 Conn. 374, 132 A.2d 563 (1957).
\end{enumerate}
\end{footnotesize}
valuation, not exceeding one hundred percent of such valuation, to be determined by the assessors.” No change was made in the provisions affecting motor vehicles or other personalty; there the standard remained “actual valuation.”

The 1957 legislative attempt to legalize the administrative practice of underassessing real estate in relation to motor vehicle and business personalty seems to have avoided judicial censure, although the legislation was clearly defective on at least two grounds. First, it delegated to assessors, who are administrators and not legislators, the authority to classify property for tax purposes, without establishing standards to apply in deciding the relative tax burdens to be borne by the different classes of property. Second, Ingraham went beyond the issue of clear violation of the statute to add:

Nor can we overlook a further matter in demonstrating the impropriety of pursuing the rule of fractional valuation. When assessors adopt such a rule, they indirectly assume a role which rightfully is not theirs to play. For, if such a rule is applied, the grand list will obviously be smaller in amount than it would be if the mandate of the statute were carried out. Under such circumstances, the borrowing power of the municipality is affected, since its indebtedness may not exceed specified percentages of the grand list.

The 1957 legislation continued this power of the assessors over municipal borrowing. Under familiar principles of constitutional law, a grant to administrators of either the power to classify for tax purposes or to set debt limits requires clear legislative standards.

The defects of the 1957 amendment were prospectively eliminated by further amendment in 1974, which requires each municipality to “assess all property for purposes of the local property tax at a uniform rate of seventy percent of present true and actual value . . . .” Since Connecticut, in another rather unusual sta-

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164. E. Ingraham Co. v. Town & City of Bristol, 144 Conn. 374, 380, 132 A.2d 564, 566 (1957).
tutory provision, has long required revaluation for assessment only once in ten years,\textsuperscript{167} and since the 1974 amendment introducing the seventy percent requirement also extended revaluation periods which would have expired between 1974 and October 1, 1978, to the later date, the seventy percent requirement will be gradually introduced. Thus, eighteen years after Ingraham, Connecticut has a statutory scheme for the introduction of uniform seventy percent assessment over the six years commencing October 1, 1978, and no procedure for requiring better compliance with this new dispensation than was afforded to the full value requirement in effect from 1860 to 1951.

b. New Jersey

Events following Switz v. Township of Middletown justified the majority's projection, as expressed by Justice Wachenfeld, that the legislature would rescue the court from having to enforce its postponed decree.\textsuperscript{168} Subsequent enactments have thus far preserved fractional assessment.

In 1960 the New Jersey legislature introduced the concept of "taxable value" into the assessment process.\textsuperscript{169} Taxable value is "that percentage of true value as shall be established by each county board of taxation as the level of taxable value to be applied uniformly throughout the county."\textsuperscript{170} A special lower valuation standard was provided for agricultural land and improvements.\textsuperscript{171} These changes were generally upheld in 1962\textsuperscript{172} and they have effectively avoided compliance with full value assessments except where localities have decided to comply.

c. Tennessee

The Tennessee legislature has adopted a series of measures seeking to prevent implementation of full value assessment. The initial reaction to the Southern Railway v. Clement\textsuperscript{173} decision

\begin{itemize}
\item \textsuperscript{167} See Comment, 68 Yale L.J., supra note 3, at 336-37 n.7.
\item \textsuperscript{168} See text accompanying note 49 supra.
\item \textsuperscript{172} See text accompanying notes 54-55 supra.
\item \textsuperscript{173} 57 Tenn. App. 54, 415 S.W.2d 146 (1967).
\end{itemize}
was the adoption in 1967 of a sliding scale of assessment ratios: The new ratios started at fifteen percent in 1968 and were to increase five points each year until 1972, at which time forty percent would be required, with a final increase to fifty percent in 1973. This scale was subject to two provisos: In no case was a jurisdiction to assess at less than its median assessment ratio found by the State Board of Equalization in 1967, and all reassessments were to be at fifty percent. In 1973, when the fifty percent level should have been reached, a new classified standard was set:

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Utility Property</td>
<td>55%</td>
</tr>
<tr>
<td>Industrial and</td>
<td>40%</td>
</tr>
<tr>
<td>Commercial Property</td>
<td></td>
</tr>
<tr>
<td>Residential and</td>
<td></td>
</tr>
<tr>
<td>Farm Property</td>
<td>25%</td>
</tr>
</tbody>
</table>

At the same time, the statutory standard of value was changed in a potentially significant way. The usual formula of "actual cash value," defined to mean "the amount of money the property would sell for, if sold at a fair, voluntary sale," was replaced with "its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values." The intent of this change seems to be to bar the use of actual sales as the measurement for value. By substituting a rule requiring judgment, rather than mere measurement of objective facts, this might insulate assessment from both private and public challenges based on sales studies.

2. No Significant Response: Massachusetts

The Massachusetts legislature's main response to the fourteen years of full value litigation was an abortive attempt to amend the constitution to allow classification and passage of a few technical measures to ease local reassessment. The constitutional amendment, passed by the legislature in 1968 and 1969, would have given the legislature power to "classify real property

Prospects for Full Value Assessment

according to uses and . . . provide for the assessment, rating and taxation thereof at different rates in the different classes so established, but proportionally in the same class." This was overwhelmingly rejected by the voters in 1970. Presumably, the amendment was intended to enable the legislature to preserve, at least to some extent, the prior administrative discriminations which would have been eliminated by full value assessment. Precisely what kind of classification would have been required to preserve the status quo is unclear. Laws were passed authorizing municipalities to fund reassessment and mapping contracts by the sale of bonds and to cooperatively contract for such services. Finally, over the opposition of the state tax commissioner, the legislature required local assessors to specify annually their methods of assessment to the state tax commission, which could revise them subject to review by the Board of Tax Appeals. This reportedly was intended to insulate residential assessments made on a depreciated cost basis against attack as being at a lower proportion of market value than assessments of commercial property, its effect is untested.


179. Letter from Comm'r Owen L. Clarke to Gov. Michael S. Dukakis (Sept. 12, 1975), at 5, reprinted in Sudbury First Progress Report, supra note 93, at Appendix 11 [hereinafter cited as Clarke Letter]. A similar proposed amendment is again working its way towards submission to the voters. Id.

180. The statewide Census Bureau figures indicate approximate equality between residential property and commercial and industrial property in all three years (38% to 37% in 1962, 48% to 50% in 1967, and 48% to 44% in 1972). See text accompanying note 18 supra, and Appendix I. Indeed, in 1972 single-family residences were, according to this source, overassessed at 49% compared to 44% for commercial and industrial property. On the other hand, a recent study concludes that full value assessment would shift taxes from commercial and industrial property to residential property in 250 of the 257 communities studied. W. Wheaton, The Statewide Impact of Full Property Revaluation in Massachusetts 3-5 (Federal Reserve Bank of Boston 1975). The average effect was calculated as a 16.3% increase in residential taxes, offsetting a decrease in tax of 23.0% on industrial property and 12.0% on commercial property. The larger, older industrial cities showed an even greater increase in residential taxes of over 20%. Id. at 5.


3. Legislation to Assist Full Value Assessment: Kentucky and Florida

a. Kentucky

Kentucky's legislative response to Russman v. Luckett was swift and effective. The legislature enacted a three-part program, consisting of (a) changes in the state property tax, (b) a freeze on the amount of local budgets, and (c) a temporary special tax on public utilities. These changes were intended to offset what were regarded as undesirable side effects that otherwise would have flowed from full value assessment.

Kentucky is one of the few states to have a general state property tax, and taxes certain personal property as well as real property. In order to avoid an increase in the state property tax as a result of 100% assessment, the rate of state tax was reduced from 5% to 1.5%. In recognition of the generally prevailing gross underassessment of personal property, the statutory scheme for personal property was revised to grant exemption to most personalty and to impose only a low-rate state tax on other personalty.

To prevent the increase in tax burden and local spending which would have resulted from applying fractional assessment tax rates to full value assessments, the legislature limited localities to utilizing a "compensating tax rate." This meant a tax

185. 391 S.W.2d 694 (Ky. 1965).
186. The first two measures were adopted at an extraordinary session of the legislature called in response to the decision in Russman v. Luckett, id. See notes 188-192 infra. The third was adopted in the following year. See note 185 infra.
187. In 1974 about 26 states had general property taxes at the state level. In many of these states, personal property was exempt or partially exempt on a de facto or de jure basis. BUREAU OF THE CENSUS, STATE TAX COLLECTIONS IN 1974, Table 9, at 13-40 (U.S. Dep't of Commerce 1974).
189. Id.
rate which, when applied to the current assessment roll, would produce the same revenue as was raised in 1965. Two exceptions to this rule were provided. First, the concept of "net assessment growth" was introduced and defined as the excess of the value of new property added to tax rolls over the value of property deleted. These additions normally come from construction of new buildings or restoration to taxability of previously exempt property, and deletions from demolition of improvements or attainment of exempt status. Taxing jurisdictions were permitted to increase their revenues by an amount equal to the compensating tax rate applied to the net assessment growth in addition to the 1965 levy. Second, municipalities were permitted to increase their revenues by ten percent by complying with special procedures, including a referendum.

Finally, a transitory public utility tax was imposed in 1966 to prevent a windfall tax savings by public utilities. These companies had been taxed at local rates on state assessments which were often at a higher ratio to full value than the local common ratio. The tax prevented a windfall benefit to the public utility companies, which would have resulted from application of reduced local rates to the unchanged full value assessment. The remedy was to set the tax rate applicable to such companies in 1966 and 1967 at that which would produce the same revenue as in 1965. The widespread use of the permissive ten percent an-

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193. See note 192 supra.
194. Real property of utilities, as well as all other property including intangibles and franchises, was subject to assessment by the State Tax Commission. Ky. Rev. Stat. §§ 136.120, 136.160. Such assessments were then allocated among, and added to the assessment rolls, of the local jurisdictions in which the property was located. Id. § 136.170. The value found for the entire property of a utility was subject to equalization, based on an overall state equalization factor; the value assigned to property in each locality was not adjusted to the local common ratio. See Luckett v. Tennessee Gas Transmission Co., 331 S.W.2d 879 (Ky. 1960). Therefore, even if the factor used to equalize was exactly the correct number for the entire state, such property would have been overassessed in all municipalities with a common ratio below the state average.
nual revenue increase by school districts and the growth in the amount of property owned by public utilities (due to plant and facility expansion) prevented a reduction in actual tax burden when the special tax expired at the end of 1967. 198

Three other features of Kentucky law warrant discussion. Two of the features predated Russman, but were given added importance by full value assessment. In 1964 the legislature created a Board of Tax Appeals to hear individual taxpayer complaints of overassessment, as well as appeals concerning other aspects of the local tax system. 197 Judicial review of Board decisions is also provided. 198 Since Russman, the Board generally has provided quick, relatively easy relief to taxpayers claiming overassessment. 199 Kentucky has long made special provision for assessment of farm land, which in general limits the assessment of such acreage to its value as farm land, even if it has a higher value for other purposes. 200 Since the sale of farm land normally reflects its potential value for other use, full value assessment (tied to a market value approach) makes such a statutory limitation more important than it was under fractional assessment. Finally, a constitutional amendment and implementing legislation adopted in 1972 granted a senior citizen homestead exemption of $6,500 for residences owned and occupied by persons over the age of sixty-five. 201 The exemption was later legislatively amended to

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199. Note, 60 Ky. L.J., supra at note 32, at 91. Taxpayers assessed by state and county assessors have a "reasonably adequate procedure for protesting that assessment," id. at 94, while those assessed by city assessors do "not have an adequate administrative remedy." Id. at 97. The author suggests that the best way of improving the remedy available to city-assessed taxpayers is to require cities to use county assessments, which, under Ky. Rev. Stat. Ann. § 320.285 (Bobbs-Merrill 1971) was optional. Note, 60 Ky. L.J., supra at 97. Instead, however, the legislature seems to have encouraged use of county assessments by lowering the costs. Under former law, as it stood in 1970, each city adopting the county roll had to pay approximately 1.5¢ per $100.00 of assessment with no maximum. KY. REV. STAT. ANN. § 320.285 (Bobbs-Merrill 1971). This section subsequently was amended by Act of March 27, 1972, ch. 245, § 4, [1972] Ky. Acts 1036, to reduce the charge to 0.5¢ per $100.00 of assessment, with a maximum of $40,000 or $50,000 depending on the size of the roll.
200. KY. REV. STAT. ANN. § 132.450 (Bobbs-Merrill Supp. 1976). This is basically the same provision as was passed by the New Jersey Legislature but invalidated by the New Jersey Supreme Court. See text accompanying note 55 supra.
201. KY. CONST. § 170 (amended 1971, further amended 1975); Act of March 27, 1972,
provide for cost-of-living index adjustments in the amount of the exemption, thus reflecting an expectation that assessments would be increased as inflation escalated values.202

b. Florida

Florida's legislative response to its full value decision was significantly more limited than that in Kentucky. A rate rollback law was enacted in 1973 to keep local property tax revenue constant as assessments increased.202 In addition, the supervisory powers of the state tax commission have been strengthened several times.204 In 1974, legislation was passed (1) requiring that assessors recognize the effect of local building moratoria on subdivision land values205 and (2) prohibiting the assessment of vacant land or building lots "until such time as development is begun on the platted acreage."206 This measure suggests that assessments were expected to keep pace with rising values, but the absence of any increase in the homestead exemption, the benefit of which would be greatly reduced by such increasing assessments, suggests the contrary.207


204. These enactments are now codified in FLA. STAT. ANN. ch. 195 (West Supp. 1976-77) and include a grant of "general supervision," id. § 195.002; a direction to "prescribe and furnish all forms to be used by property appraisers," id. § 195.022; and "prescribe reasonable rules and regulations for the assessing . . . of taxes," including "uniform standards and procedures for computer programs and operations for all programs installed in any property appraiser's office after July 1, 1973," id. § 195.027. In addition, authority was given to publish a manual of instructions for appraisers, available to the general public, id. § 195.062. This chapter gives the state revenue department power to increase or decrease budgets of local assessors, id. § 195.087, establishes a state fund to assist local assessors in making appraisals and setting up properly equipped offices, id. § 195.094. In addition, it provides for state prepared approved bidder lists and standard contracts for reappraisal and mapping projects, id. § 195.095. Finally, provision is made for periodic "in-depth review" by the state of each locality's assessments at least once every four years, with requirements of local action to correct any over-or-under-assessment found on a classified or stratified basis. Id. § 195.096-097.


206. Id. § 9, at 649, amending FLA. STAT. ANN. § 195.062 (West 1971)(codified at FLA. STAT. ANN. § 193.062 (West Supp. 1976-77)). This prohibited assessment on building lots until 60% were sold. Act of May 21, 1975, ch. 75-12, § 1, [1975] Fla. Laws 33 substituted the less specific language quoted in the text.

207. Compare the cost of living feature of the Kentucky Senior Citizen Exemption discussed in the text at note 202 supra.
V. THE PATH AHEAD IN NEW YORK STATE

Several facts clearly emerge from this review of the experience in the six states that have had *Hellerstein*-type, full value decisions. First, such decisions are not self-executing; in four of the six states, full value has been repealed or effectively postponed by subsequent legislative action or inaction. Second, strong state administrative control of the assessment process seems to be a requirement for full value assessment. Local assessors will not comply without policing and the courts alone cannot perform this task. Third, the legislative response required to achieve full value must confront the underlying causes of the practice of fractional assessment to avoid unfair windfalls and unfair burdens on particular classes of taxpayers. Fourth, full value decisions do not eliminate the need for effective relief to individual taxpayers who are unfairly treated.

Based on the experience elsewhere, it appears unlikely that New York will follow Kentucky's example in achieving full value assessment for a number of reasons. For example, there seems to be an inverse relationship between effective tax rate and receptivity to full value assessment: New York has a high effective tax rate.

208. An example of overt legislative action to replace the kind of arrangement that now frequently occurs by informal (and illegal) administrative action is the 1976 legislation permitting partial exemption on a diminishing basis over the years, to new industrial and commercial improvements. Act of June 8, 1976, ch. 278, [1976] N.Y. Laws 697 (to be codified at N.Y. REA Prop. Tax LAW § 485-b); id. ch. 279, at 699 (to be codified at N.Y. REA Prop. Tax LAW §§ 489-mm to 489-oo).

209. It is difficult to compare tax rates between states because they are set locally and display a wide range within each state, depending on levels of expenditures for schools and other local government functions, which are related both to the wealth of the community and the local assessment ratio. The range and average of nominal tax rates reported for the jurisdictions sampled by the Census Bureau in 1971 are suggestive:

<table>
<thead>
<tr>
<th>STATE</th>
<th>NOMINAL TAX RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High</td>
</tr>
<tr>
<td>Connecticut</td>
<td>7.8%</td>
</tr>
<tr>
<td>Florida</td>
<td>3.8%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>2.1%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>20.7%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>17.5%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>7.3%</td>
</tr>
</tbody>
</table>
Prospects for Full Value Assessment

and technically proficient Board of Equalization, there does not seem to be a statutory basis for a claim that it has power to require adherence to its mandates, along the lines of Russman and Sudbury. Moreover, giving the State Board enforcement powers would require a substantial increase in its budget, which is unlikely to occur in the present political climate.

Based on 1972 CENSUS RATIOS, supra note 15, at 110 (Table 12). The figures presented are the high, the low, and the arithmetic mean of “nominal rates” for selected jurisdictions. The number of jurisdictions sampled are: Connecticut—16; Florida—24; Kentucky—7; Massachusetts—22; New Jersey—11; and Tennessee—7.

From the above data it appears that the two states which made the most progress toward full value had nominal tax rates under 3%; the four that resisted had nominal tax rates over 5%. The comparable figures from New York, from the same source, are: high: 16.6%; low: 6.0%; average: 11.3%. Fourteen jurisdictions were sampled. Further support for this hypothesis is found in an examination of per capita property tax burdens presented in Netzer, supra note 26, at 90-91 (Table 5-1)(based on 1962 data). Three states which strongly resisted full value decisions—Massachusetts, New Jersey and Connecticut—were among the four with the highest per capita property tax burdens in a study of 1962 property taxes. Their ranks and rates were:

<table>
<thead>
<tr>
<th>State</th>
<th>Rank</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Massachusetts</td>
<td>Highest</td>
<td>$166.09</td>
</tr>
<tr>
<td>New Jersey</td>
<td>3rd Highest</td>
<td>$153.47</td>
</tr>
<tr>
<td>Connecticut</td>
<td>4th Highest</td>
<td>$139.61</td>
</tr>
</tbody>
</table>

Kentucky and Florida, which have had more success in moving to full value, had low ranks and rates.

<table>
<thead>
<tr>
<th>State</th>
<th>Rank</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kentucky</td>
<td>8th Lowest</td>
<td>$45.85</td>
</tr>
<tr>
<td>Florida</td>
<td>19th Lowest</td>
<td>$80.38</td>
</tr>
</tbody>
</table>

New York ranked fifth, with a rate of $138.19. The correlation is not completely clear, however, Tennessee, which has also resisted full value, had the 11th lowest rate at $48.13.


211. Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965).


213. The Board’s 1976-77 budget was $7,166,600. Letter from Samuel J. Stein, Direc-
The problems of New York City present a special reason for not expecting full value assessment in New York State. Among the City's problems is the flight of the middle class to the suburbs. One factor that encourages middle class homeowners to remain as residents of the City is the policy of assessing one and two family residential properties—of which there are over a half million in New York City—at less than thirty percent of market value, while assessing commercial properties at or above market value. These fractional assessments, combined with a constitutional property tax rate limit and differences in commutation costs, make it cheaper for many people to live in the City and pay its full city income and sales taxes, than to move to the suburbs and pay the lower commuter income taxes and the equal or slightly lower suburban sales taxes. Increasing the tax burden on these people would accelerate the flight to the suburbs, cause the loss of other tax revenues, further the racial imbalance in City schools, and ultimately result in a drop in the value of City real estate.
Reassessment at full value in a high tax jurisdiction creates real difficulties, even in suburban and rural areas. A key problem, at least in urban and suburban areas of New York, is that commercial and industrial property tends to be assessed at a higher ratio than single-family residential property.\textsuperscript{219} Any attempt to shift tax burdens from such overassessed properties to residential owners meets strong political opposition, since the average underassessed single-family house is occupied by several voters. This reflects real and difficult questions of tax policy and equity, particularly when homeowners, as well as commercial property owners and tenants, are suffering from the effects of inflation on other costs of property ownership such as fuel and utility bills, interest rates, and fire insurance costs.\textsuperscript{220}

Another problem, which has been recognized to some extent, is that of the senior citizen, or for that matter anyone, who has owned a house so long that the inflation's effect on value and tax rate would make it impossible to bear a full share of the tax burden. A limited senior citizen's exemption now exists in New York to mitigate this problem.\textsuperscript{221} But the elderly taxpayers tend to be underassessed; their assessments generally have not increased as much as real estate values. Full value assessment, therefore, would shift the tax burden from owners of new residential property and owners of commercial property to owners of old residential property.\textsuperscript{222} Three remedies have been proposed to deal with this problem: \textsuperscript{223} (1) classification schemes—lower assessment or taxes on residential property; (2) circuit breaker

\textsuperscript{219.} See, e.g., Temporary State Commission Report, \textit{supra} note 210, at 25-29.

\textsuperscript{220.} The overall cost of living index for July 1976 for U.S. cities was 170.1. U.S. Dep't of Labor, Bureau of Labor Statistics, Consumer Price Index Detailed Report 1976, at 7 (Table 1). The index for the costs of homeownership was 190.7, \textit{id.}, which indicates that these costs increased at a faster than average rate since the 1967 base year. The index for property taxes associated with homeownership was 166.6, again indicating that other elements, e.g., maintenance and repair (199.3) and fuel oil and coal (247.3), increased faster than property taxes. \textit{Id.} at 10 (Table 4). The index of residential rent was 144.4, lower than the overall index, indicating that inflation has been slower in raising costs of apartment dwelling than costs of homeownership. \textit{Id.}

\textsuperscript{221.} N.Y. Real Prop. Tax Law § 467 (McKinney Supp. 1975-76).


\textsuperscript{223.} A valuable discussion of this problem and a listing of states which have adopted the various remedies (as of 1971) is found in Shannon, \textit{Federal Assistance in Modernizing State Sales and Local Property Taxes}, 24 Nat'l Tax J. 379, 384 (1971).

proposals—statutes under which real estate taxes are limited in relation to total income;\textsuperscript{225} and (3) homestead exemptions—uniform assessment with specified exemption for owner occupied homes.\textsuperscript{226} A related problem of equity would exist if such relief is given to homeowners: should corresponding relief not be given to renters? But if such relief is to be given to renters, how can it be structured to assure that its benefits pass through to the tenant and are not appropriated by the landlord?\textsuperscript{227}


\textsuperscript{227} One possible method of handling this issue is illustrated in New Jersey Gross Income Tax Act of 1976, ch. 47, § 54A, 1976 N.J. Sess. Law Serv. 166. The proceeds of this newly enacted income tax were earmarked "exclusively for the purpose of providing property tax relief and for the purpose of reducing or offsetting property taxes, including the requirements of Public Law 1975 ch. 212 [relating to the funding of public schools] and homestead exemptions under 1976 Assembly Bill No. 1330 . . . ." Id. § 54A:9-25, at 166. This provision is now embodied in a constitutional amendment. Assembly Concurrent Res. 140, 1976 N.J. Sess. Law Serv. 206-07, approved Nov. 2, 1976. To give owners of cooperative apartments and residential tenants a benefit equivalent to the homestead exemption on owner occupied dwellings, "a homestead credit of $65.00 against the tax otherwise due . . . ." was provided. New Jersey Gross Income Tax Act of 1976 ch. 47, § 54A:4-3, 1976 N.J. Sess. Law Serv. 111.

The exemption on owner occupied property is complex. Although called an exemption, it is really a tax credit, calculated on the basis of the lesser of (a) the equalized assessment of the property, up to $10,000 and (b) two-thirds of the equalized value of the property. This base figure is then multiplied by the sum of (a) 1.5%, plus (b) 12.5% of the effective tax rate to produce the credit, but the credit in no case can exceed one-half of the tax. Public Laws 1976, ch. 72, 1976 N.J. Sess. Law Serv. 234, to be codified at N.J. Stat. 54:4.30 to 4.3.84. The maximum credit on any house with an equalized assessment of more than $15,000 in a jurisdiction with a 5% effective tax rate would be:

\[
(1.5\% + [12.5\% \times 5\%]) \times \$10,000 = .92125 \times \$10,000 = \$2,125
\]

The effect of this credit at various levels of equalized value would be:

<table>
<thead>
<tr>
<th>Equalized Value</th>
<th>Tax before Credit (at 5%)</th>
<th>Credit ($2,125 or 50% of tax)</th>
<th>Net Tax</th>
<th>Effective Rate of Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 15,000</td>
<td>$ 750</td>
<td>$ 375</td>
<td>$ 375</td>
<td>50%</td>
</tr>
<tr>
<td>25,000</td>
<td>1,250</td>
<td>625</td>
<td>625</td>
<td>50%</td>
</tr>
<tr>
<td>40,000</td>
<td>2,000</td>
<td>1,000</td>
<td>1,000</td>
<td>50%</td>
</tr>
<tr>
<td>75,000</td>
<td>3,750</td>
<td>1,875</td>
<td>1,875</td>
<td>50%</td>
</tr>
<tr>
<td>100,000</td>
<td>5,000</td>
<td>2,125</td>
<td>2,125</td>
<td>42%</td>
</tr>
<tr>
<td>150,000</td>
<td>7,500</td>
<td>2,125</td>
<td>5,375</td>
<td>28%</td>
</tr>
<tr>
<td>200,000</td>
<td>10,000</td>
<td>2,125</td>
<td>7,875</td>
<td>21%</td>
</tr>
</tbody>
</table>
Yet another problem of equity exists where differences in assessment level have been capitalized, i.e., reflected in the price of property. If the value of a particular parcel has been inflated by underassessment and an increase in assessment will merely cancel an unearned increment which would otherwise have accrued to its owner, no problem of equity exists. If, however, the property was purchased at an inflated value in reliance on the continued existence of the prior treatment, problems of equity arise. This is particularly true if, at the same time, those who purchased property in high assessment areas at lower prices (reflecting relative overassessment) are now to realize a windfall gain. A transitional period during which taxes would be based on the average assessed value over a three- or five-year period would be a possible solution, or at least an amelioration, of this problem.

New York, on the other hand, does have one factor pressing toward full value assessment which seems stronger here than in the other states studied. Probably because of its high effective tax rates, generally favorable procedural statutes, and well developed case law rules on valuation, New York has always been a

---

Finally, the Tenants' Property Tax Rebate Act, Public Laws 1976, ch. 63, 1976 N.J. Sess. Law Serv. 222, to be codified at N.J. Stat. 54:4-6.2-54:4-6.13, requires owners of multiple dwellings (over four units) to pay to tenants a rebate equal to the tenants' share (based on the proportion of the building's rent roll) of the property's share (based on the proportion of the property's assessment to the municipality's assessment roll) of 50% of the aid to education monies paid to the municipality from the fund established by the state income tax act.


229. A five-year floating average of equalized assessed value is used to determine the constitutional tax limits on cities, counties, villages and certain school districts in New York. N.Y. Const. art. 8, § 10 (McKinney 1969). A bill to give local legislative bodies the power to ease the effect of increased assessment on existing residential property, by exempting from tax any increase in assessment on such structures, with the amount of exemption decreasing and finally disappearing over an eight-year period, was introduced in the 1975 legislature, but died in committee. Assembly Introduction No. 12328, 1975 New York Legislative Record A972.

230. See note 209 supra.

231. E.g., N.Y. REAL PROP. TAX LAW § 720 (McKinney 1972) which relates to proof of assessment ratio. Although the traditional "selected parcel assessment method" has been widely and justly criticized, see, e.g., Koeppel, supra note 3; Comment, 68 YALE L.J., supra note 3, at 348 n.59, it did provide a definite procedure where other states had a vacuum. See In re Kents, 34 N.J. 21, 28, 166 A.2d 763, 767 (1961). It is also quite significant that special calendars and trial parts for tax certiorari proceedings and special rules relating to the exchange of appraisals and auditing of owner's income and expense records are provided by court rules. See 22 N.Y. Code of Rules and Reg. § 660.18 (1st Dep't); id. §§ 678.1, 678.3 (2d Dep't); id. §§ 839.3, 862.6 (3d Dep't); id. § 104.24 (4th Dep't).

232. The Seventh Decennial Digest, for example, devotes approximately 13 pages to
leader in real property tax litigation. Until 1975, difficulty in proving assessment ratio limited the ability of taxpayers to achieve reductions to a level of assessment lower than that which the municipality was willing to admit. The decisions of the Court of Appeals in Guth and of the Nassau County Supreme Court and the Appellate Division in 860 Executive Towers implementing the 1969 amendment to the Real Property Tax Law permit the state equalization rate to be relied on as the sole evidence of prevailing level of assessment. Under these decisions, it should be relatively easy for any taxpayer to secure the reduction of an assessment with higher ratio to value than the state rate. The effect of the decisions, absent reassessment, must be to continually lower the state rate. This follows mathematically from the fact that the state rate represents an average of values, some higher and some lower than the actual rate. If a significant proportion of the assessments higher than the state rate are reduced to that level, then on the next determination of an average, the new state rate must be lower than the previous one. And as the state rate gets lower, more and more taxpayers will be eligible for, and will avail themselves of, this relief.

key number 348 entitled Taxation—Valuation—Property. Of these, three pages are devoted to New York cases.

233. See, e.g., Koeppel, supra note 3, at 570 n.16.


235. 860 Executive Towers, Inc. v. Board of Assessors, 385 N.Y.S.2d 604 (2d Dep't 1976). This decision followed and expanded Guth, which had left open the question of whether the state equalization rate was properly applicable to other assessing jurisdictions and other years. 860 Executive Towers held that (1) Guth applied throughout the state, (2) the state rate and its applicability to particular jurisdictions could be proven by the testimony of expert witnesses without petitioner offering testimony of officials of the State Board of Equalization, as had been done in Guth, and (3) once the issue of applicability of the state rate had been determined against a particular taxing jurisdiction for a particular year, it was collaterally estopped from contesting these issues in cases brought by other taxpayers. The New York Court of Appeals has yet to pass on these issues.


237. This can be illustrated by the following model. Assume a jurisdiction with 1,000 properties, with assessment ratios distributed as follows:
### Prospects for Full Value Assessment

<table>
<thead>
<tr>
<th>Assessment Ratio</th>
<th>Number of Properties</th>
<th>Average Value (000)</th>
<th>Aggregate Value (000)</th>
<th>Aggregate Assessment (000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>3</td>
<td>$1,000</td>
<td>$3,000</td>
<td>$1,500</td>
</tr>
<tr>
<td>40%</td>
<td>10</td>
<td>500</td>
<td>5,000</td>
<td>2,000</td>
</tr>
<tr>
<td>30%</td>
<td>250</td>
<td>100</td>
<td>25,000</td>
<td>7,500</td>
</tr>
<tr>
<td>20%</td>
<td>500</td>
<td>40</td>
<td>20,000</td>
<td>4,000</td>
</tr>
<tr>
<td>10%</td>
<td>237</td>
<td>30</td>
<td>7,110</td>
<td>711</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>1,000</strong></td>
<td></td>
<td><strong>$60,110</strong></td>
<td><strong>$15,711</strong></td>
</tr>
</tbody>
</table>

Overall assessment ratio: \( \frac{15,711}{60,110} = 26\% \)

Assume that in the following year, 1 of the 50% properties, 5 of the 40% properties and 75 of the 30% properties, assessments are reduced to 26% of full value. The resulting assessments will be:

<table>
<thead>
<tr>
<th>Assessment Ratio</th>
<th>Number of Properties</th>
<th>Average Value (000)</th>
<th>Aggregate Value (000)</th>
<th>Aggregate Assessment (000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>2</td>
<td>$1,000</td>
<td>$2,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>40%</td>
<td>5</td>
<td>500</td>
<td>2,500</td>
<td>1,000</td>
</tr>
<tr>
<td>30%</td>
<td>175</td>
<td>100</td>
<td>17,500</td>
<td>5,250</td>
</tr>
<tr>
<td>26%</td>
<td>81</td>
<td>*</td>
<td>11,000</td>
<td>2,860</td>
</tr>
<tr>
<td>20%</td>
<td>500</td>
<td>40</td>
<td>20,000</td>
<td>4,000</td>
</tr>
<tr>
<td>10%</td>
<td>237</td>
<td>30</td>
<td>7,110</td>
<td>711</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>1,000</strong></td>
<td></td>
<td><strong>$60,110</strong></td>
<td><strong>$14,821</strong></td>
</tr>
</tbody>
</table>

Overall assessment ratio: \( \frac{14,821}{60,110} = 25\% \)

If in the following year, the same thing happens again, with another 81 properties going to the new assessment ratio, the effect would continue:

<table>
<thead>
<tr>
<th>Assessment Ratio</th>
<th>Number of Properties</th>
<th>Average Value (000)</th>
<th>Aggregate Value (000)</th>
<th>Aggregate Assessment (000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>1</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$500</td>
</tr>
<tr>
<td>40%</td>
<td></td>
<td>600</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30%</td>
<td>100</td>
<td>100</td>
<td>10,000</td>
<td>3,000</td>
</tr>
<tr>
<td>26%</td>
<td>81</td>
<td>*</td>
<td>11,000</td>
<td>2,860</td>
</tr>
<tr>
<td>25%</td>
<td>81</td>
<td>*</td>
<td>11,000</td>
<td>2,760</td>
</tr>
<tr>
<td>20%</td>
<td>500</td>
<td>40</td>
<td>20,000</td>
<td>4,000</td>
</tr>
<tr>
<td>10%</td>
<td>237</td>
<td>30</td>
<td>7,110</td>
<td>711</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>1,000</strong></td>
<td></td>
<td><strong>$60,110</strong></td>
<td><strong>$13,821</strong></td>
</tr>
</tbody>
</table>

Overall assessment ratio: \( \frac{13,821}{60,110} = 23\% \)

\[ \text{* (1 } \times \text{ $1,000,000) + (5 } \times \text{ $500,000) + (75 } \times \text{ $100,000) = $11,000,000} \]
slide in assessment levels snowballs, the tax rate must rise, or municipal spending drop. In either case, reassessment will become increasingly attractive. 238

In succeeding years, the assessment ratio would continue to drop. When it got below 20%, it would begin to crumble as taxpayers assessed at 20% became eligible for reduction. If this did not produce full value revaluation, it would produce chaos.

In reality, of course, three factors would slow this effect. One is the practice of the State Board of Equalization and Assessment of using a moving average of surveys made over a period of several years to establish the state rate, which would slow the decline. See 860 Executive Towers, Inc. v. Board of Assessors, 385 N.Y.S.2d 604, 610 (2d Dep't 1976). A second is that the typical tax reduction case takes several years to resolve, so that the effects of such reduction do not show up as soon as the taxpayers become entitled to them. Third, the parcels which do have their assessments reduced would not necessarily show up in the sample used by the State Board of Equalization.

238. This was clearly recognized by the court in 860 Executive Towers, id. at 609-10:

It is, no doubt, true that use of the State equalization rate will depress the average ratio of so-called high ratio property classes, and that, if enough owners of above-average ratio properties secure reductions in their assessments, the taxing unit will experience a drop in property tax revenues and a reduction in the existing equalization rate. However, the answer to this financial dilemma is not to ignore the rule of uniformity, or to relegate the taxpayer to the time-consuming and expensive selected-parcel method of proving ratio, which has heretofore served to limit the number of certiorari proceedings and the amount of relief secured. Rather, the answer, already provided by the Court of Appeals in Hellerstein, is for the taxing unit to reassess all of the properties on its rolls. See also In re Kents, 34 N.J. 21, 32-33, 166 A.2d 763, 766-69 (1971), quoted at note 67, supra.
### APPENDIX I

**STATEWIDE ASSESSMENT—SALES RATIOS†**

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Single-family residence*</td>
<td>48</td>
<td>63</td>
<td>84</td>
<td>49</td>
<td>58</td>
<td>33</td>
<td>47</td>
<td>61</td>
<td>82</td>
<td>41</td>
<td>67</td>
<td>31</td>
<td>55</td>
<td>54</td>
<td>48</td>
<td>48</td>
<td>78</td>
<td>63</td>
</tr>
<tr>
<td>b. Multifamily residence*</td>
<td>47</td>
<td>61</td>
<td>82</td>
<td>41</td>
<td>67</td>
<td>31</td>
<td>55</td>
<td>54</td>
<td>48</td>
<td>48</td>
<td>78</td>
<td>63</td>
<td>29</td>
<td>91</td>
<td>84</td>
<td>38</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td>c. All Residences*</td>
<td>55</td>
<td>54</td>
<td>48</td>
<td>48</td>
<td>78</td>
<td>63</td>
<td>29</td>
<td>91</td>
<td>84</td>
<td>38</td>
<td>48</td>
<td>48</td>
<td>28</td>
<td>66</td>
<td>60</td>
<td>32</td>
<td>29</td>
<td>33</td>
</tr>
<tr>
<td>d. Commercial and Industrial</td>
<td>50</td>
<td>47</td>
<td>42</td>
<td>38</td>
<td>57</td>
<td>50</td>
<td>32</td>
<td>73</td>
<td>85</td>
<td>37</td>
<td>50</td>
<td>44</td>
<td>37</td>
<td>58</td>
<td>58</td>
<td>29</td>
<td>24</td>
<td>26</td>
</tr>
<tr>
<td>e. Vacant Plotted Lots</td>
<td>51</td>
<td>35</td>
<td>33</td>
<td>24</td>
<td>44</td>
<td>47</td>
<td>24</td>
<td>59</td>
<td>86</td>
<td>25</td>
<td>25</td>
<td>35</td>
<td>19</td>
<td>47</td>
<td>48</td>
<td>14</td>
<td>22</td>
<td>28</td>
</tr>
<tr>
<td>f. Acreage</td>
<td>45</td>
<td>28</td>
<td>27</td>
<td>31</td>
<td>32</td>
<td>37</td>
<td>18</td>
<td>61</td>
<td>85</td>
<td>29</td>
<td>16</td>
<td>35</td>
<td>14</td>
<td>27</td>
<td>43</td>
<td>19</td>
<td>12</td>
<td>28</td>
</tr>
<tr>
<td>g. All Types</td>
<td>53</td>
<td>51</td>
<td>46</td>
<td>40</td>
<td>69</td>
<td>58</td>
<td>27</td>
<td>84</td>
<td>84</td>
<td>38</td>
<td>46</td>
<td>47</td>
<td>28</td>
<td>62</td>
<td>58</td>
<td>28</td>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td>h. Interclass Variation</td>
<td>18</td>
<td>51</td>
<td>42</td>
<td>62</td>
<td>67</td>
<td>42</td>
<td>53</td>
<td>38</td>
<td>5</td>
<td>35</td>
<td>73</td>
<td>30</td>
<td>51</td>
<td>62</td>
<td>41</td>
<td>63</td>
<td>66</td>
<td>21</td>
</tr>
</tbody>
</table>

† Items "a-g" are taken from the following census publications: 1962 CENSUS RATIOS, supra note 15, at 40, 43, 94 (Tables 8-11, 13); 1967 CENSUS RATIOS, supra note 15, at 42-47 (Table 9); 1972 CENSUS RATIOS, supra note 15, at 34-39 (Table 2). Item "h" was computed as follows:

\[ \text{Interclass variation} = \frac{(\text{highest reported ratio}) - (\text{lowest reported ratio})}{\text{reported ratio for "all types of property"}} \times 100 \]

* The residential classification was categorized as "single-family" and "multifamily" residences for the first time in 1972.
## APPENDIX II

### LOCAL ASSESSMENT—SALES RATIOS

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0-20%</td>
<td>11%</td>
<td>19%</td>
<td>33% 36%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21-40%</td>
<td>10% 22% 25% 24% 4%</td>
<td>89</td>
<td>67% 71% 68% 75 24% 35% 44 50 100</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>41-60%</td>
<td>70 56 63 47 16 24%</td>
<td>28 21 5 6 36 4 22 14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>61-80%</td>
<td>10 11 6 24 24 74</td>
<td>7%</td>
<td>7 23 16 62</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>81-100%</td>
<td>10 11 6 6 56 3</td>
<td>100% 93 6 5 24</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| TOTAL                                           | 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% | 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% | 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% |

† Based on the following Census of Government Reports: 1962 CENSUS RATIOS, supra note 15, at 140-53 (Table 22); 1967 CENSUS RATIOS, supra note 15, at 124-45 (Table 19); 1972 CENSUS RATIOS, supra note 15, at 60-109 (Table 11).

The figures presented in Appendix II classify the ratios discussed in the text at notes 19-21 supra into groups of 20 percentage points. Where the three measures of central tendency fall into two classes, the mean of the three figures was used to assign the jurisdiction to its proper group. The number of jurisdictions sampled were:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>10</td>
<td>17</td>
<td>9</td>
<td>18</td>
<td>16</td>
<td>9</td>
</tr>
<tr>
<td>1967</td>
<td>9</td>
<td>25</td>
<td>12</td>
<td>14</td>
<td>25</td>
<td>14</td>
</tr>
<tr>
<td>1972</td>
<td>16</td>
<td>38</td>
<td>15</td>
<td>22</td>
<td>26</td>
<td>17</td>
</tr>
</tbody>
</table>
## APPENDIX III

**COEFFICIENT OF INTRA-AREA DISPERSION**

PERCENTAGE OF SAMPL ED JURISDICTIONS WITHIN RANGE†

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</thead>
<tbody>
<tr>
<td>0-10 (Excellent)</td>
<td>30%</td>
<td>11%</td>
<td>13%</td>
<td>4%</td>
<td>8%</td>
<td>20%</td>
<td>7%</td>
<td>14%</td>
<td>8%</td>
<td>12%</td>
<td>21%</td>
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<tr>
<td>11-20 (Acceptable)</td>
<td>50</td>
<td>89</td>
<td>62</td>
<td>29%</td>
<td>88</td>
<td>76%</td>
<td>22%</td>
<td>92</td>
<td>73</td>
<td>61%</td>
<td>57</td>
<td>55</td>
<td>19%</td>
<td>64</td>
<td>58</td>
<td>67%</td>
<td>36</td>
<td>41</td>
</tr>
<tr>
<td>Over 20 (Bad)</td>
<td>20</td>
<td>25</td>
<td>71</td>
<td>8</td>
<td>24</td>
<td>78</td>
<td>7</td>
<td>39</td>
<td>36</td>
<td>32</td>
<td>81</td>
<td>28</td>
<td>31</td>
<td>33</td>
<td>43</td>
<td>59</td>
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TOTAL*: 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100%

† Based on the same sources cited in note to Appendix II.

* Totals do not add exactly because of rounding.