1981

Tax Certiorari Proceedings and the Present Real Property Tax System in New York City

Mark A. Willis
Senior Economist, Federal Reserve Bank of New York

Follow this and additional works at: https://ir.lawnet.fordham.edu/ulj
Part of the Tax Law Commons

Recommended Citation

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.
TAX CERTIORARI PROCEEDINGS AND
THE PRESENT REAL PROPERTY TAX
SYSTEM IN NEW YORK CITY

Mark A. Willis*

I. Introduction

New York state law requires that all real property be assessed at full market value and within a single jurisdiction taxed at the same statutory rate. Tax liability is determined using a property's assessed value. Therefore, under a uniform tax system such as the one required by state law, all real property is subject to the same effective tax rate, that is, the same taxes per dollar of market value.

Current practices in the City of New York contrast sharply with the requirement of a uniform tax system. Properties in the city are assessed at differing percentages of market value. These assess-
ment variations produce wide differences in effective tax rates, particularly between residential and nonresidential properties. For example, the property taxes paid by owners of single-family houses in the city are subject to a real property tax rate which is less than one half of what they would be if the property tax were levied on the basis of market value. On the other hand, owners of office buildings tend to pay a relatively large share of taxes. The author, using data supplied by the New York City Department of Finance, found that owners of office buildings pay over sixty percent more than they would if the tax burden were distributed according to actual property values. Because of these and other disparities in

3. **Effective Tax Rates for Selected Building Types Relative to Citywide Average**

![Graph showing effective tax rates for different building types.]  

Source: Estimates computed by the author from data furnished by the New York City Department of Finance.

The conclusions reached in this Article are based on an examination of New York City's property sales from July 1, 1977 to June 30, 1978. After making adjustments to the data recorded by the city to allow for only transactions that appeared indicative of "true" market prices, there were close to 26,000 sales. The procedure used, and the shortcomings of the resulting data, are discussed in technical appendices to the report filed by the author with the city's Business Tax Task Force and the Department of Finance. Although there seems little reason to doubt the overall findings of the study regarding dispersion in effective tax rates, data limitations suggest that caution should be exercised in relying on any particular
the effective tax rates, a switch by the city to a uniform tax system would result in major reallocation of the tax burden among the different property groups in the city. The size of these tax shifts underscores the potential for economic disruptions from the mandate of full market value assessment.

The variations in tax rates is exemplified by the treatment of property in Manhattan. In that borough, single-family houses are assessed, on the average, at a much higher percentage of market value than houses in other boroughs. In fact, Manhattan is the most heavily taxed borough in the city. Consequently, a conversion to a uniform tax system would reduce the share of taxes paid by

number as precise.

4. The tax shifts discussed in this Article are based on the assumption that tax shifts are not capitalized into the value of the property. If, however, these shifts are included in the capital value of a particular piece of property, the tax shifts will be less pronounced. See H. Aaron, WHO PAYS THE PROPERTY TAX? 94 (1975) [hereinafter cited as WHO PAYS THE PROPERTY TAX].

5. Future of the Property Tax, supra note 2, at 18. The fact that assessment ratios for each type of property vary from borough to borough means that the effects of full valuation with a uniform tax rate also vary. Residential tax bills will rise approximately 138% in Queens, 107% in Staten Island, 104% in Brooklyn, 72% in the Bronx, but only 6% in Manhattan. Conversely, commercial property tax rates will drop 37% in the Bronx, 31% in Manhattan, 23% in Brooklyn and Queens, but will rise 22% on Staten Island. Under full valuation industrial property taxes will drop 39% in Brooklyn, 35% in Manhattan, 34% in the Bronx, 11% in Queens and 9% in Staten Island.
owners of Manhattan properties by approximately thirty percent.  

5. EFFECTIVE PROPERTY TAX RATE BY BOROUGH: ALLOWING FOR DIFFERENCES IN PROPERTY MIX

Source: Estimates derived by author from data furnished by the New York City Department of Finance.

6. Estimate derived by author from data furnished by the New York City Department of Finance. See note 3 supra.

The sharp divergence in effective tax rates paid in these two boroughs can be explained in part by the differing property mixes. Manhattan contains a large proportion of office buildings which are taxed relatively heavily, while Staten Island consists largely of houses which
In contrast, Staten Island property owners, who now pay only a fraction of their proportional share, would face a two-thirds increase in taxes.\(^7\)

The implementation of a uniform tax system would do more than change property taxes; it would likely affect property values. Increases in taxes tend to lower the demand for property, thus depressing market prices. This result in turn should lead to a downward readjustment in assessed value, thereby offsetting part of the initial tax increase. The opposite happens for those properties experiencing a tax reduction.

This Article will explore several problems currently facing both the City of New York and the state legislature in reforming New York City's property tax. First, sections 306, 307 and 720 of the Real Property Tax Law will be analyzed. Past attempts to enact a fair and inexpensive remedy for taxpayers who feel their property has been overvalued, without disfavoring the municipalities involved, have led to the current situation. Second, this Article will examine and comment on a number of suggestions developed to help the City of New York resolve its property tax problems. The current crisis created by Hellerstein and its progeny must be broken down into two separate issues: assessment and taxation. The development of an equitable and efficient property tax system requires the fair resolution of both of these concerns. The assessment solutions which will be explored include full valuation, mathematical revaluation and individual revaluation. The taxation solutions to be examined include classification of real property, the development of a homestead exemption from property taxes combined with a uniform tax, and the use of a circuit-breaker tax to ease the burden of a property tax on low-income property owners. Any changes in property tax procedures in the City of New York, or any other taxing jurisdiction for that matter, must be accompanied by substantial efforts to cure existing disparities in assessments as to property type and borough of location. The intra-class or inter-borough differences must be cured. Otherwise, the number and cost of individual tax appeals in New York City will increase.
II. Section 306 and *Hellerstein v. Assessor, Town of Islip*

Section 306 of the Real Property Tax Law, whose origins can be

7. **Effective Property Tax Rates by Borough**

[Bar chart showing effective property tax rates by borough.]

Source: Estimates computed by the author from data furnished by the New York City Department of Finance.
traced to the eighteenth century,\(^8\) requires the assessment of all real property at its full market value.\(^9\) While the requirements of section 306 seem clear, in practice its application has been anything but consistent. In fact, until *Hellerstein v. Assessor, Town of Islip*, the practice in New York was to assess property at some fraction of full value in an inconsistent, undisciplined manner.\(^10\) In *Hellerstein*, a taxpayer in the Town of Islip brought suit seeking to have the township’s assessment roll declared void because the roll was not determined in accordance with section 306.\(^11\) In sustaining the taxpayer’s challenge, the court of appeals rejected the three arguments that have been traditionally used to justify fractional assessment. First, previous decisions which have held that assessments must be at uniform rate for every type of property in the assessing unit have been construed by other courts to imply that section 306 does not mandate full value assessments.\(^12\) The *Hellerstein* court rejected this interpretation and the misplaced reliance by lower courts on *C.H.O.B. Associates v. Board of Assessors*.\(^13\) Second, it was argued that the establishment of the State Board of Equalization and Assessment was indicative of the legislature’s in-
tent that assessments need be made only at a uniform percentage of full value.\textsuperscript{14} The court, in response to this contention, stated 

[t]he only significance the [State Equalization and Assessment Board] has in relation to this problem is found in Section 720 of the Real Property Tax Law which permits a taxpayer in an inequality proceeding to rely on the ratio established by the board in proving his claim. But this provision was merely designed to ease the taxpayers’ burden of proof in inequality cases which . . . is not premised on the legality of fractional assessments.\textsuperscript{15}

Third, and perhaps most important, the practice of fractional assessments has continued for some two hundred years despite the statutory standard of section 306 that “all real property in each assessing unit shall be assessed at the full value thereof.”\textsuperscript{16} The court faced with a centuries-old tradition of fractional assessment, simply stated that the clear and unambiguous language of section 306 “‘must not be smothered by the accumulation of customs or violations.’”\textsuperscript{17}

Having disposed of these arguments, the \textit{Hellerstein} court proceeded to examine the statutory and theoretical underpinnings of fractional assessment. Although a majority of the states require assessment at the equivalent of full or market value,\textsuperscript{18} the trend is to sanction fractional assessments.\textsuperscript{19} A number of factors explain the continued practice of partial valuation.\textsuperscript{20} While noting the factors

\begin{itemize}
\item \textsuperscript{14} Id. at 7, 332 N.E.2d at 282, 371 N.Y.S.2d at 393. \textit{See also} Slewett & Farber v. Board of Assessors, 97 Misc. 2d at 647, 412 N.Y.S.2d at 300. The function of the State Board of Equalization and Assessment (“SBEA”) is set forth in § 1202 of the Real Property Tax Law. N.Y. REAL PROP. TAX LAW § 1202 (McKinney 1972 & Supp. 1980). \textit{See notes 43-48 infra.}
\item \textsuperscript{15} Hellerstein v. Assessor, Town of Islip, 37 N.Y.2d at 9, 332 N.E.2d at 284, 371 N.Y.S.2d at 395 (citation omitted).
\item \textsuperscript{16} Id. at 13, 332 N.E.2d at 286, 371 N.Y.S.2d at 398. \textit{See In the Wake of Hellerstein, supra note 1; Prospects for Full Value, supra note 1.}
\item \textsuperscript{17} Hellerstein v. Assessor, Town of Islip, 37 N.Y.2d at 10, 332 N.E.2d at 284, 371 N.Y.S.2d at 395 (quoting Wendell v. Lavin, 246 N.Y. 115, 120, 158 N.E. 42, 43 (1927)).
\item \textsuperscript{18} \textit{Id.} at 10, 332 N.E.2d at 285, 371 N.Y.S.2d at 396. \textit{See Note, Inequality in Property Tax Assessments: New Cures for an Old Ill, 75 HARV. L. REV. 1374, 1377 n.28 (1962) [hereinafter cited as Property Tax Assessments]. See also Inman & Rubinfeld, Judicial Pursuit of Local Fiscal Equity, 92 HARV. L. REV. 1662, 1701-05 (1979); TENN. CODE ANN. § 67-611 (1976).}
\item \textsuperscript{19} 37 N.Y.2d at 10, 332 N.E.2d at 285, 371 N.Y.S.2d at 396. \textit{See Comment, Tax Assessments of Real Property: A Proposal for Legislative Reform, 68 YALE L.J. 335, 387 (1958) [hereinafter cited as Tax Assessment of Real Property].}
\item \textsuperscript{20} One commentator has noted:
\begin{itemize}
\item There are several reasons for the persistence of partial valuation. Gullible taxpayers associate a larger valuation with a larger tax, or at any rate are less contentious about
which supported this practice, the court of appeals nevertheless ruled that the taxpayer in *Hellerstein* was entitled to an order directing the Town of Islip to make future assessments at full value pursuant to section 306. By implication, the *Hellerstein* holding required each assessing unit in the state to comply with the full value standard within a reasonable period of time. This implication, however, has recently been brought into question.

In *Matter of Colt Industries, Inc.*, it was held that the City of New York has the power to “[f]ractionally assess and classify its tax roll.” In reaching its decision the court relied heavily upon the long history of fractional assessments and classification within the city, which was sanctioned by the state legislature. While *Colt Industries* has recently been criticized, its continuing valid-

---


22. *Id.* at 14, 332 N.E.2d at 287, 371 N.Y.S.2d at 399.

23. *Id.* See also Switz v. Township of Middletown, 23 N.J. 580, 130 A.2d 15 (1962) (state given three years to comply with full value standard).

24. Matter of Colt Indus., Inc., N.Y.L.J., June 4, 1980, at 10, col. 3 (Sup. Ct. 1980) (“[The historical development of present Administrative Code section 166-1.0 clearly indicates the intention of the State legislature to establish a different standard of proof of inequality in the City of New York and hence a different standard of assessment than is applicable elsewhere in the State.”).

25. *Id.* at 10, cols. 2-3. (“As of 1901, the City of New York had authority under special legislation to fractionally assess, classify its tax rolls and equalize its assessments.”).

ity may help the city in its efforts to maintain its present assessment standards.

III. Legal Remedies for Inequality and Overvaluation

Taxpayers seeking relief from an inequitable tax assessment at the turn of the century were often saddled with the difficult burden of establishing the illegality of an entire assessment roll before individual relief could be obtained. In *Sioux City Bridge v. Dakota County*, the United States Supreme Court rejected this approach, holding that an individual taxpayer may challenge an unequal assessment. The Court stated:

The taxpayer's right is to have his assessment reduced to the percentage of true value at which others are taxed, on the principle that where it is impossible to secure both the standard of full or true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.

A. Section 720

New York, in 1909, enacted a statute which permitted an individual to challenge an unequal assessment but limited the type of evidence admissible to do so. The method chosen confined the taxpayer to proving inequality, that is, an assessment made at a higher proportionate valuation than other real property on the same assessment roll, by comparison to appraisal of selected parcels or to actual sales by random sampling. In 1961, the state


29. *Id.* at 446. *See also Hillsborough v. Cromwell, 326 U.S. 620 (1946).* In *Hillsborough*, the Court held it to be a denial of due process and equal protection to restrict a plaintiff claiming unequal assessment to a public pleading in order to remedy alleged discriminatory and arbitrary taxation. 260 U.S. at 447.


31. *See N.Y. REAL PROP. TAX LAW § 706 (McKinney 1972).*

32. The statute in part provided:

Upon such hearing the parties to the proceeding may mutually agree upon the number of pieces of property to be valued and the number of witnesses to be sworn on the subject of the value of such properties. But in case the parties fail to so agree . . . the court shall determine the number of witnesses to be sworn and the number of the pieces of property to be valued and shall limit the same to such number as the court shall deem reasonable.
legislature amended this statute to allow either the taxpayer appealing his assessment or the municipality which must defend the assessment, to present evidence of the state equalization rate established for the roll containing the assessment under review. The purpose of the amendment was to reduce the expense of trying an assessment review case. Proponents of the amendment argued that small taxpayers in particular had effectively been denied assessment reductions because of the prohibitive cost of bringing an assessment appeal.

In *O'Brien v. Assessor, Town of Mamaroneck*, the court of appeals chose to interpret section 720 of the Real Property Tax Law as merely authorizing the introduction of additional evidence and held that proof of the state equalization rate alone, was insufficient for determining inequality.


33. 1961 N.Y. Laws ch. 942. The statute in part provided “evidence may be given by either party as to . . . (2) the state equalization rate established for the roll containing the assessment under review.” The statute was enacted in part to blunt judicial criticism of the state equalization rate. See *People ex. rel. Yarkas v. Kinnaw*, 303 N.Y. 224, 230, 101 N.E.2d 474, 476 (1951) (“While there is a superficial resemblance between ‘inequality’ and ‘equalization’ — for both have reference to the relation between assessed values and full values of property — a county state equalization rate serves a function entirely different from that to be served by the ratio fixed in inequality cases, and an equalization rate has no bearing upon the issue presented in such cases.”) *Yarkas* was decided at a time when “the methods employed in arriving at State equalization rates for counties and cities . . . lacked probative force on the issues raised in an inequality case.” *Wein v. Tax Comm’n*, 52 Misc. 2d 124, 125, 275 N.Y.S.2d 102, 103 (Sup. Ct. 1966). Improvements in the means for determining the equalization rate gave the legislature the confidence to enact the 1961 amendments. *Id.* at 126, 275 N.Y.S.2d at 104. See generally *J. Flynn, CERTIORARI: A REPORT ON ADMINISTRATIVE AND JUDICIAL REVIEW OF REAL PROPERTY ASSESSMENTS 44-46* (N.Y.S. Leg. Doc. 1980) [hereinafter cited as CERTIORARI].


35. CERTIORARI, supra note 33, at 45-46.

In response to *O'Brien*, the legislature again amended section 720(3), this time to supersede *O'Brien*. The language of subdivision three was changed to deemphasize the method of appraising selected parcels as the principal method of proving inequality. The legislature's intent was to expressly provide taxpayers and assessing units with probative evidence which would be both inexpensive and effective.

This amendment, however, did not lead courts to sanction the use of the equalization rate or actual sales (as opposed to use of the method of appraising selected parcels) until 1974.

In *Ed Guth Realty, Inc. v. Gingold*, the court of appeals considered the types of proof admissible to determine the ratio of assessed value to fair market value in an inequality proceeding brought under New York's Real Property Tax Law. Although the petitioner in *Guth* had submitted the types of proof permitted by the statute, including selected parcels, actual sales and the state N.Y.S.2d 843 (1967).

38. *Id.* The statute in part provided "whether or not parcels are selected as hereinabove provided, evidence may be given by either party as to . . . (2) the state equalization rate established for the roll containing the assessment under review." The amendment in effect, allowed a taxpayer to rely exclusively on the state equalization rate to establish inequality. See *Ed Guth Realty, Inc. v. Gingold*, 34 N.Y.2d 440, 315 N.E.2d 441, 358 N.Y.S.2d 367 (1974).
40. See N.Y. REAL PROP. TAX LAW § 720(3) (McKinney 1972).
41. See N.Y. REAL PROP. TAX LAW § 706 (McKinney 1972). Under § 706, a taxpayer can challenge an assessment on the grounds that the assessment was 1) illegal, 2) erroneous because of overvaluation or 3) unequal in that the property had been assessed at a higher proportionate valuation than other properties on the same tax roll. For the purposes of this Article only inequality will be considered. In an inequality proceeding, the “petitioner must prove a proper ratio of assessed value, and then he must establish the fair market value of the property. Proof of these two points then leads to the application of a simple arithmetic process whereby ratio times market value equals proper assessed valuation.” *Ed Guth Realty, Inc. v. Gingold*, 34 N.Y.2d at 446, 315 N.E.2d at 44, 358 N.Y.S.2d at 369.
42. See N.Y. REAL PROP. TAX LAW § 720(3) (McKinney 1972). See, e.g., *Wolf v. Assessor, Town of Hanover*, 308 N.Y. 416, 126 N.E.2d 537 (1955); *Westbury Drive-In v. Board of Assessors*, 70 Misc. 2d 1077, 1079-80, 335 N.Y.S.2d 361, 364 (Sup. Ct. 1972) (“The value of the land is generally estimated by comparing the subject property with similar property in the area, and making adjustments for the differences between the subject and the comparison property.”) (quoting FRIEDMAN, ENCYCLOPEDIA OF REAL ESTATE APPRAISING 52)).
equalization rate," the question before the court was whether the equalization rate could be used as sole evidence of inequality. The court unanimously approved the practice of relying exclusively on the state equalization rate because it constituted a fair and inexpensive review process which "would tend to greatly simplify and narrow the scope of these [inequality] proceedings." In addition, the court recognized the legislature’s assertion that the equalization rates more accurately reflect the assessed value/full value ratio than do use of either the actual sales or selected parcels methods.

The ratio concept has been further clarified since Guth. In


44. An equalization rate is a measurement of the relationship of total taxable assessed value to total taxable full value in an assessing unit. N.Y. State Div. of Equal. and Assessment, The Equalization Rate in the Property Tax: What It Is and What It Does, 3 (1976). These rates are established by the State Board of Equalization and Assessment ("SBEA"). N.Y. Real Prop. Tax Law § 202(1)(b) (McKinney 1972). For the general statutory provisions relating to the SBEA, see id. §§ 200-216 (McKinney 1972 and Supp. 1980).

45. In O'Brien v. Assessor, Town of Mamaroneck, 20 N.Y.2d 587, 232 N.E.2d 844, 285 N.Y.S.2d 843 (1967), the court had concluded that proof of the state equalization rate, standing alone, was insufficient to sustain a finding of inequality. "[E]ven where it is admissible . . . its value must have a guarded acceptance." 20 N.Y.2d at 595-96, 232 N.E.2d at 848, 285 N.Y.S.2d at 848-49. This decision prompted the legislature to further amend § 720(3). Language was inserted in the statute to remove the previous requirement for the selection of parcels to prove inequality.

46. 34 N.Y.2d at 450, 315 N.E.2d at 445, 358 N.Y.S.2d at 373. The court did not hold that the assertion of validity by the taxpayer of the use of the state rate is irrebuttable. Rather, "the taxing authority will always be entitled to show [after the taxpayer has proved that the rate’s use is justified] that the equalization ratio is inappropriate to the taxing unit, to the category of property involved and to the particular property or any other valid reason which would affect its relevancy or weight." 34 N.Y.2d at 451, 315 N.E.2d at 445, 358 N.Y.S.2d at 373. In fact, it was held both in Swanz v. Brant, 52 A.D.2d 1071, 384 N.Y.S.2d 607 (4th Dep’t 1976) and in Standard Brands, Inc. v. Walsh, 92 Misc. 2d 903, 402 N.Y.S.2d 264 (Sup. Ct. 1977), that evidence of actual contemporaneous sales was more reflective of the true ratio of assessed valuation to full valuation in the taxing unit than the SBEA rate. As was stated in 860 Executive Towers, Inc. v. Board of Assessors, 53 A.D.2d 463, 471, 385 N.Y.S.2d 604, 609 (2d Dep’t 1976), aff’d sub nom. Pierre Pellaton Apts., Inc. v. Board of Assessors, 43 N.Y.2d 769, 372 N.E.2d 801, 401 N.Y.S.2d 1013 (1977): “One could . . . hypothesize . . . that the State rate might be inappropriate to prove ratio where the property under review constitutes a relatively large percentage of the taxing unit’s total assessed valuation. . . .” See also Merrick Holding Corp. v. Board of Assessors, 76 Misc. 2d 754, 351 N.Y.S.2d 599 (Sup. Ct. 1974).

McCrory Corp. v. Gingold,\(^{48}\) the Fourth Department held that the doctrine of collateral estoppel barred the City of Syracuse from re-litigating the ratio issue because the city had had full and fair opportunity to be heard in prior proceedings in which the issue had been determined with specificity.\(^{49}\) In 860 Executive Towers, Inc. v. Board of Assessors,\(^{50}\) the Second Department held that Guth was applicable to other assessing jurisdictions throughout the state.\(^{51}\) In addition, the court in 860 Executive Towers stated that challenges by an individual assessing unit to the SBEA's methodology "should be made in the statutorily provided hearings before the SBEA and not in the courts upon a certiorari proceeding."\(^{52}\)

Due to the increase in successful tax certiorari proceedings and the potential liabilities to municipalities throughout the state created by these appeals, the legislature in 1977 again amended section 720(3), to allow either the taxpayer or a municipality to introduce evidence concerning the methodology and applicability of the state equalization rate to a particular proceeding.\(^{53}\) Subdivision three was amended to read:

The parties shall be limited in their proof . . . [but] evidence may be given by either party as to . . . (2) the State equalization rate established for the roll containing the assessment under review, with particular reference to the information developed by the state board with respect to the ratio of assessments to market values for each major type of taxable real property pursuant to section twelve hundred of this chapter.\(^{54}\)

---

51. Id. at 471, 385 N.Y.S.2d at 609.
52. Id. at 474, 385 N.Y.S.2d at 611. The court's rationale was premised on the limited review of the state equalization rates permissible in certiorari proceedings. This fact offsets the negative aspect of pursuing a rate objection before the SBEA, namely, the inability to rechallenge the SBEA's methodology in a certiorari proceeding due to the doctrine of collateral estoppel.
54. Id. For a discussion of the origin of the State Board of Equalization and Assessment
B. Section 307

The 1977 amendment created confusion and controversy, even though it merely put both parties on an equal footing by emphasizing the municipality's right to introduce evidence challenging the use of the equalization rate which was established in Guth. As a result of the controversy, the 1977 amendment was repealed and replaced by a new section, section 307 in 1978. Subdivision three of section 307 stated:

Where the respondent in a tax review proceeding which is based in whole or in part on a claim of inequality is an assessing unit whose standard of assessment is set forth in subdivision two of this section [assessed at not more than the full value thereof], the petition required by section seven hundred six of this chapter shall allege, in addition to the contents otherwise required by such section, that the assessment has been made at a higher proportionate valuation than the assessment of other taxable real property of the same major type, as determined by the State Board of Equalization and Assessment pursuant to section 1200 of this chapter, and evidence to such effect may be introduced together with such evidence otherwise admissible under subdivision three of section 720 of this chapter.

Under section 307, a taxpayer was only able to establish inequality by reference to the ratio of the class of property to which his property belonged, rather than by reference to the overall ratio determined by the State Board of Equalization and Assessment ("SBEA"), or by the average ratios for all properties in the taxing district determined by the alternate two methods of proof permissible under section 720(3). In addition, section 307 enacted a moratorium on the impact of full valuation. Section 307(1) allows any assessing unit which undertakes a physical revaluation of all its real property an exemption from the full value requirements of section 306. At least one court has found that New York City is entitled to avail itself of the protection of section 307(1). The legislature considered section 307 to be remedial and thus retro-

and how the equalization rate is determined, see notes 44-46 supra.
55. Certiorari, supra note 33, at 52-53.
58. Id. § 307(1).
actively applicable to all pending certiorari proceedings. This aspect of section 307 has been declared unconstitutional.60

C. Chapter 126 and 127

In a retreat from prior legislation, the legislature, in its most recent amendments to section 720, has enacted seemingly contradictory provisions. Chapter 126, enacted in 1979, limited the types of proof which a taxpayer (or municipality) could introduce on the issue of inequality.61 Under section 720(3) a party could only establish an assessment ratio through either the appraisal of selected parcels or by evidence of actual sales of real property within the assessing unit that occurred during the year in which the assessment under review was made.62 The effect of chapter 126 was to disallow the use of the state equalization rate in an inequality


61. N.Y. REAL PROP. TAX LAW § 720(3) (McKinney Supp. 1980-1981) provides in part:
Evidence on the issue of whether an assessment is unequal shall be limited as hereinafter provided. The parties shall mutually agree . . . [or] upon application of either party the court or referee shall select the parcels to be appraised without reference to their assessed values. . . . The parties shall be limited in their proof on the trial of such issue to such parcels and witnesses, except that in any event, whether or not parcels are selected as hereinafter provided, evidence may be given by either party as to actual sales of real property within the assessing unit. . . .

Id.

62. The state legislature in amending § 720(3) determined that the state equalization rate was not "capable of valid application to assessments of business and commercial properties as well as residential properties in the particular assessing unit. Moreover, in many instances the use of such equalization rate has not proven to be valid even in connection with the same types of property, and has often resulted in undesirable and unintended results." 1979 N.Y. Laws ch. 126 § 1. See Johnson v. Town of Haverstraw, 102 Misc. 2d 923, 927, 425 N.Y.S.2d 192, 196 (Sup. Ct. 1980); Industrial and Research Assocs. v. Board of Assessors, N.Y.L.J. Aug. 21, 1979, at 10, col. 1 (Sup. Ct. Aug. 2, 1979). The state legislature further noted:
The reason such equalization rate is inappropriate and invalid is that the equalization rate established for the roll was never intended to determine property values for taxing purposes, but was intended only to be used in connection with equalizing state aid and to compute constitutional tax and debt limits. Therefore the use of such equalization rate for the purpose of quantifying the ratio of assessment to market value within a taxing district produces spurious and counter-productive results.
1979 N.Y. Laws ch. 126, § 1.
appeal.\textsuperscript{68} The legislature's reversion to stricter limitations on the type of evidence allowed under section 720(3) was prompted by its continued desire to insulate municipalities from the fiscal impact of tax inequality proceedings. Chapter 127, also enacted in 1979, was adopted to protect private homeowners, whose property has traditionally been underassessed, from the tax shifts legislators had feared would take place as a result of \textit{Hellerstein}.\textsuperscript{64} Under chapter 127, section 721 was established which provides:

\textit{Review of certain assessments.} In any proceeding wherein the assessment being reviewed has been challenged on the grounds that it is unequal and where the real property is or has been improved by a residential structure containing no more than three dwelling units, at least one of which is occupied by the petitioner, the court shall further permit the introduction of any evidence deemed relevant and material to establishing the relationship between the assessed value and the market value of such real property notwithstanding any provision of law to the contrary.\textsuperscript{68}

Section 721 allows certain homeowners to introduce the state equalization rate as evidence in an inequality proceeding. One court, however, has found section 721 to be unconstitutional. In \textit{Johnson v. Town of Haverstraw}, it was held that because section 721 permits "one class of taxpayers to rely on evidence of the [state equalization] ratio while prohibiting all others from using

\begin{itemize}
\item \textsuperscript{63} 1979 N.Y. Laws ch. 126; N.Y. \textit{REAL PROP. TAX LAW} § 720(3) (McKinney Supp. 1980-1981). The legislature in amending § 720(3) specifically limited the period in which the amendment would remain in effect until "December thirty-first, nineteen hundred eighty." 1979 N.Y. Laws ch. 127, § 5. This expiration date also applied to § 307, 1979 N.Y. Laws ch. 476, § 5, and § 721, 1979 N.Y. Laws ch. 127, § 5. The state legislature extended the effective life of § 307 until May 15, 1981, see 1980 N.Y. Laws ch. 880, but neglected to do the same for § 720(3) as amended and § 721. Accordingly, these sections are no longer in effect. Slewett & Farber v. Board of Assessors, N.Y.L.J., Jan. 26, 1981, at 4, col. 5 (2d Dep't). See also note 72 infra and accompanying text.
\item \textsuperscript{64} The state legislature in Chapter 127 noted the continuing effort to "provide a remedy which would enable the individual, residential owner-petitioner to assemble and present in a summary and inexpensive manner evidence of inequality of assessment in review proceedings. . . ." 1979 N.Y. Laws ch. 127, § 1. A recent study done by the New York Public Interest Research Group, however, implicitly criticized the effectiveness of these efforts "the antiquated system of fractional assessment rates so confuses homeowners that even if they are concerned about their tax bill, they are at a loss to know how to challenge it." City of Unequal Neighbors, \textit{supra} note 20, at iii.
\end{itemize}
the same method of proof" the statute denies other taxpayers equal protection under the fourteenth amendment.66

D. Slewett & Farber v. Board of Assessors

In Slewett & Farber v. Board of Assessors, the Appellate Division, Second Department, affirming a lower court decision,67 held unconstitutional subdivisions three, four and five of section 307.68 In Slewett, petitioners who owned large commercial properties in Nassau County sought to have their properties reassessed, claiming that their properties were "assessed at a higher ratio to fair market value than other property in the county."69 The petitioners, by motion, had sought to introduce and use the tax rates established in 860 Executive Towers and the state equalization rate for the years subsequent to that decision.70 The trial court, relying on the principle of collateral estoppel, granted the motion.71 After this motion was granted, the legislature significantly amended the requirements for proving inequality in a tax certiorari appeal.72 Nassau County then sought to have the petitioners reform their petition to conform with section 307. The trial court, after entertaining the county's motion, held section 307 unconstitutional. The Second Department sustained the trial court for three reasons. First, section 307 constitutes an impermissible delegation of legislative powers to an administrative agency.73

69. Id. at 4, col. 1.
70. Id.
71. Id. See 860 Executive Towers v. Board of Assessors, 53 A.D.2d at 475-76, 385 N.Y.S.2d at 612; note 49 supra.
In support of the legislature's delegation of authority pursuant to subdivision three, it was argued that the statute by referring to classes determined by the SBEA cured its indefiniteness. This argument fails for two reasons. First, the classes referred to in subdivision three were never intended to serve as formulations for the assessment of property taxes. The SBEA, pursuant to section 1200 of the Real Property Tax Law, began segregating real property, not for the purpose of assessment, but rather as a means of improving the statistical accuracy of the state equalization rate.

The argument that subdivision three is an expression of the legislature's intent to rewrite section 1200 runs contrary to settled rules of statutory construction. Even if subdivision three were considered a legislative undertaking to define property classes, "[t]here is no legislative restriction on the ability of the SBEA to reclassify property tomorrow, if that agency, in its sole discretion, determines the necessity of such action." Second, the mere reference to a rubric for segregating real property does not satisfy the legislature's obligation to define property classes for the purposes of taxation. The New York State Constitution clearly defines the legis-
lature's obligation with respect to its taxing powers. Article XVI, section one provides that "[a]ny laws which delegate the taxing power shall specify the type of taxes which may be imposed thereunder and provide for their review." Section two of Article XVI in part provides: "The legislature shall provide for the supervision, review and equalization of assessments for purposes of taxation." The system envisioned by subdivision three fails to satisfy these requirements. Subdivision three further appears to be inconsistent with federal constitutional mandates.

Second, the Second Department upheld the trial court because section 307(5) which retroactively applies the new requirements of section 307 was "so harsh and oppressive as to transgress the constitutional limitation [of due process]." Finally, the Second De-
partment construed the taxation scheme established in subdivision three of section 307 as a classification system which violated the clear and continuing mandate of full valuation.83

The classification of real property for the purposes of taxation is clearly a legislative function.84 Subdivision three in effect, requires proof of inequality by comparison to a particular class of property rather than to all property within a district.85 While the legislature has the power to delegate its powers to local governments,86 it cannot do so without specific standards and guidelines.87 Subdivision three does not define property classes, but instead makes reference to classes as determined by the SBEA. Subdivision three, requires the SBEA to establish a property classification scheme without any guidelines.88

right to be refunded the excess payment of taxes that accrued at the time the tax was paid . . . .” Id. at 13.

83. Slewett & Farber v. Board of Assessors, N.Y.L.J., Jan. 26, 1981, at 5, col. 1 (2d Dep’t). See also Rokowsky v. Finance Admin’r, 41 N.Y.2d 574, 576, 362 N.E.2d 974, 976-77, 394 N.Y.S.2d 176, 177-78 (1977). Generally, a classification scheme is one in which property is grouped into various classes and “either assessed for tax purposes at different established percentages of market value or taxed at different established rates.” INT’L ASSOC OF ASSESSING OFFICERS, CLASSIFIED PROPERTY TAX SYSTEMS IN THE U.S., RESEARCH AND INFORMATION SERIES 1 (1979). The purpose of a classification system is to “influence the proportion of taxes allocable to each of the various classes.” Id. See N.Y.A. No. 10,000-b, 203d Sess. § 1 (Mar. 4, 1980) (“since [1960] eleven states and the District of Columbia have adopted classification systems when faced with the problems of full value assessments. These de jure classification systems were adopted specifically to prevent the interclass shifts that occur when a full value standard is imposed. . . .”).

84. United States Steel Corp. v. Gerosa, 7 N.Y.2d 454, 459, 166 N.E.2d 489, 491, 199 N.Y.S.2d 475, 478 (1960). See, e.g., ILL. ANN. STAT. ch. 120, § 501a (Smith-Hurd Supp. 1981) (“classification must be established by ordinance of the county board. If not so established, the classification is void.”).


While discretion and flexibility are essential for the sound and efficient management of a complex tax system like New York's, this discretion must be tempered and regulated by the legislature. Subdivision three fails to maintain this balance. Any legislation which seeks to implement a classification scheme in New York must be mindful of this balance not only to insure the legality of such a system but also to insure against an unwarranted and unnecessary increase in tax inequality appeals.89

Hellerstein and its progeny created two identifiable but analytically separable problems: assessment and taxation. The development of an equitable and efficient property tax system requires the resolution of both these concerns.90 The analysis which follows will focus on the City of New York, where the greater difficulties with the implementation of Hellerstein exist.91 Not only is the potential liability large, but the disparate assessment practices within the five boroughs compound the problem.

IV. Assessments

There exist today glaring differences in the assessment of properties within a given class in New York City. This variation in assessment is as pronounced at the citywide level as it is in each borough.92 This dispersion in effective tax rates is readily illustrated by examining the range of assessment ratios — assessed value over market value — for single-family houses in Brooklyn.93 Most of these properties have assessment ratios around twenty percent, that is, the assessed value is approximately one-fifth of

89. One commentator has noted:

[T]he equity of a tax system is measured by the degree to which it has firmly incorporated a uniform tax base from which individual tax liability is ultimately determined. Tax liability must be the result of principles of uniformity applied in each case in the manner intended by the policies underlying those principles. The alternative is to sanction a system which can only be described as lawless: arbitrary and capricious determinations of tax liabilities, with the resultant intergovernmental, inter-class and intra-class inequalities.

In the Wake of Hellerstein, supra note 1, at 857.

90. See N.Y. STATE DIV. OF EQUAL. AND ASSESSMENT, REPORT ON PROPOSED REFORMS IN REAL PROPERTY TAX ADMINISTRATION 3 (1980) [hereinafter cited as PROPOSED REFORMS IN PROPERTY TAX ADMINISTRATION].

91. See notes 3-7 supra and accompanying text.

92. See notes 3, 7 supra and accompanying text.
the market value. The range of assessments is wide, however, and as a result many properties are taxed much more heavily than others. For example, over one-sixth of the properties are assessed at more than thirty percent of their market values. These properties pay effective tax rates that are at least twice those of the nine percent of the properties which are assessed at less than fifteen percent of their market values.

<table>
<thead>
<tr>
<th>Assessment Ratios*</th>
<th>Percentage of Total</th>
<th>Cumulative Distribution (in percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.10-0.11</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>0.11-0.12</td>
<td>0.9</td>
<td>1.3</td>
</tr>
<tr>
<td>0.12-0.13</td>
<td>1.6</td>
<td>2.9</td>
</tr>
<tr>
<td>0.13-0.14</td>
<td>2.5</td>
<td>5.4</td>
</tr>
<tr>
<td>0.14-0.15</td>
<td>3.4</td>
<td>8.9</td>
</tr>
<tr>
<td>0.15-0.16</td>
<td>4.6</td>
<td>13.4</td>
</tr>
<tr>
<td>0.16-0.17</td>
<td>6.0</td>
<td>19.5</td>
</tr>
<tr>
<td>0.17-0.18</td>
<td>6.7</td>
<td>26.2</td>
</tr>
<tr>
<td>0.18-0.19</td>
<td>8.4</td>
<td>34.6</td>
</tr>
<tr>
<td>0.19-0.20</td>
<td>6.4</td>
<td>40.7</td>
</tr>
<tr>
<td>0.20-0.21</td>
<td>7.4</td>
<td>48.1</td>
</tr>
<tr>
<td>0.21-0.22</td>
<td>6.9</td>
<td>54.9</td>
</tr>
<tr>
<td>0.22-0.23</td>
<td>5.0</td>
<td>60.0</td>
</tr>
<tr>
<td>0.23-0.24</td>
<td>5.0</td>
<td>65.0</td>
</tr>
<tr>
<td>0.24-0.25</td>
<td>4.4</td>
<td>69.4</td>
</tr>
<tr>
<td>0.25-0.26</td>
<td>4.2</td>
<td>73.6</td>
</tr>
<tr>
<td>0.26-0.27</td>
<td>2.7</td>
<td>76.3</td>
</tr>
<tr>
<td>0.27-0.28</td>
<td>2.4</td>
<td>78.7</td>
</tr>
<tr>
<td>0.28-0.29</td>
<td>2.1</td>
<td>80.8</td>
</tr>
<tr>
<td>0.29-0.30</td>
<td>1.8</td>
<td>82.6</td>
</tr>
<tr>
<td>0.3-0.4</td>
<td>9.3</td>
<td>92.0</td>
</tr>
<tr>
<td>0.4-0.5</td>
<td>3.0</td>
<td>95.0</td>
</tr>
<tr>
<td>0.5-0.6</td>
<td>1.9</td>
<td>97.0</td>
</tr>
<tr>
<td>0.6-0.7</td>
<td>1.1</td>
<td>98.0</td>
</tr>
<tr>
<td>0.7-0.8</td>
<td>0.6</td>
<td>98.6</td>
</tr>
<tr>
<td>0.8-0.9</td>
<td>0.4</td>
<td>99.0</td>
</tr>
<tr>
<td>0.9-1.0</td>
<td>0.3</td>
<td>99.3</td>
</tr>
<tr>
<td>1.0-2.0</td>
<td>0.7</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Assessed value divided by market value

Source: Estimates derived by the author from data furnished by the New York City Department of Finance.

94. Id.
95. Id.
This lack of uniformity can be measured by the coefficient of dispersion. This coefficient measures the closeness with which the ratios of assessment to sales price, for a particular class of property within the assessing unit, cluster around the mean ratio of assessment to sales price in that unit. "The lower the coefficient, the tighter the cluster and the more uniform the assessments are within the unit." The Bureau of the Census recognizes a coefficient of 0.20 and the SBEA recognizes a coefficient greater than 0.10 as indicative of unacceptable assessment practices. The coefficient of dispersion for these Brooklyn properties is considerably higher at 0.34. Similar degrees of dispersion exist within virtually

96. Prospects for Full Value, supra note 1, at 242.
99. Coefficients of Dispersion* by Major Building Type and Borough

<table>
<thead>
<tr>
<th>Building Type</th>
<th>Manhattan</th>
<th>Bronx</th>
<th>Brooklyn</th>
<th>Queens</th>
<th>Staten Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-family houses</td>
<td>0.35</td>
<td>0.34</td>
<td>0.34</td>
<td>0.24</td>
<td>0.27</td>
</tr>
<tr>
<td>Two-family houses</td>
<td>0.36</td>
<td>0.33</td>
<td>0.40</td>
<td>0.31</td>
<td>0.25</td>
</tr>
<tr>
<td>Walk-up apartments</td>
<td>0.40</td>
<td>0.53</td>
<td>0.46</td>
<td>0.35</td>
<td>0.55</td>
</tr>
<tr>
<td>Elevator apartments</td>
<td>0.30</td>
<td>0.24</td>
<td>0.23</td>
<td>0.20</td>
<td>#</td>
</tr>
<tr>
<td>Warehouse buildings</td>
<td>0.46</td>
<td>0.45</td>
<td>0.34</td>
<td>0.39</td>
<td>#</td>
</tr>
<tr>
<td>Factory buildings</td>
<td>0.47</td>
<td>0.42</td>
<td>0.38</td>
<td>0.32</td>
<td>#</td>
</tr>
<tr>
<td>Garages</td>
<td>0.30</td>
<td>0.78</td>
<td>0.51</td>
<td>0.54</td>
<td>0.73</td>
</tr>
<tr>
<td>Hotels</td>
<td>0.41</td>
<td>#</td>
<td>#</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Theatres</td>
<td>#</td>
<td>#</td>
<td>#</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Store buildings</td>
<td>0.34</td>
<td>0.52</td>
<td>0.40</td>
<td>0.39</td>
<td>0.67</td>
</tr>
<tr>
<td>Loft buildings</td>
<td>0.45</td>
<td>#</td>
<td>#</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Office buildings</td>
<td>0.37</td>
<td>#</td>
<td>#</td>
<td>0.38</td>
<td>#</td>
</tr>
<tr>
<td>Condominiums</td>
<td>0.23</td>
<td>#</td>
<td>#</td>
<td>0.15</td>
<td>#</td>
</tr>
<tr>
<td>Vacant land</td>
<td>0.65</td>
<td>0.97</td>
<td>0.77</td>
<td>0.84</td>
<td>0.80</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>0.46</td>
<td>0.70</td>
<td>0.58</td>
<td>0.41</td>
<td>#</td>
</tr>
</tbody>
</table>

*The coefficient of dispersion measures the deviation of the individual assessment ratios from the average assessment ratio for the group as a whole. It is computed by dividing the average amount of these deviations by the average assessment ratio, thereby making it useful for comparing degrees of dispersion between groups with different average ratios.

#No coefficient of dispersion shown because of ten or fewer observations.

Source: Estimates derived by the author from data furnished by the New York City Department of Finance.
all property groups in the city. In only two instances is the coefficient of dispersion below the minimum level which the Census Bureau considers acceptable.\footnote{Id. Only assessments for condominiums in the Bronx and Queens fell within a range which would satisfy the standards of the Census Bureau.} The message is clear: there are wide variations in New York City in the effective tax rates paid on similar properties.

The variations in assessments within a property class limit the effectiveness of a classification scheme to prevent tax shifts. Since each property cannot be assigned its own individual class, taxpayers whose assessment ratio differs from the ratio for their class, will still face tax changes. The tax changes under a classified scheme, however, are generally less extreme than those caused by a switch to a uniform tax. In some instances, the tax change may actually be in the opposite direction. For example, taxes on properties now assessed at ratios above the city-wide average but below the average for their class will rise instead of fall. If factory buildings were assigned a separate class, one-fifth of them would face a tax increase of fifty percent or more.\footnote{See note 3 supra. The author, using data provided by the New York City Finance Department, placed all factory buildings in one class and then simulated the hypothetical situation stated in the text.} On the other hand, since the average assessment ratio for factory buildings now exceeds the citywide average, the switch to a uniform tax system would result in major tax increases for only a few of these buildings.\footnote{Id.} Indeed, the group of factory buildings as a whole would benefit from a twenty-three percent tax reduction.\footnote{Id.}

\section*{A. Mathematical Revaluation}

Many have argued that the city's property tax problems, can be corrected by adjusting the assessed values of large numbers of properties in groups.\footnote{See, e.g., N.Y.A. No. 10,000-b, 203d Sess. § 310 (Mar. 4, 1980). This bill was introduced by Assembly Speaker Stanley Fink and will hereinafter be referred to as the "Fink Bill." See generally Update on Full Equalization, supra note 26, at 2, col. 4.} If all the properties in a given property class are assessed at the same fraction of market value, the use of a single multiplicand brings assessed values to the desired standard.\footnote{See The Legislative Response to the Property Tax Crisis: An Analysis of Pub-}
market value, then multiplication by a factor of five would ensure compliance with a "full value" standard. Because this process works by multiplying each of these properties by the same constant, it is called mathematical revaluation. By proper choice of factors, disparities in assessment ratios between groups can be eliminated. 106

Although appealing in its simplicity, mathematical revaluation suffers from a critical flaw: it leaves intra-group variations in place. This is particularly disconcerting for New York City because of the apparent impossibility of dividing tax rolls into groups within which the ratios are uniform. 107 Mathematical revaluation merely perpetuates existing assessment disparities within groups, and thus, similarly situated properties would continue to be taxed at different rates. In fact, when combined with a classified tax system, mathematical revaluation may serve only to prolong the present distribution of taxes. 108 When the same groupings are used as the basis for both the revaluation process and the classification scheme, every property continues to be taxed as before.

106. See generally REPORT ON THE REAL PROPERTY TAX, supra note 98, at 62.

107. The possibility of devising a classification scheme which will divide the city's tax rolls into groups containing uniform assessment ratios appears remote. The author, employing data provided by the Department of Finance failed to find any uniformity of assessment ratios even after breaking down the data into 15 building types with as many as nine subgroups and into boroughs with as many as 18 community planning districts.

108. In the simplest case, the tax liability is unchanged if the factor used for the mathematical revaluation is simply the inverse of the fraction used for the classification scheme. For example, if a piece of property has an assessed value of 0.22, and is placed in a group that is now on average assessed at 0.2, mathematical revaluation would require the property to be multiplied by a factor of five to bring the average property in the group to full value. The property in question would now be assessed at 1.10% of market value. If the same property is then placed in a class for which property is fractionally assessed at one-fifth of its fair market value then the process of multiplying by five and dividing by five would bring the assessed value for tax purposes back to where it started, 0.22 of market value.
Mathematical revaluation may also prompt many property owners who are presently overassessed relative to other property owners within the same class to avail themselves of the tax appeals process. The consequences of a further flood of tax certiorari appeals in New York City to both the courts and the city's financial security cannot be ignored. The potential for this increase in certiorari proceedings becomes clear with a simple example. Under current assessment practices an owner may fail to realize his relative overtaxation. A property owner assessed at a ratio of 0.22 of market value, and placed in a property class with an average assessment ratio of 0.20, after revaluation will have his property will be assessed at ten percent above its market value. Once the assessed value exceeds the property's worth it is likely that the owner will become aware of the relative overassessment.

The increase in the number of appeals is staggering. A rough estimate, based on the use of fifteen building classes, projects over a quarter of a million appeals, including 180,000 appeals by homeowners. This estimation contrasts sharply with the current average of approximately 40,000 appeals per year, with only a few thousand of these appeals coming from homeowners. A sixfold increase in the number of appeals would place an undue burden on the city's Tax Commission, which must hear each appeal. If a clas-

109. See notes 111-115 infra and accompanying text.

110. By enlarging the overassessment from two percent of market value (22% minus 20%) to 10%, mathematical revaluation also increases the visibility of the gains to be won through appealing the assessment. The actual tax reduction possible, however, remains the same as long as the total tax on the group is unchanged. While the amount of the overassessment for a property worth $40,000 would increase from $800 to $4,000, the tax rate needed to raise the same revenue would have fallen by four-fifths.

111. Estimate derived by author from information furnished by the New York City Department of Finance. See note 3 supra. These estimates were calculated by extrapolating the results obtained from the sales data to the tax rolls as a whole. All owners of properties relatively overassessed by 10% or more compared with their class average (there were fifteen classes based on building type) were assumed to appeal. To arrive at the estimated loss to the city's tax base, it was assumed that each of the appeals resulted in a reduction of the property's assessed value to a level commensurate with the average assessment ratio for the class as a whole. The percentage of reductions of total assessed value for each of 75 subdivisions of the sales data (15 building types in five boroughs) were then extrapolated to cover all the properties on the tax roll.

112. Telephone interview with Mary E. Manne, President, Tax Commission of the City of New York, in New York City (Feb. 17, 1981). For the 1980 hearing period, the Tax Commission handled 2,857 applications from one and two-family homeowners.

113. Id.
sification scheme with fewer classes were employed, the number of appeals could be even higher. Further, to the extent that these appeals are successful, mathematical revaluation will reduce the city’s tax base. If the assessed value reductions are granted in all the appeals estimated above, the loss to the city’s tax rolls could amount to almost seventeen percent.

B. Individual Revaluation

To reduce the potential for certiorari appeals, it is necessary to eliminate the disparities in assessment ratios. The only feasible way to do this is to reappraise each property individually. This could prove to be a lengthy and expensive undertaking. Individual reassessment is not all that is required in order to insure intra-group equality; assessments must be maintained over time to keep pace with inflation. Through careful planning, the tasks of reappraising properties and of establishing a system to maintain the integrity of the tax roles can be combined, thus substantially reducing the costs of doing each separately.

114. If fewer classes are used, the dispersion between classes will be greater, see generally notes 96-103 supra and accompanying text, thereby increasing the likelihood of appeal.

115. Estimate derived by author from information furnished by the New York City Department of Finance. See note 111 supra.

116. See Future of the Property Tax, supra note 2, at 10-17. See also Tri-Terminal Corp. v. Borough of Edgewater, 68 N.J. at 409-14, 346 A.2d at 399-401; Who Pays the Property Tax, supra note 4.

Inept and fragmented administration imposes unequal burdens on households in otherwise identical circumstances. But capricious or clumsy administration introduces new inequities continuously, especially when relative property values change rapidly. Furthermore, bad administration deprives the property tax of legitimacy among taxpayers. Administrative tools are at hand, and are being introduced in some jurisdictions, that permit frequent and accurate revaluation with fewer costly on-site inspections. Providing full information on assessment methods and on opportunities for quick, cheap appeals by disgruntled taxpayers can help legitimize the property tax.

Id. at 94. As one state agency has cogently noted, “[t]he ability of local governments to administer equitably a property tax on a continuous basis will largely depend on the degree of professionalization of the local assessment function.” N.Y. STATE DIV. OF EQUAL. AND ASSESSMENT, REPORT ON PROPOSED REFORMS IN REAL PROPERTY TAX ADMINISTRATION 13 (Feb. 1980).

117. At present, the city’s Real Property Assessment Bureau does not appear able to handle the tasks of appraisal and of updating assessments. In fact, the Bureau has been found to be deficient in even the most basic kinds of bookkeeping functions. See Office of the Comptroller, State of New York, Assessment Practices of the Bureau of Real Property Assessment, New York City Department of Finance, Audit Report NYC-66-76.
Moving to a more equitable property tax system without endangering the fiscal integrity of the city is possible, but the reform will not be painless. There are several options, however, to reduce the hardship on individual property owners.¹¹⁸

(Nov. 1, 1978). Not all responsibility for the present disarray of the tax rolls rests with the Bureau’s procedures. The Bureau has only some 125 field assessors to review annually the assessments on the city’s 830,000 parcels. Priorities have had to be set, with the result that some properties were not assessed even when they were sold. It has been claimed that if “New York City assessors revalued all parcels annually, they would spend less than 10 minutes on each.” Future of the Property Tax, supra note 2, at 7.

In order to successfully implement any assessment reforms, the city must move to computerized mass appraisal systems (CAMA), which are being employed in other states. See, e.g., Tenn. Code Ann. § 67-680 (Cum. Supp. 1980). Computerization will help alleviate much of the paperwork and many of the value judgments now involved in appraisal work. See Property Assessment Valuation, supra at 308. Greater use of computers to store and process data on each property should also help control one of the major sources of dispersion in assessment ratios; the delays in reassessing properties following changes in their market values. Id. at 310; Report on the Real Property Tax, supra note 98, at 42-44. See also Essex County Bd. of Taxation v. City of Newark, 73 N.J. 69, 72, 372 A.2d 607, 608 (1977) (“periodic revaluations are an absolute essential, particularly in times of continuous fluctuations of reality values. . . .”). Increased reliance on computers to store and process data on each property should also help control one of the major sources of dispersion in assessment ratios — the delays in reassessing properties following changes in their market values. Property Assessment Valuations, supra at 310; New York State Div. of Equal. and Assessment, Report on Proposed Reforms in Real Property Tax Administration 14-15 (Feb. 1980). Lags in reassessing properties cause assessment ratios to fall (rise) as their values in the marketplace decrease (increase). Although the exact importance of lags is hard to show without information on the movements over time and information concerning the price and assessed value for specific properties, many characteristics of the tax rolls suggest that lags are a major source of dispersion. For example, the generally high level of the ratios for properties in the Bronx may reflect a failure by the city to readjust promptly and fully the assessed values as properties fall in price. In contrast, the low average assessment ratios for one- and two-family houses can be traced to the absence of any comprehensive program to reassess these properties since World War II. See Future of the Property Tax, supra note 2, at 7 (“During the 1960’s, city assessors say, the unofficial but explicit city practice was to avoid any changes in residential assessments.”) The only area of the city which appears to have received the most attention from the Real Property Assessment Bureau is Manhattan, and its high average assessment ratio, the nearest of all the boroughs to the “full value” standard reflects this fact. See note 6 supra.

V. Taxation

A. Classification

To avoid the enormous tax shifts associated with full market value assessment, the state legislature has a number of options to modify the present property tax laws. The simplest and most direct way to lessen the tax shifts among property groups is to establish a classified tax system. Under a classified system, properties are divided into selected tax groups. The assessment standard or tax rate can then be adjusted to the current effective tax rate so that the total taxes paid by each group of properties is unchanged. Preventing any reallocation of property taxes requires each property now taxed at a different effective rate to be placed in a separate class. There are, however, practical limits on the number of classes that can be established. Therefore, it may not be possible to eliminate all tax shifts through classification. While it is clear that a classification scheme by a state legislature could survive both federal and state constitutional challenge, constitutional and administrative difficulties will persist if there exists wide variances in the valuation of similar properties situated within the same class. It has been the experience of a number of other states which have adopted a classification scheme for administering property taxes that there must be uniformity in the assessment of real property within a class whether it be at full value or some fraction thereof.


121. See generally Dulton Realty, Inc. v. State, 270 Minn. 1, 11-12, 132 N.W.2d 394, 402 (1964); Hamm v. State, 255 Minn. 64, 67-68, 95 N.W.2d 649, 653 (1959).

122. Alabama, until 1978, required all property to “be assessed to the fair and reasonable market value of such property,” Ala. Code § 40-8-1(a) (1977), before a classification
The principal difficulty with a classification system is constructing a system with an appropriate number of classes which will shield certain properties from the onerous burden of full valuation, while adhering to the requirement of intra-class uniformity. Bills currently before the state legislature suggest that nine classes, with possible further subclassifications be employed. The SBEA currently divides real property into seven groups and property within the City of New York into 25 major classes. Even if a ratio could be applied. Alabama, however, allowed different counties to assess properties within the same class at different ratios. Ala. Code § 40-8-4 (1977). This classification scheme has been found to be violative of both the Alabama state constitution and the fourteenth amendment of the United States Constitution. McCarthy v. Jones, 449 F. Supp. at 482-83. California requires assessors to assess “all property subject to general property taxation at — its full value.” Cal. Rev. & Tax. Code § 401 (West Supp. 1980) (omission in statute). This same section prior to 1981 required assessment at “25 percent of its full value.” Id. (omission in statute). Massachusetts preconditioned the implementation of a classification scheme upon each municipality’s revaluation of property at fair cash value, and then having this revaluation certified by the appropriate local court. Mass. Gen. Laws Ann. ch. 59A, § 42 (West Supp. 1980). The Supreme Judicial Court of Massachusetts has found this scheme to be constitutional. Associated Indus. of Mass., Inc. v. Commissioner of Rev., Mass. Adv. Sh. 2027, 393 N.E.2d 812 (1980). Minnesota by statute, Minn. Stat. Ann. § 273.11 (West Supp. 1979), requires assessment at full value, or at a uniform percentage thereof, i.e., at adjusted market value before a classification ratio could be applied. Id. See In the Wake of Hellerstein, supra note 1, at 286.

123. A number of studies of this problem have concluded that the largest tax shifts will come from intra-class equalization rather than through inter-class equalization. See N.Y. State Div. of Equal., 1980 Revaluations Property Tax Shift Analysis 5-7 (1980) ("Intra-class changes far outweigh the overall shift in tax burdens between the residential and other classes of property"); N.Y. State Div. of Equal. and Assessment, 1979 Revaluations Property Tax Shift Analysis 2, 4-8 ("the shifts within classes are far more important than the shifts between classes").

124. The bill introduced by Assembly Speaker Fink, would not only allow for the classification of real property, N.Y.A. No. 10,000-b, 203d Sess. (March 4, 1980) § 3, tit. II, but would amend the existing homestead exemption and tax appeal process, Id. §§ 5-9, See generally Comment, New York’s Tax and Debt Limits and Classified Property Tax Assessments: Time for a Constitutional Amendment?, 9 Fordham Urb. L.J. 627 (1981) for a discussion of the implication of this bill’s classification scheme on New York’s constitutional debt and tax limitations. Under the Fink Bill, real property would be classified as either residential, apartment, commercial, industrial, agricultural, vacant, railroad, utility, or special franchise. N.Y.A. No. 10,000-b § 312(a)-(i) (1980). The bill would also allow the City of New York to subclassify real property into four classes and any other assessing unit outside the city into two classes. Id. § 312(3)(a), (b). See also Update on Equalization, supra note 30, at 2, cols. 4-5.

125. See Rego Properties Corp. v. Finance Admin’y, 102 Misc. 2d at 644, 424 N.Y.S.2d at 624; Certiorari, supra note 33, at 43.

126. The 25 property groups include a number of groups which are either fully or partially exempt from taxation. The city further divides each of these groups into a maximum
classification system proves to be desirable, legal,\textsuperscript{127} fiscal,\textsuperscript{128} and political constraints\textsuperscript{129} must be kept in mind in devising such a system.

of nine subgroups. The total number of subgroups of all properties within the city is 181. It must be noted, however, that this does not mean that there are 181 separate and distinct classes for the purpose of taxation. This information was furnished to the author by the New York City Department of Finance.

127. See notes 119-24 supra and accompanying text. Two bills recently introduced in the New York legislature, N.Y.S. No. 4130, N.Y.A. No. 6136 203d Sess. (1980) (Esposito-Padavan), provide a clear example of the constitutional difficulties attempts at reform can encounter. The legislation at base attempts to preserve and legalize the autonomy currently enjoyed by local assessing units. Esposito-Padavan would replace § 306 of the Real Property Tax Law as it presently exists with a new section which provides:

All real property in each assessing unit shall be assessed by any of the same methods of assessment as such real property was assessed for the assessment roll used immediately prior to the year nineteen hundred seventy-five, provided, however, another method of assessment may be adopted by a governing body of a municipal corporation by resolution passed by a majority of the members of such body voting on the resolution in accordance with the procedures in effect for the adoption of such resolutions in such municipal corporation.

N.Y.S. No. 4130 § 1 203d Sess. (1980). Esposito-Padavan in all likelihood would be unconstitutional for three reasons. First, assessing property “by any of the same methods” by which it was assessed prior to 1975, is too vague to satisfy constitutional standards. In order to comply with the standards of due process, a statute, especially a taxing statute must inform the public as to how it will operate. See Chicago Union Traction Co. v. State Bd. of Equal., 114 F. 557 (7th Cir.), aff'd sub nom. Raymond v. Chicago Union Traction Co., 207 U.S. 20 (1907); Weissinger v. Boswell, 330 F. Supp. at 624-25. Second, the bills would also effect an unconstitutional delegation of the legislature’s taxing power. See N.Y. CONST. art. XVI §§ 1, 2. See also notes 79-88 supra and accompanying text. Finally, the method of assessment required by Esposito-Padavan would fail to comport with the requirements of both state and federal equal protection clauses. The Esposito-Padavan bill does not provide a rational basis for perpetuating the current practice of assessing similarly situated taxpayers differently. See Louisville & N.R.R. v. Public Serv. Comm’n, 493 F. Supp. 162, 169-71 (M.D. Tenn. 1978); Carey Transp., Inc. v. Triborough Bridge and Tunnel Auth., 38 N.Y.2d 545, 552, 345 N.E.2d 281, 284, 381 N.Y.S.2d 811, 814 (1975); Ampco Print-Advertisers’ Offset Corp. v. City of New York, 14 N.Y.2d 11, 24-25, 197 N.E.2d 285, 290, 247 N.Y.S.2d 865, 872-73, appeal dismissed for want of a sub. fed. question, 379 U.S. 5 (1964).

128. See notes 140-41 infra and accompanying text.

129. While this Article will avoid comment thereon, the political realities of the present situation cannot be overlooked. The burden of full valuation will fall most heavily on those who currently benefit the most from the present system; residential homeowners in Queens, Brooklyn and Staten Island. See FUTURE OF THE PROPERTY TAX, supra note 2, at 27 (“The politics of property tax reform is only the most public part of the city’s dilemma: The city knows that no matter how it revises the system, it will place new burdens on some property owners and remove old burdens from others. For this, it will receive little credit from the once overburdened property owners who, by definition, have been overtaxed for decades. And it will suffer virulent attack from the formerly underburdened who will see no theoretical justice in the reformed system.”). Id.
B. Homestead Exemption & Circuit-Breakers

Another option available to the legislature is to enact a homestead exemption program, or a "circuit-breaker" tax system either in tandem or separately. A homestead exemption in effect, exempts "relatively inexpensive housing from taxation, lower effective average tax rates for owner-occupants in somewhat expensive housing, and increase effective tax rates for all other property owners." A circuit-breaker on the other hand, usually provides either a credit against income taxes, with maximum amounts determined by a sliding scale based on household gross income. In this manner, a circuit-breaker program causes the property tax to be more progressive with respect to income than a homestead exemption because the tax relief under the circuit-breaker is contingent on property taxes exceeding some percentage.


132. Both the homestead exemption and the circuit-breaker systems have enjoyed the support of the Temporary State Commission on the Real Property Tax, Report on the Real Property Tax, supra note 98, at 66, and the SBEA, Proposed Reforms in Property Tax Administration, supra note 91, at 8-11, among others. See Future of the Property Tax, supra note 2, at 18-21; Committee on Housing and Urban Development, Recommendations for a More Equitable Real Estate Tax System, Community Service Society of New York (1978). It should be noted that the Temporary Commission considered the homestead exemption as being best suited to handle the tax shifts associated with revaluation, while the circuit-breaker was felt to be better suited to handle the problems associated with high individual tax burdens. See Report on the Real Property Tax, supra note 98, at 65.

133. Report on the Real Property Tax, supra note 98, at 64.

134. Id. at 63.

135. An essential element of any tax reform is a policy which favors progressive rather than regressive tax adjustments, that is, granting relief to those least able to pay. Proposed Reforms in Property Tax Administration, supra note 97, at 3. It has been argued that a property tax because it is not tied to income or the ability to pay is regressive. This traditional view, however, has recently been questioned by studies as to the actual incidence of the tax. See Who Pays the Property Tax, supra note 4, at 20-54.
of the homeowner’s income.\textsuperscript{136}  
A homestead exemption or circuit-breaker program does not suffer from the same legal difficulties which may be encountered in the construction of a classification system.\textsuperscript{137} However, both programs do reduce revenues.\textsuperscript{138} Further, under a homestead exemption program, unlike a classified tax system in which all properties within a class pay at the same effective rate, the more valuable properties pay taxes at effective rates much higher than the present average. The degree of progressivity with respect to assessed real estate values varies with the size of the exemption. In New York City the exemption would have to be very large — about half the average assessed values of houses — in order to prevent any increase in taxes on homeowners as a group.\textsuperscript{139}

\textbf{VI. Conclusion}

Continued delay in reforming the city’s property tax system could itself prove costly. The inequalities of the present system have spawned appeals which now represent a potential liability to New York City of over 1.7 billion dollars,\textsuperscript{140} or almost half of the yearly collections from the property tax;\textsuperscript{141} further delay in resolving this dilemma will only exacerbate this problem. The uncertainties over future taxes also discourage economic activity within the city. With the shape of the city’s tax system in doubt and with no clear assessment standard, businesses and individuals contemplat-

\begin{itemize}
\item \textsuperscript{136} See note 133-34 \textit{supra} and accompanying text. A further distinction between a circuit-breaker and a homestead exemption should be noted. The cost of a circuit-breaker, because it is a credit against state income taxes, is financed by the state. On the other hand, the cost of a homestead exemption is placed on the municipality or county which levies the property tax because the exemption decreases the actual amount of taxes which the homeowner is required to pay.
\item \textsuperscript{137} See notes 65-88 \textit{supra} and accompanying text.
\item \textsuperscript{138} The Temporary State Commission on the Real Property Tax observed that a $5,000 homestead exemption in New York would cost approximately $406 million annually in lost revenues. \textit{REPORT ON THE REAL PROPERTY TAX, supra} note 98, at 65. A circuit-breaker, while not as costly as the homestead exemption would nevertheless reduce tax revenues for the state. Id. at 63.
\item \textsuperscript{139} Estimate derived by author from data furnished by the New York City Department of Finance. \textit{See} note 3 \textit{supra}.
\item \textsuperscript{140} \textit{See} \textit{N.Y. STATE DIV. OF EQUAL. AND ASSESSMENT, REVIEW OF NEW YORK CITY FISCAL LIABILITY RESULTING FROM TAX CERTIORARI PROCEEDINGS} 1, 4-5 (1979); \textit{Future of the Property Tax, supra} note 2, at 10-11.
\item \textsuperscript{141} \textit{Future of the Property Tax, supra} note 2, at 11.
\end{itemize}
ing buying property shy away from investing in New York City.\textsuperscript{142} Furthermore, continued noncompliance with existing law could force courts to impose immediate deadlines, causing too hasty a revision of this complex and important tax.\textsuperscript{143}

For reform to proceed, the state legislature must act decisively. Past attempts to legalize the status quo have merely prolonged the period of uncertainty. Once the legislature establishes a viable set of programs, New York City and other municipalities in the state can then get on with the difficult task of reforming their property taxes with a minimum of disruption to taxpayers and the economy.

\begin{itemize}
\item \textsuperscript{142} "Real property taxes, and the burden they impose upon New York residents, have effectively encouraged the present population flight from New York State." Memorandum in Support of N.Y.S. No. 155 204th Sess. (prefiled Jan. 7, 1981) (Sen. O. Johnson). See also N.Y. STATE DIV. OF EQUAL. AND ASSESSMENT (1980), BUSINESS PROPERTY TAXES AND EXEMPTIONS IN NEW YORK STATE: A SURVEY of BUSINESS LEADERS and LOCAL GOVERNMENT OFFICIALS 15-20.

\item \textsuperscript{143} An option currently being considered by the New York legislature to ease some of the congestion caused by increasing tax certiorari appeals would establish a special real property tax part of the state supreme court to hear and determine "proceedings to review assessments of real property under Article 7 of the real property tax law." N.Y.S. No. 8686, § 177-h 203d Sess. (Mar. 25, 1980). The special real property part, however, would entertain only "minor controversies," where the contested assessment would result in an altered tax liability in any one taxable year of $500 or less. N.Y.S. No. 8686, § 177-o. This provision will not only speed the resolution of certiorari petitions which now flood the courts but the simplified procedures envisioned in the bill, would also enable the average homeowner to actively pursue real property tax relief. See Memorandum in Support of S.8686, 203d Sess. (Sen. Flynn). See also Hellerstein, The Appeals Machinery in Property Taxation, NAT'L TAX Assoc. (1958). Given the possible increase in certiorari petitions under a classification system, see notes 111-14 supra and accompanying text, mathematical revaluation, see notes 104-10 supra and accompanying text, or some hybrid thereof, a reform in the court system discussed above is essential. It must be noted, however, that any reforms in the certiorari procedures must be preceded by a complete individual reassessment of all properties. If such an assessment is not undertaken, then the increase in appeals spawned by the reforms, given current assessment practices, will exceed the capacities of both the courts and the city's fiscal resources.
\end{itemize}