Third Party Taxpayer Challenges Under the New York Real Property Tax Law

Catherine P. Bonnette
NOTES

THIRD PARTY TAXPAYER CHALLENGES UNDER THE NEW YORK REAL PROPERTY TAX LAW

I. Introduction

The real property tax is the oldest and most important continuing source of local revenue in New York State. More than one-half of all revenue generated locally is derived from real property taxes.

1. The property tax is of major economic importance to each individual state throughout the United States. Legislative Research Center, University of Michigan Law School, The Finances of Metropolitan Areas 43 (1964); "[t]he main economic fuel for any municipality...is the revenue...from the assessment of real property..." H. Lee & W. LeForestier, Review and Reduction of Real Property Assessments § 1:01 (1960); "[w]hile some property taxes are imposed by states, the real property tax is, today, collected almost exclusively by local governments and constitutes the primary source of their revenue." Ginsberg, The Real Property Tax Exemption of Nonprofit Organizations: A Perspective, 53 Temp. L.Q. 291, 294 n.12 (1980).

[The real property tax] is administered by thousands of jurisdictions in a pattern that varies somewhat from state to state, depending on the structure of local government. In general, the taxing jurisdictions include counties, towns, cities, villages, school districts, and a variety of special service districts. The funds generated support local services such as police, fire, safety, and sanitation, as well as provide almost all local support for primary and secondary education. The tax produces more revenue than any other single impost except the federal personal income tax.

Id. Real property tax is a tax on both the value of the land and its structures. 2 Report of the Temporary State Commission on State and Local Finances, The Real Property Tax 25 (1975) [hereinafter cited as Real Property Tax]; the tax is referred to as ad valorem because it is applied in proportion to the "taxable assessed value." Department of Taxation and Finance, A History of New York State's Tax System 24 (1979-1980) [hereinafter cited as History of New York State's Tax System].

2. The real property tax is the single most important source of government revenue in New York State. In addition, this tax is the financial base of local governments within New York State. Governor's Memorandum on Approval of ch. 888, N.Y. Laws (Aug. 11, 1977), reprinted in [1977] N.Y. Legis. Ann. 308; the real property tax is the primary source of income for local governments in New York. History of New York State's Tax System, supra note 1, at 24. The real property tax generates nearly $9 billion annually for local purposes. It has been the most stable of all tax sources for local governments, and is referred to as the revenue of last resort. New York State, Division of Equalization and Assessment, Report on Proposed Reforms in Real Property Tax Administration 1 (Feb. 1980) [hereinafter cited as Reforms in Real Property Tax Administration]. See also note 24 infra and accom-
panying text (discusses why the real property tax is referred to as the “tax of last resort”).

The real property tax, its structure, application and administration, evolved from the time when New York was a colony. Real Property Tax, supra note 1, at 11. New York, called New Netherlands, was settled by the Dutch in 1614. New Netherlands, a commercial rather than an agricultural colony, depended on indirect taxes with heavy reliance on customs duties and excise taxes. In 1664, New York changed from Dutch to English rule which brought the general tax system. On November 1, 1683, New York passed its first general tax and assessment law. H. Powell, Reducing Realty Taxes 2 (1928). The property tax accounted for 98% of the tax revenues of the state by 1879. This was due in part to the fact that intangible personal property also was taxed along with real property. History of New York State’s Tax System, supra note 1, at 11. After 1928, the state discontinued most real property levies. Nevertheless, local governments still rely on real property taxes as the major source of revenue. Id. In 1933, the tax on personal property was eliminated and, by a 1938 constitutional amendment, prohibited. Id. With the prohibition of the personal property tax, the real property tax increased and a rising number of property owners sought reduced assessments. As a result of this increase in assessment reviews, the inadequacies and inequalities of the property tax system became pronounced. Id.

3.

**New York State Revenues**

<table>
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<tr>
<th>Year Ended 1979 (Amounts in millions)</th>
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<tr>
<td>Real Property Taxes and Assessments</td>
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<tr>
<td>Non-Property Taxes</td>
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<td>Other Revenues</td>
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<tr>
<td>Total</td>
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Office of the New York State Comptroller, Special Report on Municipal Affairs 14 (1981) [hereinafter cited as Comptroller’s Municipal Report]. These figures do not include state and federal aid. State aid was $6,945.5 million for the year, and federal aid was $5,230.8 million for the year. Id. See note 25 infra and accompanying text for a discussion of reduction in federal aid to New York State. Trends in New York City indicate that exemptions from taxation of real property taxes have been escalating. In 1969, fully taxable property netted $33,304.9 million, while exempt property accounted for only $16,654.4 million. However, in 1979, real property accounted for $37,926.1 million, while exemptions had increased to $26,361.9 million. Comptroller’s Municipal Report, supra, at 21. See note 82 infra (discusses the increase in exempt property over taxable property). Excluding New York City and its high number of exempt properties, the property tax accounts for almost two-thirds of revenues generated locally. The revenue breakdown excluding New York City is as follows:

(Amounts in millions)

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<tbody>
<tr>
<td>Real Property Taxes</td>
<td>5,413.5</td>
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<tr>
<td>Non-Property Taxes</td>
<td>1,130.4</td>
</tr>
<tr>
<td>Assessments</td>
<td>50.3</td>
</tr>
<tr>
<td>Other Revenues</td>
<td>2,073.3</td>
</tr>
<tr>
<td>Total</td>
<td>8,667.5</td>
</tr>
</tbody>
</table>
Inasmuch as the real property tax is the financial backbone of local government,\textsuperscript{4} it is critical that its administration\textsuperscript{5} be equitable for the
real property tax to survive as the essential tax base of local government. Local governments must be able to rely on the uninterrupted collection of revenues, and the provision for a simple, efficient method of reviewing tax assessments will aid in the constant and steady flow of revenue. To ensure this result, the New York State Legislature has continually attempted to revise the tax law administration to achieve greater equity for the individual taxpayer.

6. Id. at 82. The manner in which the real property tax has been applied, as well as the labyrinth of administrative requirements, has resulted in inequality to the individual taxpayer. A persistent inequitable application will undermine and eventually discredit the entire real property tax system. Id. See note 138 infra and accompanying text (discusses the integrity of tax systems in general). Difficulties in administering the real property tax system in New York State have led to many inequities in taxation. Among the administrative difficulties which the Temporary State Commission on State and Local Finances found were inadequate rates of compensation for assessors and the ability of assessors to review their own decisions. REAL PROPERTY TAX, supra note 1, at 61.


8. Id. Section 290-a of Article 13 of the former Tax Law required that a proceeding to review a tax assessment be commenced within 30 days after the final completion and filing of the assessment roll. Id. at 333. This provision can help to insure the timely collection of taxes. Id. at 339. In 1958, the Legislature enacted a unified Real Property Tax Law. 1958 N.Y. LAWS ch. 959. See note 16 infra. See also N.Y. REAL PROP. TAX LAW § 700(2) (McKinney 1972) (discusses the scope and breadth of the Real Property Tax Law). Article 7 of the current Real Property Tax Law replaced Article 13 of the former Tax Law. Despite renumbering, Article 7 was to continue without substantive change. Board of Educ. v. Parsons, 61 Misc. 2d 838, 841-42, 306 N.Y.S.2d 833, 839 (Sup. Ct. Wayne County 1969) (citing 24 CARMODY-WAIT 2D § 146:2, at 247-49); see also FIFTEENTH ANN. REP. N.Y. JUD. COUNCIL 324 (1949) (discusses the history of tax certiorari proceedings prior to the adoption of Article 7 of the N.Y. Real Prop. Tax Law).

9. In 1880, the Legislature "enacted a statute . . . creating a new and complete system for correcting" assessments which were excessive or unequal. Board of Educ. v. Parsons, 61 Misc. 2d 838, 841, 306 N.Y.S.2d 833, 839 (Sup. Ct. Wayne County 1969) (citing 1880 N.Y. LAWS ch. 269). These provisions became part of former Article 13 of the Tax Law in 1896. Parsons, 61 Misc. 2d 838, 841, 306 N.Y.S.2d 833, 838 (Sup. Ct. Wayne County 1969) (citing 1896 N.Y. LAWS ch. 908, which the Legislature revised in 1949). See FIFTEENTH ANN. REP. N.Y. JUD. COUNCIL 321 (1949). This revision set forth a process to review tax assessments on real property which was intended to be a simple, contemporary procedure. Id. at 332. It was also to lighten the burden on the "courts, administrative agencies and officers, clerks, attorneys and property owners." Id. at 321, 332. In 1958, the Legislature consolidated the Real Property Tax Law. 1958 N.Y. LAWS ch. 959. See note 15 infra for the purpose of consolidation. The next amendment was to create a Temporary Commission on assessment. 1949 N.Y. LAWS ch. 346. In 1960, this Commission became the State Board of Equalization and Assessment (SBEA), a permanent agency. 1960 N.Y. LAWS ch. 335. See notes 145-49 infra and accompanying text for SBEA purpose. Then, in 1970, the Legislature enacted the Assessment Improvement Law. 1970 N.Y. LAWS ch. 957. See also REAL PROPERTY TAX, supra note 1, at 61 (discusses the Assessment Improvement Law); Governor's Memorandum (N.Y.S. 7557-A, 181st Sess.), reprinted in [1970] N.Y. LEGIS. ANN. 347-48 (discusses the purpose and
In 1949, the New York Judicial Council recommended the abolition of the writ process of reviewing tax assessments on real property pursuant to Article 13 of the former Tax Law, and the enactment of a simple, modern tax certiorari procedure by which such assessments could be judicially reviewed. This procedure was to be modeled in part after a proceeding under Article 78 of the old Civil Practice Act.

requirements of the bill, which was designed to "assure fair and equitable treatment for all real property taxpayers through a comprehensive program to improve assessment practices and procedures"). This section was added to the Real Property Tax Law as Article 15-A. Id. at 347. The law called for improved qualifications and training of assessors, the creation of boards of assessment review, improved county tax maps, and county and state advisory appraisals of certain properties. Real Property Tax, supra note 1, at 61. These innovations were to be administered by the SBEA. Id. The most recent improvement, 1981 N.Y. Laws chs. 1022, 1023, is the small claims assessment review proceeding for certain residential properties. N.Y. Real Prop. Tax Law §§ 729-738 (McKinney Supp. 1982-1983). Under this section, Title 1-A, a small claims court has been established to hear claims for a total anticipated refund of $750 or less. Id. § 730. In addition, a hearing officer may award costs to a successful petitioner not to exceed the amount paid by the petitioner in filing fees. Id. § 733(1).

10. Fifteenth Ann. Rep. N.Y. Jud Council 322 (1949). The old writ process was "cumbersome and unwieldy." Id. at 321. Under the old process, the aggrieved taxpayer had to present a lengthy petition to a justice of the supreme court in order to obtain an order granting a writ of certiorari. The writ, once issued, had to be served on the assessing officers who were required to respond. If the assessing officers failed to make a timely return, the taxpayer's sole remedy was one for contempt for failure to comply. Once the return had been made, the court disposed of the proceeding as a matter of law. If there were issues of fact, however, the court had to take evidence of such issues. Id.

11. Id. at 322 & n.8. The new writ was to retain all of the "distinguishing characteristics of [a] certiorari proceeding, while eliminating its unnecessary and purely formal aspects." Id. at 321. See note 9 supra. The new proceeding would be instituted by serving a petition on the officers similar in content to the old form of petition. The proceeding would commence upon timely service of the petition. Under the new process, however, the petitioner could request the court not only to issue a writ of certiorari but also for any other relief necessary to correct the tax inequity. Fifteenth Ann. Rep. N.Y. Jud. Council 323 (1949). If the respondent did not answer, a general denial would be assumed. The hearing must occur within 30 days after notice, but sooner if both parties consent. As a result, the taxpayer would not necessarily be delayed and the officers would be protected. The hearing on review has not been altered from the hearing allotted by the former proceeding. Id.

Unlike Article 78, this new proceeding was to advance the effectiveness of the taxpayer’s right to review by reducing the cost to the taxpayer.

To consolidate various real property tax laws, New York’s Real Property Tax Law (RPTL) was codified in 1958. The RPTL incorporates the efficient proceeding from Article 13 of the former Tax Law which has been interpreted as a taxpayer’s exclusive remedy.

motion. Fifteenth Ann. Rep. N.Y. Jud. Council 323 n.9 (1949). Some proceedings which may be brought under the new article are proceedings “to reinstate a municipal employee discharged without hearing, and for back pay, to review a determination cancelling liquor license, for review of a determination of Motor Vehicle Bureau, and for a review of the action of the Board of Zoning appeals.” Id.


14. Fifteenth Ann. Rep. N.Y. Jud. Council 328 (1949). The old writ procedure, see note 9 supra, required the taxpayer to retain an attorney and elicit expert witnesses. Fifteenth Ann. Rep. N.Y. Jud. Council 328 (1949). Frequently, the savings in taxes to the taxpayer were less than the cost to the taxpayer of bringing his complaint before the court. Id. The present Article 7 certiorari proceeding removes the formality which had been necessary under the old writ process regarding initiation and joining of issues. Id. at 329. The taxpayer’s review prior to the judicial proceeding is before a quasi-judicial Board of Assessors where there is no need for an attorney. See notes 34-35 infra and accompanying text & note 99 infra.


17. City of Mount Vernon v. State Bd. of Equalization and Assessment, 44 N.Y.2d 960, 962, 380 N.E.2d 155, 156, 408 N.Y.S.2d 323, 325 (1978). In Mount Vernon, an action brought under CPLR Article 78 was dismissed. The Mount Vernon court stated that even though Article 7 of the Real Property Tax Law is the taxpayer’s exclusive remedy regarding real property tax assessments, the article does not permit a review by a municipality of a special franchise assessment which has been made by the State Board of Equalization and Assessment. Id. The court held that the petitioner’s claim of illegality under CPLR Article 78 was merely an attempt to escape the exclusivity of Article 7 of the Real Property Tax Law, and that the allegations would not prevail. Id. The court explained that since all errors of undervaluation and overvaluation resulted in illegal assessments, if a CPLR Article 78 proceeding was permitted for such errors, the proceeding would “eviscerate the exclusivity” of the RPTL. Id. In Mid-Town Tennis Club v. City of Rochester, 57 A.D.2d 1067, 1068, 395 N.Y.S.2d 824, 826 (4th Dep’t 1977), the court dismissed a petitioner’s CPLR
New York Court of Appeals, however, has denied this remedy to a taxpayer who wishes to challenge an exemption from real property taxation granted to another party.\textsuperscript{18} The court has determined that Article 78 of the Civil Practice Law and Rules (CPLR) is the third party taxpayer's proper vehicle.\textsuperscript{19}

This Note will discuss and analyze an individual taxpayer’s right to challenge a third party assessment or exemption under Article 7 of the New York Real Property Tax Law (RPTL).\textsuperscript{20} In addition, the feasibility and deficiencies of the alternate remedy afforded by CPLR Article 78\textsuperscript{21} will be examined. Finally, this Note will review the function of the New York State Board of Equalization and Assessment (SBEA),\textsuperscript{22} an organization statutorily empowered to examine local assessments and to advise local assessment boards. This Note concludes by advocating a broadening of the use of Article 7 as a vehicle for redressing third party taxpayer grievances, and a substantive expansion of SBEA authority.

II. Nature of the Third Party Taxpayer Challenge

A. The Rights of the Taxpayer

The real property tax levy is based on a municipality’s estimate of its fiscal needs after all other revenues have been considered.\textsuperscript{23} The proceeding because the assessor had jurisdiction to make the assessment. An Article 78 proceeding is proper when a tax assessor is not within his jurisdiction. Therefore, it was held that Article 7 was the exclusive remedy for the taxpayer.

18. Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981). The court stated that the RPTL provided a remedy for the taxpayer seeking to challenge an excessive or illegal assessment on his own property. The court held that the RPTL “was not designed to reach the unusual situation . . . where taxpayers concede the propriety of their own assessments but seek instead to challenge the assessor’s action in granting wholesale exemptions to other properties within the town.” Id. at 549, 421 N.E.2d at 799, 439 N.Y.S.2d at 307.

19. Id. at 548, 421 N.E.2d at 799, 439 N.Y.S.2d at 307.


22. The present State Board of Equalization and Assessment began as a temporary commission created in 1949. 1949 N.Y. Laws ch. 346. This commission was established to revise the state equalization rates. Governor's Memorandum, \textit{reprinted in} \[1960\] N.Y. LEGIS. ANN. 482. On April 1, 1960, the Board was reorganized as a permanent State agency. 1960 N.Y. Laws ch. 335. \textit{See also} notes 145-49 \textit{infra} and accompanying text (discusses the purpose and history of the SBEA); Governor's Memorandum, \textit{reprinted in} \[1960\] N.Y. LEGIS. ANN. 482 (discusses the Board’s functions).

23. LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, TOWARD AN EVALUATION OF THE PROPERTY TAX SYSTEM IN NEW YORK STATE 10 (1979) [hereinafter cited as TOWARD AN EVALUATION].
real property tax rate is then set annually at a figure that will provide the funds necessary to meet any budgetary gap.\textsuperscript{24} As a result, the Reagan Administration's position in favor of eliminating many federal grants to states and cities\textsuperscript{25} directly affects real property tax rates. This, of course, will affect individual taxpayers. The practices of assessment\textsuperscript{26} and exemption\textsuperscript{27} also affect the individual taxpayer.\textsuperscript{28} An

\begin{quote}
24. \textit{Id.} This explains why the real property tax has been termed the "tax of last resort." \textit{Id.} This quality of the property tax helps in developing an understanding of the tax's "use and objectives." \textit{Real Property Tax, supra} note 1, at 16. The Temporary State Commission on State and Local Finances explains that:

The use is the financing of local services by means of a local levy determined by the residual effect of other revenues. This use is consistent with the general objectives of the tax which are: (1) to apply to the local tax base a charge which is intended to reflect the availability of services to property owners; and (2) to relate this charge to ability of the owner to pay as measured by the value of his real property.

\textit{Id.} The tax system requires that payment for these services be advanced so that the operation costs of the municipality can be attained for the ensuing year. \textit{Id.} In addition to being a good revenue producer, the real property tax has a "dependability and adjustability" well-suited to the needs of local governments. Local governments can obtain revenues from the real property tax each year "with a convenient range of flexibility and a satisfactory degree of precision." \textit{1 Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax} 68 (1963) [hereinafter cited as \textit{Strengthening the Property Tax}].

25. \textit{N.Y. Times}, June 20, 1982, at A1, col. 3. The Reagan Administration has asserted that federal aid has contributed to the decline of American cities. The Administration's statement on urban policy reported that some federal programs have changed local officials "'from bold leaders of self-reliant cities to wily stalkers of Federal funds.' " \textit{Id.}, at A1, col. 4. The statement went on to say that it should be the responsibility of local officials, in tandem with the private sector and local communities, "to develop a strategy for survival and prosperity." \textit{Id.} The proposed federal contribution would rule out many sorely-needed plans for federal assistance in areas such as street repairs, transportation and water supply. These are areas in which cities are relying on federal funds. \textit{Id.}, at A1, col. 3. The recession and cuts in federal funding have caused many large cities to cut services while raising taxes. New York City's Director of the Office of Management and Budget stated that the city's approved $15.5 billion budget for the year 1983 was dependent upon a 14\% contribution of federal funds. \textit{Id.}, at A25, col. 6; cities received less federal aid in 1980 than in 1979, and state aid was the slowest growing component of revenues for cities. \textit{Staff of Joint Econ. Comm., 97th Cong., 1st Sess., Trends in the Fiscal Condition of Cities} 25 (Joint Comm. Print 1981).

26. Assessment is a process whereby an assessor determines, through his own judgment, what value to place on a piece of real property for the purpose of taxation. \textit{Real Property Tax, supra} note 1, at 17.


28. Unequal assessment and underassessment increase the individual real property owner's tax liability. Unequal assessment is "a violation of the principle that all
underassessment of other property will result in a higher tax debt to be shared by other taxpayers within the locality. The grant of a tax exemption effectively increases a locality’s budget deficit and consequently the tax burden for real property taxpayers by decreasing the amount of incoming tax revenues.

A taxpayer or recipient of tax-supported services should have the right to insure (1) that his own property is not disproportionately taxed, and (2) that the government receives all revenues to which it is entitled. If the government does not receive all of the revenues due from its tax sources, it may be argued that a third party taxpayer is aggrieved due to the resulting increase in his share of the tax burden.

Third party taxpayer suits have been sustained in many jurisdictions. Some states rely on the language in their assessment-review taxpayers are to receive uniform treatment in the appraisal of their property.”

STRENGTHENING THE REAL PROPERTY TAX, supra note 24, at 40. Underassessment is a “digression from the legal mandate that all real property is to be assessed at its market value, or . . . at a specified percentage of such value.” Id. See also note 61 infra (sets forth the text of newly enacted N.Y. REAL PROP. TAX LAW § 305 which calls for fractional assessment). Exemptions pose another problem to the real property taxpayer. The Temporary State Commission on State and Local Finances has stated that exemptions will result in a reduction of the locality’s tax base. REAL PROPERTY TAX, supra note 1, at 86. This reduction causes the individual taxpayer’s tax burden to be increased. Id. As the number of exemptions increase, the real property tax is opened to criticism and challenges from the non-exempt taxpayers who bear the weight of the inequitable tax burden. Id. In fact, criticism of a rising number of exemptions to the personal property tax caused that tax to be abolished. The real property tax was left to meet the municipalities’ tax burdens. Id. See also note 2 supra (discusses the history of the tax system in New York and subsequent prohibition of taxation of personal property). Over the last 15 years, local officials have criticized the proliferation of exemptions and have expressed concern for the continued effectiveness and vitality of the real property tax system which is local government’s most important source of revenue. REAL PROPERTY TAX, supra note 1, at 86. In 1970, the Commission on State and Local Finances found that real property tax exemptions in New York State had risen to almost $23 billion, a 3000% increase over the total valuation of exempt properties in 1900. Id. at 88. Exempt property is assessed infrequently, as no tax revenue is generated from these lands. The Commission found that sporadic assessment practices led to an underestimation of the value of exempt property. Id. at 90. Updating taxable property is a more productive use of an assessor’s time, since exempt property will generate no revenue and updating its valuation will not produce any change in the locality’s tax base. Id. See note 82 infra and accompanying text for statistics on the recent increase in exempt property in New York State and New York City.

29. E.g., Pulaski County v. Commercial Nat’l Bank, 210 Ark. 124, 194 S.W.2d 883 (1946) (legislative intent to permit one property owner to protest a perceived insufficiency of another taxpayer’s assessment); Pierce v. Green, 229 Iowa 22, 294 N.W. 237 (1940) (tax discrimination may be challenged by the taxpayer who has been discriminated against, even though his tax burden is not increased); Baltimore Steam Packet Co. v. Baltimore, 161 Md. 9, 155 A. 158 (1931) (appellant complained it was taxed on certain property while its competitors were exempt under what was
The New York courts, however, have construed the New York assessment-review statute as precluding certain taxpayer challenges.

claimed to be an invalid statute; remedy was in restraining tax officials from granting the exemption to the competitors); Board of County Comm’rs v. Buch, 190 Md. 394, 58 A.2d 672 (1948) (taxpayer has right and interest to complain of underassessment and nonassessment of property owned by other taxpayers; statutory language not limited to taxpayer’s own property); Southern By. Co. v. Clement, 57 Tenn. App. 54, 415 S.W.2d 146 (Ct. App. 1966) (any taxpayer has a right to petition State Board of Equalization for relief if property of others is assessed at a lesser percentage of actual value than taxpayer’s own property); Brock v. Property Tax Comm’n, 290 N.C. 731, 228 S.E.2d 254 (1976) (taxpayer can challenge property assessment of others if he has been aggrieved); see also Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923) (bridge company brought suit based on the fact that its lands were taxed at full value while neighboring property was taxed at only 55% of its value; due to the burdensome nature of this approach, it was held that the remedy of securing an increase in assessment of all underassessed property in order to achieve equality was a violation of equal protection of the laws); see generally Annot., 5 A.L.R.2d 584 (1959) (discusses taxpayer challenges); Comment, Third Party Standing for Property Tax Assessments: Tug Valley Recovery Center, Inc. v. Mingo County Comm’n, 83 W. Va. L. Rev. 595 (1981) (author examines a state supreme court decision which permitted county residents to compel examination of the appraisal and assessment of any property in the county, including property held by third parties. The court ruled that the residents’ interests in services provided by the county conferred standing sufficient for them to maintain an action). The West Virginia statute refers to “[a]ny person claiming to be aggrieved by any assessment in any land . . . of any county . . . .” W. Va. Code § 11-3-25 (Michie 1974).


31. City of Mount Vernon v. State Bd. of Equalization and Assessment, 44 N.Y.2d 960, 380 N.E.2d 155, 408 N.Y.S.2d 323 (1978) (court held that state real property tax law did not authorize petitioner municipality to seek judicial review of a special franchise assessment made by the State Board of Equalization and Assessment); Van Deventer v. Long Island City, 139 N.Y. 133 (1893) (chapter 269 of the Laws of 1880 [former Article 7 of the Real Property Tax Law] was held not applicable to a case where the whole assessment role was claimed to be illegal and void; rather, it was held to apply only where there was a valid assessment roll in which some person had been illegally assessed, or where the assessment had been excessive and unjust. This case was overturned by the New York Court of Appeals in Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981), see notes 94-95 infra and
B. Real Property Tax Law Article 7

Article 7 of the New York Real Property Tax Law\(^{32}\) was instituted to provide the taxpayer with an expedient and efficient mechanism for determining and correcting tax assessment inequities.\(^{32}\) The statute provides for quasi-judicial administrative review before a Board of Assessors.\(^{34}\) If the taxpayer remains unsatisfied, he may challenge his accompanying text for discussion; Winter v. Board of Assessors, 63 Misc. 2d 451, 311 N.Y.S.2d 684 (Sup. Ct. Nassau County 1969) (proceeding to compel county board of assessors and village to place property of a religious corporation leased to a day camp during the summer on the tax roll was properly brought as a CPLR Article 78 proceeding and not under Article 7 of the Real Property Tax Law, because the taxpayer was enforcing a mandatory, continuing duty of the assessor to assess real property); Central School Dist. No. 1 v. Rochester Gas & Elec. Corp., 61 Misc. 2d 846, 306 N.Y.S.2d 765 (Sup. Ct. Wayne County 1970) (court denied access to Article 7 of the Real Property Tax Law because the plaintiffs did not allege any actionable damage to themselves or to any other taxpayers in case in which a defendant gas and electric corporation was allegedly underassessed); Board of Educ. v. Parsons, 61 Misc. 2d 838, 306 N.Y.S.2d 833 (Sup. Ct. Wayne County 1969) (companion case to Central School District. No. 1 cited above; the court found that neither CPLR Article 78 nor Article 7 of the Real Property Tax Law was available to attack the alleged underassessment of another's property).


\(^{33}\) FIFTEENTH ANN. REP. N.Y. JUD. COUNCIL (1949). "It is recommended that the present certiorari proceeding to review tax assessments on real property under the Tax Law be abolished and that a simple procedure . . . be substituted . . . ." Id. at 332. From a review of the history of proceedings involving the assessments of real property, the appellate division determined that the objective of revising former Article 13 of the Tax Law, now Article 7 of the Real Property Tax Law, was "to provide a clear, simple, efficient, speedy and all encompassing means for the handling of complaints from aggrieved owners of real property arising from the assessment process . . . ." Dudley v. Kerwick, 72 A.D.2d 224, 226, 424 N.Y.S.2d 533, 534-35 (3d Dep't 1980), rev'd, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981).

\(^{34}\) N.Y. REAL PROP. TAX LAW § 526 (McKinney Supp. 1982-1983). Upon completion of the tentative assessment roll, and notice thereof, id. § 506, the board of assessment review shall meet to hear complaints with regard to assessments. Id. § 526 (1). The date for hearing complaints shall be set forth in the notice. Id. In addition, the assessor shall be available with the tentative assessment roll for a specified number of hours at least three days before the Board of Assessors have scheduled their hearing. Id. This information shall also appear in the notice of completion of the tentative assessment roll. Id. As a result of legislation enacted in 1970, effective Oct. 1, 1971, the Assessment Improvement Act, 1970 N.Y. Laws ch. 957, § 1524, complaints in relation to assessments by local governments are heard by a board of assessment review. N.Y. REAL PROP. TAX LAW § 1524 (McKinney Supp. 1982-1983). This board is composed of persons having a knowledge of property values in the locality, but does not include the assessor or members of his staff. Id. Prior to the Assessment Improvement Act, the review board was composed of the assessors themselves. As a result, the individuals who had made the assessments were hearing the complaints regarding those assessments and making decisions on their own initial determinations. The review by the board of assessment is essentially a quasi-judicial function, and the board has the responsibility of reaching a fair judgment. Id.
assessment in New York State's Supreme Court. These actions take precedence over all other actions before the courts.

Article 7, however, offers relief only in instances where the taxpayer has an ownership interest in the property. Therefore, under Article 7, there remains a category of remediless citizens who suffer the effects of the underassessment or exemption of other taxpayers.

According to the New York statute, there are four ways a real property taxpayer may be aggrieved and therefore qualify to challenge a tax assessment: by illegal, erroneous, or unequal assessments, administrative review is a necessary precondition for the maintenance of a proceeding for judicial review under Article 7 of the N.Y. REAL PROP. TAX LAW § 706 (McKinney Supp. 1982-1983). "Such petition must show that a complaint was made to the proper officers to correct such assessment." Id.

35. "A proceeding to review an assessment of real property under this article shall be brought at a special term of the supreme court in the judicial district in which the assessment to be reviewed was made." N.Y. REAL PROP. TAX LAW § 702(1) (McKinney Supp. 1982-1983). This proceeding shall be commenced by service of a petition and notice of an application for review upon officers designated in § 708. Id. §§ 704, 708 (McKinney 1972 & Supp. 1982-1983). This petition shall set forth the way in which the assessment was excessive, unequal or unlawful, or that real property was misclassified. The petitioner must also state that he has been or will be injured as a result. Id. § 706 (McKinney Supp. 1982-1983). The proceedings must be commenced within 30 days after the completion and filing of the assessment roll containing the assessment in question. Id. § 702(2). If the petitioner fails to serve or file the petition and/or notice within the said 30 days, such failure will be a complete defense and the petition will be dismissed. Id. § 702(3) (McKinney 1972).

36. Id. § 700(3) (McKinney 1972).

37. Article 7 may be used by taxpayers aggrieved by allegedly excessive or illegal assessments on their own property, "or in which they have a derivative form of ownership, or in which they have an equitable interest." Board of Educ. v. Parsons, 61 Misc. 2d 838, 842, 306 N.Y.S.2d 833, 839 (Sup. Ct. Wayne County 1969); see also note 39 infra (discusses "aggrieved" taxpayers).

38. N.Y. REAL PROP. TAX LAW § 706 (McKinney Supp. 1982-1983). This section permits court review upon allegations that an assessment is excessive, unequal, unlawful or involves misclassification. The petitioner must also state that he has been or will be injured. Id. "Classification" is defined in Article 18. Id. §§ 1801-1805.

39. "Any person claiming to be aggrieved by any assessment of real property upon any assessment roll may commence a proceeding under this article . . . ." Id. § 704(1) (McKinney 1972). A proceeding, though, is predicated on whether the petitioner has been or will be injured as a result of the assessment. Id. § 706(2) (McKinney Supp. 1982-1983). See also H. LEE & W. LEFORESTIER, supra note 1, at 35 (discusses which persons are "aggrieved" pursuant to N.Y. REAL PROP. TAX LAW § 704 (McKinney 1972 & Supp. 1982-1983)). This has been construed to include the following: one whose pecuniary interests have been or will be adversely affected, for example, a purchaser of real property for which an assessment has been completed, People ex rel. Bingham Operating Corp. v. Eyrich, 265 A.D. 562, 40 N.Y.S.2d 33 (3d Dep't 1943); an owner of property even though the property is not assessed to him, but was assessed to a lessee, People v. Cantor, 115 Misc. 519, 188 N.Y.S. 885 (Sup. Ct. Bronx County 1921); owner who sold property subject to taxes a few days after starting a certiorari proceeding, People ex rel. N.Y. Trust Co. v. Sexton, 176 Misc. 761, 27
or by misclassification. Additionally, the taxpayer may be aggrieved in ways not contemplated by the statute, such as by the underassessment of other real property on the tax roll, or by the abuse of exemption privileges. In those instances where the taxpayer is aggrieved as defined by Article 7, and where he is assessed correctly but must pay higher individual taxes due to the underassessment or exemption of others, the grievance is fundamentally the same—he is the victim of an unfairly high tax burden.

III. Judicial Treatment of the Third Party Taxpayer

A. No Remedy for the Third Party Taxpayer

In Board of Education v. Parsons, a third party taxpayer brought an action under both Article 7 of the RPTL and CPLR Article 78. The petitioner challenged a valuation of certain real property assessed at a lower percentage of full value than other properties in the town.


The petition for a review must contain the basis of the illegal, erroneous, or unequal assessment. In addition, the plaintiff must show that he was or will be damaged, and the complaint must be timely. Waldbaum's, Inc. No. 85 v. Board of Assessors, 106 Misc. 2d 556, 434 N.Y.S.2d 112 (Sup. Ct. Nassau County 1980). Misclassification refers to real property solely in special assessing units. A "special assessing unit" is a unit with a population of one million or more. N.Y. Real Prop. Tax Law § 1801 (McKinney Supp. 1982-1983). The classification for real property in a special assessing unit is set forth at id. § 1802.

40. N.Y. Real Prop. Tax Law § 706 (McKinney Supp. 1982-1983). The petition for a review must contain the basis of the illegal, erroneous, or unequal assessment. In addition, the plaintiff must show that he was or will be damaged, and the complaint must be timely.


43. "[I]t is probably safe to say that as exemptions increase in both number and size, the particular tax system becomes onerous to the non-exempt taxpayers and more subject to criticism grounded in theories of equity." Real Property Tax, supra note 1, at 86.


45. Id. at 839, 306 N.Y.S.2d at 835-36. Petitioners claimed the assessment was "'unjust, unequal, illegal, erroneous, unconstitutional, arbitrary and capricious.'"
court held that the taxpayer had no right to raise such a challenge under either Article 7 of the RPTL or CPLR Article 78. Further, the court stated that Article 7, the taxpayer's exclusive remedy, provided review only for assessments of the taxpayer's own property. This taxpayer challenge was not permitted because, as the court stated, the New York State Legislature "never intended to make a taxpayer an 'assessor' of the property of another" by allowing him to litigate another's tax burden.

B. Third Party Taxpayer Challenge to Assessments

Under Parsons, a third party taxpayer has no mechanism under Article 7 to challenge an "unjust, unequal, illegal, erroneous, unconstitutional, arbitrary and capricious assessment" caused by the underassessment of another taxpayer's property. Seven years later, in Hellerstein v. Assessor of Town of Islip, the New York Court of Appeals found that a taxpayer does have a remedy under Article 7

Id. The petitioners in Parsons claimed that the Rochester Gas & Electric Corp. was underassessed. They sought an increase in the tax assessment claiming that the property was assessed at a lower rate than other properties on the same assessment roll.

46. Id. at 842, 306 N.Y.S.2d at 838-39.
47. Id. at 842, 306 N.Y.S.2d at 838. See also Central School Dist. No. 1, 61 Misc. 2d 846, 306 N.Y.S.2d 765 (suit by school district and individual taxpayer on behalf of similarly situated real property owners was dismissed because the court found no injury to plaintiff non-taxpaying school district and held that the individual plaintiff's exclusive remedy was under RPTL, and not a class action). But see Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981) (upon remittance from the court of appeals after holding that petitioner could bring a CPLR Article 78 proceeding, the appellate division held that the petitioner could bring his CPLR Article 78 action as a class action, and join as a respondent class the exempted property owners. 84 A.D.2d 884, 444 N.Y.S.2d 965 (1981)).
48. 61 Misc. 2d at 842, 306 N.Y.S.2d at 839. See note 37 supra.
49. 61 Misc. 2d at 844, 306 N.Y.S.2d at 841. The legislature gave the taxpayer a remedy to challenge and correct his own assessment and not a remedy to increase the assessment and tax on another's property. Id. at 844-45, 306 N.Y.S.2d at 841. See also Village of Pelham v. New York State Bd. of Equalization & Assessment, 208 Misc. 201, 143 N.Y.S.2d 556 (Sup. Ct. Albany County 1955) (proceeding may not be maintained by a village for purposes of reviewing special franchise assessments fixed by the State Board of Equalization and Assessment—only assessments made by assessors can be challenged by one who is liable for the payment of real property taxes). "If there is no overvaluation of a taxpayer's property, it does not follow that the taxpayer will be injured by an undervaluation of some piece of property belonging to another" taxpayer. 61 Misc. 2d at 844, 306 N.Y.S.2d at 840.
50. 61 Misc. 2d 838, 306 N.Y.S.2d 833.
51. Id. at 839, 842, 306 N.Y.S.2d at 836, 838-39.
when an assessor fails to assess all property in a town at full value.\(^{\text{53}}\) The plaintiff taxpayer claimed that the entire tax roll was illegal because all property had not been assessed at full value pursuant to section 306 of the RPTL.\(^{\text{54}}\) The court held that the practice of fractional assessment was illegal,\(^{\text{55}}\) thereby permitting an Article 7 taxpayer challenge to assessments on property belonging to others.\(^{\text{56}}\)

Prior to \textbf{Hellerstein}, the common practice of fractional assessment had acquired legal status,\(^{\text{57}}\) a result the court of appeals referred to as "legislation by violation."\(^{\text{58}}\) The \textbf{Hellerstein} court ordered full value assessment in the petitioner’s town by a specified date.\(^{\text{59}}\) As a result of this holding, and due to the implication that all of New York State

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53. \textit{Id.} at 14, 332 N.E.2d at 287, 371 N.Y.S.2d at 399. \textbf{Hellerstein} can be distinguished from \textit{Parsons} in that the plaintiff in \textbf{Hellerstein} did not seek to challenge the underassessment of another taxpayer’s property, but instead challenged the failure to comply with § 306 of the Real Property Tax Law which called for full value assessment. The \textbf{Hellerstein} taxpayer’s challenge was a “logical derivation” of the legality of her own assessment. Dudley v. Kerwick, 52 N.Y.2d 542, 550, 421 N.E.2d 797, 799, 439 N.Y.S.2d 305, 307 (1981).


55. \textit{Id.} at 13, 332 N.E.2d at 286-87, 371 N.Y.S.2d at 398-99. \textit{See also Dudley}, 52 N.Y.2d at 550, 421 N.E.2d at 799, 439 N.Y.S.2d at 307 (court of appeals explains why \textbf{Hellerstein} fits within the Article 7 requirement that the complaining taxpayer’s assessment be overvalued, illegal or unequal to others).


59. \textit{Id.} at 14, 332 N.E.2d at 287, 371 N.Y.S.2d at 399. In calling for full value assessment at a future date, the court of appeals noted that an invalidation of the assessment roll could bring “‘fiscal chaos to the Town of Islip.’” \textit{Id.} at 13, 332 N.E.2d at 287, 371 N.Y.S.2d at 299. If the petitioner had sought mandamus under Article 78, the court held that the relief would have been denied. \textit{Id.} This decision was later modified by the court and the full-value assessment attainment date was extended to July 1, 1978. 39 N.Y.2d 920, 352 N.E.2d 593, 386 N.Y.S.2d 406 (1976). The date was further extended to December 31, 1980, 1977 N.Y. Laws ch. 888, to May 15, 1981, 1980 N.Y. Laws ch. 880, to June 15, 1981, 1981 N.Y. Laws ch. 107, and finally, to October 30, 1981, 1981 N.Y. Laws ch. 259. The moratorium protected localities from court orders to assess at full value as mandated by the court of appeals in \textbf{Hellerstein}, thus giving the State time to study the ramifications of the full value issue. \textbf{NEW YORK STATE ASSEMBLY COMMITTEE ON REAL PROPERTY TAXATION, 1981 ANN. REPORT 2} (1981). The Legislature later repealed § 306 which required full valuation of all real property, and enacted § 305. 1981 N.Y. Laws ch. 1057. Section
would have to meet the full-value standard mandate,\textsuperscript{60} the Legislature has repealed section 306. A new section has been added to the RPTL which demands uniform fractional assessment.\textsuperscript{61} One argument in favor of this amendment to the RPTL is that it will relieve municipalities of the cost of "unnecessary revaluations" as a result of the full value assessment standard mandated by \textit{Hellerstein}.\textsuperscript{62}

The State Board of Equalization and Assessment (SBEA), has asserted that the state, through the section 305 "uniform fractional assessment" amendment, condones the existing inequitable condition of the real property tax as it existed prior to the \textit{Hellerstein} decision.\textsuperscript{63}


61. \textsc{N.Y. Real Prop. Tax Law} § 305 (McKinney Supp. 1982-1983). This section provides:

\begin{quote}
Assessment methods and standard. 1. The existing assessing methods in effect in each assessing unit on the effective date of this section may continue. 2. All real property in each assessing unit shall be assessed at a uniform percentage of value (fractional assessment) except that, if the administrative code of a city with a population of one million or more permitted, prior to January 1st, 1981, a classified assessment standard, such standard shall govern unless such city by local law shall elect to be governed by the provisions of this section. 3. Any assessing unit in which assessments are at full value by reason of a revaluation may adopt a level of assessment in accordance with this section.
\end{quote}

62. State Board of Equalization and Assessment, Memorandum in Opposition to N.Y.S. 7000-A, N.Y.A. 9200, Nov. 5, 1981, at 4 [hereinafter cited as SBEA Memorandum in Opposition]. Bill 7000-A was later enacted as § 305. \textsc{N.Y. Real Prop. Tax Law} § 305 (McKinney Supp. 1982-1983). \textit{See} note 61 \textit{supra} for full text of § 305. The State Board of Equalization and Assessment (SBEA) claims that these proponents do not consider the "counterbalancing costs to local governments of litigating the legality" of the amendment nor "the continued certiorari litigation with its attendant potential refund liability." SBEA Memorandum in Opposition, \textit{supra}, at 4. The combined state and local costs which result will surpass the costs of revaluation. \textit{Id.}

In addition, the law does not provide the plaintiff's in "special assessing units," as defined in \textsc{N.Y. Real Prop. Tax Law} § 1801 (McKinney Supp. 1982-1983), with a "plain speedy and efficient remedy" as required by 28 U.S.C. § 1341 (1976). SBEA Memorandum in Opposition, \textit{supra}, at 3. The result will be disastrous and counterproductive to the state programs instituted to accomplish equitable taxes. \textit{Id.} at 4. \textit{See} note 9 \textit{supra} and accompanying text for a list of attempts by the legislature to achieve greater equity for the individual taxpayer. 28 U.S.C. § 1341 (1976) provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state." \textit{Id.} If there is no "plain, speedy and efficient" remedy provided by the state, the federal courts will have jurisdiction. \textit{Id.} See note 70 \textit{infra} for discussion of the \textsc{Friarton Estates Corp.} case where the court held the plaintiffs were not granted a "plain, speedy and efficient remedy" and, as a result, the federal court had jurisdiction.

63. SBEA Memorandum in Opposition, \textit{supra} note 62, at 1-2. The SBEA identifies the basic premises of the new amendment to the Real Property Tax Law as intending
Additional support for this view is given by the enactment of Article 18 of the RPTL which contains assessment limitation provisions. These provisions will severely limit the relative equity of a residential owner's tax burden as his tax liability is made wholly contingent upon the fairness of his assessment on the 1981 roll.

The effect of this section 305 assessment standard will be to eliminate the third party taxpayer's right, recently created by Hellerstein, to use Article 7 to challenge unequal treatment of property owners. This effect is inevitable because, under section 305, the only incentive to proceed to an equitable reassessment program would be a judicial order to comply with the "uniform percentage" standard. Under section 305 there will be no requirement that assessments be updated in the future. Moreover, the pleading and proof requirements for
claims of inequality, especially in "special" assessing units, will make it virtually impossible for any property owner to obtain a "plain, speedy, and efficient remedy" for redress of his complaints. Since section 305 may be used to enforce pre-Hellerstein inequitable assessment practices, third party taxpayers once again will be left without an effective weapon to combat the resulting unfair apportionment of the real property tax burden.

C. Third Party Taxpayer Challenge to Exemptions

The granting of real property tax exemptions is another cause of unequal apportionment of a municipality's tax burden. Under New York law, exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit. Exemption from property taxes necessarily reduces the tax base. As a result, either collections will be decreased or the relative tax burden on the individual
York law, all real property is subject to taxation. Exemption from taxation is the inevitable consequence of the imposition of a tax. Exemptions may be granted to certain organizations and institutions.
for a variety of reasons. In addition to both state and federal government property, the New York State Constitution grants exemptions for religious, charitable and educational organizations. These exemptions provide important indirect support to nonprofit organizations which render substantial public services. Exemptions, however, deprive local governments of revenues and increase the tax burden of individual taxpayers.

The requirements for securing exempt status in New York State are set out in Article 4 of the Real Property Tax Law. In distinguishing the use of the land in certain ways deemed to benefit the public, i.e., railroads; (2) as a subsidy for the support of certain needy individuals such as veterans, clergymen and volunteer firemen; and (3) as an incentive to the preservation of certain types of land, e.g., forest and timberlands. See Real Property Tax, supra note 1, at 136-68.

76. See Note, New York's Real Property Tax Exemptions for Religious, Educational, and Charitable Institutions: A Critical Examination, 44 ALB. L. REV. 488 (1980), examining the religious, educational and charitable exemptions protected under art. XVI, § 1, of the N.Y. CONST. See note 71 supra for text of Article XVI, § 1. The institution seeking tax-exempt status under N.Y. REAL PROP. TAX LAW § 421 must be (1) organized exclusively for a religious, educational, or charitable purpose, (2) conducted as a nonprofit organization, and (3) must use the property exclusively for one or more exempt purposes. See Note, supra, at 488; N.Y. REAL PROP. TAX LAW § 421 (McKinney 1972) for full text of statutory requirements. The constitutional provision was designed to promote the general welfare by eliminating real property taxes on property owned by nonprofit organizations. See Note, supra, at 488. See, e.g., Diocese of Rochester v. Planning Bd. of Brighton, 1 N.Y. 2d 508, 524-25, 136 N.E.2d 827, 836, 154 N.Y.S.2d 849, 861 (1956), where the court held that a zoning ordinance may not exclude a church or synagogue from a residential district; the court also stated that New York State has "declared a policy that churches and schools are more important than local taxes, and that it is in furtherance of the general welfare to exclude such institutions from taxation." The court further stated that the denial of the permit due to the loss of tax revenues was not in furtherance of the general welfare. Id. at 525, 136 N.E.2d at 836, 154 N.Y.S.2d at 861. See Beebe & Harrison, supra note 27; Ginsberg, supra note 1, discussing the public policy supporting the tax exemption of real property used by nonprofit organizations in furtherance of the general welfare.

77. See note 71 supra.

78. The tax exemption of real property used by nonprofit organizations to further their public benefit activities reflects a broadly based public policy in support of this sector of our society. These private organizations often occupy areas of endeavor that government or private profit-oriented institutions have avoided or abandoned, and their programs are often at the forefront of social or cultural change. Their efforts complement or expedite governmental programs and may save public (tax) funds or provide other benefits which defy quantification in fiscal terms.

Ginsberg, supra note 1, at 292.

79. Real Property Tax, supra note 1, at 86. "Approximately 30 percent of the assessed value of real property in New York is exempt from taxation and the percentage of exempt property continues to increase . . . . Fewer and fewer taxpayers are paying more and more tax." Reforms in Real Property Tax Administration, supra note 2, at 12.

between applications for exemption, Article 4 seeks to balance competing societal interests—the promotion of certain groups and organizations deemed beneficial to society, and the preservation of the real property tax base as a source of public revenue. In recent years the number of exemptions granted and the value of exempt properties has increased.

and partial, permissive and mandatory, allowed in New York State. See also note 75 supra (discussing Article 4 exemptions).

81. See Ginsberg, supra note 1. “Although property tax exemptions deprive local governments of . . . revenues, they provide important indirect support to nonprofit organizations . . . .” Id. at 292. These organizations add “character and diversity” to society and “render substantial public services.” In addition, these private organizations function in areas which government or private profit-oriented institutions avoid or abandon. Id. at 292-93. Their programs often instigate social or cultural changes. Id. at 293. These efforts “complement or expedite governmental programs and may save public (tax) funds.” Id. See, e.g., Note, Exemption of Educational, Philanthropic and Religious Institutions from State Real Property Taxes, 64 Harv. L. Rev. 288 (1950). Exemptions are granted to private organizations which execute duties ordinarily the responsibility of the state. The tax revenue foregone will be exceeded by the savings realized. In addition, “the state should encourage not only functions easing the state’s burden, but all activities devoted to humanitarian goals.” Id. at 288-89. The choice, however, must be made as to which organizations will be subsidized. Id. at 299. “[T]he wider the area subsidized, the greater . . . the financial and political pressure to curb all exemptions. . . .” Id. Although exemptions to nonprofit organizations serve the general welfare, exemptions for non-governmental property result in taxpayers subsidizing the individuals or organizations whose property is exempt, since these properties usually require public services paid for from property tax revenues.

82. The amount of increase in exempt property over taxable property as reported by the State Comptroller in 1981 is alarming. See Comptroller’s Municipal Report, supra note 3, at 15, 21.

ASSESSED VALUATION OF REAL PROPERTY
(Amounts in millions of dollars)

<table>
<thead>
<tr>
<th></th>
<th>1969</th>
<th>1979</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Units (including New York City)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxable</td>
<td>54,355.3</td>
<td>85,055.8</td>
</tr>
<tr>
<td>Exempt</td>
<td>22,984.7</td>
<td>41,386.6</td>
</tr>
<tr>
<td>New York City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxable</td>
<td>33,304.9</td>
<td>37,926.1</td>
</tr>
<tr>
<td>Exempt</td>
<td>16,654.4</td>
<td>26,361.9</td>
</tr>
</tbody>
</table>

The striking increase in the New York City exemption figures could be due to tax incentive programs for the creation and rehabilitation of housing, e.g., the J-51 program. New York, N.Y. Admin. Code ch. 51, Title J (1975). This tax abatement program for real estate developers has been criticized and the legislators would like to put reins on this “tax-giveaway” policy. Catch-51 Is Alive, N.Y. Times, July 6, 1982, at A17, col. 2. See note 3 supra for a discussion of tax abatement programs in New York City. In 1980, about 30% of the assessed value of real property in New York
The individual taxpayer has a pecuniary interest in property tax collection. The proliferation of exemptions erodes the tax base and imposes an inequitable burden on taxpayers not benefiting from the exemptions. A taxpayer, therefore, should be provided with an effective procedure to challenge not only improper assessments, but also arbitrary exemptions which directly affect his real property tax liability.

The growth in real property exemptions and the ease with which they may be procured is illustrated in Dudley v. Kerwick. In Dudley, 88% of the citizens of a town within New York State obtained mail order ministries qualifying their real property for tax exemptions. The taxpayer plaintiff in Dudley challenged these wholesale religious exemptions, claiming that the exemptions left the remaining 12% of the town to shoulder the town's entire tax burden. The

State was exempt from taxation and the percentage continues to grow. REFORMS IN REAL PROPERTY TAX ADMINISTRATION, supra note 2, at 12. In the cities, approximately 40% of the assessed value is exempt. Id. The result is that the tax burden is placed on a relatively small, and decreasing, number of taxpayers. Id.

83. REAL PROPERTY TAX, supra note 1, at 86.
84. Absent equitable assessment, the taxpayer is entitled to effective remedies when he has a grievance. STRENGTHENING THE PROPERTY TAX, supra note 24, at 24.
85. 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981). This case involved a taxpayer revolt against exemption abuses within a town. Beebe & Harrison, supra note 27, at 534. As a direct response to a perceived abuse and inappropriate expansion of the nonprofit exemption, "virtually an entire town ceased paying taxes for two years claiming exemptions as mail order ministers." Id.
86. 52 N.Y.2d at 548, 421 N.E.2d at 798, 439 N.Y.S.2d at 306.
87. Id. Following Assessor Kerwick's standards for determination, any person who states he is a church officer (here the Universal Life Church), and signs a covenant claiming that he holds religious functions on his property once or twice a month is entitled to tax exemptions (under former N.Y. REAL PROP. TAX LAW § 436). Brief for Appellant at 9, Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981). See note 133 infra for amendment to N.Y. REAL PROP. TAX LAW § 436. "This is true no matter how many acres of land are owned and regardless of how the property is used during the times between religious prayer or services. The sincerity or veracity of the religious officer is never questioned." Brief for Appellant at 9, Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981). See United States v. Seeger, 380 U.S. 163 (1965). "A profession of religious belief coupled with divine worship bi-monthly qualifies the landowner for total tax exemption. One, like [the plaintiff in Dudley], who in good faith cannot make these claims or will not because of other religious belief or non-belief takes the consequences by ultimately paying everyone else's taxes." Brief for Appellant at 9, Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981).
88. Dudley, 52 N.Y.2d at 548, 421 N.E.2d at 798, 439 N.Y.S.2d at 306. On April 27, 1977, Kerwick (the assessor) told James Dudley that 88% of the Town of Hardenburgh's property owners, members of the Universal Life Church, had filed for religious exemptions. Kerwick went on to say that if Dudley did not do likewise,
appellate division held that Article 7 of the RPTL provided the exclusive method for judicial review. The plaintiff, however, was found to have failed to bring his action within thirty days as required by the statute. Consequently, the taxpayer in Dudley was precluded from litigating the merits of his claim.

The appellate division's ruling in Dudley illustrates the effect of Article 7's brief statute of limitations period. The statute forces a third party aggrieved taxpayer to ascertain the nature of an unfair assessment or exemption and bring an action within thirty days of the

he would be among the 12% who would pay the $500,000 annual governmental expenses. Brief for Appellant at 6, Dudley v. Kerwick, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305 (1981).


[w]e hold that article 7 provides the exclusive method for judicial review under the circumstances presented here. From a review of the history of proceedings involving the assessments of real property, it seems apparent that the objective sought to be achieved by the revision of former article 13 of the Tax Law, now article 7 of the [N.Y. Real Prop. Tax Law] was to provide a clear, simple, efficient, speedy and all encompassing means for the handling of complaints from aggrieved owners of real property arising from the assessment process, save for those instances where jurisdiction was an issue. That this is what the Legislature had in mind appears clear upon examination of the terms and the language of article 7.

Id. The court found

that [article 7] was designed to draw within its sphere assessment challenges of every variety, with the exception of those instances where a body or officer has allegedly acted in excess of its or his jurisdiction, which is surely not the case here where the assessor clearly has the authority to grant or deny any exemption.

Id. The court cited several decisions which have spoken to the exclusivity of article 7.

Id. at 227, 242 N.Y.S.2d at 535. See, e.g., Central School Dist. No. 1, 61 Misc. 2d at 849, 306 N.Y.S.2d at 768 (court denied access to Article 7 of the Real Property Tax Law because the plaintiffs did not allege any actionable damage to himself or to any other taxpayers in case where a defendant gas and electric corporation was allegedly underassessed); Bedford Lake Park Corp. v. Board of Assessors, 45 Misc. 2d 485, 257 N.Y.S.2d 218 (Sup. Ct. Westchester County 1965) (court held petition for review must be served within 30 days or the Article 7 proceeding must be dismissed); Falls Riverway Realty, Inc. v. Maloney, 38 Misc. 2d 925, 238 N.Y.S.2d 702 (Sup. Ct. Niagara County 1963) (failure to serve petition within 30 days after the completion and filing of the assessment roll will result in dismissal of the petition pursuant to Article 7 of the N.Y. Real Prop. Tax Law).


91. People ex rel. Hoesterey v. Taylor, 210 A.D. 196, 205 N.Y.S. 897 (4th Dep't 1924), rev'd on other grounds, 239 N.Y. 626, 147 N.E. 223 (1925). In Hoesterey, the
final completion and filing of the assessment roll.\textsuperscript{92} This burden was lifted when the court of appeals reversed the lower court's decision and provided a new remedy for the third party real property taxpayer.\textsuperscript{93} By overturning an 1893 ruling in \textit{Van Deventer v. Long Island City} which prohibited the voiding of an entire tax roll because of an assessor's omission of property whether by mistake or design,\textsuperscript{94} the court allowed the plaintiff in \textit{Dudley} to bring a proceeding under Article 78 of the Civil Practice Law and Rules (CPLR).\textsuperscript{95} CPLR Article 78 provides a remedy for those aggrieved by actions of state officials and administrative bodies.\textsuperscript{96} Moreover, this remedy provides
for a four-month statute of limitations which commences when the determination to be reviewed becomes final and binding upon the petitioner.\textsuperscript{97} While Article 78 provides a means of relief for the aggrieved third party taxpayer, the remedy eviscerates the exclusive remedy for taxpayers set out by the Legislature in Article 7 of the RPTL.\textsuperscript{98} In addition, Article 78 is also costly to the taxpayer, a result the Judicial Council, in creating the real property tax proceeding, tried to avoid.\textsuperscript{99}

CPLR Article 78\textsuperscript{100} covers the time-honored writs of certiorari to review, mandamus and prohibition.\textsuperscript{101} An Article 78 certiorari to review extends to reviews of assessments which are allegedly void for want of jurisdiction or which are arguably illegal as opposed to merely errors in judgment on the part of the assessor.\textsuperscript{102} A mandamus proceeding is used to compel proper action by the assessor when he has acted in an erroneous manner.\textsuperscript{103} The writ of prohibition is judicially sought only to prevent administrative action in excess of lawful power.\textsuperscript{104} The claim in Dudley\textsuperscript{105} should not fall under the rubric of officer” which it defines as “every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.” See D. Siegel, New York Practice 774 (1978).


98. See note 121 infra.

99. Fifteenth Ann. Rep. N.Y. Jud. Council 328 (1949). Under the former tax certiorari writ process, the taxpayer was required to retain an attorney and supply expert witnesses. Id. The Judicial Council suggested a new, simple form of tax certiorari proceeding be adopted (found today in Article 7 of the N.Y. Real Prop. Tax Law) and the former, more complicated and costly writ process be abolished. Id. at 332. An Article 7 review is preceded by a quasi-judicial review before a Board of Assessors where there is no need for an attorney or witnesses. New York Public Interest Research Center, Inc., Homeowner’s Guide for Challenging Property Taxes 10 (1982). If the taxpayer is still unsatisfied he can then challenge his assessment before the supreme court, which actions take precedence over all other actions before the court. N.Y. Real Prop. Tax Law § 700(3) (McKinney 1972). See notes 34-35 supra and accompanying text.


101. See note 106 infra.


103. Id. at 841, 306 N.Y.S.2d at 837.

104. N.Y. Civ. Prac. Law § 7803 (McKinney 1981); D. Siegel, supra note 96, at 780-82. The three former writs of certiorari to review, mandamus and prohibition were abolished under Article 78 of the former Civil Practice Act, but “the basic
an Article 78 proceeding.\textsuperscript{106} If the Court, in overturning \textit{Van Deventer}, permits the \textit{Dudley} plaintiff to claim that the assessment roll was illegal and void by way of Article 78, then there is nothing to prevent the voiding of entire tax rolls any time a taxpayer does not agree with an assessor's judgment as long as he claims illegality.

IV. Summary of Status of Third Party Challenges

A. Assessment Challenges

The \textit{Hellerstein}\textsuperscript{107} decision which permitted a taxpayer to challenge via Article 7 of the RPTL all assessments on the tax roll which had not been assessed at full value has been effectively obstructed.\textsuperscript{108} Under section 305 of the RPTL, a taxpayer will have difficulty trying to prove inequality of his own assessment.\textsuperscript{109}

functions of the three writs still dictate the scope and extent of permissible judicial review.” \textit{Id.} at 775. \textit{See} note 13 \textit{supra}. A writ of certiorari is used to review an administrative determination resulting from a judicial-type hearing. D. \textit{SIEGEL, supra} note 96, at 780-82. Prohibition does not lie against strictly administrative action, but only against judicial and quasi-judicial functions. \textit{Id.} Mandamus is the petitioner's proper remedy if he seeks to either compel favorable administrative action or to have the court review an unfavorable administrative decision. \textit{Id.} An Article 78 proceeding is used to determine “whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction. . . .” \textit{N.Y. CIV. PRAC. LAW} § 7803(2).

\textsuperscript{105} 52 \textit{N.Y.2d} 542, 421 \textit{N.E.2d} 797, 439 \textit{N.Y.S.2d} 305.

\textsuperscript{106} The assessor was acting within his jurisdiction, so the writ of certiorari would not lie, \textit{see} text accompanying note 102 \textit{supra}; he had performed his duty, so mandamus would not be the correct writ, \textit{see} text accompanying note 103 \textit{supra}; and prohibition would not be proper because the administrative review was not in excess of lawful power, \textit{see} text accompanying note 105 \textit{supra}. \textit{See} note 104 \textit{supra}.


\textsuperscript{108} \textit{See} notes 61-70 \textit{supra} and accompanying text.

\textsuperscript{109} The effect of fractional valuations is that the figure is meaningless. For example, if a property is worth $60,000, but is assessed at $45,000 where the ratio is 50\%, the property is overvalued. It is not always clear to the taxpayer (or to the assessor). SBEA Memorandum in Opposition, \textit{supra} note 62, at 8, (citing \textit{E. JOHNSON, THE PROPERTY TAX: PROBLEMS AND POTENTIALS, FRACTIONAL RATIOS AND THEIR EFFECT ON ACHIEVEMENT OF UNIFORM ASSESSMENT} 211-13 (Tax Institute of America, Princeton, N.J. 1967)). Fractional assessment “requires an unnecessary step in the assessment process, whereby the full value which must first be found is factored back to produce the fractional assessment to be used.” \textit{Id.} Many assessors consider this step so unnecessary that they eventually eliminate it by never bothering to find full value in the first place. \textit{Id.} “They have noted the absurdity, but have compounded the error by eliminating the wrong unnecessary step. The result is that the assessment is then based upon speculation, not fact.” \textit{Id.} Fractional valuations also make it difficult for assessors to notice when valuations gradually “drift out of line.” \textit{Id.} at 9.
A taxpayer challenge to underassessments of other real property is unlikely to succeed, as the taxpayer is required to prove that his property was assessed at a higher proportion than other property on the same tax roll. Fractional assessment values would have to be computed for all neighboring real property, before those values may be compared. The taxpayer might not even be aware of the inequities which would motivate him to this mammoth task, due to the cloaking of disproportionate taxation in fractional assessments. In essence, the taxpayer is required to compare the incomparable.

Assessment methods and standards have been the topic of much debate over the years. See Beebe & Sinnott, supra note 60. Along with N.Y. Real Prop. Tax Law § 305 (McKinney Supp. 1982-1983), see note 61 supra for text, the legislature amended § 720(3) concerning evidence which now reads as follows:

Evidence on the issue of whether an assessment is unequal shall be limited as hereinafter provided . . . (a) in all assessing units, actual sales of real property within the assessing units that occurred during the year in which the assessment under review was made; (b) in all assessing units other than special assessing units . . . the state equalization rate established for the roll containing the assessment under review; or (c) in all special assessing units . . . the latest applicable class ratio established for the roll containing the assessment under review; provided, however, that such class ratios shall not be admissible pursuant to this paragraph unless the petitioner alleges and proves an inequality greater than twelve and one half percent of such class ratio.

N.Y. Real Prop. Tax Law § 720(3) (McKinney Supp. 1982-1983). This change has been received with criticism because the new law will virtually close the doors of the courts to those claiming inequality in their tax burdens. SBEA Memorandum in Opposition, supra note 62, at 3. See also Goldstein & Goldstein, supra note 70. The authors assert that the enactment of N.Y.S. 7000-A (subsequently enacted as N.Y. Real Prop. Tax Law §§ 1800-1805 (McKinney Supp. 1982-1983)), in addition to N.Y. Real Prop. Tax Law §§ 305, 720(3) (McKinney Supp. 1982-1983), and along with the First Department's decision in Colt Indus., Inc. v. Finance Adm'r, 81 A.D.2d 777, 439 N.Y.S.2d 24 (1st Dep't 1981), modified, 54 N.Y.2d 533, 446 N.Y.S.2d 237 (1982), would leave the taxpayer without a remedy on the grounds of inequality in New York City. Goldstein & Goldstein, supra note 70, at 28, col. 2. See also SBEA Memorandum in Opposition, supra note 62, at 3 (discusses the Friarton decision); note 71 supra (discussing the Colt case); note 61 supra for text of N.Y. Real Prop. Tax Law § 305; notes 64-66 supra for discussion of Article 18 of the N.Y. Real Prop. Tax Law. The Colt decision denied a motion to declare a statutory amendment unconstitutional. The amendment prevented a taxpayer from using the SBEA's assessment rate in proving a claim of inequality in a proceeding commenced after January 1, 1970 and not determined as of May 22, 1979 (the effective date of the amendment). This decision was later modified and all references to the constitutionality or applicability of former N.Y. Real Prop. Tax Law §§ 307, 720(3) were deleted. See Slewett & Farber v. Board of Assessors, 54 N.Y.2d 547, 430 N.E.2d 1294, 446 N.Y.S.2d 241 (1982). See also note 70 supra (discusses the Slewett case).

110. The fact that the taxpayer's property is assessed at less than full value or a fraction of full value offers no assurance. Strengthening the Property Tax, supra note 24, at 46. While the taxpayer's property is assessed at 50%, the prevailing level may be only at 25%. Id. The assessor is unlikely to make any voluntary disclosures. Id.
Full-value assessment was a more concrete standard, but since fractional assessment has been enacted, the state has a responsibility for removing as much uncertainty as possible. As the SBEA stated in its memorandum in opposition to the adoption of section 305 of the RPTL, its enactment "would surely send New York State plummeting back toward the bottom of the national listings which measure assessment equity." Clarification for the taxpayer of such data as comparisons of market values and assessed values would remove a considerable amount of taxpayer injustice.

The Hellerstein challenge to other property owners' assessments was permitted by the court under Article 7 of the RPTL because the challenge was a "logical derivation" of the taxpayer's own assessment. Hellerstein, however, was merely a case which enabled the court to enforce full value assessment. Now that full value assessment is no longer the goal, Hellerstein is no longer the remedy. In Dudley v. Kerwick, the court confirmed the exclusivity of the Article 7 remedy to taxpayers and reaffirmed the holding in Parsons. Under Parsons, which remains good law, a third party has no recourse against the underassessment of other real property owners' property.

B. Exemption Challenges

The Dudley claim resembles the plaintiff's contention in Van Deventer, specifically, that properties were intentionally omitted from the tax rolls and, as a result, the entire tax roll was void. The Van Deventer court recognized that a "Pandora [sic] box of litigation" would be opened if a taxpaying plaintiff could bring an Article 78

111. Id. at 63. See also Beebe & Sinnott, supra note 60, at 11.

112. The State Board of Equalization and Assessment stated that the Advisory Committee on Intergovernmental Relations (ACIR), in a 1971 report, ranked New York third from the bottom in measuring the "relative fairness of its property tax." SBEA Memorandum in Opposition, supra note 62, at 5. See note 61 supra.


114. The court of appeals in Dudley, summarizing Parsons, 61 Misc. 2d 838, 306 N.Y.S.2d 833 (Sup. Ct. Wayne County 1969), stated that "the tenor of article 7 is to provide an expeditious procedure by which the numerous and expectable challenges by taxpayers of their own assessments can be resolved." Dudley, 52 N.Y.2d at 549, 421 N.E.2d at 799, 439 N.Y.S.2d at 307.


117. 139 N.Y. 133, 34 N.E. 774.

118. Id. at 135, 34 N.E. at 774.
action resulting in the invalidation of an entire town's assessment rolls. An invalidation due to the assessor's errors, either intentional or due to negligence, would have consequences on the timely collection of real property taxes. Article 78 would be the inappropriate remedy in a claim of illegality due to error when the assessor was acting within his jurisdiction. It is doubtful that a city, town or village tax roll is ever made without the omission of some property. If all imperfect assessment rolls are voided, there may never be a valid final assessment roll. The New York Real Property Tax Law recognizes the inevitability of imperfect assessment rolls and provides for the correction of assessors' errors in the tax rolls of the succeeding year.

In Dudley, the court of appeals overturned Van Deventer without heed of any of the fears underlying the earlier decision. As

119. Id. at 136, 34 N.E. at 774. In Hellerstein, the court of appeals also determined that fiscal chaos would result if entire tax rolls were invalidated. 37 N.Y.2d 1, 13, 332 N.E.2d 279, 287, 371 N.Y.S.2d 388, 399.
120. Van Deventer, 139 N.Y. at 138, 34 N.E. at 775, overruled, Dudley, 52 N.Y.2d at 551, 421 N.E.2d at 800, 439 N.Y.S.2d at 308.
121. All errors of omission or underassessment result in an illegal assessment, but to permit an Article 78 proceeding whenever such errors occur, however caused, would eviscerate the exclusivity provision of the N.Y. Real Prop. Tax Law. City of Mount Vernon v. State Bd. of Equalization & Assessment, 44 N.Y.2d 960, 962, 380 N.E.2d 155, 156, 408 N.Y.S.2d 323, 325 (1978).
122. Van Deventer, 139 N.Y. at 138, 34 N.E. at 775.
123. N.Y. REAL PROP. TAX LAW § 551 (McKinney Supp. 1982-1983). An assessor shall enter on the assessment roll, prior to the tentative completion thereof, "any parcel of real property shown to have been omitted from the assessment roll of the preceding year. . . ." Id.
124. 52 N.Y.2d at 551, 421 N.E.2d at 800, 439 N.Y.S.2d at 308. In People ex rel. Hoesterey v. Taylor, 121 Misc. 718, 202 N.Y.S. 7 (Sup. Ct. Monroe County 1923), rev'd, 210 A.D. 196, 205 N.Y.S. 897 (4th Dep't 1924), rev'd on other grounds, 239 N.Y. 626, 147 N.E. 223 (1925), the supreme court denied an Article 78 proceeding brought by a taxpayer whose tax burden was increased because of the exemption from taxation of the property of another property owner. The court held that an Article 78 writ of certiorari would not furnish a remedy for a taxpayer who had been illegally assessed or overtaxed and, therefore, it could not furnish a remedy to an aggrieved taxpayer whose tax burden was increased by the omission of taxable property. Id. at 721, 202 N.Y.S. at 10. The supreme court held that Article 7 only covered the taxpayer's own property, but the court stated that the legislature could supply the needed relief. Id. at 723, 202 N.Y.S. at 11. The legislature had extended the remedy under Article 7 for a property owner whose tax burden had been increased, 1880 N.Y. Laws ch. 269, so it could also extend the remedy to one whose tax burden had been directly increased by the exemption from taxation of property of another property owner. Id. The appellate division reversed the supreme court holding that the plaintiff could seek relief through Article 78. 210 A.D. 196, 205 N.Y.S. 897 (1924). The court of appeals reversed the appellate division because the rolls had already passed out of the hands of the assessor, and the assessor was unable
the Dudley decision was not limited to its facts, the door was opened by the court of appeals for routine Article 78 proceedings against allegedly illegal exemptions.¹²⁷ Article 78 can be used to challenge any favorable tax treatment accorded another taxpayer as long as allegations that the assessor ignored statutory guidelines are present.¹²⁸ The Dudley court’s Article 78 remedy exceeded the palliative the taxpayer needed: a method of challenging exemptions which affect his own tax burden without altering the tax liability of the town’s remaining taxpayers.¹²⁹

C. Current Status

The main obstacle to the use of Article 7 by a taxpayer challenging the assessments or exemptions of others is the third party taxpayer’s difficulty in satisfying the brief statute of limitations.¹³⁰ The thirty-day statute of limitations in Article 7 of the RPTL is appropriate for a taxpayer who wishes to challenge his own assessment.¹³¹ It is extremely difficult and burdensome, however, for a third party taxpayer to obtain the information necessary to raise a challenge to the assessments or exemptions of his fellow citizens within a thirty-day period.¹³² In Dudley, for example, the plaintiff would have been

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¹²⁵. 139 N.Y. 133, 34 N.E. 774. See note 133 infra.
¹²⁶. Dudley, 52 N.Y.2d at 556, 421 N.E.2d at 803, 439 N.Y.S.2d at 311 (Gabrielli, J., dissenting).
¹²⁷. Id. See also note 133 infra.
¹²⁸. Dudley, 52 N.Y.2d at 556, 421 N.E.2d at 803, 439 N.Y.S.2d at 311 (Gabrielli, J., dissenting).
¹²⁹. The petitioning plaintiff in Dudley v. Kerwick was one of 12% of the town’s remaining landowners who would have to pay the full $500,000 annual governmental expense. Special Term permitted the action to proceed as a class action on behalf of all non-exempt property owners. Id. at 548, 421 N.E.2d at 798, 439 N.Y.S.2d at 306.
¹³⁰. See note 91 supra.
¹³¹. See note 92 supra.
¹³². Brief for Appellant at 14, Dudley, 52 N.Y.2d 542, 421 N.E.2d 797, 439 N.Y.S.2d 305. In Dudley, [t]here was simply no reasonable possibility, even assuming Dudley had been inclined to attempt to monitor the religious activity of his neighbors, that he could have done so and presented a coherent argument before the Board of Assessment Review in the time between the initial filing of the roll on May 25, 1977, and grievance day on June 21, 1977.
precluded from bringing an action had the court of appeals not found CPLR Article 78 available to him.\textsuperscript{133}

As a result of Dudley, a taxpayer is permitted to use the "exclusive remedy" provided by Article 7 for taxpayer grievances\textsuperscript{134} and CPLR Article 78 to challenge third party favorable tax treatment on the basis of illegality. Article 78 provides for a four-month statute of limita-

\textit{Id.} In addition, Dudley would have been faced with setting forth his objections to a Board of Assessment Review composed of three persons, all of whom had been exempted themselves. \textit{Id.} at 13.

133. Had the court of appeals affirmed the appellate division's holding that Article 7 of the RPTL was the plaintiff's sole remedy in Dudley, the plaintiff would have been precluded due to the short 30-day statute of limitations provided in Article 7. By overthrowing the \textit{Van Deventer} decision in Dudley, however, the court enabled the plaintiff to bring an action under CPLR Article 78. \textit{Dudley}, 52 N.Y.2d at 551, 421 N.E.2d at 800, 439 N.Y.S.2d at 308. However, as the dissent in Dudley pointed out, the \textit{Van Deventer} holding represented "a sound policy of judicial abstention" in that the courts should not declare a town's entire tax roll void due to an assessor's omission of property either by mistake or design. \textit{Dudley}, 52 N.Y.2d at 553, 421 N.E.2d at 801, 439 N.Y.S.2d at 309 (Gabrielli, J., dissenting). Therefore, rather than forcing a court to declare an entire tax roll void, the legislature should fashion a remedy for this aggrieved taxpayer.

The \textit{Van Deventer} holding proved wise in light of the fact that the legislature, following the Town of Hardenburgh's flagrant abuse of the exemption, amended N.Y. \textit{REAL PROP. TAX LAW} § 436, eliminating the possibility of another Dudley problem. \textit{Dudley}, 52 N.Y.2d at 555, 421 N.E.2d at 802, 439 N.Y.S.2d at 310 (Gabrielli, J., dissenting). The amendment requires the "exclusive" use of property for religious purposes, thereby eliminating persons who claim to use their home once or twice a month for services as in the Town of Hardenburgh. The problem of exemptions as effecting other taxpayers were thus resolved with regard to § 436, but inequities remain in underassessments and other exemptions not within § 436. Compare N.Y. \textit{REAL PROP. TAX LAW} § 436 (original version): "Real property held by an officer of a religious denomination shall be entitled to the same exemption from taxation, special ad valorem levies and special assessments, subject to the same conditions and exceptions, as property owned by a religious corporation," 1958 N.Y. Laws ch. 959 with N.Y. \textit{REAL PROP. TAX LAW} § 436 (McKinney Supp. 1982-1983) (current version), 1978 N.Y. Laws ch. 738:

Real property held in trust by a clergyman or minister of a religious denomination for the benefit of the members of his incorporated church or unincorporated church shall be entitled to the same exemption from taxation, special ad valorem levies and special assessments as authorized by section four hundred twenty-a of this article; provided that such real property shall satisfy all the conditions and exceptions set forth therein including that the property so held be used exclusively for one or more of the purposes enumerated in paragraph (a) of subdivision one of section four hundred twenty-a of this article.


134. N.Y. \textit{REAL PROP. TAX LAW} § 700(1) (McKinney 1972). "A proceeding to review an assessment of real property shall be brought as provided in this article. . . ." \textit{Id.}
However, an Article 78 proceeding is not desirable as it may invalidate a town’s entire tax assessment role.136 Adoption of a four-month statute of limitations would be a more appropriate time frame to allow a third party taxpayer to challenge under Article 7 of the RPTL. The third party taxpayer would have time to learn of the inequity and to file a petition as required in RPTL section 706.137 However, extension of the Article 7 statute of limitations for third party taxpayers from a thirty-day period to a four-month period, as found in Article 78, would present a problem to the taxing municipality concerned with the timely collection of real property taxes.

V. Recommendations For Change

Unfair and inequitable taxes undermine the integrity of any tax system.138 The basic premise of a system of taxation is that similarly situated individuals pay an equitable share of the tax burden. The integrity of the real property tax system depends on achieving that fairness.

The taxpayer’s difficulties in obtaining knowledge on which to base a challenge to third parties’ tax assessments or exemptions argue persuasively for remedial action. The most direct solution for taxpayers

135. See text accompanying note 97 supra.
136. See notes 121-25 supra and accompanying text.
138. People v. Life Science Church, 82-1 U.S. Tax Cas. (CCH) ¶ 9414 (1982). The court, after stating that the payment of income tax is voluntarily complied with by taxpayers, determined that “[i]f this self-discipline is to be maintained improper exemptions must be ferreted out and denied because it is impossible for the government to collect income taxes through audit alone and the very structure of organized government may be undermined.” Id. The result was an injunction against illegal, fraudulent and deceptive acts, e.g., soliciting funds from the public for minister credentials. Id. “Regardless of whether this condition [inequity] stems from injustices inherent in some of the tax provisions or from administrative incompetence, it creates for the property tax system an unhealthy disrespect.” STRENGTHENING THE PROPERTY TAX, supra note 24, at 8. The SBEA, citing the Temporary State Commission on the Real Property Tax report in 1979, has stated that

[t]he real property tax has come under increasing attack because it is perceived to be excessive and unfair. Inequity in the present system, obviously, contributes to unfairness but it also makes the real property tax excessive for many taxpayers. The basic premise of any system of taxation is that similarly situated individuals pay the same share of the tax burden. The integrity of the real property tax system rests on achieving such fairness, and can only be maintained by assessing according to a standard. SBEA Memorandum in Opposition, supra note 62, at 4.
required to evaluate the tax burden of others is a provision in the RPTL requiring notice to taxpayers concerning the nature and date of completion of tax rolls.

Since notice of this nature would be inefficient and costly, an alternative would be to expand the role of the State Board of Equalization and Assessment so that the Board may substantively enforce compliance with the laws governing the assessment and taxation of real property. In addition, the holding in *Parsons* should be overturned or superseded by legislative response. This would permit an aggrieved third party taxpayer to challenge unfair tax burdens.

A. Notice

Article 7 of the RPTL was established as the primary vehicle to challenge tax assessments, and presents an advantage to the taxpayer in its expediency. This efficient remedy also enables a taxing municipality to depend on a constant, steady flow of revenues by speedy resolution of any questionable tax income.

Article 7 mandates that notice of a property owner's increased assessment be sent to the taxpayer. However, Article 7 does not require notice of underassessments and improper exemptions granted to property owners which directly increase a third party taxpayer's tax liability. Without such notice, an aggrieved taxpayer cannot raise an effective challenge within the thirty-day statutory period.

The only notice provision capable of remedying a third party taxpayer grievance is one which calls for full disclosure of a municipality's tentative assessment roll. This notice provision, while necessary due to the present inequitable state of the law, is obviously inefficient.

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139. See notes 37, 89 & 134 supra.
141. N.Y. REAL PROP. TAX LAW § 510 (McKinney Supp. 1982-1983). Under § 510, an assessor must mail to each owner of real property, no later than 10 days prior to the date for hearing complaints in relation to assessments, a notice of the assessed valuation for that year and the previous year. This notice shall indicate the net increase in the assessment as well as a statement concerning the availability of a publication containing procedures for contesting such assessments at the assessor's office. *Id.*
142. Pursuant to N.Y. REAL PROP. TAX LAW § 506 (McKinney Supp. 1982-1983), notice of the completed tentative assessment roll must be published in the designated official newspaper. The actual tentative assessment roll is left with the assessor or town clerk, who is to make the roll available for public inspection. Under third party notice, the tentative assessment roll could be published in toto, eliminating the problem outlined by the appellate division in *People ex rel. Hoesterey v. Taylor*, discussed at note 91 supra.
It is both costly and burdensome to the municipality involved. An alternative, and more appropriate, remedy would be the granting of authority to the State Board of Equalization and Assessment (SBEA) to regulate local assessment and exemption.

B. Expansion of SBEA Authority

Many third party taxpayer challenges could be resolved without the need for an Article 7 remedy, if New York State would improve local assessment administration. The more equitably administered the tax system, the less the need for review. The SBEA could be structured and perhaps expanded to permit more active and direct participation in local assessment administration.

The SBEA was created as a temporary commission in 1949 to revise the state equalization rates and offer recommendations on the continuation of this essential function in the future. In 1960, the temporary commission was reconstituted as a permanent state agency. The essential function of the agency did not change; it

143. No study of the problems involved in tax certiorari proceedings can fail to note that, more fundamental than the need of providing a simple, efficient method of reviewing tax assessments, is the need for a method of determining in the first instance the assessments which will distribute the tax burden equitably among the taxpayers. If a method could be devised which would satisfy such requirement, obviously the need for a review would be practically eliminated.

Fifteenth Ann. Rep. N.Y. Jud. Council 327 (1949); "it makes more sense to work for good quality primary assessing than to concentrate on perfecting a hierarchy of review and appeal agencies to correct primary assessing mistakes." Strengthening the Property Tax, supra note 24, at 50.

144. Fifteenth Ann. Rep. N.Y. Jud. Council 327 (1949). There is a correlation between the problem of formulating a method for equitable assessments and the problem of providing a simple method of reviewing tax assessments. Id. at 327-28. Since a great proportion of revenues is collected by municipal governments through the real property tax, see note 2 supra, "the question of whether a tax assessment is erroneous because of illegality, inequality or overvaluation is of great importance."


146. This Board was created due to legislative concern that existing equalization rates had become inequitable as a result of economic inflation after World War II. 1949 N.Y. Laws ch. 346, § 1 (Legislative determinations); Town of Smithtown v. Moore, 11 N.Y.2d 238, 241, 183 N.E.2d 66, 67, 228 N.Y.S.2d 657, 659 (1962); Guth Realty, Inc. v. Gingold, 34 N.Y.2d 440, 448, 315 N.E.2d 441, 444, 358 N.Y.S.2d 367, 371 (1974).


remained authorized to advise on assessment matters and to keep current equalization rates.\textsuperscript{149}

Beyond the statutory power to advise local assessors on assessment rates\textsuperscript{150} the SBEA has little power in relation to local assessment boards\textsuperscript{151} which are regarded as bearing the primary responsibility on matters of local taxation.\textsuperscript{152} This lack of efficacious power is illustrated in \textit{SBEA v. Kerwick},\textsuperscript{153} a companion case to \textit{Dudley}.

In \textit{Kerwick}, the SBEA sought to compel a town assessor to follow the Board’s recommendations to deny certain exemptions to local taxpayers.\textsuperscript{154} The SBEA’s suit to force compliance with its guidance was denied by the court of appeals.\textsuperscript{155} The court did not consider the

\begin{itemize}
\item \textsuperscript{149} Governor’s Memorandum (N.Y.A. 4396, 183d Sess.), \textit{reprinted in} [1960] \textit{N.Y. LEGIS. ANN.} 482. See 1960 N.Y. Laws ch. 335. In his memorandum on March 31, 1960, approving 1960 N.Y. Laws ch. 335, the Governor stated: “The Board of Equalization and Assessment advises local government on assessment matters, keeps current state equalization rates for municipalities, assesses special types of property so that they may be properly entered on local assessment rolls, and supplies assessment information to State agencies.” Governor’s Memorandum (N.Y.A. 4396, 183d Sess.), \textit{reprinted in} [1960] \textit{N.Y. LEGIS. ANN.} 482.
\item \textsuperscript{150} N.Y. \textit{REAL PROP. TAX LAW} § 202(1)(g) (McKinney 1972). The purpose of the State Board is to furnish assessors with information necessary or proper in making assessments. \textit{Id.}
\item \textsuperscript{151} SBEA v. Kerwick, 52 N.Y.2d 557, 421 N.E.2d 803, 439 N.Y.S.2d 311 (1981). “In determining the authority claimed by the SBEA we must also consider the active participation by that agency in this complex and expensive litigation. SBEA can point to no specific legislative authorization to undertake it.” \textit{Id.} at 574, 421 N.E.2d at 808, 439 N.Y.S.2d at 316.
\item \textsuperscript{152} \textit{Id.} at 573, 421 N.E.2d at 807, 439 N.Y.S.2d at 315-16. The SBEA may “[f]urnish assessors with such information and instructions as may be necessary or proper to aid them in making assessments. . . .” \textit{Id.} (quoting N.Y. \textit{REAL PROP. TAX LAW} § 202(1)(g) (McKinney 1972)).
\item \textsuperscript{153} 52 N.Y.2d 557, 421 N.E.2d 803, 439 N.Y.S.2d 311 (1981). The court held that the statute grants authority to the SBEA “to aid” in assessments, but gives no substantive authority to direct assessment decisions. \textit{Id.} at 573, 421 N.E.2d at 807, 439 N.Y.S.2d at 315.
\item \textsuperscript{154} 52 N.Y.2d 557, 421 N.E.2d 803, 439 N.Y.S.2d 311 (1981). In a memorandum to assessors, the SBEA stated that no fact situation had yet been presented to the SBEA which would entitle real property owned by a Universal Life Church member to either a partial or total exemption. Memorandum from the SBEA to Assessors regarding the Universal Life Church, April 13, 1977. In addition, the SBEA enclosed a 28-page advisory memorandum concerning the “Taxable Status of Real Property Owned by Universal Life Church Members,” April 11, 1977. This advisory memo analyzed the Federal and State constitutional case law, as well as N.Y. \textit{REAL PROP. TAX LAW} §§ 421, 436, 460 & 462, pertaining to exemptions and again concluded that the facts which had been presented to date to the SBEA by the assessors would not entitle members of the Universal Life Church to either a total or partial exemption. \textit{Id.}
\item \textsuperscript{155} See note 153 \textit{supra} and accompanying text.
\end{itemize}
SBEA's position on the propriety of the exemptions at issue, stating only that the case must be dismissed as the SBEA lacked authority to initiate the lawsuit. In so ruling, the court effectively denied the SBEA any power to enforce the guidelines against the determinations of local assessors.

An expansion of the function of the SBEA to oversee local assessment practices would have enabled the Board to prevent the abusive use of exemption privileges in *Dudley*. If a distinct electoral minority is shouldering the tax burden, as did twelve percent of the town in *Dudley*, assessment reform through the political process cannot be expected unless the town's majority votes against their interests. To the extent the SBEA can exert its power on local tax assessors, local autonomy and the benefits of keeping the tax power close to the taxpayer are diluted. The SBEA, however, would be able to bring to bear considerable expertise on local tax inequities, provide

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156. 52 N.Y.2d at 568, 421 N.E.2d at 804, 439 N.Y.S.2d at 312.
157. *Id.* at 573-74, 421 N.E.2d at 808, 439 N.Y.S.2d at 316. The court of appeals, however, stated that "nothing we have said should reflect adversely on the propriety of the preparation and distribution of the instructional memorandum dealing with religious property exemptions. The availability of such information is undoubtedly valuable in this problematical area." *Id.* at 574, 421 N.E.2d at 808, 439 N.Y.S.2d at 316.
158. In addition, if the SBEA had substantive authority over illegal assessment procedures by either local assessors or the boards of assessment review, the onus and cost of individual, private litigation would be removed from the individual taxpayer.
159. As expressed by the court in the *Van Deventer* case, the aggrieved taxpayer, who has been aggrieved by the omission of property from the assessment rolls, is in the same position as any citizen aggrieved by governmental action. *Van Deventer*, 139 N.Y. at 138, 34 N.E. at 775. Such a taxpayer "must appeal to public opinion and to the ballot, and use his efforts to procure the election of better or more competent assessors." *Id.* However, as the court of appeals pointed out in *Dudley*, there is little likelihood that almost 90% of the Town of Hardenburgh would exercise the ballot to remove the assessor who granted them exemptions. *Dudley*, 52 N.Y.2d at 551, 421 N.E.2d at 800, 439 N.Y.S.2d at 308.
160. Positioning the SBEA between local governments and the collection of their taxes by granting the SBEA substantive powers will obscure the certainty of tax collection for these municipalities. The Board was created to establish a "more effective State program of services to local government." Governor's Memorandum, *reprinted in* [1960] N.Y. LEGIS. ANN. 482. See note 149 *supra* for SBEA present purpose. By granting the SBEA substantive power, the Board will in essence be dictating proper revenue collection to local governments.
161. The State Board maintains a full-time staff of attorneys, under the direction of the Board's Counsel to advise and assist the State Board and its personnel in the performance of their daily operations. In this role, staff
needed legal resources to taxpayers who feel aggrieved, and prevent frivolous cases from entering New York State's congested courts. This effect could be accomplished through legislative enactment granting the SBEA substantive authority to review assessment practices. Legislation should be enacted to compel adherence to SBEA instruction issued pursuant to section 202 of the RPTL. Immediate judicial proceedings should be permitted without the necessity of complying with the hearing requirements of section 216 of the RPTL as interpreted by the court of appeals. Prompt judicial review would dispose of problems prior to the finalization of the assessment roll.

attorneys have acquired a comprehensive understanding of the panoply of administrative, technical and legal activities of the Board.

Memorandum to the Legislature from the SBEA dated June 2, 1982, in support of Bill No. 82-52 to amend the N.Y. Real Prop. Tax Law in relation to the power of the State Board of Equalization and Assessment, at 4. The effect of this Bill, if enacted, would be to "redefine the authority of the [SBEA] to review actions by local assessment officials and to enforce compliance with the laws governing the assessment and taxation of real property." Id. at 1.

162. N.Y. REAL PROP. TAX LAW § 202(1)(g) (McKinney 1972). "Powers and duties of the state board

1. The board shall: . . .

(g) Furnish assessors with such information and instructions as may be necessary or proper to aid them in making assessments, which instructions shall be followed and compliance with which may be enforced by the board. . . ." Id.

163. The SBEA relied on § 202, see note 172 supra, to initiate a judicial proceeding to enforce the assessor in the Dudley case to reinstate all real property to the taxable portion of the tentative assessment roll which had been granted exemptions from taxation in an "arbitrary, capricious or unlawful manner." SBEA v. Kerwick, 52 N.Y.2d 557, 568, 421 N.E.2d 803, 805, 439 N.Y.S.2d 311, 313 (1981). The court determined that the SBEA must first comply with the preliminaries for such prompt judicial review as set forth in § 216(2) of the N.Y. REAL PROP. TAX LAW. Id. at 569, 421 N.E.2d at 805, 439 N.Y.S.2d at 313. NEW YORK REAL PROP. TAX LAW § 216(2) (McKinney 1972) states that:

Whenever it appears to the satisfaction of the board that any assessor or other public officer or employee whose duties relate to assessments has failed to comply with the provisions of this chapter or any other law relating to such duties, or the rules and regulations of the board made pursuant thereto, after a hearing on the facts [emphasis added], the board may issue its order directing such an assessor, officer or employee to comply with such law, rule or regulation, and if such assessor, officer or employee shall neglect or refuse to comply therewith within the period of ten days after service on him of such order, the board may apply to a justice of the supreme court for a summary order to compel him to comply with such law, rule or regulation, and the justice shall have [the] power to issue such order.

164. State Bd. of Equalization and Assessment, Report of Hearing Officer 11 (March 8, 1982).
C. Permit Third Party Taxpayer Challenges Under Article 7 of the RPTL

In conjunction with the substantive expansion of SBEA authority, the ruling in Parson's should be superseded by legislative action. The legislature should expand the definition of "aggrieved person" in section 704 of the Real Property Tax Law.

The New York State Constitution clearly defines the legislature’s obligation regarding its taxing powers. Section one of Article XVI 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.” The New York RPTL currently provides property owners with a remedy solely for challenges to assessments made on property owned by them.

Under Parson's, the present definition of “aggrieved” covers only a taxpayer who has an ownership interest in the property. In Parson's, the court stated that if there is no overvaluation of a taxpayer’s property, then the taxpayer will not be aggrieved by the undervaluation of property of another. However, the Parson's court failed to recognize that a third party taxpayer may be aggrieved by a higher tax burden due to underassessment or improper exemption of other property. This higher burden, due to the lost tax from the underassessment or improper exemption, causes the third party taxpayer to be aggrieved. The New York State Legislature, therefore, should expand the definition of “aggrieved person” under the Real Property Tax Law to include these aggrieved taxpayers. Such an amendment would permit a third party taxpayer to challenge via Article 7 of the RPTL if he satisfied the same requisite administrative review procedure and

165. 61 Misc. 2d 838, 306 N.Y.S.2d 833 (court held that a remedy under Article 7 of the N.Y. Real Prop. Tax Law covered only taxpayers with an ownership of the property whose assessment is to be challenged).
166. N.Y. REAL PROP. TAX LAW § 704(1) (McKinney 1972). “Any person claiming to be aggrieved by any assessment of real property upon any assessment roll may commence a proceeding under this article by serving a petition. . . .” Id. The petition shall set forth “the respect in which the assessment is excessive, unequal or unlawful, or the respect in which real property is misclassified and stating that the petitioner is or will be injured thereby.” Id. § 706 (McKinney Supp. 1982-1983).
167. N.Y. CONST., art. XVI, § 1.
168. See note 37 supra.
169. Parson's, 61 Misc. 2d 838, 842, 306 N.Y.S.2d 833, 839, “or in which they have a derivative form of ownership, or in which they have an equitable interest.”
170. Id. at 844, 306 N.Y.S.2d at 840.
the short thirty-day statute of limitations as a taxpayer owner.\textsuperscript{171} A third party taxpayer, once he has learned of an inequitable assessment or improper exemption, can then wait until the next tentative assessment roll is filed and bring a complaint for administrative review.\textsuperscript{172}

\section*{VI. Conclusion}

The present administrative-judicial hierarchy of procedure for assessment review and appeal under Article 7 of the RPTL\textsuperscript{173} should be evaluated and amended to provide the remedies taxpayers deserve.\textsuperscript{174} An amendment of the RPTL which mandates notice of the completion of the tentative assessment roll to each taxpayer would benefit both owner taxpayers as well as taxpayers aggrieved by assessments or exemptions of the property of others. Such a provision, however, is burdensome and inefficient. Therefore, the only adequate remedy for third party taxpayers lies in increased regulatory authority over inequitable assessment and exemption practices. Given the frequent inequities in these practices, responsibility for corrective action should not be placed so heavily on the taxpayer. The onus for correction should be transferred to the state, specifically, the State Board of Equalization and Assessment. In addition, third party taxpayers should be deemed to be "aggrieved persons" under Article 7 of the Real Property Tax Law. These courses of action will permit the New York State

\textsuperscript{171} If a third party taxpayer claim is to be brought under Article 7 of the N.Y. Real Prop. Tax Law, notice of such claim should be served on the property owner whose assessment or exemption is to be challenged.

\textsuperscript{172} This means that once the tentative assessment roll has been completed and notice published and posted, the taxpayer must appear on "Grievance Day" with his complaint. See note 34 \textit{supra}. Thereafter, upon final completion and filing of the assessment roll which starts the 30 day statute of limitations to run, he may challenge the results in a judicial proceeding. \textit{See N.Y. Real Prop. Tax Law §§ 516, 702(2)} (McKinney Supp. 1982-1983).

\textsuperscript{173} \textit{See notes 34-35 \textit{supra}.}

\textsuperscript{174} Demands for reform are nearly as old as the property tax itself. \textit{See, e.g., Strengthening the Property Tax, \textit{supra} note 24; State of New York, Report of the State Commission on Eminent Domain and Real Property Tax Assessment Review (1975); Real Property Tax, \textit{supra} note 1; Comment, \textit{supra} note 72. Several factors in recent years have combined to increase the intensity and urgency of such demands in New York State. Toward an Evaluation, \textit{supra} note 23. Among these factors are: increased awareness of assessment inequities; the proliferation of exemptions and their abuse; increased tax reduction awards because of successful appeals; increased tax burdens because of rising government costs; constraining tax limitations on cities and school districts; and the necessity for greater equality in school financing. Id. at 103.}
Legislature to fulfill the New York Constitutional requirement\textsuperscript{175} of providing third party taxpayers with a means of reviewing the underrassessment and the improper exemption of property owned by other taxpayers on the same assessment roll.

\textit{Catherine P. Bonnette}

\footnotetext{175. N.Y. \textsc{Const.} art. XVI, § 1. See text accompanying note 167 \textit{supra}.}