

## REAL PROPERTY ASSESSMENTS IN OHIO

Locally imposed real property taxes have traditionally been the principle financial bulwark of the local governments in Ohio. These taxes are locally collected, and virtually all will go to local treasuries to be spent on local programs. Despite the importance and long existence of the property tax, it has been under frequent attack for many years.<sup>1</sup> Perhaps the most repeated criticism concerns inequalities in the local assessment of real property. It is the county auditor upon whom this criticism must fall for he has the primary duty of determining the taxable value of the real property within his county.<sup>2</sup> In theory, the county auditor as appraiser has the sole function of finding and evaluating property at its full value.<sup>3</sup> However, the decision made in his office as to the percentage of market value that will be used for assessment purposes is almost controlling and because of this choice, the auditor can direct the fiscal policy of most local governments.<sup>4</sup> Furthermore, because this determination of what percentage to use usually results in inequality as to who bears the burden of the property tax within and between the counties, there is a necessity for equalization created by this failure of the local officials in the counties to assess at a state wide uniform valuation level. It is this problem of equalizing the real property tax burden that the General Assembly and the Supreme Court of Ohio have tried to remedy.

The Ohio Constitution provides that property shall be taxed at a uniform rate according to value.<sup>5</sup> The Ohio Statutes stated that this value is the true value in money;<sup>6</sup> therefore what ever was the full value would be the base to which the tax rate was applied. However, in Ohio, it has been traditional for the county auditors to assess real property at less than its full value, in other words, to assess property for taxation at only a percentage of monetary value. This assessed value is achieved by comparing the aggregate appraised value of the property within the county to recent sales of property within that same county. This ratio is expressed in a percentage and the percentage is applied to the appraised value to get the tax base of the property. Traditionally, this comparison of the sales data with the aggregate appraisal value was thought to correct any deficiencies in the assessment.<sup>7</sup> The best method of determining the

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<sup>1</sup> D. NETZER, *ECONOMICS OF THE PROPERTY TAX* 3-8 (1966).

<sup>2</sup> OHIO REV. CODE ANN. § 5713.01 (Page Supp. 1968).

<sup>3</sup> NATIONAL ASSOCIATION OF ASSESSING OFFICERS, *ASSESSMENT PRINCIPALS AND TERMINOLOGY* 32-36 (1937).

<sup>4</sup> NATIONAL TAX ASSOCIATION *PROCEEDINGS, RECENT STATEWIDE PROGRAMS TO IMPROVE LOCAL ASSESSMENTS* 166-67 (1951), cited in E. LEB, *STATE EQUALIZATION OF LOCAL ASSESSMENTS* 41 (1953).

<sup>5</sup> OHIO CONST. art. 12 § 9.

<sup>6</sup> OHIO REV. CODE ANN. § 5713.01 (Page 1953).

<sup>7</sup> INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, *ASSESSMENT ADMINISTRATION* 7 (1963).

monetary value of a particular piece of property is an actual sale of that property by a willing seller to a willing buyer.<sup>8</sup> Since this information is rarely available with respect to a particular piece of property the county auditor will appraise all the property in the county. The accuracy of the assessment system can then be tested by computing the ratio between the price at which specific properties sell and the appraisal value of these same properties.<sup>9</sup>

This percentage that is applied to the appraised value can be very important to the revenues of a particular county. There are a number of reasons why a percentage which is either higher or lower than that used by other counties may be beneficial. One is the avoidance of state taxes apportioned on the basis of assessed valuations. Another, is to secure a larger share of grants-in-aid, or state collected, locally shared taxes apportioned on the basis of assessment. Furthermore, by having a relatively higher percentage applied, the community can maintain a reputation for low tax rates. Finally, the application of the sales ratio to assessed value can be used to avoid the restrictions set by tax rate and debt limit laws.

Inequality to the taxpayer is the result of pursuing such policies in what should be purely revenue collecting activity. The major types of inequality cited are "1. Failure to assess some property. 2. A general tendency toward competitive undervaluation by different assessors of types of properties located in different taxing districts. 3. A tendency for assessors to value different properties of the same type and value at widely varying ratios to true value."<sup>10</sup>

In a study prepared in 1956 by the Ohio Chamber of Commerce it was demonstrated that state aid to local government was the main financial burden of the state. In addition it was shown that

45 percent of Ohio counties made no net contribution to the cost of state government. . . . 40 counties pay in as general revenue the amount of \$42,500,000; the other 48 counties on the other hand, pay in \$389,000,000—9 times as much. The 40 counties which pay \$42,500,000 get back in the form of subsidies \$57,700,000; the 48 counties which pay \$389,000,000 in general revenue get back \$206,400,000, and pay the entire tax cost of State government in addition to their own subsidies. Thus, the 40 counties make no net contribution to the cost of State government. Therefore: 48 counties paid all the tax cost of operating the State government, their own subsidies, and \$15 million to the other 40 counties.<sup>11</sup>

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<sup>8</sup> *Park Investment Co. v. Board of Tax Appeals*, 175 Ohio St. 410, 412, 195 N.E.2d 908, *cert. denied* 379 U.S. 818 (1964).

<sup>9</sup> INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, *ASSESSMENT ADMINISTRATION* 7 (1963).

<sup>10</sup> E. LEE, *STATE EQUALIZATION OF LOCAL ASSESSMENTS* 2 (1953).

<sup>11</sup> OHIO CHAMBER OF COMMERCE, *THE EQUALIZATION OF PROPERTY TAX VALUATIONS IN OHIO COUNTIES* 18 (1953).

To remedy this kind of problem, with its resulting inequality to the taxpayers of those 48 counties, the Ohio Legislature established the Board of Tax Appeals, as a state equalization agency.<sup>12</sup> This Board was given the power to adjust the total county assessment roll or the total valuation of a class of property within the county.

However, the problem of equalization was not to be solved so simply. Although the statutes of Ohio made no provision for a fraction of true value to be used as the tax base for real property, the county auditors were not to be deterred by lack of statutory approval and followed the tradition of applying the sales ratio to the true value and using this fractional value as the tax base. Furthermore, the Board of Tax Appeals had no duty to redetermine the assessed value of a particular piece of property, but could only change the aggregate amount of the real estate in a county that had not been properly assessed.<sup>13</sup> The fact that a piece of property was assessed at a higher value than comparable real estate was of no significance to the Board as long as the taxpayer could not show an assessment in excess of 100 percent of the true value. Its only function on appeal was to determine whether the property was assessed at its true value in money,<sup>14</sup> and as long as this assessment was not unreasonable it would stand.

In 1960, the Tax Study Commission for the 103rd General Assembly found that, although there had been improvements in equalization in the previous ten years by the program of the Board of Tax Appeals, the ratios of assessment used within the state ranged from 50 percent to less than 30 percent.<sup>15</sup> Furthermore the commission found that although this disparity is not in itself serious, it is in light of the fact that the counties are not entirely self-supporting, but depend on state aid, which is allotted on the basis of the assessed value of real property on the county tax rolls. Therefore, a county which valued its property at a lower percentage of value than that dictated by the law is rewarded by receiving more state aid than it would have.

The Tax Study Commission also found that the practice of using a different percentage for different classes of property within a county, although creating no inequality in state aid, resulted in "unequal treatment to many property owners, against which the law provides no adequate remedy."<sup>16</sup>

Finally, it was decided that the reason for the lack of uniformity

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<sup>12</sup> *Id.* at 20.

<sup>13</sup> OHIO REV. CODE ANN. § 5715.19 (Page 1953), *cf.* 1965 amendment, OHIO REV. CODE ANN. § 5715.19 (Page Supp. 1968).

<sup>14</sup> OHIO REV. CODE ANN. § 5715.24 (Page 1953).

<sup>15</sup> TAX STUDY COMMISSION, REPORT TO THE OHIO 104TH GENERAL ASSEMBLY ON THE PROPERTY TAX LAW ii (1961).

<sup>16</sup> *Id.*

within and between counties was "the lack of a uniform system of real property assessment, with adequate state guidance of local officials."<sup>17</sup>

To remedy this situation the commission proposed that the ratio of assessment to true value should be established by law at 50 percent.

The retention of the present provisions for 100% assessment, which are disregarded in every county in the State, is unrealistic, leads to disrespect for the law, acts as a cloak for discrimination and serves no useful purpose. While it may be possible to provide for enforcement of a 100% ratio throughout the State, a 50 percent ratio, observed in every county, would be just as effective in achieving uniformity, and would not create such difficult problems of local adjustments.<sup>18</sup>

To ensure that the 50 percent assessment level would be adhered to the Commission also recommended that the statutes provide a uniform method for assessing property, and that the Board of Tax Appeals be empowered to promulgate rules prescribing methods of making appraisals. The study also recommended that the taxpayer be able to obtain relief from over-valuation by a showing that his property was assessed at more than 50 percent. This would solve the inequity to a taxpayer whose property was valued at a higher assessment rate than others in his county, or other counties, but is still taxed on a basis of less than 100 percent of true value.

In 1965 the proposals of the Tax Study Commission were effectuated in the laws of Ohio. Rather than the county auditor assessing all the real estate in his county at its true value in money, he must now determine the taxable value of the real estate and in doing so he must follow the rules promulgated by the Board of Tax Appeals.<sup>19</sup> Correspondingly, the Board was given the duty of issuing rules governing the assessment of real property which the county auditor must follow in order to achieve uniformity and avoid overvaluation, undervaluation, and discrimination.<sup>20</sup> The statutes also state that the taxable value of real property may not exceed 50 percent of its true value in money.<sup>21</sup> And, to insure that the taxpayer would have a remedy, the Board could, upon the request of a complainant, determine the common level of assessment in the county on the basis of the most recent sales ratio studies and such other factual data as the board deems pertinent. Any valuation that varies from this common level of assessment by more than 10 percent is prima facie discriminatory.<sup>22</sup>

On March 15, 1966, the Board of Tax Appeals promulgated and adopted new rules for the valuation of real property for tax purposes as

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> OHIO REV. CODE ANN. § 5713.03 (Page 1953).

<sup>20</sup> OHIO REV. CODE ANN. § 5715.01 (Page Supp. 1966).

<sup>21</sup> *Id.*

<sup>22</sup> OHIO REV. CODE ANN. § 5715.19 (Page Supp. 1966).

required by section 5715.01 of the Ohio Revised Code. Central to the equalization and review function of the board, particularly with reference to a uniform taxable value was Rule 100<sup>23</sup> through which the Board could and did pursue a policy of gradually bringing the taxable values throughout the state to a semblance of uniformity.

In practice the Board carries out its equalization function through its review of the sexennial reappraisal, must submit the abstract of the full (market) valuations to the Board. The Board then attempts to ascertain through its own independent appraisal of selected properties the extent to which the reappraisal may have over-estimated or under-estimated market values on the whole or for individual classes of property. This information is then used by the Board to fix a percentage of the appraised value at which property shall be entered on the tax roles. At present, it is the policy to set assessed valuations as near as possible to 40 percent of the true cash (market) value.

Property valuations in each county are thus, in effect, 'equalized' every six years at the time of the sexennial reappraisal. Over a six-year period a raising level of market values would produce a gradual sag in the level of assessments in a county (as measured by the average assessment ratio), with the result that recently reappraised counties would tend to show higher assessment ratios than those due for reappraisal. Disparities between classes of property within the county may also develop. The Ohio equalization system does not attempt to correct these inequalities except at the time of the sexennial reappraisal. Ohio does not in other words, follow the practice common in other states of establishing and applying an 'equalization factor' each year to assessments in each county or to tax rates.<sup>24</sup>

However, the Supreme Court of Ohio, has recently ruled that this approach is not giving the taxpayers the right of uniformity in tax collection guaranteed to them by the Ohio and Federal Constitutions. On

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<sup>23</sup> BOARD OF TAX APPEALS, RULES FOR THE VALUATION AND ASSESSMENT OF REAL PROPERTY BTA-5-01 (Rule 100) states that:

The "true value in money" of real property, as herein used, is the "current market value" of the property and is the price at which the property would change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having knowledge of all the relevant facts. Such "true value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in his county on consideration of all facts tending to indicate the market value of the property. . . .

The "taxable value" of real property, as herein used, shall be such percentage of the "true value in money" of the real property in each county that the Board of Tax Appeals shall find to be necessary to equalize the taxable values in and among the various counties. This finding and determination shall be made by the Board of Tax Appeals following its examination of an abstract of "true value in money" which shall be files by each county auditor upon completion of a reappraisal. The percentage to be used to compute "taxable value" shall be equally and uniformly applied to each parcel and to each class of real property and the taxable value of no parcel shall exceed the maximum of fifty percent of the "true value in money" thereof as provided in Revised Code 5715.01.

<sup>24</sup> OHIO TAX STUDY COMMISSION, THE STATE AND LOCAL TAX STRUCTURE IN OHIO 52 (1967).

December 24, 1968, the Supreme Court decided that, although the legislature had provided in section 5715.19 the individual taxpayer the right to appeal to the Board of Tax Appeals against any valuation or assessment, and the board must determine whether the valuation or assessment is discriminatory as compared with the common level of assessment within the taxpayer's county, the taxpayer was given no ability to require that his assessment be reviewed in comparison with the common level of assessment throughout the state.<sup>25</sup> However, in a companion case decided on the same day the court held that the Board has a mandatory duty to see that "all real property within the state of Ohio is assessed at a uniform percentage of its true value in money. . . ."<sup>26</sup> Although this had been said before by the court and the Board had established rules for uniform assessment and valuation by the county auditors in 1965, this time the court made a much more explicit ruling, saying that via amended Sections 5715.01 and 5715.24 of the Revised Code the legislature has required the Board of Tax Appeals to *annually determine* "an equal and uniform rule for assessing real property in the state of Ohio *which rule shall provide a percentage of the true value in money of each parcel or tract, which shall be the taxable value*"<sup>27</sup> (emphasis added). In effect the court was saying that the rules promulgated by the Board in 1965 pursuant to legislation and previous cases, and in particular, Rule 100 which was designed to meet the problem of the disparity in percentages, were not enough to insure equality to the taxpayer in bearing the burden of taxation, because of the six-year lag, with the counties six-year reassessment periods occurring at different times. For example, the facts as shown by the plaintiff in the *Park* case demonstrated that when the abstract for real property in Cuyahoga County was submitted and approved by the Board of Tax Appeals in 1967, the Board had available its sales ratio study for Cuyahoga County for the year 1965 and for the State of Ohio for 1963. The state wide average for all real estate as shown by the 1962 study was 38.78%. The 1965 Cuyahoga County study disclosed that the ratio for the classes of property within the county was 48.65% for commercial property, 36.42% for residential, 26.63% for vacant property and the average ratio was 36.84%. This sales ratio data which had been compiled by the Board demonstrated that the commercial class of real property in Cuyahoga County had been assessed as a class on a basis approximately thirty percent in excess of the common level of all real property in the State of Ohio and in Cuyahoga County. The vacant land in the county had been assessed at approximately 27% less than the common level in Ohio or the county. The plaintiff felt, and the court agreed, that these facts

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<sup>25</sup> *Phelps Realty Co. v. Board of Revision*, 16 Ohio St. 2d 83, 84, 243 N.E.2d 97 (1968).

<sup>26</sup> *State ex rel. Park Investment Co. v. Board of Tax Appeals*, 16 Ohio St. 2d 85, 87, 242 N.E.2d 887 (1968).

<sup>27</sup> *See*, note 8, *supra*.

showed that the Board's policy of gradually bringing the level of assessment into line resulted in discrimination to the taxpayer and was a violation of its mandatory duty to equalize.

In compliance with this decision the Board of Tax Appeals began to consider a rule which could meet the requirement of the statutes and Constitution as interpreted by the court.<sup>28</sup> However, before adopting a

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<sup>28</sup> The proposed revision of Rule 100 presented by the Board of Tax Appeals to a public hearing in March 1969 read as follows:

BTA-5-01 which was adopted by the Board of Tax Appeals with an effective date of March 15, 1966 is hereby repealed in its entirety and the proposed new rule BTA-5-01 will read as follows; either (A), (B), (C) or (D) or (E) as will be determined by the Board of Tax Appeals after the public hearing thereon as provided by law.

**BTA-5-01 (Rule 100) DEFINITIONS AND EQUALIZATION PROCEDURE**

(A) The "true value in money" of real property, as here used, is the "current market value" of the property and is the price at which the property would change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having knowledge of all relevant facts. Such "true value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in his county on consideration of all facts tending to indicate the market value of the property including, but not limited to, the physical nature and construction of the property, its adaption and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity if any. The assessor shall likewise take into consideration the location of the property and the valuation of similar properties in the same locality.

The "taxable value" of real property, as here used, shall be such percentage of the "true value in money" of the real property in each taxing district in each county that the Board of Tax Appeals shall find to be necessary to equalize the taxable values in and among the various taxing districts and counties in the state.

Each April, starting in April 1969, the Board of Tax Appeals shall examine its latest available sales-assessment ratio studies for the previous calendar year and other factual data which the Board deems pertinent and it shall also examine the abstract of real property filed with it by each county auditor for the previous year as provided by Revised Code 5715.23.

The Board, upon consideration of said information, shall issue an order to each county auditor to either increase or decrease the taxable value of each and every parcel of real property in the various classes of real property in the various taxing districts of his county by such a stated percentage that the taxable value of each parcel in each district be included in the abstract of real property to be filed with the Board of Tax Appeals in the following August at 40% of its true value in money.

In the event that there are insufficient sales of parcels of real property in any class in a taxing district to establish a sales assessment ratio of probative value for that particular class in that taxing district, then the class in that taxing district shall be ordered to be equalized on the basis of the county-wide average sales-assessment ratio for that class of property, and such other factual data as the Board of Tax Appeals deems pertinent.

In the event that no percentage increase or decrease is necessary to insure that each parcel is equalized at 40% of true value in money, the Board of Tax Appeals shall so notify the Auditor.

New construction shall be valued and placed on the tax duplicate and abstract at 40% of its estimated cost as of January of the year noted in Rule BTA-5-06.

If a complaint (Revised Code 5715.19) has been filed and the taxable value on a parcel of real property has been either increased or reduced for any of the 5 previous tax years, then the taxable value of that particular parcel shall be reexamined by the County Auditor and that official shall list the parcel for taxation at its taxable value which will be 40% of its true value in money as said true value was established in the

rule, the Ohio General Assembly passed Senate Bill 199<sup>20</sup> which would in effect postpone the *Park* decision for three years. This legislation will be welcomed by the county auditors who did not favor the result of the *Park* case and wanted more time to bring the assessment levels into line, but it is difficult to predict how the Supreme Court will react. If the

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decision on the complaint; provided further however that if a general reappraisal has been made of all real property in the county subsequent to the increase or decrease, then the parcel shall be given a taxable value of 40% of the reappraisal value, and that taxable value shall remain constant for the six year appraisal cycle, subject, however, to any change that may be made in the taxable value by the Board of Revision, the Board of Tax Appeals or a Court as the result of a complaint filed under the provisions of R. C. 5715.19 and further subject to any change that may be necessary as the result of the annual equalization order of the Board of Tax Appeals above provided for, and further subject to the right of a County Auditor to order an increase in the value of land if the value thereof has been increased or decreased due to rezoning, platting, subdividing, or other significant land use changes.

The Board of Tax Appeals retains the right, in April of each year, to order either an increase or decrease in the 40% figure used herein without further public hearing. Such order, if made, shall be certified to the Auditor, Treasurer, and Prosecuting Attorney of each county in Ohio.

Each general reappraisal of real property in a county shall be initiated by an entry and order of the Board of Tax Appeals directed to the county auditor of the county concerned and shall specify the time for beginning and completing the appraisal as provided by Revised Code 5715.34. In January of each year the Board of Tax Appeals shall adopt a journal entry wherein is set forth the status of reappraisals of the various counties and the tax year upon which the next reappraisal in each county shall be completed.

- (B) PROPOSED RULE BTA-5-01 (Rule 100) Definitions and Equalization Procedures. The same as (A) EXCEPT that the percentage figure 42% is substituted in lieu of the percentage figure of 40%.
- (C) PROPOSED RULE BTA-5-01 (Rule 100) Definitions and Equalization Procedure. The same as (A) EXCEPT that the percentage figure 41% is substituted in lieu of the percentage figure of 40%.
- (D) PROPOSED RULE BTA-5-01 (Rule 100) Definitions and Equalization Procedure. The same as (A) EXCEPT that the percentage figure 39% is substituted in lieu of the percentage figure of 40%.
- (E) PROPOSED RULE BTA-5-01 (Rule 100) Definitions and Equalization Procedure. The same as (A) EXCEPT that the percentage figure 38% is substituted in lieu of the percentage figure of 40%.

<sup>20</sup> S. B. 199, 108th OHIO GENERAL ASSEMBLY. This bill to amend sections 5715.01 and 5715.24 of the Revised Code relative to the determination of taxable value and the equalization of real property provides that:

The power of the Board of Tax Appeals to issue rules concerning the determination of the taxable value of real property and the percentage to be applied in such determination shall be effective for the year 1972 and thereafter. Until such rules of the Board of Tax Appeals become effective in 1972, the method by which taxable value of real property was determined in the several counties of the state in 1968 shall be applied by the county auditors annually in the determination of the taxable value of real property, which taxable value shall not exceed fifty per cent of true value in money, except that the Board of Tax Appeals may amend its rules as to any sexennial reappraisal to be effective for the tax years 1969, 1970, and 1971 . . .

Section 5715.24 was amended to read that the Board of Tax Appeals at its annual meeting "MAY determine, AND IN 1972 AND THEREAFTER SHALL DETERMINE, whether the real property and various classes thereof in the several counties . . . have been assessed by an equal and uniform rule at taxable value. . . ."



decision rested solely on the interpretation of a statute the action of the legislature amending the statute would stand, however, the mandatory duty of the Board is also based on the Ohio and Federal Constitutions and whether or not the effectuation of a constitutional right is another matter, and this puts the Board in a difficult position. It is a creature of the legislature and so must follow its dictates, but at the same time it has a mandatory duty imposed by the Constitution which may conflict with those dictates. At the time of this writing the Board is waiting for the Bill to be signed into law before enacting any new rules.

Despite the difference of opinion between the court and the General Assembly concerning when the Board must begin its annual review of assessments, both have agreed that is how the Board should equalize.

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