A History of the Real Property Tax and Equalization in the State of New York

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Part 1 - From the Colonies to the Civil War

The real property tax dates back as early as 1654 to the Dutch New York Colony. The history of the laws relating to the real property tax in New York State is, for the most part, a history of efforts of New Yorkers to achieve equality in the apportionment of property tax levies among property owners.

Property tax laws enacted since the early colonial period mainly addressed problems of equalization, although many related to refinements in collection and enforcement procedures and to the exemption of certain types of property from the tax.

The dominant feature of most of the property tax laws enacted during the colonial and early state periods was the determination by the legislative body of a quota of taxes to be collected from each county. County boards of supervisors would then determine quotas for the towns and wards within their boundaries. The assessors of the towns and wards were required to assess property at "whatsoever have been deemed the worth or value thereof."

The property tax laws in force during the period of 1799 to 1813 mandated that local assessors use the valuation of real property made by the federal assessors pursuant to an act of Congress.

In 1798, Congress enacted legislation to raise a direct tax upon property throughout the United States. The federal act established an organization for the administration of this law. New York State was divided into nine divisions, each of which was headed by a commissioner. Divisions were divided into districts, and districts were further subdivided into subdivisions. The boundaries of the districts were mainly coterminous with the boundaries of counties; and those of the subdivisions coterminous with those of towns and wards.

The federal commissioners were empowered to equalize assessments among assessment districts within their respective divisions, and among subdivisions within districts. The equalization process was accomplished by adding or deducting from the valuations, "such a rate per centum as shall appear just and equitable," provided that the relative valuations within the same unit (district or subdivision) were not changed. The equalized valuations were then set down opposite each individual property or parcel on the assessment roll, so that the completed assessment roll reflected the equalized valuations of the properties contained therein, rather than the assessed valuations.

In making valuations, the act directed federal assessors to be guided by the actual sales prices of recent real estate transfers.

The New York State laws of this period not only mandated the use of the federal valuations, but also directed that in cases where real property had not been assessed by the federal assessors for some reason or other, the New York assessors should ascertain "the true value thereof, agreeably to the principles prescribed by the act of Congress."

A State act of 1799 made provision for county commissioners of taxes who were required to "equalize the tax upon the real estates within this State, and make the valuation of the real estates in their respective counties as near as may be equal to the valuation of the houses and lands therein made under the authority of the United States."

Thus, as early as 1799, the Legislature recognized the necessity for some form of equalization procedure to overcome the practice by some assessors of underassessing real property in their tax districts in an effort to gain a tax advantage over other tax districts.

The federal government levied a direct tax on property in 1798, and then not again until 1813, when Congress reduced the federal direct tax.

Also in 1813, New York's Legislature enacted a law establishing a procedure for the assessment of property and empowered county boards of supervisors to equalize assessment rolls of towns within their respective counties by adding to or deducting from the aggregate valuations in any town, "such a per centum as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the county."

The 1813 act was the first codification and revision of the general laws relating to the assessment and taxation of real property. In addition to providing for the equalization of assessment rolls by counties, the act expressly provided for a "grievance day" at which a taxpayer could complain and be heard by the assessors on his assessment. This act also provided that real property be assessed "at the value they would appraise such estate in payment of a bona fide debt due from a solvent debtor."

In 1828 a second codification of the laws relating to the assessment and taxation of real property was passed, introducing into the law for the first time the term "full value."

From 1827 to 1842, the state did not levy a property tax, depending, to a large extent, on revenues from the Erie Canal. Thereafter, marking a refrain familiar to today, the increasing burden of the state property tax sharpened the criticisms and complaints of taxpayers as to the inequalities resultant from the apportionment of the tax on the basis of assessed valuation, and consequently the administration of the tax became more and more difficult.

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Part 2 – The State Board of Equalization

Continued from previous issue

The first State Board of Equalization was established in 1859, and consisted of three full-time State Assessors, and the Commissioners of the Land Office (i.e., the Lieutenant-Governor, the Speaker of the Assembly, the Secretary of State, the Comptroller, the Treasurer, the Attorney-General, and the Surveyor). The State Assessors were required to ascertain facts to assist the Board of Equalization. The Board of Equalization was empowered to increase or diminish the aggregate assessed valuations of real estate in any county in order "to produce a just relation between all the valuations of real estate in the state."

The first Board of Equalization appears to have experienced considerable difficulty in the execution of its powers and duties, for many observers during this period urged remedial legislation to permit the state technical supervision of assessment practices.

In 1870, the Legislature by joint resolution authorized the Governor to appoint three commissioners "to revise the tax laws for the assessment and collection of taxes". The Commission made a comprehensive study of the tax systems of other states, and presented a 154-page report to the legislature in the following year, wherein it was reported in part:

> In some instances in New York the valuation of real estate for taxation is reported as low as 20% of its real value. In a majority of cases in the county the rate varies from 25% to 35%, and rises in the cities to 50% and possible 60% of the maximum.
>
> In short, there cannot probably be found a single instance in the whole state ... where the law as respects valuation of real estate is fully complied with and where the oaths of the assessors are not wholly inconsistent with the exact truth.

The Commission concluded that the administration of the tax laws in regard to the assessment of property should be made more effective in compelling the assessors to do their duty in accordance with the strict meaning of the statute, and recommended the creation of a central authority,

> clothed with all proper authority and supported by the law officers of the State ... to practically enforce the laws, by providing for revaluations of real property when the same are evidently defective and erroneous; and by prosecuting, to the full extent of the law, all derelictions of duty on the part of the assessors.

In 1880, a statutory provision was made for the review and correction of erroneous, unequal and illegal assessments. Prior to this time, court review was limited to questions of illegality and taxpayers had no access to judicial review of an inequitable assessment. This 1880 act provided the taxpayer with a complete judicial review of the facts as well as the law relating to the assessment of his property.
In 1889, a Statutory Revision Commission was appointed "to consolidate and revise the general statutes of the state". In 1896, the Commission reported in part:

> There has been no revision of the tax laws since the revised statutes of 1828, but the scheme of taxation as then adopted has remained substantially unchanged; so far as the local assessment and collection of taxes are concerned.

The labors of the Commission resulted in the enactment by the Legislature in that year of the "General Laws of New York". Chapter XXIV of these laws was designated as "The Tax Law", which was in the main, a restatement of the then existing assessment procedure.

The office of State Assessors was abolished in 1896 and succeeded by a Board of Tax Commissioners, consisting of three Tax Commissioners. These Commissioners and the Commissioners of the Land Office constituted the State Board of Equalization. The Board of Tax Commissioners was required and empowered to furnish certain technical and advisory services to local assessing officials, to make rules and regulations, and to require from state and municipal officers information in regard to property assessment and related matters.

In 1899, the State Board of Tax Commissioners was authorized to assess special franchises (the right of railroads and utilities to occupy public streets and public places, including the value of tangible property located therein) and in accordance with the statute, the Board assessed the special franchises at full value. The special franchise assessments determined by the Board were certified to the local assessors who were required to enter the assessments on the assessment roll without change. Since the Board and the local assessor had no power to equalize special franchise assessments to correspond to other property in the locality, the only remedy to procure equalization was by a court proceeding. In 1912, the Legislature empowered the State Board of Tax Commissioners to equalize special franchises.

The equalization of special franchises by the State Board of Tax Commissioners (not to be confused with the State Board of Equalization) produced several factors or by-products which were most significant in the development of state equalization. In this respect any data or information secured for the purposes of equalizing special franchises was made available to the State Board of Equalization. Moreover, the State Board of Tax Commissioners published equalization rates for each city, town and village, which were to be subsequently utilized for various other purposes – such as, apportioning of grants-in-aid, apportioning of taxes among school and special districts and determining tax and debt limitations.

In 1909, the present “Tax Law” was enacted as one of the Consolidated Laws. However, this new Consolidated Law was again essentially a reenactment of the then existing property tax laws.

In 1912, the State Board of Tax Commissioners recommended to the Legislature that it be granted supervisory powers over local assessments. In 1915, the Board was succeeded by the “State Tax Commission”, which was vested with certain powers and duties in regard to the supervision of property assessments throughout the state.

In 1927, the composition of the State Board of Equalization was materially altered by removing the Commissioners of the Land Office from the Board so as to constitute the three members of the State Tax Commission as the State Board of Equalization.

The year 1928 marked the termination of the state property tax, and the subsequent history of equalization reveals the extension of the use of state equalization rates to various new applications. The use of state equalization rates for the equalization of assessments among towns within a school district was introduced in 1921, and in 1926 provision was made for the distribution of state aid to schools on the basis of a formula involving the use of state equalization rates. Similarly in 1930, state equalization rates were made a factor in a new formula for the allocation of state aid to towns for highway purposes. Provision was made for the equalization of assessments among towns within special districts in 1933, and it was provided in 1939 that certain court expenses were to be apportioned to counties within judicial districts on the basis of equalized valuations. At the present time, the state equalization rates are required or authorized to be used for over thirty different purposes and are also adopted by more than one-half of the counties in the state for apportioning county taxes.

It will be observed that since the discontinuance of the state property tax in 1928, state equalization rates were no longer a factor in the raising of revenue for the support of the state government, but were utilized primarily in the field of municipal finance. Thus, the abandonment of the state property tax helped to bring about the gradual deterioration of the validity of the state equalization rates.

Ten years later, the Constitutional Convention of 1938 showed its concern with the inadequate machinery for equalization by recommending that a section on equalization be added to the State Constitution.

The Convention’s Committee on Taxation reported:

> ... There has been a great deal of complaint, and it is an old time complaint, about assessments of real property. The tax law today contains a provision in the nature of supervision and review and equalization of assessments, but they do not seem to have satisfied the situation by any means. So the idea of this is to make it mandatory upon the Legislature to provide for the supervision, review and equalization of assessments in the first instance and proper review as the Legislature may see fit.

As a result, the voters added Section 2 to Article XVI of the State Constitution which states in part:

> "The Legislature shall provide for the supervision, review and equalization of assessments for the purposes of taxation. Assessments shall in no case exceed full value."

More time went by and work in the field of equalization continued to deteriorate. In its 1944 annual report, the State Tax Commission described the situation this way:

> "For a period of years prior to the depression of the 1930's real estate values, particularly in the urban communities, had generally advanced. Owners of and operators in real property were sustained by rising prices and an active market. ... In short, real estate was a good investment and its burden of taxation went largely unnoticed.
>
> "It follows as a corollary that there was little public interest in the work of the Bureau of Local Assessments. While it was performing a necessary governmental function in the supervision and equalization of assessments, this under the circumstances was largely academic. There was no public demand to stimulate the improvement of its procedure. There was no public urge to support any enlargement of its staff or facilities.
>
> "With the depression came an urgent demand for economies in governmental expenditures, coupled with diminishing state revenues. Further curtailment of non-revenue producing activities was a natural sequence.
>
> "Certain of the valuable contributions of the Bureau of Local Assessments to improve assessing methods were wholly abandoned or substantially reduced. The performance of field work and the assembling of complete data as an aid to equalization were discontinued. Reliance was had largely upon information voluntarily furnished by tax districts and other interested parties."

The Tax Commission made it clear that with limited funds and a small staff, it was unable to keep pace with the job of establishing equitable equalization rates throughout the state. The result was that the state equalization rates being established from year to year did not reflect the true ratio between the assessed valuation and the full valuation of local real estate. It was not long before light was focused from another direction on the glaring inaccuracies in the state equalization rates.

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Part 3 – The Birth of the Real Property Tax Law

In 1947, Frank C. Moore, then State Comptroller, appointed a statewide committee of citizens to study among other things the constitutional tax and debt limits imposed on the localities.

Its studies soon showed that the constitutional limits originally imposed in 1884 on the basis of assessed valuation had over the years put localities in a financial straitjacket because local assessments had not kept pace with increases in property values.

Therefore, the Committee recommended to the 1948 Legislature a constitutional amendment providing that the constitutional tax limit be computed on the basis of the five year average of full valuation rather than assessed valuation -- the full valuation to be determined by application of state equalization rates. This recommendation of the Moore Committee was approved by the 1948 and 1949 Legislatures and by the people in 1949 before becoming effective January 1, 1950.

Approval of this constitutional amendment directed attention to the condition of the state equalization rates. It was readily apparent that if the localities were to obtain a realistic measure of the taxing power originally contemplated for them in 1884, there would have to be an overhauling of the state equalization rates.

In its report, the Moore Committee said:

> Use of the full valuation of taxable real property as the base for the tax limit gives greater importance to the equalization rates established by the state. Existing rates should be reviewed to make sure that in all instances they reflect accurately the percentage of full value at which local assessments are being made. The Committee recommends that those rates be reviewed as speedily as possible.

The 1949 Legislature then officially recognized that the existing state equalization rates had been driven out of proportion in many localities because of increases which had occurred in the value of real estate.
Therefore, the Legislature created, by Chapter 346 of the Laws of 1949, a temporary commission, known as the State Board of Equalization and Assessment, and assigned it the task of reviewing and revising the state equalization rates and of offering recommendations on the permanent assignment of these duties.
In setting up the temporary commission to do this job, the Legislature directed it to establish “accurate and equitable rates of equalization” and declared this to be “essential to the proper functioning of local government”.
In 1954, the State Board of Equalization and Assessment announced revised state equalization rates which were developed as a result of statewide field surveys by the Board’s staff, of 1949 and 1952 market values.
In the same year, Frank C. Moore appointed a committee of persons interested and concerned with the problem of improving the equality of real property assessments to an Assessment Advisory Committee of the State Board of Equalization and Assessment. This Committee is composed of representatives of state and local governments and taxpayer groups. Included on the Committee, among others, are representatives of the New York State Conference of Mayors, the Association of Towns of the State of New York, the New York State School Boards Association, New York State Assessors’ Association, New York State Association of Real Estate Boards and the County Officers Association.
Early meetings of the Committee outlined the particular topics which it felt were of important concern and required prompt consideration. It was decided as a first step toward achieving the improvement of real property assessment procedures that there should be a recodification of the laws relating to assessment and taxation of real property in view of the fact that no recodification of the real property tax laws had been made since the enactment of the 1909 Tax Law. This law had become, after years

of patchwork amendments, a poorly organized collection of laws relating to not only real property taxation, but to many other types of taxation, such as gasoline taxes, corporation taxes, and income taxes. Moreover, as a result of these numerous amendments, the law no longer possessed a logical pattern or uniform terminology.

The primary objective of the Real Property Tax Law was to bring together all of the general laws relating to real property assessment and taxation into a separate Consolidated Law.

The task of recodifying these laws was performed by the legal staff of the State Board of Equalization and Assessment with the assistance of numerous consultants having specialized qualifications and experience in the various aspects of the subject of real property taxation. The Counsel to the Board was assisted in the direction of this project by Robert L. Littlefield, an Albany attorney with experience in the field of local government.

The new Real Property Tax Law was introduced as a study bill in the 1956 and 1957 legislative sessions. In 1958, it was introduced for passage and became Chapter 959 of the Laws of 1958, effective October 1, 1959.

This new law was in the main a restatement of the existing law and purported to make no substantive revision except minor procedural changes. The law rearranged the subject matter into a more orderly and largely chronological sequence and simplified and modernized language. Obsolete provisions were eliminated, notably, references to the state real property tax and personal property tax, which were abolished many years earlier.

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All of the provisions of the Tax Law, Education Law, Village Law, as well as other general statutes which relate to the assessment and taxation of real property were included in this new Consolidated Law.

Section 102 of the law contains definitions of technical terms used throughout the law, some of which are terms not previously defined in the Tax Law or elsewhere. Attention was particularly directed to the terms “assessing unit”, “assessment”, “special ad valorem levy” and “special assessment”.

The law contained appropriate savings clauses, including express provisions to the effect that it does not (1) increase or diminish any real property exemption, or (2) make any change in the classification of property as personal property or real property. The law also provides that no provision thereof shall be deemed to repeal or otherwise affect any special or local law or ordinance unless otherwise duly amended, repealed or affected.

Express provision was made that any act of the Legislature in the years 1958 and 1959 are legally effective notwithstanding the repeal or amendment by this law, of the provision codified. Thus, the law in no way diminished or impaired the effectiveness of any legislation affecting real property taxation enacted in 1958 and 1959.

In 1960, the Legislature reconstituted the State Board of Equalization and Assessment as a permanent agency within the new Office for Local Government which had been previously established in 1959.

The new Real Property Tax Law marked the completion of one part of the program of the State Board of Equalization and Assessment for the improvement of assessment functions and practices. It was hoped that it would encourage the development and adoption of substantive improvements to the laws relating to the assessment and taxation of real property.

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Part 4 - The Assessment Improvement Law of 1970

One of the most significant changes to New York State's real property tax system in the latter half of the 20th Century was the institution of the Assessment Improvement Law (AIL). The changes made by that legislation established the framework upon which assessment administration is conducted to this day.

During that period, the property tax continued to be the prime source of revenue for the support of local governments, but its administration in many municipalities had fallen far short of the primary objective of the entire system of local real property assessment—the equitable distribution of the tax burden among all property taxpayers. The weakness in the old system was pointed out in the first report of the Assessment Advisory Committee to the State Board of Equalization and Assessment in 1957.

The report concluded that:

- Many assessors entered upon their assessing tasks without adequate knowledge and experience,
- Training facilities available to assessors were inadequate,
- Assessors were not provided with adequate expert or advisory services, and
- Many assessors lacked the basic equipment and records necessary to high-quality performance of their duties.

In addition, there existed a serious failure of local governing bodies to recognize the importance of the assessing function and local assessors's responsibilities and the amount of work involved in producing an equitable assessment roll.

The AIL represented the first step in improving assessment administration by upgrading the position of assessor, requiring assessors to meet minimum qualification standards, providing them with adequate training and equipment and giving them a degree of independence to enable them to perform their duties efficiently and uniformly. The program provided local assessors with expert assistance and advice in appraisal of the more complex parcels of real property in their jurisdictions.

In addition, one of the most significant features of the AIL was the requirement that each assessing unit appoint an independent board of assessment review (BAR) of not less than three nor more than five members. The AIL established rules on the composition and duties of the BARs. In the earlier system, the very same persons who made the assessments heard and determined the issues on grievance day.

Under the AIL, each assessing unit in the state was required to appoint a single assessor to a six-year term commencing on October 1, 1971 and every sixth year thereafter. It established minimum qualifications for appointment and required the completion of a basic course of training. The first training program for assessors was completed in the summer of 1973. A total of 670 assessors were certified in that first program.

The law also provided that the appointed position of assessor be classified under civil service laws.

Another new concept requirement under the AIL was the establishment of county real property tax services agencies, with a director for each. Directors were to be appointed by the respective county legislatures. Westchester County was authorized to retain its county tax commission and the duties of the county director were assigned to the chief administrative officer of the commission.

Under the AIL the counties assumed a more important role in administering the real property tax. Previously, there had been a lack of professional assistance available to the local assessor in coping with difficult appraisal problems and a lack of necessary tools and equipment, such as tax maps and property record cards. Now each county was required to:

- Prepare tax maps for each assessing unit in the county and maintain them on a current basis.

- Provide advisory appraisals to each assessing unit in the county, upon request of the assessing unit, for moderately complex taxable properties.
- Advise local assessors on procedures for preparation and maintenance of assessment roll, property record cards and other records.
- Provide appraisal cards to assessors.
- Cooperate and assist in the training program provided by the State Board.

To provide assessors and county tax agencies with accurate and current information concerning the status of real property within their jurisdictions, each county had to prepare and maintain approved tax maps. Costs of preparing tax maps varied depending upon the size and complexity of the project. Such factors as the size of the county, total parcels contained within the assessing unit, density of parcelization and extent of urbanization had to be considered. Generally, costs averaged from $10 to $15 per parcel.

The AIL also provided for state aid of $1 per parcel to be paid to each county for the preparation of tax maps for each assessing unit in its boundaries. The State Board established standards, specifications and procedures for the preparation and maintenance of tax maps.

The training programs conducted by the State Board provided assessors with substantial knowledge and skill in the appraisal of major types of property on local assessment rolls. However, those programs were not expected to equip assessors with the knowledge and ability to appraise complex property involving highly professional appraisal techniques. Counties and the State Board were charged with assisting local assessors in the appraisal of those complex properties. Counties were charged with providing assessing units with, upon request, advisory appraisals of certain moderately complex properties.

The State Board, was charged with providing, upon request, advisory appraisals of:

- Privately owned forest lands in excess of 500 acres,
- Highly complex properties,
- Taxable utility property.

Finally, the AIL stated that any city or town with one or more elected assessors was required to change to a sole appointed assessor. However, these assessing units were given the option of adopting a local law, on or before July 1, 1971, subject to mandatory referendum, which would provide for the office of assessor to remain elected.

In an effort to provide a simplified procedure by which assessing units could convert to an appointed assessor, section 1557 was added to the RPTL in 1972, which set forth the procedure by which cities and towns could elect to replace the elected assessor system with an appointed assessor.

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Part 5 - What hath Hellerstein wrought?

It helped break down a centuries-old system of unequal taxation in New York State. It lit the fuse that led to the boom of true systematic computer-assisted revaluations in the latter quarter of the 20th Century. It started as a local assessment grievance and it ended up changing the standard of assessment that is used throughout New York more than thirty years later.

To the lawyers and real property tax and government administrators it is known by one name– Hellerstein. The full name of this 1975 decision of the New York State Court of Appeals is *Matter of Hellerstein v. Assessor, Town of Islip*, 37 N.Y.2d 1.

Back in 1975, section 306 of the State Real Property Tax law directed that; “All real property in each assessing unit shall be assessed at the full value thereof.” The history of the full value standard in New York can be traced back at least to 1788, and the traditional practice of ignoring this standard was as old as the statute itself. The practice of assessing at a percentage of full value was referred to in an 1852 decision *(Van Rensselaer v. Witbeck)*, where the court, even at that early date, commented that “if this be so, the practice should be corrected.” Few municipalities followed this advice of the Court of Appeals, and most assessors continued to assess at less than full value, in flagrant violation of the statute.

The validity of this longstanding practice of assessing at less than 100 percent of full value was challenged in *Hellerstein*, the facts of which were quite simple. A property owner commenced a certiorari proceeding to declare the entire assessment roll of the Town of Islip void. The sole ground of the argument was that the assessments on the roll were illegal because they were not made in accordance with the requirement of RPTL 306. Interestingly, the Town of Islip admitted that assessments were not made at 100 percent of value but rather at a lesser percentage.

The first defense of the Town of Islip was that the Court of Appeals, in considereing inequality cases in the past, had made no references to the apparently winked-at custom of assessing at percentages less than 100 percent, and had, by its silence, given judicial sanction to this practice.

The town placed great reliance upon the famous case of *C.H.O.B. Associates v. Board of Assessors of County of Nassau*, in which, at the supreme court level, it was suggested that section 306 did not mandate assessments at 100 percent of full market value. Rather, the argument held that section 306 required only that assessments be at a uniform rate or percentage of full value. Writing for the majority in *Hellerstein*, Judge Sol Wachtler pointed out that the question of the validity of fractional assessment was not really at issue in *C.H.O.B.* He lamented the numerous lower court opinions spawned by *C.H.O.B.* and observed: “Thus the custom of fractional assessment, once roundly condemned as a flagrant violation of the statute, has endured and acquired a new life through a kind of legislation by violation.”

The majority opinion in *Hellerstein* also traced the history of inequality cases. It pointed out that, early on, the courts were faced with a dilemma. On the one hand, in a situation where assessors were assessing property at a percentage less than full value, but were assessing a complainant’s property at a higher percentage of full value than others, “there was a rather obvious violation of equal protection.” On the other hand, if the court were to reduce or order a reduction of an assessment which was already below the market value standard prescribed by section 306, it would be compelling the assessor to perform an unlawful act.

As a result many courts held themselves precluded by the letter of the law from doing more than advising the complainant that he had the theoretically satisfactory privilege of swearing out a writ of mandamus to compel the assessors to revalue every other piece of property in the jurisdiction. This dilemma was resolved by the United States Supreme Court in a 1923 decision (Sioux City Bridge Co.

v. Dakota County), in which it held that if it was impossible to secure both the standard of true value and the uniformity and equality required by law, the latter requirement was to be preferred. This was the basis upon which the New York courts felt free to order the assessors to reduce an assessment that was already below the statutory standard.

A second defense raised by the Town of Islip was that the creation of the State Board of Equalization and Assessment was tantamount to legislative approval of fractional assessment. Judge Wachtler made short shrift of this argument in stating that

> *The only significance the Board has in relation to this problem is found in section 720 of the Real Property Tax Law which permits a taxpayer in an inequality proceeding to rely on the ratio established by the Board in proving his claim. But this provision was merely designed to ease the taxpayers' burden of proof in inequality cases (i.e., Guth Realty v. Gingold) which, as indicated earlier, is not premised on the legality of fractional assessments.*

However, Islip's defense relied most heavily upon the argument that the statutory standard on section 306 had been violated for some 200 years; that the legislature was aware of this violation; that the legislature had done nothing to overturn the practical construction which those charged with administering the statute had placed upon it; and that since the legislature had thereby acquiesced in this practical construction, the Court of Appeals should do the same.
The Court acknowledged that sometimes the interpretation of a doubtful or obscure clause in an act of the legislature or in a constitution may be aided by the practice which has grown up around it. However, the Hellerstein majority held this defense to be inapplicable, concluding that the language of section 306 was clear, unambiguous and capable of only one interpretation. The court cited an earlier case, *Wendell v. Lavin*, to the effect that "plain and clear provisions … must not be smothered by the accumulation of customs or violations."
Having rejected all of the defenses raised by the town, the majority held that the petitioner was entitled to an order directing the town to make future assessments at full value.
Clearly, the Court of Appeals considered all of the legal aspects of this case in detail, but it is equally clear that it considered the practical aspects as well. It refused to invalidate the specific assessment roll before it on the ground that to do so could bring fiscal chaos to the Town of Islip. It recognized the principle that the courts should not act so as to cause disorder and confusion in public affairs, even though there may be strict legal right involved. The majority was quick to point out, however, that this did not mean that it was forced to endorse the practice of fractional assessments or withhold relief insofar as future assessments were concerned.
In recognizing that future compliance would undoubtedly cause some disruption in procedures, the court allowed what it considered to be reasonable time for the town to comply with the decision. And it specifically held that

> *In the interim assessments made be in accordance with the existing practice, and any tax levies, liens, foreclosures or transfers based on such assessments shall not be subject to challenge for failing to comply with section 306 of the Real Property Tax Law.*

The court also included in its decision a specific directive to lower courts in future cases to exercise the same degree of restraint with regard to disturbing settled assessment rolls and providing a reasonable opportunity for compliance with the statute.
Apparently, however, the court felt compelled to comment further on the practice of fractional assessments, stating that this practice "has time on its side and nothing else." Citing several noted authorities, the court attacked the very concept of fractional assessment, making references to gullible taxpayers, lack of visibility, the desire of the party in power to maintain fractional assessments and the difficult task of the taxpayer in proving comparative inequality.

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Part 6 - Impact of Hellerstein decision trumped by Chapter 1057, Laws of 1981

Last month we discussed the events leading up to the Hellerstein decision. It was the response following that decision that precipitated legislation establishing the assessment standard used today.

The enactment of Chapter 1057 of Laws of 1981 rendered the effect of the 1971 Hellerstein decision – which held full value as New York's statewide standard of assessment – to nothing more than an interesting landmark for those studying the course taken by New York's real property tax system.

Codification of a locally established uniform fractional level of assessment had its opponents at the highest level of State government – including the Governor – throughout the legislative life of Chapter 1057. That didn't stop its enactment, though.

Following the Hellerstein case, assessment litigation accelerated throughout New York. And while the Assessment Improvement Acts of 1970 and 1977 fostered systemic assessment reform, the Court of Appeals had established that full valuation was the standard upon which assessments should be made.

The bipartisan Temporary State Commission on the Real Property Tax, established by the Legislature before and continued after Hellerstein recommended a total program of real property tax reform grounded in full value assessment administration. After Hellerstien, it reported that:

> *The 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.*

Accordingly, with the weight of Hellerstein and the Temporary Commission's judgments behind it, the State Division of Equalization and Assessment (E&A) mounted a statewide program fostering full-value assessment and reassessments. Then, in 1981, the Rules Committees of the State Senate and Assembly introduced Senate Bill 7000/Assembly Bill 9200 (hereafter, S.7000). These bills sought to change the landscape of assessment administration in three primary ways.

- Section one of S.7000 would repeal full value as the sole standard of assessment in New York.
- Bill section two preserved existing tax shares in special assessing units (Article 18, New York City and Nassau County).
- Bill section three created a dual tax rate option (Article 19).

The new RPTL section 305 placed the burden of deciding tax policy squarely on each assessing unit by providing that the standard of assessment would be anything up to 100 percent of full value at the option of the assessors or boards of assessors.
E&A said that, outside of New York City and Nassau, S.7000 "would essentially be an abdication of State responsibility to determine basic real property tax policy."
The Agency stated that real property tax problems wouldn't be resolved by the repeal of the full value standard. The real property tax burden, excessive in many municipalities, wouldn't be lessened by institutionalizing then-current inequities. Except for constitutional tax limits (primarily in cities), nothing in S.7000 prevented tax increases due to increased municipal budgets.
It was E&A's position that, whether analyzed in terms of the establishment of value as the necessary first step or in terms of the public policy of taxpayer understanding and tax system credibility, uniform

fractional assessments couldn't be justified. E&A pointed to James C. Bonbright, who said in his 1937 publication on municipal finance:

> *Theoretically the taxpayer's pocket is not in the least affected by uniform undervaluation or overvaluation. Systematic undervaluation diminishes the tax base and the tax rate must therefore rise in order to supply the required government revenue … The objections to the practice of undervaluation are patent. In the first place, except where sanctioned by statute, it involves a generally known and sanctioned disregard by officials of the law requiring them to assess property at its full and fair value. The other great vice is that the percentage of undervaluation is rarely a matter of common knowledge, so that it is extremely difficult to ascertain whether there is uniformity in the proportion or whether, through incompetence, favoritism, or corruption of the assessors, some portions of the taxpaying body are bearing the others' burdens, as between either individuals or local groups.*

In regard to this latter objection, E&A pointed out that S.7000 required neither publication nor other notification to taxpayers of the "uniform percentage" chosen or adopted within a particular assessing unit. This would be inconsistent with concurrent legislative efforts to ensure taxpayer knowledge of, and participation in, the assessing process. For example, in 1980, the Legislature first required the preparation of pamphlets for distribution by the assessor describing how a property owner could "contest" his or her assessment, thus adding to a growing commitment to increased awareness and the increased opportunity for assessment review.

The primary objection to uniform fractional assessment standards was that taxpayers would often be unable to understand the differences that existed between assessments of properties of the same type. Again, quoting an impartial "expert," this time former Kentucky Revenue Commissioner James Luckett, E&A flipped the equity card on the table:

> *When current market value is the standard, gross inequalities stand out like sore thumbs. Most any property owner can tell the difference between 80 percent and 100 percent but he finds it difficult to distinguish between 20 and 25 percent, or between 8 and 10 percent; yet the relationships are identical.*

The bottom-line argument against S.7000 was that it appeared to E&A to be intended to guarantee continued inequity both between and among classes. The mention of a uniform fractional standard was deemed to accomplish little to fix the problems pointed out by appraisers and courts up to that time. Nevertheless, both houses passed the legislation and it was sent on to Governor Hugh L. Carey for his signature. Gov. Carey, however, vetoed the legislation, stating:

> *My analysis of the provisions of the bill, as well as the analyses of many who have submitted recommendations with respect to it, is that the bill is deficient in many serious respects, and that its enactment would do little to improve real property tax and assessment administration in this State or to provide a viable resolution of the issues raised in the case of Hellerstein v. Assessor of Islip.*

However, the Governor's veto did not stop the enactment of S.7000. Once it was returned to the Legislature, a December special session was called, during which both houses of the Legislature voted to override Gov. Carey's veto of S.7000, amending several facets of the RPTL and establishing important new changes.

Regarding the standard of assessment, with the December 3, 1981 enactment of Chapter 1057, the legislature repealed section 306 of the RPTL, which had defined the standard of assessment as "full value" and replaced it with section 305, which stated:

- the existing assessing methods in effect in each assessing unit on the effective date of the legislation may continue;
- all real property in each assessing unit should be assessed at a uniform percentage of value;
- any assessing unit now at full value through a revaluation may adopt a uniform percentage of value as its new standard.

In the 25 years since the establishment of RPTL section 305 as the codification of New York's assessment standard, the Division of Equalization and Assessment – and, today, the Office of Real Property Services – has maintained its opinion that full value assessment still remains the more taxpayer-friendly standard.And, while ORPS continues to impress the importance of New York's assessing officials understanding both the costs and benefits of full value assessments, the agency realizes the over-arching importance of uniformity in assessments, no matter the locally established level of assessment.

A History of the Real Property Tax and Equalization in the State of New York

Part 7 – State Aid for Improved Assessment Administration

Over the past six months, the Uniform Standard has published a comprehensive history of New York's property tax system. This State Aid history marks the final installment in the series. In the past two installments, we noted that the Legislature's reaction to the Hellerstein decision lead to the assessment standard we use today. Meanwhile, it has been the State Aid programs, combined with the diligence of assessment professionals throughout the State, that have resulted in the significantly improved assessment administration of recent years.

The cost of improving assessment administration can be substantial, particularly when assessments have been long neglected and rolls are decades out of date, as many were in the 1970s. Recognizing this, the State established financial assistance programs to help to offset some of this cost.

Over the past several decades, several financial aid programs have been provided at various times, all with the goal of improving the quality, efficiency, and uniformity of local assessment administration.These programs evolved from the model of thirty-some years ago, the goal of which was to encourage revaluation projects, to today's more comprehensive programs oriented not only to a one-time reassessment but also to maintenance of the new assessments over time and consolidation of assessing functions.

Since both local assessment costs and state equalization costs are related to the number and scale of assessing units, the financial aid programs have also sought to address this issue in recent years. It is a particularly critical one in New York, as there are approximately 1,200 separate municipal assessing units, as compared to most other states with their limited number of county-level jurisdictions.

Attainment Aid

In the 1970s the State began to establish financial aid programs designed to defray the costs of equitable assessment administration to municipalities (excluding villages).The first program, titled the *State Assistance for the Attainment of Improved Real Property Tax Administration*, became law in 1977 as Article 15-B of the Real Property Tax Law.This program is often referred to as *Attainment Aid* (although it might be better described as "Reassessment Aid").Attainment Aid was payable in the amount of $10 per parcel, in accordance with the following payment schedule:

Payment #1

— For preparation of assessment rolls, tax rolls, and tax bills (i.e., assessment administration information) ($2/parcel)

Payment #2

— For submission of a plan of collection and maintenance of real property valuation data and the maintenance of records of transfers of real property which was certified by the State Board of Equalization and Assessment (former name of State Board of Real Property Services) ($3/parcel)

Payment #3

— Upon certification of satisfactory completion of plans submitted for Payment #2 ($2 per parcel)

Payment #4

— For implementation of a revised assessment roll certified as being in compliance with standards required for receiving prior payments, including compliance with requirements for both full disclosure to owners of real property as to the estimated effect of any changes in the assessed valuation resulting from an initial revaluation or subsequent update and a system of accounting for the collection of real property taxes ($3 per parcel).

This program was discontinued by Chapter 309 of the Laws of 1996, which reorganized and updated the state's financial aid programs for assessment administration, with no payments to be made under its provisions after 1998.
Between 1978 and 1997, 983 municipalities, or virtually all of the non-village assessing municipalities in New York, were certified for at least the first aid payment. Annual state outlays over this time ranged from approximately $500,000 to $3.8 million. In later years, total state payments declined significantly, as the majority of assessing units had already qualified and been paid in a previous year.

Supplemental Attainment Aid

For a brief period of time, two aid payments were made available, under a program generally referred to as Supplemental Attainment Aid, established by Chapter 53 of the Laws of 1992. Payments under this program were targeted toward those municipalities that had already completed an initial revaluation, but had failed to update this initial revaluation in subsequent years.The purpose of the program was to bring those municipalities up to date, so that they could then be eligible for the Maintenance Aid program, described below.
The first supplemental payment, at $2 per parcel, was awarded to those municipalities that re-verified and re-valued parcel inventories.A second payment of $3 per parcel was awarded to recipients that included the revalued assessments on tentative assessment rolls in 1992, 1993, or 1994.
Supplemental Attainment Aid payments totaling $1.34 million were awarded to 55 municipalities between January 1, 1993 and April 1, 1995, when the program expired.
As previously mentioned Chapter 309 of the Laws of 1996 discontinued the Attainment Aid program and provided for its replacement by a redesigned Maintenance Aid program.

Maintenance Aid

In 1990, a new category of state aid was created to help municipalities preserve the systems of improved real property tax administration they had already achieved, through regular updating of rolls. The Maintenance Aid program was restructured to incorporate aid under the Attainment Aid Program that expired at the end of 1998.This restructuring took effect on rolls prepared after January 1, 1996. Payments are as follows:

- In the year of a reassessment, qualified assessing units received up to $5/parcel.This payment could be received repeatedly, but only once in any three year period, and not within three years of receiving Payments #3 or #4 of Attainment Aid.
- In the intervening years, up to $2/parcel, not including wholly exempt parcels or parcels assessed by the State Board.

To qualify for this aid, the assessing unit was required to meet standards of quality assessment administration, including an acceptable level of assessment uniformity as measured by the State Board; implement a revaluation or update at 100 percent of value (except in special assessing units of New York City and Nassau County, where the criterion is a uniform percentage of value in each property class); publish the uniform percentage of value on the tentative assessment roll; adopt a taxable status date and valuation date pursuant to law; provide a set of supporting valuation documents and files to the State Board; and provide a computer copy of the assessments, inventory, and sales files in standardized format to the State Board.
An assessing unit that implemented a state-approved reassessment in a given year was presumed to satisfy the applicable assessment uniformity standards for the year of the revaluation or update and for the next two years. In the following year, aid eligibility depended on achieving a satisfactory assessment uniformity standard (unless another reassessment is implemented).

Aid for Consolidated, Coordinated and County Assessment Programs

In order to improve efficiency in the administration of the real property tax, a consolidation incentive aid program was created under Chapter 170 of the Laws of 1994.This program, as initially enacted, offered local governments up to $10 per parcel if two or more assessing units unified their assessing functions in one of the following ways:

- combine to form a consolidated assessing unit, by employing a single assessor, preparing a single assessment roll, assessing at the same uniform percentage of value, conducting reassessments at the same time, having a single Board of Assessment Review;
- or coordinate the assessing function, by employing a single assessor, specifying the same uniform percentage of value for all assessments, and using the same assessment calendar;
- or contract with the county for all assessment administration services, including appraisal, assessing, and exemption processing.

Each of these approaches provides a way for many smaller municipalities to reduce the cost of reassessment, facilitate acquisition of new technology, and obtain valuation expertise. In addition, these approaches also help to achieve full-time, professional assessing, which can improve equity and provide better service to taxpayers. If a municipality reverts to separate assessing within ten years, the program requires that a prorated portion of the incentive aid payment must be returned to the state. Since the inception of this program, 114 towns and one city in 26 counties have received incentive aid for establishing Coordinated Assessment Programs (1995 through 2006).Approximately 11 percent of all New York's non-village assessing units currently participate in the program.
Chapter 309 of the Laws of 1996 also provided that a municipality may apply for both Maintenance Aid and one of the consolidation incentive aid programs in the same year. However, under the same legislation, payments for these consolidation incentive aid programs were reduced, from $10 per parcel to a maximum of $7 per parcel, effective for rolls filed after July 13, 1996.
Moreover, the maximum amount receivable by a constituent municipality under this program was limited to $140,000.A one-time payment of $2 per parcel was provided for county assessing units established before April 1, 1996 if they implement a reassessment after 1996, at 100 percent of value.With the completion of a reassessment on the 2000 assessment roll, the Tompkins County assessing unit received $65,736 under this provision.
Chapter 216 of the Laws of 2005 provided for an additional payment of $5 per parcel to each assessing unit participating in an Enhanced Coordinated Assessment Program that is implemented or expanded in 2006, 2007 or 2008. Payments are limited to $100,000 per assessing unit for this enhanced program aid.This aid is not available to assessing units that have previously received consolidation incentive aid for participation in a Coordinated Assessment Program. In the first year of this program, $65,325 in Enhanced Coordination Aid was paid to seven municipalities, based on their respective assessment rolls in 2006.
Chapter 530 of the Laws of 2001 authorized a onetime payment of up to $1 per parcel to counties that enter into agreements with assessing units pursuant to RPTL §1573 for providing exemption services, appraisal services or assessment services to assessing units. The amount disbursed through the 2006 roll year has been modest, despite recent expansion of covered services to include data collection, sales verification or other assessment-related services to assessing units. Possible reasons for this low level of participation are the low level of payment and lack of future payments beyond a single year.

Annual Reassessment Aid and Triennial Aid

Chapter 405 of the Laws of 1999 substantially changed the Maintenance Aid program, creating a new annual aid program of financial assistance, supplemented by a program of triennial aid payments for those localities having completed a recent reassessment but not meeting the requirements for annual aid. As with earlier financial aid programs, this new program helped to defray the local costs of maintaining up-to-date, equitable, assessment practices.
Chapter 405 provided a new, higher level of financial assistance to assessing units that annually maintain assessments at a level of 100 percent (or, at a uniform level in each class in special assessing units) under Annual Reassessment Aid.This program originally authorized state aid up to $5 per parcel on each assessment roll through 2004, and up to $2 per parcel on each assessment roll thereafter. However, to encourage the fullest possible participation in the program, Chapter 530 of the Laws of 2001 provided a $5 payment per parcel for each qualifying assessment roll completed during an assessing unit's first five years in the program (or if its fifth year was before 2004, for each qualifying roll through 2004). The maximum annual payment thereafter was increased to $3 per parcel. Authorization of these payments was originally scheduled to sunset after the completion of 2009 assessment rolls.To be eligible, assessing units are required to have:

- maintained assessments annually at 100 percent of market value;
- conducted a systematic analysis of all locally assessed properties annually;

- revised assessments annually where necessary to maintain the assessment level at 100 percent of market value;
- implemented a program to inspect physically and reappraise each property at least once every six years; and complied with applicable statutes and rules.

Although the aid payment beyond the first five years in the program was raised from $2 to $3 per parcel, there was concern by both ORPS staff and the assessment community about continued participation by assessing units in the Annual Reassessment Aid Program. Both parties feared that reducing the level of support for participating municipalities beyond the fifth year of the program and also terminating the program in 2010 would only discourage participation in this program.To strengthen the program, legislation was enacted (under Chapter 655 of the Laws of 2004) that removed the sunset provision and eliminated the phase down in payments. Annual Reassessment Aid is now payable up to $5 per parcel for each and every year in which a municipality qualifies under the program.

Chapter 405 also provided for a Triennial Aid program of up to $5 per eligible parcel upon completion of a reassessment, which includes reinspection and reappraisal of all parcels on the assessment roll. Payments are available only on a triennial basis.This option is oriented toward those assessing units that wish to reassess periodically, but are not ready to commit to annual updating. Chapter 655 of the Laws of 2004 imposed a sunset of 2008 on this program; however, Chapter 212 of the Laws of 2006 extended this program through 2011.

Annual Aid participation has increased dramatically since its inception, with approximately 250 assessing units reassessing annually as of the 2007 roll. Participation in the Triennial Aid program fluctuates each year, since a number of assessing units (sometimes on a countywide basis) reassess on a three-year cycle. Through 2006 assessment rolls, a total of over $41 million has been paid through the two programs, with Annual Aid comprising over 80 percent of total payments.

Real Property Tax Administration Technology Improvement Grant Program

In September 2005 the Office of Real Property Services established the Real Property Tax Administration Technology Improvement Grant Program (RPTATIP).The purpose of this program was to provide users of parcel-level data with more effective and easier access to information they need through sharing of the data, improved technology and integrated real property systems.Another desired outcome of the program was improved business processes through intergovernmental collaboration and cooperation in the use of real property data.Any county, city, town or consortium thereof in New York could apply for the following types of projects:

Project A results in a product that either: (1) provides taxpayers with the ability to access web-based parcel level and sales information. Information provided may also include assessment calendars, photographs, tax rates, search/query capabilities and other appropriate rates and ratios; or (2) provides all the features and functionality of (1) as well as multi-purpose web-based parcel-related software application that encourages the integration and use of parcel data among multiple levels of government, and which also provides parcel tax history information to taxpayers.

Project B results in either: (1) a feasibility/pilot study that demonstrates that a proposed project is capable of being implemented, based on usability, technology or cost effectiveness and other parcel related records; or (2) a project that facilitates implementation of results determined in a demonstration project as described above, or in a pre-existing real property tax administration feasibility/ pilot study.

Each grant application was evaluated in accordance with the published evaluation, ranking, and selection criteria. In the 2005-06 fiscal year 33 Project A grants and 9 Project B grants were awarded.A total of $2.56 million was approved for fiscal year 2005-06 projects.These projects were subject to audit, with the possibility that adjustments could be made to the approved payments as a result of the audit process.

The RPTATIP grant program was also available for the 2006-07 fiscal year, and ORPS' pre-award recommendations are now being reviewed by the Office of the State Comptroller.A number of improvements were enacted for the 2006-07 program, and the B1 project category "feasibility or pilot study projects," was ended.