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Property Tax Equalization and Assessment: A Proposal for Reform

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Comment

PROPERTY TAX EQUALIZATION AND ASSESSMENT: A PROPOSAL FOR REFORM*

I. INTRODUCTION

In 1967 the State of Nebraska officially withdrew from the property tax field.[1] With the enactment of L.B. 377 in 1967, Nebraska changed from a property tax to a combined sales and income tax as a source of revenue. Property taxes are now collected only by local subdivisions.[2] However, the state still performs duties related to the property tax in two important areas: the state must value certain centrally assessed property such as railroads, public utilities and airlines, and fix a uniform rate of valuation throughout the state.[3] Centrally assessed properties are valued by the Nebraska Board of Equalization.[4] Although this task generally arouses little controversy, the Board must also insure that all properties in the state are assessed uniformly.[5] Therein lies the problem. Achieving uniform assessment has proven to be not only politically unpopular, but practically impossible.

II. A BRIEF HISTORY OF PROPERTY TAXATION

Some form of property tax has been in force in the United States since early colonial times. Though the bulk of the colonies' revenues came from poll and head taxes, a number of colonies raised revenue through a "land assessment" tax; this generally was not based on

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1 NEB. REV. STAT. ch. 77, art. 27 (Supp. 1969). A prior venture into the sales and income tax was repealed by a referendum vote of the electors in November, 1966. Sections 77-2701 to -2713 cover the sales tax; the income tax provision is contained in sections 77-2714 to -27,148. Sections 77-27,142 to -27,148 were adopted by the 1969 legislature and authorize a local sales tax.

2 Art. VIII, section 1A of the Nebraska Constitution prohibits the state from levying property taxes upon enactment of a sales and/or income tax.

3 NEB. CONST., art. VIII, § 1.

4 NEB. REV. STAT. ch. 77, art. 6 (Supp. 1969).

5 "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property . . . ." NEB. CONST. art. VIII, § 1.

value, but was a uniform assessment on land units.[6] Personal property was seldom taxed. By the mid 1800's the property tax began to follow the pattern of earlier property taxes.[7] In keeping with the newly emerged notion that tax burden should bear some resemblance to ability to pay, a system of basing property tax liability on the actual value of land was inaugurated. At the same time, personal property began to be taxed.[8] The current trend, however, is away from taxation of personal property and Nebraska will probably follow suit.[9]

As real estate takes on the burden of property taxation, difficulties begin to arise. Even though few states presently rely solely on the property tax for revenues,[10] the ever-growing demands for revenue in local subdivisions place an increasing burden on property, since property bears the brunt of taxation in most political subdivisions.

The system of levying a tax on property was well suited to a time when wealth was measured in property and the extent of a man's property holdings determined his income-producing ability, but with the industrial revolution, it became common for income-producing capability to be less dependent on status as a property owner.[11] With diminishing need for property in order to produce wealth, the property tax became less suitable as a revenue raising

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[6] For example, the land tax rate in Virginia was threepence per hundred acres. Land taxes developed sporadically, but by 1850 most states found it necessary to levy a property tax in order to finance internal improvements. A. LYNN, PROPERTY TAX DEVELOPMENT 11, 12 (1967).

[7] There is some basis for the idea that the development of the American property tax followed European precedents. "In its origins . . . land value or produce was the best available measure of the taxpaying capacity of the citizens . . . . As the forms of tangible wealth multiplied, . . . the land tax was converted to an essentially impersonal levy. The latest trend toward personalization of the tax is thus completing a cycle." H. WALD, TAXATION OF AGRICULTURAL LAND IN UNDERDEVELOPED ECONOMIES 45 (1959).

[8] The mid-1800's saw a trend toward "the taxation of all property, movable and immovable, visible and invisible, or real and personal, as we say in America, at one uniform rate." R. ELY & J. FINLEY, TAXATION IN AMERICAN STATES AND CITIES 131 (1888).

[9] Among Constitutional Amendments approved by Nebraska voters in November 1970, was a provision allowing the legislature to classify personal property and exempt such classes from taxation as it sees fit. L.B. 290, 80th Neb. Leg. Sess. (1969).

[10] In June 1969, 22 states collected a property tax. However, only 13 states rely exclusively on the property tax. All states have a property tax administered either locally or in combination with the state. NEW YORK STATE ASSEMBLY INTERSTATE COMPARISON OF PROPERTY TAX ADMINISTRATION 23 (1970).

[11] A. LYNN, *supra* note 6, at 15.

method. This has been generally recognized, and thirty-seven states now incorporate a sales tax, income tax or both into a broadened tax base.[12]

Local subdivisions and counties continue to rely heavily on property taxation[13] despite widespread criticism.[14] Though we might concede that property tax is at best a poor and inequitable means of generating revenue, it will probably be with us for a long time. It is therefore essential that it be made as equitable and efficient as possible.

III. PRESENT DIFFICULTIES

Property is taxed by applying a levy, expressed in mills, against the assessed valuation of a given piece of property. Most states require that property be assessed at full or actual value, or some fraction thereof.[15] Many states have statutes which set forth specific factors to be considered in determining value.[16] Valuation is determined by an elected or appointed assessor.

Nebraska uses a system known as "primary valuation." All property is assessed by an elected county assessor. This valuation is used by all assessing districts, even those which cross county lines.[17]

It has been almost universal experience that property is seldom assessed at "full" or "actual" value even in those states which constitutionally require it. A study conducted in New Jersey indicated that assessed value of property ranged from 4.13 to 86 percent of

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[12] *Id.* at 21.

[13] In 1963 property tax revenue accounted for approximately 88% of the tax revenue of local government and 68% of revenue from all local sources. B. BRIDGES, PAST AND FUTURE GROWTH OF THE PROPERTY TAX 21 (1967).

[14] "Practically, the general property tax as actually administered is beyond all doubt one of the worst taxes known in the civilized world." Seligman, *The General Property Tax*, in ESSAYS IN TAXATION 62 (9th ed. 1921).

[15] Fifteen states require full value; 19 require a fractional percentage of full value. NEW YORK STATE ASSEMBLY, *supra* note 10, at 25.

[16] NEB. REV. STAT. § 77-112 (Reissue 1966) enumerates 7 factors to be considered. The Nebraska Supreme Court has held that "actual value" as stated in the statute means the same as "fair market value," thereby encompassing all 7 factors within "fair market value." LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956); State Tax Cases, 155 Neb. 331, 51 N.W.2d 739 (1950).

[17] There are more than 1400 assessment districts in Nebraska which cross county lines, 530 of which are school districts. Brief for Rock Island R.R. as Amicus Curiae, County of Sioux v. State Bd. of Equalization and Assessment, 185 Neb. 741, 178 N.W.2d 754 (1970). *See* Appendix A. Because school districts generally levy the highest mill rate, it is necessary that adjoining counties value land uniformly.

actual value.[18] Many states are now acting under orders from their supreme courts to raise all assessments to actual value. For most, this has created tremendous administrative difficulties. A good example of the problems that can be created when a full value requirement is imposed after a long history of fractional valuation appears in Florida. Though Florida's experience is somewhat atypical, the problems faced in other states are no less real. In 1964, the Florida Supreme Court ruled that all property in Florida must be appraised at full value.[19] This created obvious hardships for agricultural lands bordering cities. In response, the Florida legislature passed a statute specifying a different procedure for assessing agricultural land.[20] This provides a means for agricultural land bordering expanding cities to be appraised based on its value as agricultural land, rather than a higher use. However, there have been many difficulties. For example, land speculators are encouraged to retain speculative lands in agricultural production. This allows the valuation of the land for tax purpoess to remain relatively stable while its value for its ultimately intended use increases sharply. Most observers agree that the dual system of valuation has not worked well.[21]

In 1957, twenty-five of twenty-six states responding to a questionnaire felt that fractional valuation was universal throughout their state.[22] In 1961, the South Dakota Supreme Court ordered that assessments be standardized at actual value after finding that assessment values ranged from 13.3 percent to 131 percent of actual value.[23]

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18 Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374 (1962).

19 A series of rulings from 1964 to 1966 held that assessors must assess according to the statutory standard (full value). State *ex rel* Dupont Plaza, Inc. v. McNayr, 166 So. 2d 142 (Fla. 1964); Walter v. Schuler, 176 So. 2d 81 (Fla. 1965). On June 16, 1966, the state comptroller ordered all counties in the state to put their tax roles on a full value basis by September 15, 1966. A subsequent court ruling extended the deadline to July 1967. State *ex rel.* Butscher v. Dickinson, 196 So. 2d 105 (Fla. 1966).

20 Wershow, *Ad Valorem Assessments in Florida: Whither Now?* 18 U. FLA. L. REV. 9 (1965).

21 *Id.* If land is to be used as agricultural land, it must be declared as such. It is not enough that crops be growing on the land. For one Florida taxpayer this resulted in a valuation of $576,390 on land appraised for agricultural purposes at $32,909. He had neglected to specifically tell the assessor that it was agricultural land, and the court held that this could not be inferred from the fact that the land was being used to grow crops. Stiles v. Brown, No. G-197, 1st D.C.A. Fla., Aug. 5, 1965.

22 Note, *supra* note 18. Even in those states with "full value" provisions, assessment ratios averaged 30% of actual value.

23 Baken Park, Inc. v. County of Pennington, 79 S.D. 168, 109 N.W.2d 898 (1961).

Other states have responded to fractional valuations in the same manner as Nebraska by statutorily requiring that all property be assessed at some fraction of actual value.[24] In Nebraska, the percentage was set at fifty percent in 1955, then lowered to thirty-five percent in 1957.[25] This is merely a device to bring the statutory requirement into conformity with actual practice. However, it has often been demonstrated that even those states which have "percentage of value" assessment end up with fractional valuations.[26]

IV. VALUATION

The key to effective property tax administration is accurate valuation. While this is the primary goal of any assessor, it is an elusive one. A study prepared for the General Assembly of New York showed that only nineteen states used more than three of six factors indicating good assessment practice.[27] Nebraska was one of seven states using five, while only Tennessee utilized all six.[28]

There is no universally accepted means of arriving at value.[29] A number of approaches are utilized, none of which is completely satisfactory. First and most obvious is the comparison to sales prices of similar property. This is generally satisfactory in urban areas where property is frequently marketed and where most of the property consists of single unit dwellings. It is of little or no value, however, in valuing agricultural lands. A number of areas in Nebraska have very few sales of agricultural lands. Those that do occur are seldom arms' length, open market transactions. More often, they involve sales of small units of land which a landowner wishes to add to his present producing unit. Because of this, a premium is paid. Even among the infrequent sales of full producing units, a number involve a contemplated change to use as residential subdivisions. Therefore, sales assessment ratios are not a good indicator of value for agricultural lands. The Nebraska Supreme Court has noted its dissatisfaction with their use.[30]

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[24] *See* note 15 *supra.*

[25] E. PETERSON, LOCAL PROPERTY TAXES IN NEBRASKA 2 (1970) (Pamphlet of the Univ. of Neb. College of Agriculture).

[26] Seligman, *supra* note 14, at 1380.

[27] NEW YORK STATE ASSEMBLY, *supra* note 10, at 31.

[28] *Id.* at 32.

[29] Actual value is defined by state courts in almost as many ways as there are states. Essentially, they boil down to different means of expressing the Illinois Standard: "The price at a fair voluntary private sale." M. KOPLICK, PROPERTY TAX ASSESSMENT IN THE UNITED STATES, REPORT TO THE NEW YORK BOARD OF EQUALIZATION AND ASSESSMENT 104-08 (1961).

[30] County of Sioux v. State Bd. of Equalization and Assessment, 185 Neb. 741, 178 N.W.2d 754 (1970); State Tax Cases, 158 Neb. 353, 63 N.W.2d 468 (1954).

Many agriculturists favor greater reliance on income capitalization as a means of reaching value.[31] They claim that farming yields a rather poor return on capital investment, often as little as one and one half to two percent.[32] Obviously, this makes it impossible to keep a farm with mortgage money, as the interest on the money borrowed would be so much greater than the rate of return. However, there are several significant flaws in an income capitalization approach:

1. It tends to penalize the efficient land manager and favor the less efficient producer.

2. The marginal landowner who is forced to farm his land as intensively as possible to earn a livelihood is in a disadvantageous position compared to the large landowner who can earn the same income with less intensive farming.

3. It encourages the speculative land owner to engage in minimal farming operations to maintain a low valuation. This speculative landowner may not be concerned with employing sound agricultural practices.

4. It is often as difficult to determine actual income as it is to determine actual value.

5. Heavy reliance on income capitalization is nothing more than an inefficient means of collecting an income tax.

6. There is little agreement as to a proper capitalization rate.

7. Capital gains are not considered.

A refinement of the income capitalization approach has been incorporated in Colorado. It is known as "productive capacity" capitalization.[33] Briefly, it consists of assigning certain "indicator" crops to land. For all types of land, there is a determination of how much of an indicator crop can be produced. An allowance is made for the costs of water, fencing and other normal production costs. Price is based on average market price for the indicator crop for the previous seven years. The fifty percent landlord's share of the profit is then capitalized at a nine percent rate.[34]

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[31] Interview with Forest E. Lee and E. H. Shoemaker, Officials of the Nebraska Stockgrower's Association, in Ogallala, Nebraska, June 12, 1970.

[32] *Id. See* also VanKirk, Why Tax Protests Center in Nebraska Rural Areas, North Platte Telegraph, June 24, 1970.

[33] Memorandum from Colorado Tax Commissioner to All County Assessors, April 28, 1970.

[34] *Id.*

This system would seem to be quite adequate for farmland and is worthy of close examination. The major difficulty is that urban landowners would begin pressuring for similar treatment. In some rural business centers this may be a desirable alternative to present methods of valuation. Many small town business locations are extremely difficult to value.[35] However, in urban areas this is generally not the case, as there are enough sales to apply a valid sales assessment ratio.

A third system of valuation is the scientific reappraisal. This is done by a private appraisal firm. The 1963 Nebraska Legislature required that all ninety-three Nebraska counties conduct a scientific reappraisal by 1973.[36] Scientific apprasials generally attempt to take as many factors as possible into account when making a determination of value. Nebraska law provides specifically for seven factors to be taken into account in appraising property.[37] This classification system divides all agricultural land, from prime irrigated cropland to grazing lands, into classifications from one to six minus. The six minus classification covers fifty-three percent of Nebraska's agricultural lands.[38] Scientific reappraisals have been generally acceptable to the Nebraska Supreme Court as indicators of value.[39]

The major objection is that different appraisal firms use different means of arriving at value.[40] This affects the consistency of results. However, a program of reappraisals is necessary to a soundly administered property tax program.

The 1969 legislative session provided several valuable statutory tools to the state tax commissioner to aid in making accurate appraisals. These include regional valuation hearings[41] and spot re-

[35] In most cases the value of a small town business bulding is based on the value of the going business it contains. Without a going business the building is practically valueless. The standard usually applied is replacement cost less depreciation. NEW YORK STATE ASSEMBLY, *supra* note 10, at 16.

[36] By June 1, 1970, 53 counties had completed reappraisals; 26 more had reappraisals in progress. Working paper, Neb. Dept. of Revenue. In 1969, the legislature changed this to mandatory annual reappraisals by county assessors, with the department of revenue empowered to order a professional reappraisal if needed. L.B. 391, 80th Neb. Leg. Sess. (1969).

[37] NEB. REV. STAT. § 77-112 (Reissue 1966).

[38] U.S.D.A., Major Land Resource Areas for Nebraska (1963) (text with accompanying map).

[39] County of Gage v. State Bd. of Equalization and Assessment, 185 Neb. 749, 752, 178 N.W.2d 759, 762 (1970).

[40] Hanna v. State Bd. of Equalization and Assessment, 181 Neb. 725, 731-33, 150 N.W.2d 878, 882-83 (1967) (Spencer, J., concurring).

[41] L.B. 390, 80th Neb. Leg. Sess. (1969). L.B. 390 amends NEB. REV. STAT. § 77-508 (Reissue 1966).

appraisals.[42] It is generally felt that Nebraska currently has one of the best statutory bases for accurate appraisals of any of the fifty states.[43]

V. EQUALIZATION

A brief examination of Nebraska's system of equalization has previously been made. Stated simply, the task of the Nebraska Board of Equalization is to insure that all property throughout the state is taxed uniformly.[44] The board must determine, based on abstracts of assessments submitted by county officials, if there is such disparity in assessed valuations that some adjustment is necessary. This determination is not made until action is completed by the county board of equalization. If adjustments are necessary, the state board of equalization, consisting of the governor, tax commissioner, secetary of state, state treasurer, and state auditor,[45] meets to determine the adjustments. Notice of proposed valuation increases are sent to county assessors, and an opportunity for a hearing before the board is given. Then, based upon information supplied by the department of revenue and testimony taken at the hearings, the board enters final orders raising or lowering valuations as necessary to reach the statutory requirement of thirty-five percent of actual value.

The action taken by the board in 1969 is illustrative. Prior to the state board's action, there were indicated assessment ratios of rural land ranging from seventy percent to thirty-three percent and on urban property from nineteen to thirty-seven percent.[46] The board ordered increases on rural land in sixty-four counties, on urban land in thirty-three counties.[47] A decrease in urban valuations was ordered in one county. Following this action, rural valuations ranged from twenty-four percent to thirty-five percent, urban valuations from twenty-two percent to thirty-five percent.[48] As in the past, the state board's action met with considerable resistance.[49]

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42 L.B. 391, 80th Neb. Leg. Sess. (1969).

43 Interview with Murrell B. McNeil, Nebraska State Tax Commissioner, in Lincoln, Nebraska, July 8, 1970.

44 *See* note 5 *supra.*

45 NEB. CONST. art. IV, § 28.

46 Brief for Appellant, County of Sioux v. State Bd. of Equalization and Assessment, 185 Neb. 741, 178 N.W.2d 754 (1970).

47 *Id.*

48 *Id.*

49 Forty-three percent of the counties ordered to increase valuations on rural lands in 1969 chose to appeal the board's determination. Such appeals presently offer a reasonable chance of success and nothing is to be lost except the costs of appealing. Interview with Randall A. Rinquest, Tax Attorney for the Nebraska Dept. of Revenue, in Lincoln, Nebraska, July 8, 1970.

The unpopularity of state board actions arises from several sources. First, there is an all too common tendency for taxpayers to equate valuation with taxation. Thus, an increase in valuation raises the specter of an increase in taxation.[50] Of course, this is not necessarily the case. Often an increased valuation results in little or no increase in taxes paid after an adjusted mill levy is applied. This is always true of the blanket county-wide increases ordered by the state board. An increase may have some effect on proportionate shares of taxes paid.[51] It must be remembered, however, that the only determinant of property tax liability is local revenue needs.

One difficulty that arises when rural valuation is increased centers around estate taxes. As has been noted earlier, few farms are sold on the open market. Most are transferred as part of an inheritance. The first source of valuation information for estate tax purposes is the property tax role of the county assessor. An increased valuation has a very real effect on estate tax liability. Because of the low return on agricultural investment, many farms do not produce enough cash flow to meet estate tax liability.[52] The result is either a sale or a mortgage. This has had a very real effect on the size and number of farms in Nebraska.[53]

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[50] This concept is graphically illustrated by the case of a Massachusetts homeowner. After receiving notice of a 600% valuation increase on his home, the homeowner decided that some form of protest would be appropriate. The next day a picture of him standing in front of his burning house appeared in the *New York Times*. The picture was captioned: "Homeowner burns house to protest tax increase." But when the homeowner's tax bill arrived, the actual increase was insignificant, as an adjusted mill levy was applied against the adjusted valuation. New York Times, Jan. 24, 1962, at 35, col. 2.

[51] If an individual landowner's property is valued higher than similar land in the same taxing district, that land must carry a disproportionate share of the tax burden. However, this is a problem of intra-county equalization and must be handled at that level. But if the disparity exists after intra-county equalization is completed, a blanket increase ordered at the state level does magnify the inequity.

[52] As a closely held business, the devisee has 10 years to pay estate taxes. This eases the burden somewhat. It is not felt that an estate tax problem should be met by an attack on property tax valuation, but instead by legislative changes in the Internal Revenue Code relating to valuation of agricultural lands for estate tax purposes. Such an attempt is being made. Letter from the National Livestock Tax Committee to John S. Nolan, Deputy Assistant Secretary, United States Treasury Department, May 11, 1970.

[53] For example, in Nebraska Planning Region 13, the number of farms decreased 19.3% from 1960 to 1968 while average farm size increased from 346.7 acres to 402.3 acres between 1959 and 1964. It should be noted that during the 1959-1964 period the average value of lands and improvements increased from $116.16 to $154.51 per acre. Nebraska Dept. of Economic Development, IRIS Working Papers 7 (March 1970).

An assessor who feels he has done his job properly naturally takes some offense when there is an indication that he has undervalued the property in his jurisdiction. However, the reverse of this may be true. As an elected county official, an assessor hesitates to take the unpopular step of increasing valuation. A county assessor may, then, undervalue with full knowledge that the task of ordering an increase can be relegated to the state board.

The state board has had difficulty sustaining its actions before the Nebraska Supreme Court. The court has stated that "[t]he object of constitutionally required uniformity in the taxation of real property is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value."[54] This elusive goal is perhaps nearer than at any previous time, but it has not been reached. Although absolute mathematical equality is not necessary,[55] (and in fact not possible): [W]here the record of the proceedings before the State Board of Equalization and Assessment contains no evidence to justify an order, the action must be held to be unreasonable and arbitrary"[56] and "where the record of the proceedings before the [State Board] . . . shows that the order of the Board was unreasonable and arbitrary, it will be reversed."[57]

The board's record of appealed orders has not been good. Aside from the fact that the state board has been frequently reversed by the supreme court, the number of appeals in itself has been a difficulty. In 1969, twenty-eight counties appealed valuation increases. The state board was reversed in twenty cases, upheld in seven, and reversed in part, affirmed in part in one case.[58] The court did not seem to indicate that a recent scientific reappraisal was a sufficient indicator of value. At the same time, some dissatisfaction was noted with the use of sales assessment ratios.[59]

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[54] County of Gage v. State Bd. of Equalization and Assessment, 185 Neb. 749, 755, 178 N.W.2d 759, 764 (1970).

[55] County of Kimball v. State Bd. of Equalization and Assessment, 180 Neb. 482, 143 N.W.2d 893 (1966).

[56] Hanna v. State Bd. of Equalization and Assessment, 181 Neb. 725, 150 N.W.2d 878 (1967).

[57] Brandeis Inv. Co. v. State Bd. of Equalization and Assessment, 181 Neb. 750, 150 N.W.2d 893 (1967).

[58] Summary of the 1969 Tax Cases, 185 Neb. 741-75, 178 N.W.2d 754-74 (1970), prepared by Randall A. Rinquest, Tax Attorney for the Nebraska Dept. of Revenue.

[59] Sales assessment ratios have been upheld but the Nebraska Supreme Court has cautioned as to their flaws: "Ordinarily, the objection to using sales price as the standard or evidence of value is the fact that the sale may not have been in the ordinary course of trade." County of Loup v. State Bd. of Equalization and Assessment, 180 Neb. 478, 480, 143 N.W.2d 890, 892 (1966).

The difficulties with inter-county equalization are easy to see; the solutions are not so obvious. A number of states do not use any form of inter-county equalization. Some may use other forms of equalizing values such as central assessment, full value requirements or others.[60]

There is some question as to whether state-wide inter-county equalization is necessary in a state which collects no property tax. Indeed, when the state collects no property tax, the obvious inequity of dissimilar fractional assessments does not exist. The only thing which figures into the property tax bill is the revenue needs of the subdivision. In a state which uses primary valuations, as does Nebraska,[61] it would make little difference if valuations were unequal between counties so long as they were uniform within the county. However, there are other factors which make inter-county equalization necessary. The most important of these is the overlapping taxing district, that is, a taxing district which contains property from more than one county within its boundaries. There are 1,430 overlapping taxing districts in Nebraska; approximately 500 of these are school districts.[62] Each taxing district may apply a mill levy against property within its boundaries. If two adjoining counties assess similar land at different values, the property with the higher assessed value in the same assessment district with property of a lower assessed value bears a disproportionate share of the tax burden.

Justice Newton, dissenting in the 1969 Tax Cases, said:

> With the abolition of the state property tax, uniformity between western and eastern Nebraska counties is no longer mandatory as neither is subject to taxes levied in the other. If Scotts Bluff County were assessed at 50 percent of actual value and Douglas County at 25 percent, no prejudice would result to Scotts Bluff County because thre [sic] are no overlapping taxing districts between the two counties.[63]

This is incorrect. Though less obvious than overlapping taxing districts, there are a number of reasons why prejudice results from non-uniform valuations. The state aid formula, which returns sales and income tax revenues to subdivisions, is based on the mill levy.[64] If

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[60] Memorandum to Robert Barnett, Director, Nebraska Constitutional Revision Comm., from Randall A. Rinquest, Tax Attorney for the Nebraska Dept. of Revenue, May 7, 1970.

[61] Primary valuation means simply that valuation is performed by the political subdivision, and all taxing districts base their mill levy on that assessment.

[62] Brief for Rock Island R.R., *supra* note 17.

[63] County of Sarpy v. State Bd. of Equalization and Assessment, 185 Neb. 760, 767, 178 N.W.2d 765, 770 (1970) (Newton, J., dissenting).

[64] *See* NEB. REV. STAT. § 77-1330 *et seq.* (Supp. 1969), *as amended* L.B. 633, 80th Neb. Leg. Sess. (1969).

a county is undervalued, it must apply a higher mill levy to generate the same amount of revenue as a properly valued county. Thus, the undervalued county receives a disproportionate share of state aid even though its citizens' tax burden is no greater than in the properly valued county.

Legislative Bill 932 (80th Neb. Leg. Sess. 1969) grants a limited homestead exemption to all owner-occupied dwellings. If a home is undervalued, the homestead exemption relieves that homeowner of a greater proportionate share of his tax burden than it does for the owner of a properly valued dwelling.

Centrally assessed property valued at thirty-five percent by the state board must bear a disproportionate share of a county's tax burden if all locally assessed property is undervalued. Locally undervalued property requires a higher mill levy to generate necessary revenue. Thus the tax burden of centrally assessed property within the county is higher than it should be.

Nebraska law does not allow local subdivisions to provide tax incentives to industry.[65] However, if a county is consistently undervalued, this is in effect a limited tax incentive for relocation.

These factors necessitate some form of inter-county tax equalization. But given the difficulties of the current structure, is there a more efficient and equitable means for accomplishing the same task?

Means of equalization fall into six general categories:

1. A board of equalization appointed by the Governor or a tax commission (twenty-five states)
2. A board consisting of elected state officials (four states, including Nebraska)
3. A state agency (eleven states)
4. A tax court (four states)
5. An election board (one state)
6. No equalization at the state level (nine states)[66]

Two states combine an equalization board with a review agency; one uses a tax court, the other a tax review board. There are a total of sixteen states which have independent agencies to hear assessment appeals and appeals of tax rulings.[67]

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[65] NEB. CONST. art. VIII, § 1 would prevent such an action.
[66] Memorandum, *supra* note 60.
[67] *Id.*

No one method stands out as clearly superior to any other. An appointive board is a politically attractive course and has been heavily favored over other means. Still, it does not answer the most basic problem, that is, achieving equitable equalization.

It appears that a departure from traditional patterns is clearly warranted. Accordingly, a plan for regional equalization boards is proposed.

To implement a regional equalization plan, the state must first be divided into coherent regions. The regions must follow county lines, as their purpose is inter-county equalization.

The regions should be drawn in such a manner that those factors most affecting valuation and equalization are uniform within each region. The following factors are considered most important, though not all-inclusive:

1. Land type and use
2. Economic base
3. Rural-urban ratios
4. Population trends
5. Productivity levels of agricultural land

Each region should contain from seven to nine counties.[68]

After county boards had completed the task of intra-county equalization, a representative from each county within a region would meet to perform inter-county equalization within the boundaries of their region.[69] The equalization process itself would be based on statistical information supplied by the department of revenue.[70]

At the completion of regional equalization, the department of revenue would make full disclosure of the prevailing assessment ratio within each region to all regions. Any inequalities would be made known to the members of all regional boards. At this point the state board of equalization would have two possible courses:

[68] One possible division of regions appears in Appendix B. It is felt that each county within a region should be represented. Too many counties within a region would make the regional equalization board unwieldy; too many regions would defeat the purpose of the regional divisions.

[69] The regional board would proceed under the assumption, as the state board must now, that lower levels of equalization had been properly performed.

[70] Again, this is presently the case. The State Department of Revenue conducts valuation and equalization studies on a continuing basis, and is adequately equipped to provide this information.

1. To convene and order general equalization hearings, entering orders for valuation adjustments based on the hearings;

2. To allow any region to challenge the valuation of any other region with a lower assessment ratio, basing a final order on the evidence presented by both regions.[71]

After final action by the state board, each taxing district would set a mill levy based on the final order.

The advantages of this system are numerous:

1. The number of overlapping taxing districts that the state board must consider are significantly reduced.[72]

2. The state board need only equalize thirteen subdivisions as opposed to the current ninety-three.

3. Initial equalization orders are made by the people most familiar with local conditions.

4. The major portion of the equalization process is returned to local citizens.

5. Incentives to equalize become economic rather than political.

6. Hearings before the state board become more nearly adversary in nature. This gives an opportunity to more fully develop evidence in the hearing.

7. The role of the department of revenue would be advisory. As a disinterested party the department can be more effective in equalization.

8. Regional variations can be more carefully considered during equalization.

Obviously, there are disadvantages to the proposal. The most obvious is that the political undesirability of a valuation increase may preclude a local assessor, who must face local voters, from concurring in a regional order.[73] However, it is felt that the economic pressure supplied by the other members of a regional board would insure compliance. This economic incentive may be supplied not

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[71] This would seem to be the more desirable course. Orders entered after a full adversary hearing would carry a stronger presumption of validity. Beyond this, it would provide a more thorough airing of all the evidence. At the present time, most evidence taken from county officials is adverse to an increase, even though it be acknowledged that such an increase is necessary.

[72] *See* note 62 and accompanying text *supra*.

[73] Letter from Robert E. McKelvie, Harlan County Attorney, to Stanley M. Talcott, Research Assistant to Governor Tiemann, July 3, 1970.

only by the state aid formula, but by some device such as valuing centrally assessed properties at the lowest prevailing assessment ratio.

The possibility exists that inserting another level of equalization will only increase the possibility of error. It is felt that this objection is overcome by the advantages mentioned above.

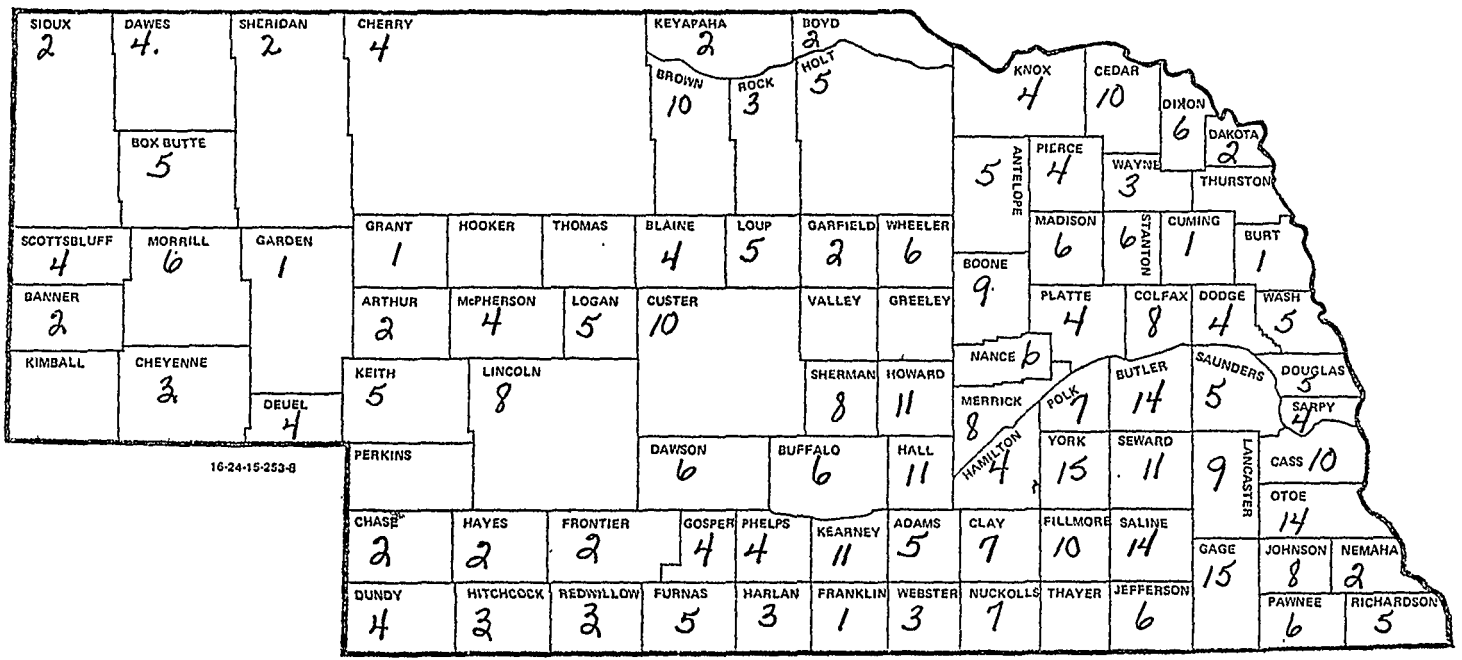
Regional equalization should significantly reduce the inequities which occur. Full attention can be given to the process of equalization. Under present practice, the State Board sits primarily as a board of valuation and becomes no more than a final step in the valuation process. This will be the case so long as the goal is to reach the statutory thirty-five percent of value. But it must be recognized that if all property is valued equally, it makes no difference if the assessment is at ten percent or one hundred percent of actual value. The only determinant of a citizen's property tax bill is the revenue needs of his local subdivision. If equality exists, valuation is unimportant.[74] It is strongly felt that regional valuation is a significant step toward greater equality of valuation.

Naturally, all the problems of equalization cannot be solved by a structural reorganization. Many of the difficulties are inherent in the property tax itself. However, since the property tax will be the greatest source of local revenue for the foreseeable future, any action which can make its administration more equitable is worthy of close examination.

Stanley M. Talcott '71

[74] One of the more significant aspects of the regional proposal is that it tends to separate valuation and equalization and treat them as two separate procedures. Although accurate valuation is essential to equalization, the ratio of assessed value to actual value is unimportant so long as all property is valued uniformly throughout the state.

APPENDIX A



NUMBER OF OVERLAPPING SCHOOL DISTRICTS

Appendix B
Regional equalization Plan