

## TAX ASSESSMENT IN NEW YORK STATE

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INTRODUCTION<sup>1</sup>

The property tax burden in New York State is jeopardizing the sustainability of New York's entire property tax system.<sup>2</sup> In reaction to property tax growth rates that are substantially higher than income growth rates,<sup>3</sup> and an abnormally high property tax burden,<sup>4</sup> New York taxpayers are beginning to organize an anti-property tax campaign reminiscent of the "taxpayer revolution" that led to voter initiatives such as Proposition 13 in California during the 1970s.<sup>5</sup> In response to growing voter dissatisfaction, and perhaps to prevent a property tax rebellion,<sup>6</sup> numerous measures to improve the property taxation system in New York have been proposed.<sup>7</sup> Unfortunately, however, many of these proposals merely shift the property tax burden from one set of taxpayers to another or shift

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<sup>1</sup> Although this article stands on its own as a contemporary contribution to the scholarship of state and local taxation, portions of this article previously appeared in an earlier publication by the authors. Steven V. Melnik & David Cenedella, *Real Property Taxation and Assessment Processes: A Case for a Better Model*, 12 N.Y.U. J. LEGIS. & PUB. POL'Y 259 (2009). The authors thank James F. Dunne, New York State Office of Real Property Services, Research Information and Policy Development, Brian J. Kenney, Assessor for the Town of Orangetown, NY, and Anthony DeBellis, Commissioner, Institute of Assessing Officers (IAO), for information and assistance they provided to us.

<sup>2</sup> See, e.g., S. 5509A, 2007 Leg., 230th Reg. Sess. (N.Y. 2007); see also John Davis, *Residents Join to Seek Tax Relief*, POUGHKEEPSIE J., Feb. 25, 2007, 1A; David Jones, *NYS Tax Burden Leads Nation: Report*, CRAIN'S NEW YORK BUS., May 15, 2007, <http://www.craainsnewyork.com/apps/pbcs.dll/article?AID=/20070515/FREE/70515008/-1/rss01&rssfeed=rss01>.

<sup>3</sup> Ford Fessenden, *Gain in Income is Offset by Rise in Property Tax*, N.Y. TIMES, Aug. 7, 2006, available at <http://www.nytimes.com/2006/08/07/nyregion/07taxes.html>.

<sup>4</sup> See N.Y. STATE COMM'N ON PROP. TAX RELIEF, A PRELIMINARY REPORT OF FINDINGS AND RECOMMENDATIONS TO GOVERNOR DAVID A. PATTERSON 13 (2008) [hereinafter FINDINGS AND RECOMMENDATIONS], available at [http://www.cptr.state.ny.us/reports/CPTRPreliminaryReport\\_20080603.pdf](http://www.cptr.state.ny.us/reports/CPTRPreliminaryReport_20080603.pdf) (citing N.Y. CITIZENS BUDGET COMM'N, LOCAL TAXES IN NEW YORK STATE: EASING THE BURDEN (2007) [hereinafter CITIZENS BUDGET COMM'N] available at [http://www.cbny.org/sites/default/files/CBC\\_Local\\_Taxes\\_in\\_NY.pdf](http://www.cbny.org/sites/default/files/CBC_Local_Taxes_in_NY.pdf)).

<sup>5</sup> Tonya Barr, *State Property Tax Debate Heating Up*, HEARTLAND INST. BUDGET & TAX NEWS, Jan. 1, 2008, available at <http://www.taxfoundation.org/research/show/22956.html>. See Fessenden, *supra* note 3; see also Davis, *supra* note 2, at 1A.

<sup>6</sup> Barr, *supra* note 5; see Fessenden, *supra* note 3; see also Davis, *supra* note 2, at 1A.

<sup>7</sup> See, e.g., FINDINGS AND RECOMMENDATIONS, *supra* note 4, at 55, 59.

revenue collections from property tax to a different type of tax and therefore address only the consequences of the underlying problem and not the problem itself.<sup>8</sup>

The fundamental problem is that the real property taxation system in New York is inequitable and inefficient.<sup>9</sup> The property tax system in New York is inequitable because similarly situated properties are taxed differently. Inconsistent valuation methods, infrequent revaluations, overlapping geographical boundaries, and inadequate overall real property tax policies cause the inequalities. The systems are also inefficient. Local jurisdictions often perform redundant tasks. These inefficiencies result in further valuation inconsistencies and, consequently, inequitable taxation practices.

New York must enact laws that fundamentally modify its system of real property tax assessment and collection. First, New York State, and not local governments, must assess and collect real property tax.<sup>10</sup> But local governments must retain control over the key elements of the process and oversee the state's real property tax-related activities. Specifically, local governments must determine the extent of their property owners' tax burden, have custody of the tax collections, and have control over spending. To further address local governments' potential sovereignty-related concerns, the legislation must include a sunset provision. Second, once in charge, the state must annually revalue real properties. Recent technological developments and the long-term employment of tax assessors would make this proposition financially possible. Annual revaluations would result in further cost savings. Finally, local governments must reimburse New York State for the net costs of assessing and collecting real property tax.

Part I of this article presents a brief summary of the tax burden in New York State. Part II summarizes the current property tax system in New York and highlights certain deficiencies. Part III describes various existing programs to reduce the property tax burden. This Part discusses the benefits and drawbacks of exemptions such as the STAR program, circuit breaker programs, classification systems and property tax limits. Part IV presents recent legislative proposals and discusses the

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<sup>8</sup> See *infra* Part IV.B.

<sup>9</sup> See *Infra* Part V; see also CITIZENS BUDGET COMM'N, *supra* note 4, at 3.

<sup>10</sup> Based on our research, Maryland is the only state that has a centralized state-run real property tax assessment system. See *infra* note 254.

problems imbedded in those proposals. Part V proposes a model property tax system designed to bring greater equity and efficiency into governments' real property taxation systems. Finally, Part VI evaluates this article's proposal from the traditional perspectives of equity, efficiency, and simplicity.

### I. THE TAX BURDEN IN NEW YORK

The property tax is currently the most disliked tax across the United States.<sup>11</sup> What separates New York from other states is the degree of the burden imposed. New York State has the highest local tax burden in America, measuring seventy-nine percent above the national average.<sup>12</sup> In comparison, the second highest local tax burden is in New Jersey whose burden is just eighteen percent above the national average.<sup>13</sup> The property tax is responsible for the majority of these local taxes.<sup>14</sup>

For example, the two counties in the United States which pay the highest median property taxes (and five of the top twelve) are located in New York State.<sup>15</sup> Part of the reason for this figure is that some counties in New York State have experienced tremendous price appreciation in real property over the past decade and property tax rates have merely increased accordingly. As of 2008, for example, Westchester County paid the highest median property tax in the United States, but is ranked only 138th when the property tax is taken as a percentage of home value.<sup>16</sup> New Yorkers cannot take solace in this alternate measuring statistic, however, because when property tax as a percentage of median home value is used to determine the property tax burden, nine of the ten counties in the United States with the highest property tax burden are located in New York State.<sup>17</sup> Even when a third possible criterion for determining the property tax burden is used, New York continues to come out near the top. When comparing property tax as a percentage of

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<sup>11</sup> Barr, *supra* note 5.

<sup>12</sup> CITIZENS BUDGET COMM'N, *supra* note 4, at 8.

<sup>13</sup> *Id.*

<sup>14</sup> Josh Barro, *Fiscal Fact No. 129, Sound Tax Policy Coming to New York(?)*, TAX FOUND., June 6, 2008, at 1, available at <http://www.taxfoundation.org/files/ff129.pdf>.

<sup>15</sup> See TAX FOUND., PROPERTY TAXES ON OWNER-OCCUPIED HOUSING BY COUNTY, 2005–09 (2010), <http://www.taxfoundation.org/taxdata/show/1888.html>.

<sup>16</sup> *Id.* (indicating that Westchester County dropped to number two with Hunterdon County, New Jersey taking the number one spot).

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

household income, five of the top twelve counties with the highest property tax burden are located in New York State.<sup>18</sup>

New Yorkers could be relieved to know that New York ranks only fourth out of the fifty states in terms of property tax collections per capita<sup>19</sup> with residents of New Jersey, Connecticut and New Hampshire paying more property tax per capita than residents of New York.<sup>20</sup> Even this statistic is grossly misleading, however, because of the relatively small reliance New York State places on the property tax as a percentage of total taxes levied. For example, of the three major state and local taxes (property, sales and income) the property tax accounts for only thirty-three percent of total tax collections in New York, thirty-eight percent in Connecticut, forty-eight percent in New Jersey and seventy-seven percent in New Hampshire which imposes no income tax,<sup>21</sup> meaning New York is imposing a much higher amount of other taxes than New Jersey, Connecticut, or New Hampshire.

New York collects revenue from all three of the major taxes in almost equal proportion: thirty-three percent from the property tax, twenty-nine percent from the sales tax and thirty-eight percent from the income tax.<sup>22</sup> Therefore, one might expect the property tax burden in New York to be less than in a state that relies almost exclusively on the property tax such as New Hampshire, seventy-seven percent, or Alaska, seventy-two percent.<sup>23</sup> The per capita property tax burden in New York, \$1,774, however, is more than in Alaska, \$1,345, and only marginally lower than in New Hampshire, \$2,023.<sup>24</sup> When all taxes are taken into account, New York's per capita tax burden is the highest in the nation.<sup>25</sup> The overall per capita tax burden in

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

<sup>19</sup> MANDY RAFOOL, NAT'L CONFERENCE OF STATE LEGISLATURES, A GUIDE TO PROPERTY TAXES: AN OVERVIEW 15 (2002) [hereinafter NCSL, OVERVIEW], available at <http://www.leg.state.nv.us/73rd/otherDocuments/PTax/NCSL-gptoverview.pdf>.

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

<sup>21</sup> NAT'L CONFERENCE OF STATE LEGISLATURES, A GUIDE TO PROPERTY TAXES: THE ROLE OF PROPERTY TAXES IN STATE AND LOCAL FINANCES 5 (2004) [hereinafter NCSL, ROLE], available at <http://www.scstatehouse.gov/archives/citizensinterestpage/PropertyTaxReform/NCSLGuidetoPropertyTaxes.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Press Release, The Business Council of N.Y. State, Inc., Analysis Finds New York's Per Capita Tax Burden Highest in the Nation, (May 15, 2007), [hereinafter Business Council of N.Y. Press Release], available at <http://www.bcnys.org/whatsnew/2007/0514statelocal.htm>.

<sup>25</sup> Jones, *supra* note 2.

New York is \$5,770 compared to the national average of \$3,699 and Alabama at \$2,564 which is the lowest.<sup>26</sup> Officials at the Business Council of New York State Inc., warn that New York will lose jobs and entire companies to other states if New York fails to lower taxes.<sup>27</sup> Economist Arthur Laffer has also noted mobility to lower income jurisdictions.<sup>28</sup> Additionally, The Public Policy Institute of New York State has equated upstate New York's depressed rate of job growth with its property tax burden.<sup>29</sup>

Property taxes have grown "two to three times faster than personal income[s] from 2000 to 2004 in the suburbs surrounding New York City."<sup>30</sup> In Nassau County, for example, "tax collections rose 29 percent from 2000 to 2004, while total personal income went up only 11 percent."<sup>31</sup> These are similar to the conditions that were present in the United States during the 1970's just before Proposition 13 was enacted in California in 1978.<sup>32</sup> Numerous legislative property tax proposals, including a recent proposal by former New York Governor David A. Patterson,<sup>33</sup> and growing citizen organizations dedicated to curtailing or eliminating the property tax, indicate that New York could be poised to overhaul its current property tax system in the near future.<sup>34</sup>

## II. THE PROPERTY TAX SYSTEM IN NEW YORK STATE

In this section we summarize the property tax system in New York State and attempt to identify the factors which cause New York State's property tax system to be inefficient and ripe for change. Specifically we focus on: (1) the high number of assessing

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<sup>26</sup> Business Council of N.Y. Press Release, *supra* note 24.

<sup>27</sup> Jones, *supra* note 2.

<sup>28</sup> Arthur Laffer, *Tax Hikes and the 2011 Economic Collapse*, WALL ST. J., June 7, 2010, at A19.

<sup>29</sup> See THE PUB. POL'Y INST. OF N.Y. STATE, INC., HOW HIGH IS THE UPSTATE TAX BURDEN—AND WHY? 1 (2004), available at [http://www.ppiny.org/reports/2004/upstate\\_taxes04.pdf](http://www.ppiny.org/reports/2004/upstate_taxes04.pdf).

<sup>30</sup> Fessenden, *supra* note 2.

<sup>31</sup> *Id.*

<sup>32</sup> GERALD PRANTE, TAX FOUND., SPECIAL REPORT: PROPERTY TAX COLLECTIONS SURGED WITH HOUSING BOOM—WILL LOCALITIES RESPOND TO HOUSING DIP WITH HIGHER RATES? 6 (2006), available at <http://www.taxfoundation.org/files/sr146.pdf>.

<sup>33</sup> Press Release, N.Y. Governor David A. Patterson, Governor Introduces Legislation to Cap Property Taxes (June 3, 2008), available at [http://www.governor.ny.gov/archive/paterson/press/press\\_0603081.html](http://www.governor.ny.gov/archive/paterson/press/press_0603081.html).

<sup>34</sup> See, e.g., Davis, *supra* note 2, at 1A.

units in New York State, (2) the fact that school districts, which levy a separate tax, are not congruent with municipality or County boundaries; (3) that there is no state-wide uniform assessment ratio (level of assessment) which causes New York to employ a flawed equalization rate; and (4) the effect of the equalization rate on intrajurisdictional equity.<sup>35</sup>

### A. Overview

The New York real property tax is raised and spent by a multitude of local taxing authorities “to finance municipal governments and public schools.”<sup>36</sup> The local tax imposed on any given real property within New York State represents an aggregate levy by all taxing units (i.e. town, county, city, village, school district) within which the property is located.<sup>37</sup> Taxing units, however, do not assess (value) real property. In New York, assessing units are charged with valuing property for this purpose.<sup>38</sup> Taxing units use the assessments set by assessing units to levy their own tax. The geographical boundaries of assessing units are not contiguous with the geographical boundaries of taxing units, and any given taxing unit may impose a tax on property from multiple assessing units.<sup>39</sup>

The New York State government “does not collect or receive any direct benefit from the property tax,”<sup>40</sup> but, it does have a statutory mandate to oversee local implementation of the property tax<sup>41</sup> and “to assure . . . equitable allocation among

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<sup>35</sup> Press Release, N.Y. State Dep’t of Tax’n and Fin., Office of Real Prop. Tax Servs., *The Challenges of New York’s Property Tax System*, (Jan. 1, 2011) [hereinafter *Challenges of New York’s Property Tax System*], available at <http://www.orps.state.ny.us/press/> (last modified Jan. 24, 2011).

<sup>36</sup> N.Y. STATE DEP’T OF TAX’N AND FIN., OFFICE OF REAL PROP. TAX SERV., BOARD OF REAL PROPERTY SERVICES ANNUAL REPORT 1 (2006), available at <http://www.orps.state.ny.us/pamphlet/annualrpt2006.pdf>; see also, N.Y. STATE DEP’T OF TAX’N AND FIN., OFFICE OF REAL PROP. TAX SERV., UNDERSTANDING THE EQUALIZATION RATE: A GUIDE FOR PROPERTY OWNERS (2011) [hereinafter *UNDERSTANDING THE EQUALIZATION RATE*], available at [http://www.orps.state.ny.us/pamphlet/under\\_eqrates.htm](http://www.orps.state.ny.us/pamphlet/under_eqrates.htm).

<sup>37</sup> *UNDERSTANDING THE EQUALIZATION RATE*, *supra* note 36.

<sup>38</sup> OFFICE OF REAL PROP. TAX SERVS., ASSESSOR’S REPORT INSTRUCTIONS FOR CITIES AND TOWNS, [http://www.orps.state.ny.us/ess/asreport/b\\_define.htm](http://www.orps.state.ny.us/ess/asreport/b_define.htm) (last modified Mar. 19, 2008).

<sup>39</sup> See *Challenges of New York’s Property Tax System*, *supra* note 35.

<sup>40</sup> *UNDERSTANDING THE EQUALIZATION RATE*, *supra* note 36.

<sup>41</sup> N.Y. REAL PROP. TAX LAW § 202(1)(d)–(e) (McKinney 2008 & Supp. 2011); *UNDERSTANDING THE EQUALIZATION RATE*, *supra* note 36.

[almost] 4,000 [local] taxing jurisdictions.”<sup>42</sup> Despite this mandate, however, no state agency has authority to correct inequities within municipal boundaries.<sup>43</sup>

The process for determining the property tax for real property located in New York State consists of five major steps: (1) Classification; (2) Valuation; (3) Equalization; (4) Assessment; and (5) Levy.<sup>44</sup>

### 1. Classification

Classification refers to the process of grouping properties of like-kind into separate categories for the purpose of applying either a different tax rate or different assessment rate (the percentage of fair market value at which the property is valued for purposes of applying the tax rate) to each category.<sup>45</sup> Many states employ a classification system.<sup>46</sup> In Alabama, for example, the state constitution classifies all property into one of four categories on a state-wide basis.<sup>47</sup> Alabama provides a lower assessment rate for residential properties than it does for most commercial properties.<sup>48</sup>

New York has a classification system, but not one that is employed universally. Rather, New York State law has created a patchwork of classification systems deployed by various localities throughout the state. New York State law provides: (1) that “special assessing units,” defined as “assessing unit[s] with a population of one million or more”<sup>49</sup> (currently New York City and Nassau County),<sup>50</sup> must employ a four-class system;<sup>51</sup> (2) that “approved assessing units,” defined as assessing units that have been certified by the state board as having completed a

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<sup>42</sup> N.Y. REAL PROP. TAX LAW §§ 301, 305 (McKinney 2008); UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36. As used in this paper, “taxing jurisdiction” is given the definition found in N.Y. PRIV. HOUS. FIN. LAW § 125(d) (McKinney 2002) (“any municipal corporation or district corporation, including any school district or any special district, having the power to levy or collect taxes”).

<sup>43</sup> Challenges of New York’s Property Tax System, *supra* note 35.

<sup>44</sup> [2010 Property; Licenses] N.Y. State Tax Rep. (CCH) ¶ 20–605.

<sup>45</sup> *Id.*; see also Nordlinger v. Hahn, 505 U.S. 1, 11 (1992).

<sup>46</sup> See, e.g., ALA. CONST. art. XI, § 217.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> N.Y. REAL PROP. TAX LAW § 1801(a) (McKinney 2000 & Supp. 2011).

<sup>50</sup> UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36.

<sup>51</sup> N.Y. REAL PROP. TAX LAW § 1802(1) (McKinney Supp. 2011).

reevaluation of property,<sup>52</sup> generally have the option to employ a two-class system,<sup>53</sup> and (3) that no classification system may be employed in other “assessing units,” defined as a city, town, county, or in certain cases a village, with the power to assess real property.<sup>54</sup>

Classification is only mandatory for special assessing units; New York City and Nassau County are currently the only special assessing units.<sup>55</sup> Property in New York City and Nassau County is divided into four classes.<sup>56</sup> Different tax rates may be imposed on each class for the purpose of minimizing changes in the relative share of the total tax levy paid by each class from year to year.<sup>57</sup> Approved assessing units, are allowed to classify property as either homestead<sup>58</sup> (which consists mostly of residential property) or non-homestead<sup>59</sup> (which consists mostly of commercial property), but only if they have completed a reevaluation of the real property situated within the assessing unit.<sup>60</sup> Different tax rates may be imposed on homestead and non-homestead property. Those assessing units that are neither special assessing units, nor approved assessing units, may not adopt a classification system.

Further complicating the classification system in New York is that multiple authorities may potentially impose a classification system on any one piece of property.<sup>61</sup> For example, as discussed above, cities, towns and counties have the authority, if they are approved assessing units, to impose a classification system within their geographical boundaries.<sup>62</sup> Under New York State law, however, a school district may also impose a classification system

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<sup>52</sup> *Id.* § 1902(1) (McKinney Supp. 2011).

<sup>53</sup> *Id.* § 1903(2)(a)(i–ii) (McKinney Supp. 2011) (provided they have performed a reevaluation of property).

<sup>54</sup> *Id.* §§ 102(1)(a), (c) (McKinney Supp. 2011).

<sup>55</sup> OFFICE OF REAL PROP. TAX SERV., MARKET VALUE SURVEY PROCEDURE FOR 2006 STATE EQUALIZATION RATES FOR CITIES, TOWNS, VILLAGE HOMESTEAD ASSESSING UNITS AND COUNTIES § 1 (2006), <http://www.orps.state.ny.us/legal/procedures/06rates.htm> (last modified Aug. 22, 2006).

<sup>56</sup> N.Y. REAL PROP. TAX LAW § 1802(1) (McKinney Supp. 2011).

<sup>57</sup> *Id.* § 1803(2)(b) (McKinney Supp. 2011).

<sup>58</sup> *Id.* § 1901(1) (McKinney Supp. 2011).

<sup>59</sup> *Id.* § 1901(2) (McKinney Supp. 2011).

<sup>60</sup> *Id.* §§ 1903(1)(a), (2)(a) (i)–(ii) (McKinney Supp. 2011).

<sup>61</sup> *Id.* § 1901(10) (McKinney Supp. 2011); *see also* Treichler v. Niagara-Wheatfield Cent. Sch. Dist., 590 N.Y.S.2d 954, 954, 956 (App. Div. 1992).

<sup>62</sup> N.Y. REAL PROP. TAX LAW § 102(1)(a), (c) (McKinney 2000); *id.* § 1903(1) (McKinney Supp. 2011).

within its geographical boundaries under certain circumstances:<sup>63</sup> provided at least one-fifth of the properties within the school district are already subject to a classification system (homestead or non-homestead) imposed by an approved assessing unit, such as a town,<sup>64</sup> the school district may impose that classification system (homestead or non-homestead) on the entire school district.<sup>65</sup> Because school district boundaries in New York State often overlap the geographical boundaries of assessing units,<sup>66</sup> a school district may include fractional parts of multiple assessing units. Therefore a school district (which has decided to impose a classification system on all real property located within its borders) may bisect one or more assessing units, such as a town, which have not adopted a classification system.<sup>67</sup> As a result, the assessing unit is left in the situation in which only a fraction of its real properties are classified as homestead or non-homestead. In some cases properties located next to each other geographically, but in separate school districts, are classified under a different classification scheme and thus subject to different tax burdens.<sup>68</sup>

Historically, classification systems have invited constitutional challenges under the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court has ruled that the Equal Protection Clause does not forbid a state from taxing different classes of property differently; rather it prevents “treating differently persons who are in all relevant respects alike.”<sup>69</sup> It could be argued that the New York classification system goes beyond the traditional classification system and does treat differently persons who are in all relevant aspects alike. One of New York State’s appellate courts, however, has found that New York’s classification system is constitutional in situations where two properties located within the same assessing unit are taxed differently because they are located in separate school districts,<sup>70</sup> and where commercial property owners in a special assessing

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<sup>63</sup> *Id.* § 1901(10) (McKinney Supp. 2011); see *Treichler*, 590 N.Y.S.2d at 956.

<sup>64</sup> N.Y. REAL PROP. TAX LAW § 1901(10) (McKinney Supp. 2011); see *Treichler*, 590 N.Y.S.2d at 956–57.

<sup>65</sup> N.Y. REAL PROP. TAX LAW § 1901(10) (McKinney Supp. 2011); see *Treichler*, 590 N.Y.S.2d at 956–57.

<sup>66</sup> UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36.

<sup>67</sup> *Id.*

<sup>68</sup> See *Treichler*, 590 N.Y.S.2d at 956–57.

<sup>69</sup> *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

<sup>70</sup> See *Treichler*, 590 N.Y.S.2d at 955, 957.

unit (Nassau County) are taxed more heavily than commercial property owners in a different assessing unit.<sup>71</sup>

Despite being lawful, New York's classification system is inequitable because it allows similarly situated properties, even within the same assessing unit, to be classified differently and thus subjects similar properties to unequal tax burdens. In order to remedy this consequence, New York could mandate uniform classification throughout the state.

## 2. Valuation

In New York, the value of real property, for purposes of levying a real estate tax is determined at the local level.<sup>72</sup> New York State (through the Office of Real Property Services), however, is statutorily charged with furnishing local assessors with instructions, aiding them in making assessments, and enforcing compliance with such instructions.<sup>73</sup>

In general, assessing units, comprised of cities, towns, counties, and in some cases villages, must complete an inventory of all real property therein, known as an assessment role, on an annual basis.<sup>74</sup> Once the assessment role is complete, an assessor, either elected or appointed by an assessing unit, is charged with valuing the real property contained on the assessment role.<sup>75</sup> Although there is no particular statutory methodology for determining the value of residential property, there are constitutional, statutory and judicial standards which cannot be violated.<sup>76</sup> For example, real property may not be assessed at more than full value,<sup>77</sup> and it must be assessed at a uniform percentage of full value,<sup>78</sup> meaning that an assessor may choose to assess property at any level of fair market value under 100% provided that all properties, within the assessing unit, are assessed at the same level. Additionally, the

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<sup>71</sup> See *Tilles Inv. Co. v. Gulotta*, 733 N.Y.S.2d 438, 440 (App. Div. 2001).

<sup>72</sup> N.Y. REAL PROP. TAX LAW §§ 102(1), (2), (McKinney Supp. 2011).

<sup>73</sup> *Id.* § 202(1)(f) (McKinney Supp. 2011).

<sup>74</sup> *Id.* § 500 (McKinney 2008 & Supp. 2011).

<sup>75</sup> *Id.* § 102(3) (McKinney Supp. 2011); 1 Op. N.Y. Office of Real Prop. Tax. 39 (1972).

<sup>76</sup> *Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 1351 (N.Y. 1992); see *Commerce Holding Corp. v. Bd. of Assessors of Babylon*, 673 N.E.2d 127, 130 (N.Y. 1996).

<sup>77</sup> N.Y. CONST. art. XVI, § 2 (providing that the assessment may not exceed the full value of property and permitting the legislature to provide for supervision, review, and equalization of tax assessments).

<sup>78</sup> N.Y. REAL PROP. TAX LAW § 305(5) (McKinney 2008 & Supp. 2011).

method undertaken by the assessor must result in a “fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc.”<sup>79</sup> No state agency, however, has the power to enforce assessment practices.<sup>80</sup>

Assessors in New York State use a variety of methods to determine property values, depending on the type of property at issue. Among the methods used in New York are the income approach,<sup>81</sup> the market approach,<sup>82</sup> the cost approach,<sup>83</sup> and the unit approach.<sup>84</sup> Assessors, however, are not required to assess properties at 100% of market value.<sup>85</sup> It is within an assessor’s sole discretion as to what fraction of full value the assessment role should be assessed.<sup>86</sup> Not all taxing jurisdictions have the authority to value the property they are taxing. School districts and certain villages may levy a tax, but must use the value determined by the assessing unit, as adjusted by the Office of Real Property Services (ORPS).<sup>87</sup>

According to the State Comptroller in New York, because different local property valuation processes determine the property tax, “assessment quality varies throughout the state, and in many areas properties with similar market values may have very different assessments.”<sup>88</sup> In fact, some municipalities have assessments that are up to date, while others have assessments that are over one hundred years old.<sup>89</sup> ORPS statistics show that only two-thirds of assessing jurisdictions are

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<sup>79</sup> *Allied Corp.*, 604 N.E.2d at 1350.

<sup>80</sup> Challenges of New York’s Property Tax System, *supra* note 35.

<sup>81</sup> *See Metro. Life Ins. Co. v. Tax Comm’n of N.Y.*, 443 N.E.2d 476, 477 (N.Y. 1984).

<sup>82</sup> *See Reckson Operating P’ship, L.P. v. Assessor of Greenburgh*, 734 N.Y.S.2d 478, 479 (App. Div. 2001).

<sup>83</sup> *See Xerox Corp. v. Ross*, 421 N.Y.S.2d 475, 477 (App. Div. 1979).

<sup>84</sup> *See Long Island Lighting Co. v. Assessor for Brookhaven*, 616 N.Y.S.2d 375, 379 (App. Div. 1994).

<sup>85</sup> *See Hickmann v. Assessor, Town of Huntington*, 30 N.Y.L.J. 18 (Sup. Ct. 2005); *see also Drelich v. Kahn*, 302 N.Y.S.2d 634, 638 (Sup. Ct. 1969).

<sup>86</sup> *McAlevy v. Williams*, 344 N.Y.S.2d 193, 194 (App. Div. 1973).

<sup>87</sup> N.Y. STATE DEP’T OF TAX’N AND FIN., OFFICE OF REAL PROP. TAX SERV., VALUING & ASSESSING REAL PROPERTY, *available at* [http://www.orps.state.ny.us/home/varp\\_index.cfm](http://www.orps.state.ny.us/home/varp_index.cfm) (last modified Nov. 18, 2010).

<sup>88</sup> N.Y. STATE COMPTROLLER, DIV. OF LOCAL GOV’T & SCH. ACCOUNTABILITY, PROPERTY TAXES IN NEW YORK STATE (2006) [hereinafter PROPERTY TAXES IN NEW YORK STATE], *available at* <http://www.osc.state.ny.us/localgov/pubs/research/propertytaxes.pdf>.

<sup>89</sup> N.Y. STATE DEP’T OF TAX’N AND FIN., OFFICE OF REAL PROP. TAX SERV., PROPERTY TAX MYTHS AND MISUNDERSTANDINGS (2011) [hereinafter PROPERTY TAX MYTHS], *available at* <http://www.orps.state.ny.us/pamphlet/myths.pdf>.

achieving satisfactory uniformity in residential assessments.<sup>90</sup> Currently, however, there is no state agency with the power to compel any assessing jurisdiction to use acceptable, modern appraisal methods.<sup>91</sup>

Because assessing units do not have uniform standards throughout the state, and because the accuracy of assessments varies between assessing units, the assessed value of properties located in separate assessing units are not comparable. Therefore, taxing units which include multiple assessing units have no means upon which to determine the relative tax burden between properties in separate assessing units. This causes an extra layer of administration, forcing the ORPS, to adjust assessed property levels to where they may be compared, in a process called “equalization” discussed below. If all property in New York were assessed at a uniform level, with uniform standards, there would be no need for equalization.<sup>92</sup>

### 3. Equalization

As briefly discussed above, because there is no requirement that every assessing unit value property at the same fraction of fair market value, there is no relationship between the property values given by any two assessing units: some assessing units may value property at 100% of fair market value while others at just a small fraction. New York State, through ORPS, is charged with the task of adjusting the total values determined by each assessing unit to fair market value.<sup>93</sup> In order to accomplish this goal, ORPS requires that the assessed value of real property, as determined by each assessing unit, be divided by an “equalization rate,” which is determined by ORPS.<sup>94</sup> This process is called equalization.

The equalization rate is determined by dividing the total value of all properties within an assessing unit, as assessed by the local assessing unit, by the total market value of all properties within an assessing unit, as determined by ORPS.<sup>95</sup> Therefore, an equalization rate of one, or 100%, means that the assessing unit

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36.

<sup>93</sup> N.Y. REAL PROP. TAX LAW § 1202(1) (McKinney 2000 & Supp. 2011).

<sup>94</sup> UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36.

<sup>95</sup> *Id.*

is assessing property at 100% of market value;<sup>96</sup> an equalization rate of less than 100% means that the assessing unit is assessing property at less than fair market value;<sup>97</sup> and an equalization rate of greater than 100% means that the assessing unit is assessing property at greater than market value.<sup>98</sup> There would be no need for equalization if all assessing units assessed all property at 100% of market value.<sup>99</sup>

An equalization rate is necessary because: (1) there is no fixed percentage at which property must be assessed; (2) not all assessing units assess property at the same percentage of market value; and (3) taxing jurisdiction boundaries are not coterminous.<sup>100</sup> For example, the geographical borders of many school districts in New York State contain multiple assessing units.<sup>101</sup> In order for a school district to equitably allocate its tax levy (the total amount of school taxes to be collected), the levy needs to be divided in proportion to the total market value of each assessing unit within the district.<sup>102</sup> Therefore, the school district must know the relative total market values of the real property within each district. The assessments determined by the multiple assessing units within its borders do not provide the school district with the necessary information because, as discussed above, each assessing unit may report value at a different fraction of market value.<sup>103</sup> As a result, the school district requires a mechanism to adjust the assessed values of each assessing unit in such a way that it can measure the value relative to every other assessing unit within the district. Equalization performs this function. Equalization is the process of dividing the total assessed value of the assessing unit, as determined by the assessing unit, by the equalization rate, as determined by New York State. The result is a market value estimate also known as “equalized full value.”<sup>104</sup> Once all

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See *Nyack Plaza Hous. Ass'n v. Town of Orangetown*, No. 11425-02, 2005 WL 887269, at \*1 (N.Y. Sup. Ct. April 18, 2005); see also Brian J. Kenney, *Proposed Amendments to Real Property Tax Law: An Argument for the Establishment of a Commercial Assessment Ratio*, 46 I.A.O. J. 4, 5–6 (2004).

<sup>102</sup> UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36.

<sup>103</sup> N.Y. REAL PROP. TAX LAW § 305(1), (2) (McKinney 2008).

<sup>104</sup> UNDERSTANDING THE EQUALIZATION RATE, *supra* note 36.

assessing units are at equalized full value, they may be compared in relative terms.

A numerical example of the above situation, as provided by the New York Office of Real Property Services, is as follows: Suppose School District AB needs to raise \$1 million through property taxes and the School District contains all of two assessing units, town A and town B, each of which has a total assessed value, as determined by the assessing units, of \$10 million. If the \$1 million tax levy were allocated on the basis of the assessed values, as determined by the assessing units, (i.e. fifty percent each) each town would pay \$500,000. Because assessing units may value property at any fraction of fair market value, however, there is no way to determine whether the assessments accurately represent the relative values of the two towns. After the equalization process, however, towns A and B may be compared for the purpose of dividing the \$1 million school district tax levy. If town A's equalization rate is determined to be thirty-three percent and town B's equalization rate is determined to be fifty percent the following results would occur:

	Town A	Town B
Assessed Value of each town (As determined by the assessing units)	\$10 million	\$10 million
Equalization Rate of each town (As determined by ORPS)	33.33	50.00
Market Value of each town	\$30 million (\$10m/33.33%)	\$20 million (\$10m/50.00%)
Percent of Market Value (and therefore of levy) for each town	60%	40%
Tax Levy to be raised from each town	\$600,000	\$400,000
Tax Rate for each town (Tax Levy/Assessed Value) * 1000	\$60 per \$1,000 of assessed value	\$40 per \$1,000 of assessed value

The equalization process is not without flaw. Although it may accurately adjust the overall value of every assessing unit to fair market value, it does not accurately adjust the value of individual

properties within an assessing unit. The reason for the distortion is that the equalization rate represents the average amount that an entire assessing unit deviates from fair market value.<sup>105</sup> It does not measure the amount that any particular property deviates from fair market value.<sup>106</sup> Not all properties increase (or decrease), relative to market value, at a uniform rate.<sup>107</sup> Specifically, commercial properties, which are often valued using different criteria than residential properties (commercial properties are generally valued using the income approach while residential properties are generally valued using the sales approach)<sup>108</sup> have lagged in price appreciation compared to their residential counterparts over the past decade.<sup>109</sup> Under New York State law one uniform equalization rate is applied to all property within an assessing unit.<sup>110</sup> The result is that the assessment value of all property, commercial and residential, is upwardly (or downwardly) adjusted at a single rate. Therefore, commercial properties tend to be overvalued and residential properties undervalued, solely due to the application of the equalization rate.

An example of the impact that a uniform equalization rate can have on commercial property valuations can be seen in *Nyack Plaza Housing Ass'n v. Town of Orangetown*.<sup>111</sup> In that case, the town of Orangetown (the "Town") assessed a property owned by the Nyack Plaza Housing Association ("Nyack") at \$2,621,200 for the tax years 2002, 2003, and 2004.<sup>112</sup> The equalization rates for the Town, as determined by ORPS, for the years at issue were 63.54% for 2002, 57.50% for 2003 and 54.25% for 2004.<sup>113</sup> Nyack challenged the assessment. At trial, the assessor for the Town (the "Assessor") agreed that the equalization rates provided by ORPS were inaccurate as applied to not only Nyack, but also all other commercial properties because it represented the average deviation from fair market value of all properties and not just

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<sup>105</sup> See *Nyack Plaza Hous. Ass'n*, 2005 WL 887269, at \*1; Kenney, *supra* note 101, at 4.

<sup>106</sup> *Nyack Plaza Hous. Ass'n*, 2005 WL 887269, at \*3.

<sup>107</sup> Kenney, *supra* note 101, at 5.

<sup>108</sup> See *Reckson Operating P'ship v. Town of Greenburgh*, 2004 WL 556580, at \*3 (N.Y. Sup. Ct. 2004), *aff'd*, 734 N.Y.S.2d 478, 479 (App. Div. 2001).

<sup>109</sup> See Kenney, *supra* note 101, at 5.

<sup>110</sup> *Nyack Plaza Hous. Ass'n*, 2005 WL 887269, at \*4.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at \*1.

<sup>113</sup> *Id.*

commercial properties.<sup>114</sup> The assessor attempted to introduce into evidence an alternate “commercial” equalization rate, which only measured commercial properties.<sup>115</sup> The equalization rates the assessor attempted to introduce into evidence were 87.67%, 76.79% and 76.20% respectively.<sup>116</sup> The commercial rates would have produced values at least thirty percent below the values achieved when applying the uniform equalization rate. The court, however, prohibited the assessor from introducing such evidence because it was in violation of the New York Real Property Tax Law, which mandates that only one uniform equalization rate may be used, except in the case of special assessing units.<sup>117</sup>

Because lawyers and commercial property owners have realized that the equalization rate has caused inflated commercial property assessments, challenges are frequent.<sup>118</sup> These challenges, known as certiorari lawsuits, can cause localities to incur legal expenses to defend lawsuits, and administrative expenses to rework budgets after large refunds are awarded.<sup>119</sup> The City of New Rochelle has averaged \$3.1 million in certiorari refunds per year over the past ten years compared to \$31.73 million of current property tax collection in its 2006 budget.<sup>120</sup> In reality, the refunds are merely the return of money that the locality received as a result of an incorrect assessment and should not be considered a true cost. The only true costs associated with certiorari claims are legal fees,

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<sup>114</sup> *Id.* at \*2, n.7.

<sup>115</sup> *Id.* at \*2. Ironically, all homestead towns within New York State are issued separate “class rates” each year for town and school district purposes that in fact break out each property class for use in the Homestead formulas for Base Percentages, see N.Y. REAL PROP. TAX LAW §§ 1801(e)–(g) (McKinney Supp. 2011) and *Id.* § 1903 (McKinney 2000). These rates provide similar results to a “commercial” equalization rate. See Kenney, *supra* note 101, at 6.

<sup>116</sup> *Nyack Plaza Hous. Ass’n*, 2005 WL 887269, at \*2.

<sup>117</sup> *Id.* at \*3–4.

<sup>118</sup> Donna Greene, *Brodsky to Press Revaluation Fight*, N.Y. TIMES, Aug. 22, 1999, available at <http://www.nytimes.com/1999/08/22/nyregion/brodsky-to-press-revaluation-fight.html>.

<sup>119</sup> See, e.g., Pocantico Hills Cent. School Dist., Board of Education Business Meeting Minutes 2–3 (Jan. 24, 2007), available at [http://www.pocanticohills.org/boe/meetings/boe\\_meeting\\_01\\_24\\_07.pdf](http://www.pocanticohills.org/boe/meetings/boe_meeting_01_24_07.pdf); see also Letter from Alan G. Hevesi, N.Y. State Comptroller, to Hon. Wayne J. Hall Sr., Mayor of the Vill. Of Hempstead (Apr. 21, 2006) (describing the budget for the 2006–2007 fiscal year), available at <http://www.osc.state.ny.us/localgov/audits/2006/villages/hemptsead.pdf>.

<sup>120</sup> CITY OF NEW ROCHELLE, PROPOSED BUDGET AND WORK PROGRAM (2006), available at <http://www.newrochelleny.com/2006%20proposed%20budget.pdf>.

administrative costs, and interest payments incurred as a result of budget deficits created by unanticipated revenue reductions.

The flip side of over-assessed commercial property, however, is under-assessed residential property. To the extent that the application of the equalization rate causes commercial property to be over-assessed, it causes residential property to be under-assessed. Residential properties which have risen in value faster than the average are subject to the same uniform equalization rate as commercial properties. The only difference is that a uniform equalization rate under-adjusts the value of property that has increased in value more than average. Of course a property owner in this situation will not file a lawsuit to increase their assessed value, as will a commercial property owner which has been over-assessed, so it is difficult to estimate the effect of under-assessment.

Certain localities might prefer a system in which commercial properties are subject to a greater tax burden than residential properties and therefore, might like the results achieved from the higher assessed commercial values associated with New York's current equalization process. As discussed above, however, a locality must impose a uniform level of assessment<sup>121</sup> and must employ a uniform equalization rate.<sup>122</sup> The only avenue for differentiating property therefore, is a classification system which allows separate tax rates for commercial and residential properties. As discussed above, however, a classification system is permissible only in special assessing units, (New York and Nassau County) and in assessing units that have performed a revaluation of all property. Therefore, unless an assessing unit performs a revaluation, it will not be able to impose a higher tax burden on commercial property.

Equalization attempts to adjust all property assessments to fair market value so that all tax levies are equitable. The process of equalization, however, causes inequities within a jurisdiction. The use of a separate commercial equalization rate would partially ameliorate this inequity. Additionally, uniform assessments would eliminate the need for an equalization rate altogether.

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<sup>121</sup> N.Y. REAL PROP. TAX LAW § 305(2) (McKinney 2000).

<sup>122</sup> *Nyack Plaza Hous. Ass'n*, 2005 WL 887269, at \*2.

#### 4. Assessment and Levy

Once the value of real property is determined and the equalization rate applied, the only remaining steps are to apply a tax rate and collect the tax due. Separate “[t]ax rates are set by each taxing district (county, city, town, village or school district or special district) by dividing the amount of money to be raised (the tax levy) by the assessed valuation of taxable property in [each] taxing district, subject to constitutional tax revenue limitations.”<sup>123</sup> There is no state property tax levied.<sup>124</sup>

It is interesting to note that, based on the formula above, the total tax levy is determined by each taxing district based on how much money they have included in their budget.<sup>125</sup> Therefore, as would be intuitive to the average taxpayer, budget needs are what is supposed to determine tax collection. An individual property owner would expect that if budget needs decreased, due to spending decreases, total property tax should also decrease. In reality, however, the actual tax due on a particular property can vary wildly from year to year based solely on the calculation or recalculation of the equalization rate.<sup>126</sup> For example, in 2000, Westchester County’s overall county budget actually decreased from the prior year.<sup>127</sup> And as expected, the total tax levy decreased accordingly. The property tax of certain assessing units (North Castle, Pelham and New Rochelle) within the county increased.<sup>128</sup> The reason for the seeming contradiction was that the equalization rates, for those towns, as calculated by ORPS, decreased from the prior year. The county determined its overall budget (tax levy) and then applied an overall rate based on the total values as determined after application of the equalization rate. The rate, however, was then applied to the value of each individual property as calculated after application of the equalization rate. Because North Castle, Pelham and New Rochelle were given equalization rates that were much lower than the year before, ORPS determined that the value of the

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<sup>123</sup> [2010 Property; Excise] N.Y. State Tax Rep., (CCH) ¶ 20-405; PROPERTY TAX MYTHS, *supra* note 89.

<sup>124</sup> [2010 Property; Excise] N.Y. State Tax Rep., (CCH) ¶ 20-405.

<sup>125</sup> PROPERTY TAX MYTHS, *supra* note 89.

<sup>126</sup> Donna Greene, *Three Municipalities Face Property Tax Rise*, N.Y. TIMES, Jan. 9, 2000, available at <http://www.nytimes.com/2000/01/09/nyregion/three-municipalities-face-property-tax-rise.html?pagewanted=1>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

property in those towns had increased dramatically, even though the towns had not reassessed the property between 1999 and 2000.<sup>129</sup> In effect, the equalization rate drastically re-allocated a much larger portion of the total tax levy to certain towns, and away from other towns (county taxes in Mount Vernon, Scarsdale, North Salem, Lewisboro, Yonkers, Mount Kisko, Peekskill, White Plains, Somers, Bedford and Eastchester all decreased).<sup>130</sup>

Not surprisingly, officials from the three towns complained that the ORPS method of calculating the equalization rate was flawed because they based their determination on a “sampling of far too few parcels of land in each community.”<sup>131</sup> Additionally, some localities have resorted to hiring lobbyists to lobby for lower equalization rates, and apparently with some success.<sup>132</sup> ORPS valuation methods are beyond the scope of this paper except to note that the equalization rate would not have to be calculated at all if every assessing unit valued its property at fair market value every year.

Once the tax due is determined, assessment is made against the real property, which is liable to sale for unpaid taxes or special assessments.<sup>133</sup>

### III. PROPERTY TAX REDUCTION SYSTEMS IN NEW YORK

Currently, the major vehicle to reduce property taxes in New York State is an exemption from the school portion of property taxes for owner occupied primary residences known as the School Tax Relief Program (STAR).<sup>134</sup> New York State also has a circuit breaker program<sup>135</sup> and a constitutional limit on property tax rates.<sup>136</sup> Both of these programs, however, are limited in scope. Additionally, as noted above,<sup>137</sup> certain qualifying assessing units may establish a lower tax rate on homestead property, and a higher tax rate on all other property, but only under certain

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Faiza Akhtar, *Enlisting Lobbyists for School Budgets*, N.Y. TIMES, May 7, 2006, at 14LI.

<sup>133</sup> N.Y. REAL PROP. TAX LAW § 304(1) (McKinney 2008).

<sup>134</sup> *Id.* § 425(1)–(3).

<sup>135</sup> N.Y. TAX LAW § 606(e) (McKinney Supp. 2011).

<sup>136</sup> N.Y. CONST. art. VIII, § 10.

<sup>137</sup> See N.Y. REAL PROP. TAX LAW §§ 1901, 1903 (McKinney 2000).

conditions.<sup>138</sup> Finally, New York State has a constitutional prohibition against assessing any property above fair market value<sup>139</sup> and an assessment limit which applies only to special assessing units.<sup>140</sup> All of these measures are designed to reduce the property tax burden, but in effect only reallocate the tax burden between taxpayers and introduce extra layers of administration.

### *A. Systems Used by New York*

#### 1. Exemptions (STAR)

*“Although often described as a tax cut, STAR exemptions are actually a transfer of tax burden, from homeowners paying local school property taxes to taxpayers statewide.”*<sup>141</sup>

*STAR has not solved the problems it was meant to address, because it treats the symptom and not the disease. The “relief” STAR provides is temporary, like a large dose of fiscal Novocaine. The pain becomes all the greater when the Novocaine wears off. . . . [S]pending billions of state tax dollars to dull the pain of high local property taxes simply resulted in higher spending- and ultimately, even higher school property taxes.*<sup>142</sup>

As previously mentioned, New York State has a property tax exemption program which is contained in STAR.<sup>143</sup> Like all exemption programs, the tax relief STAR provides is actually a tax re-allocation, in this case from homeowners paying local school property taxes to taxpayers statewide, and is not tax reduction.<sup>144</sup>

Enacted in 1997, the STAR program provides a partial exemption from the school portion of property taxes for owner-

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<sup>138</sup> *Id.* § 1903(1)(a), (b).

<sup>139</sup> N.Y. CONST. art. XVI, § 2; N.Y. REAL PROP. TAX LAW § 701(4)(a) (noting that no assessment can be above fair market value).

<sup>140</sup> N.Y. REAL PROP. TAX LAW § 1805.

<sup>141</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 13.

<sup>142</sup> *Real Property Taxation, Before the N.Y. State Assem. Comm. on Real Property Taxation*, 2007 Leg., 230th Reg. Sess. (2007) (testimony of E.J. McMahon, Senior Fellow for Tax and Budgetary Studies, Manhattan Institute for Policy Research) [hereinafter *McMahon Testimony*], available at <http://www.empirecenter.org/testimony/2007/04/EJMcMahonTestimonyRealPropertyTaxation.cfm>.

<sup>143</sup> N.Y. REAL PROP. TAX LAW § 425(2)(a) (McKinney 2008).

<sup>144</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 13.

occupied residential<sup>145</sup> homes.<sup>146</sup> The STAR exemptions are the only state funded property tax exemptions in New York State.<sup>147</sup> The basic exemption excludes the first \$30,000 of a home's estimated fair market value from taxation with no limit on the homeowner's income.<sup>148</sup> An enhanced exemption of \$50,000 is available to homeowners age sixty-five (65) or older provided their income is below \$60,000, adjusted for Cost of Living.<sup>149</sup> In counties where the median home value is higher than the statewide median home value, the exemptions are adjusted in proportion to the sales price differential factor. For example, in Westchester County, the county with the highest median home value, the sales price differential factor was 2.9748 in 2007 making the value of the basic exemption equal to  $(\$30,000 * 2.9748)$  \$89,240.<sup>150</sup> This means that taxpayers with higher priced homes receive a larger exemption in terms of total dollars saved.<sup>151</sup> Similar adjustments are made for the enhanced STAR program as well.<sup>152</sup>

Like all property tax exemption programs, the effect of STAR is not a tax reduction, but rather a reallocation of the tax burden between taxpayers.<sup>153</sup> This is because the foregone local revenue to the school district caused by STAR is reimbursed by New York State from income taxes collected statewide.<sup>154</sup> Therefore, tax savings from STAR is shifted to an income tax increase. Those who benefit disproportionately from STAR exemptions, but have less exposure to the income tax, benefit the most from the shift.

As illustrated above, those who live in counties where the median home value is higher than the statewide median home value will receive larger property tax exclusions under STAR.

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<sup>145</sup> The exemption applies to one, two, or three-family homes, condominiums, co-operative apartments or mobile homes. See N. Y. STATE UNITED TEACHERS, BRIEFING BULLETIN NO. 06-22: PROPOSALS TO EASE THE BURDEN OF PROPERTY TAXES ACROSS NEW YORK STATE (2006), available at [http://www.nysut.org/files/research\\_20060822\\_propertytax.pdf](http://www.nysut.org/files/research_20060822_propertytax.pdf); 13 WILLIAM XENOPHON WEED, WARREN'S WEED NEW YORK REAL PROPERTY § 133.13 (5th ed. 2010).

<sup>146</sup> N.Y. REAL PROP. TAX LAW § 425.

<sup>147</sup> N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., STAR—NEW YORK STATE'S SCHOOL TAX RELIEF PROGRAM, available at <http://www.orps.state.ny.us/star/faq.htm> (last modified Feb. 3, 2011).

<sup>148</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 12.

<sup>149</sup> N.Y. REAL PROP. TAX LAW §§ 425(4)(a), (b) (McKinney Supp. 2011).

<sup>150</sup> CITIZENS BUDGET COMM'N, *supra* note 4, at 23.

<sup>151</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 13.

<sup>152</sup> CITIZENS BUDGET COMM'N, *supra* note 4, at 22–23.

<sup>153</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 13.

<sup>154</sup> See *id.*

These areas are also high-wealth areas and include: Westchester, Rockland, Nassau, Suffolk and Putnam counties.<sup>155</sup> Therefore (excluding the effect of the tax shift caused by STAR) high wealth areas benefit more than other areas under STAR because they receive a higher dollar benefit.<sup>156</sup> This is the “inverse of the pattern of State school aid, which generally provides greater aid to lower-wealth, higher-needs districts.”<sup>157</sup>

The actual cost or benefit of the STAR program to an individual taxpayer will depend on the individual taxpayer’s exposure to the income tax. Renters for example, can only lose under STAR because they are not eligible for STAR exemptions.<sup>158</sup> Any increase in the income tax resulting from STAR is a net loss for renters. This amount is a shift of the total tax burden from homeowners to renters. The overall net tax effect, however, is zero dollars.<sup>159</sup>

In addition to shifting the tax burden, it can be argued that, STAR causes school district spending to increase and thereby actually has the unintended effect of increasing taxes over time.<sup>160</sup> Notably, “[t]he reason for this is that STAR lowers the effective property tax rate on homeowners—the largest group of people who vote on and otherwise influence local school budgets.”<sup>161</sup> Furthermore, “[b]y reducing the local tax share paid for . . . school spending, STAR actually provides an incentive to increase school spending,”<sup>162</sup> assuming that local politicians have more political incentive to increase spending because the tax effects are muted by STAR. This effect of STAR is illustrated by the fact that overall school levies have increased since 1998, and levies after deducting for STAR are now greater than before STAR was enacted.<sup>163</sup>

## 2. Circuit Breaker

Generally, circuit breaker programs are “threshold” programs that provide property tax credits to an eligible person whose

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<sup>155</sup> CITIZENS BUDGET COMM’N, *supra* note 4, at 22.

<sup>156</sup> See PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 14.

<sup>157</sup> *Id.* at 12–13.

<sup>158</sup> *Id.* at 12.

<sup>159</sup> See *id.* at 13 (discussing long term impact of STAR).

<sup>160</sup> *McMahon Testimony*, *supra* note 142.

<sup>161</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 13.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

property tax exceeds a certain percentage of his or her income<sup>164</sup> or overall wealth.<sup>165</sup> New York State has a circuit breaker.<sup>166</sup> It is, however, extremely limited. It only applies to people over age sixty five and with a household income less than \$18,000 and home value less than \$85,000.<sup>167</sup> Like all property tax reduction systems, a circuit breaker shifts the tax burden from one set of taxpayers, those who qualify for the program, to another set of taxpayers, those who do not qualify for the program. In New York, it may be laudable to allow elderly people with low incomes to shift their taxes to others, but the requirements are so strict that the total effect is negligible.

### 3. Limits

New York State imposes tax rate limits and, in certain areas, assessment limits.<sup>168</sup> New York's limitations have resulted in unfair assessments<sup>169</sup> and in a tax shift between taxpayers.

#### a. Tax Rate Limits

New York's Constitution imposes a percentage limitation on the rate of property tax that may be imposed by localities.<sup>170</sup> Depending on the type of taxing authority, the maximum tax rate is between one and one-half and two and one-half percent of the total tax levy (at full value), less appropriations for debt service and certain budgetary appropriations.<sup>171</sup> In practice, the majority of localities are not close to fully using their allowable tax rate.

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<sup>164</sup> *E.g.*, ME. REV. STAT. ANN. § 6207 (West Supp. 2007); OKLA. STAT. ANN. § 2907 (West 2001).

<sup>165</sup> *E.g.*, MD. CODE ANN. TAX-PROP. §§ 9-104(h), (i) (LexisNexis 2007 & Supp. 2010).

<sup>166</sup> N.Y. TAX LAW § 606(e) (McKinney Supp. 2011).

<sup>167</sup> *Id.* at § 606(e)(7)(A), (C).

<sup>168</sup> N.Y. CONST. art. VIII, § 10; N.Y. REAL PROP. TAX LAW § 1805 (McKinney 2000).

<sup>169</sup> N.Y. PUB. INTEREST RESEARCH GRP., A TAXING PROBLEM: ASSESSMENT EQUITY FOR NEW YORK CITY HOMEOWNERS (2003), [hereinafter A TAXING PROBLEM], available at <http://www.nypirg.org/goodgov/proptax/equity.html>; Eric Lipton, *Tax on Homes is Inequitable, Study Finds*, N.Y. TIMES, July 29, 2003, at B1.

<sup>170</sup> N.Y. CONST. art. VIII, § 10; N.Y. STATE COMPTROLLER, DIV. OF LOCAL GOV'T SERVS. & ECON. DEV., COMPTROLLER'S SPECIAL REPORT ON LOCAL GOVERNMENT FINANCES FOR NEW YORK STATE 2 (2004), available at <http://www.panix.com/userdirs/mjdowden/vrp/2002villages.pdf>.

<sup>171</sup> See *id.* at 2.

For example, in 2004 Monroe County, which is constitutionally limited to a 1.5% real property tax rate, raised only one-half of the constitutionally allowable amount via the property tax.<sup>172</sup>

#### b. Assessment Limits

New York also statutorily imposes assessment limits, but only in special assessing units<sup>173</sup> which currently include New York City and Nassau County.<sup>174</sup> Assessments on class one property (one, two and three-family homes) in New York and Nassau County are limited to an increase of six percent in any given year and twenty percent over any five-year span.<sup>175</sup> New York's assessment limits are far less restrictive than those found in other states, such as California. Due to rapidly rising home values in certain areas of New York City over the past decade, however, New York City's assessment limits have been reached and have resulted in a predictable outcome: an arbitrary and inequitable shift of the tax burden from homes which have rapidly risen in value to homes which have not.<sup>176</sup>

The intent of an assessment rate limit is to prevent rapidly increasing housing values from resulting in drastic increases in a property tax bill.<sup>177</sup> While New York City's assessment limit provision does prevent rapid assessment increases on homes, it also results in an arbitrary shift in tax burdens and inequalities between taxpayers.<sup>178</sup> Homes in areas with high appreciation benefit from the assessment limits as their assessments lag behind the full market value of their homes, while homes in areas with relatively little appreciation do not benefit from the assessment limits as the appreciation fails to reach the six percent threshold. As the New York Public Interest Research Group (NYPIRG) noted: "For example, a home might double in value in just a few years, but see an assessment increase of far less over the same period because of the assessment cap. The

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<sup>172</sup> See MAGGIE BROOKS, MONROE CNTY. EXEC., 2005 MONROE COUNTY BUDGET EXECUTIVE SUMMARY 39 (2004), available at <http://www.monroecounty.gov/p/omb-2005Budget.pdf>

<sup>173</sup> N.Y. REAL PROP. TAX LAW §§ 1801, 1805 (McKinney 2000).

<sup>174</sup> N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., PROCEDURES OF ORPS § 1 (2008), available at <http://www.orps.state.ny.us/legal/procedures/08rates.htm>.

<sup>175</sup> N.Y. REAL PROP. TAX LAW § 1805(1).

<sup>176</sup> A TAXING PROBLEM, *supra* note 169; Lipton, *supra* note 169, at B1.

<sup>177</sup> A TAXING PROBLEM, *supra* note 169; see RAFOOL, *supra* note 19, at 31.

<sup>178</sup> A TAXING PROBLEM, *supra* note 169; Lipton, *supra* note 169, at B1.

story would be different for homes in declining or slower growth areas.”<sup>179</sup>

A 2003 study by NYPIRG uncovered some examples of assessment inequity in New York City. In the study, NYPIRG found that a brownstone in Cobble Hill, Brooklyn with an estimated fair market value of \$1.4 million had an assessed value of \$23,223 (1.7 percent of market value), while a one-family home in Bergen Beach, Brooklyn with an estimated fair market value of \$338,000 had an assessed value of \$22,195 (6.6 percent of market value).<sup>180</sup> The reason for the disparity is that the Cobble Hill home’s assessment was limited to a far greater extent under New York’s assessment limit.<sup>181</sup> Under state law, assessments in New York are required to be at a uniform level.<sup>182</sup> The median assessment value in New York City in 2003 was 5.44 percent.<sup>183</sup> As the NYPIRG study highlights, assessments are not uniform in New York City. The Cobble Hill property was assessed far below the median level while the Bergen Beach Property was assessed well above the median level. Because New York City should be assessing all properties at the same level at all times, the Cobble Hill property is under assessed while the Bergen Beach property is over assessed.<sup>184</sup>

In general, properties that are over-assessed will be those properties that have not appreciated in value at a rate that is above the assessment limit rate of six percent per year and twenty per cent per five years, while properties that are under assessed will be those properties that have appreciated in value at a rate that is above the assessment limit. Therefore, it is reasonable to assume that the tax burden in New York City is shifted from people who have enjoyed rapidly rising home values, to those who have not.

In conclusion, New York’s property tax relief systems are in reality a tax shift and not an actual reduction in tax. Although targeted property tax relief may offer benefits to certain groups that are in need of broad based relief, such as New York’s STAR program, New York City’s assessment caps merely shift the tax

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<sup>179</sup> A TAXING PROBLEM, *supra* note169; *see* Lipton, *supra* note169, at B1.

<sup>180</sup> A TAXING PROBLEM, *supra* note169; *see* Lipton, *supra* note169, at B1.

<sup>181</sup> *See* A TAXING PROBLEM, *supra* note169; Lipton, *supra* note169, at B1.

<sup>182</sup> N.Y. REAL PROP. TAX LAW § 305(2) (McKinney 2008); *Stemmer v. Bd. of Assessors*, 468 N.Y.S.2d 785, 786 (App. Div. 1983).

<sup>183</sup> A TAXING PROBLEM, *supra* note169.

<sup>184</sup> *See id.*

burden in ways that are not fully anticipated.

#### IV. RECENTLY PROPOSED PROPERTY TAX REDUCTION SYSTEMS IN NEW YORK

There are many proposals which are aimed at reducing the property tax burden in New York. The majority of these proposals fail address the root problem of New York's system: inefficiency and inequality. Instead, most of the proposals are aimed at reducing the property by shifting the burden to other forms of taxation.

##### *A. Selected Proposals*

##### 1. Cap on Property Tax Levy Increases

On June 3, 2008, New York Governor David A. Paterson proposed property tax legislation (the "Proposal") that closely mimics the recommendations of a report by the New York State Commission on Property Tax Relief (the "Commission").<sup>185</sup> The centerpiece of the proposal is a "cap" on school property tax levy increases of four percent or 120 percent of the Consumer Price Index (CPI) whichever is lower.<sup>186</sup> A school district could exceed the cap if at least fifty-five percent (55%) of voters approved.<sup>187</sup> In addition to the cap, the Commission's report and the Proposal would limit the current STAR program by instituting a "STAR circuit breaker." The STAR circuit breaker would provide an income tax credit for a percentage of property taxes paid, but only when the taxes exceed a percentage of the owner's income.<sup>188</sup> The STAR circuit breaker, however, could only be adopted if the tax cap is adopted. The Commission also recommended changes intended to reduce costs to local school districts such as eliminating unfunded mandates.<sup>189</sup> On January 12, 2006, New

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<sup>185</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., *Governor Introduces School Property Tax Cap Bill*, PROP. TAX MONITOR, June 2008, available at <http://www.orps.state.ny.us/monitor/jun08/index.cfm>.

<sup>186</sup> N.Y. STATE COMM'N ON PROP. TAX RELIEF, A PRELIMINARY REPORT OF FINDINGS AND RECOMMENDATIONS TO GOV. DAVID A. PATERSON 3 (2008), available at <http://www.cptr.state.ny.us/reports/CPTRpreliminaryreport-20080603.pdf>.

<sup>187</sup> *Id.* at 3.

<sup>188</sup> *Id.* at 3-4.

<sup>189</sup> N.Y. STATE COMM'N ON PROP. TAX RELIEF, FINAL REPORT TO GOV. DAVID A. PATERSON 95 (2008) available at [http://www.cptr.state.ny.us/reports/CPTRFinalReport\\_20081201.pdf](http://www.cptr.state.ny.us/reports/CPTRFinalReport_20081201.pdf).

York State Assemblywoman Sayward introduced bill A. 9458 which would place a property tax cap on owner-occupied residential real property.<sup>190</sup> The property tax cap would vary depending on household income, with households earning more than \$200,000 receiving no cap.<sup>191</sup> Taxpayers would be able to take as a credit against income, the amount by which their property tax bill exceeded their property tax cap.<sup>192</sup> In essence, the Sayward bill differs from the Governor's Proposal in that it makes the entire cap dependent on each household's income.

Another proposal was to expand the application of New York's current restrictive circuit breaker.<sup>193</sup>

## 2. Replacing or Supplementing the Property Tax with Another Tax

One recent legislative proposal was to supplement the property tax with a school district income tax.<sup>194</sup> In that way the property tax burden would decrease while an income tax burden would increase.

## 3. Implementing a System of Uniform Real Property Assessments

In 2007, a bill proposed to reform the assessment process in New York by: (1) creating a single statewide standard of assessment; (2) creating a mandatory three-year assessment cycle; and (3) entrusting all assessments to be performed at the county level.<sup>195</sup>

### *B. The Problems with Proposed Legislation*

#### 1. Cap on Property Tax Levy Increase:

A limit on the property tax levy could have numerous effects on the property tax.

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<sup>190</sup> Assem. 9458, 2006 Leg., 229th Reg. Sess. (N.Y. 2006).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Assem. 443, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

<sup>194</sup> S. 5509-A, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

<sup>195</sup> Assem. 1572, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

a. Cap in Excess of Desired Increase

If local taxing units impose a tax increase in excess of the cap to any property within its boundaries, then the effect of the cap would be nothing.

b. Cap in Excess of Desired Increase for Some Properties

If local taxing units increase the tax levy above the tax cap to some properties, but not to others, then the effect of the tax cap could be a shift of the tax burden from properties with a levy over the cap, to properties with a levy under the cap. For example, assuming the tax cap on levies is four percent (4%), and the assessed value of certain properties within a taxing jurisdiction increased, causing the tax levy to increase by six percent (6%) in the absence of the cap, the local taxing unit would have to reduce the tax levy on those properties. The question becomes how the taxing unit would make up for the lost revenue. One possibility is to shift the burden to other properties which did not increase by four percent. If other properties in the taxing unit were only two percent (2%) in excess of the prior year's tax levy, the local taxing unit could increase the levy on those properties, at least until the four percent cap was reached. This situation is similar to the situation studied by NYPIRG in New York City. The result is that the tax cap would merely shift the property tax burden among tax payers. Probably from those with rapidly rising home values to those who have not enjoyed rapidly rising home values.

c. Cap in Excess of Desired Increase for all Properties

Assuming local taxing units would like to increase the tax levy in excess of the cap to all properties, then an outright limit on the property tax would likely lower the property tax bill of the average taxpayer in New York<sup>196</sup> and cause the taxing unit to recognize lower revenue generation from the property tax. How a locality reacts to such a revenue decrease will determine the actual effect of the cap.

Proponents of the property tax cap believe that a limit on property tax revenue will increase local government efficiency

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<sup>196</sup> See KAREN LYONS & IRIS J. LAV, CTR. ON BUDGET & POL'Y PRIORITIES, THE PROBLEMS WITH PROPERTY TAX REVENUE CAPS 17 (2007), available at <http://www.cbpp.org/files/6-21-07sfp.pdf>.

and therefore, not necessarily have any deleterious consequences.<sup>197</sup> Studies have found, however, that there are a myriad of effects that a property tax cap may have on local government. Such effects include: (1) A shift in revenue collection from the property tax to other local sources;<sup>198</sup> (2) A shift in revenue collection from the local level to the state level;<sup>199</sup> (3) A transfer of power from the local level to the state level; (4) A decrease in local government's ability to provide education, public safety, and other services;<sup>200</sup> and (5) Property tax relief allocated without regard to the economic condition of the taxpayer.

That a property tax cap will reduce the level of property taxation has been shown in states that have enacted a property tax cap.<sup>201</sup> Evidence also suggests, however, that the reduced level of local revenue, resulting from the property tax cap, has not been made up solely by increased local government efficiency or reduction in waste.<sup>202</sup>

One common consequence of a property tax cap is that instead of working with a reduced budget, localities make up the lost revenue by shifting revenue collection from the property tax to fees and other non-tax items.<sup>203</sup> In California and Massachusetts, for example, studies have shown that after each state enacted a property tax cap, over time, localities made up for the revenue lost due to the property tax cap by increasing fees and non-tax revenues.<sup>204</sup> Therefore, in these two states taxpayers did not

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<sup>197</sup> IRIS J. LAV, CTR. ON BUDGET & POL'Y PRIORITIES, SUOZZI'S STATEMENT IGNORES TRUTH ABOUT MASSACHUSETTS' PROPERTY TAX CAP 3 (2008), *available at* <http://www.cbpp.org/archiveSite/5-28-08sfp.pdf>.

<sup>198</sup> See INST. OF GOV'T STUDIES—UNIV. OF CAL., TAX & EXPENDITURE LIMITATION IN CALIFORNIA: PROPOSITION 13 & PROPOSITION 4 (2005) [hereinafter TAX & EXPENDITURE], [http://www.igs.berkeley.edu/library/research/quickhelp/policy/finance/tax\\_spend\\_limits\\_2003.html](http://www.igs.berkeley.edu/library/research/quickhelp/policy/finance/tax_spend_limits_2003.html).

<sup>199</sup> See IRIS J. LAV & ERICA WILLIAMS, CTR. ON BUDGET & POL'Y PRIORITIES, A FORMULA FOR DECLINE: LESSONS FROM COLORADO FOR STATES CONSIDERING TABOR 1, 4, 17 (2010), *available at* <http://www.cbpp.org/files/10-19-05sfp.pdf>.

<sup>200</sup> See LYONS & LAV, *supra* note 196, at 1, 17.

<sup>201</sup> See PHIL OLIFF & IRIS J. LAV, CTR. ON BUDGET & POL'Y PRIORITIES, HIDDEN CONSEQUENCES: LESSONS FROM MASSACHUSETTS. FOR STATES CONSIDERING A PROPERTY TAX CAP 1 (2010), *available at* <http://www.cbpp.org/files/5-21-08sfp.pdf>.

<sup>202</sup> *Id.* at 12.

<sup>203</sup> See, e.g., Gary M. Galles & Robert L. Sexton, *A Tale of Two Jurisdictions: The Surprising Effects of California's Proposition 13 and Massachusetts' Proposition 2½*, 57 AM. J. OF ECON. & SOC. 123, 125 (1998) (demonstrating that assessment and tax rate limits in California and Massachusetts caused an increase in non-tax fees and charges and did not reduce total spending)..

<sup>204</sup> Galles & Sexton, *supra* note 203, at 125, 131.

realize a more efficient local government. Instead the source of revenue merely changed from one group, property taxpayers, to another group, those subject to local fees and non-tax revenues. It is difficult to analyze the effect of such a shift because of the multitude of fees that may be imposed in various localities and states.<sup>205</sup> One observation that can be made, however, is that if a state shifts its revenue generation from property taxes to fees, it effectively increases its residents' aggregate federal tax burden, because property taxes are tax deductible while fees are not.<sup>206</sup>

A similar option for a locality faced with a revenue shortfall due to a property cap is to substitute another local option tax, such as a sales or income tax. Such an option, by its own terms, would, however, be nothing more than a tax shift, from property taxpayers to whomever the burden of the newly instituted tax fell upon. For example, proposal S. 5509-A by New York State Senator Bonacic to replace a portion of local revenue from the property tax with revenue from an income tax would, by its own terms, be a tax shift from property taxpayers to income taxpayers.<sup>207</sup> The shift may or may not be warranted as there are arguments to be made for and against the worthiness of a property tax as compared to an income tax. The ramifications of a new tax will vary and will depend upon the type of tax instituted.

A second common consequence of a property tax cap is that instead of working with a reduced budget, localities make up the lost revenue by receiving increased state aid.<sup>208</sup> This again is a tax shift and not a tax reduction. In effect, taxpayers are relieved from one tax, the property tax, by paying another tax, or other form of revenue collection, imposed at the state level. An increased reliance on state aid may result in a transfer of power from the local to the state level. In Massachusetts for example, state aid increased in the years immediately after enactment of a property tax cap.<sup>209</sup> As a result, localities were not economically affected by the cap because much of the property tax revenue lost was replaced by state aid.<sup>210</sup> The localities did, however, become

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<sup>205</sup> *Id.* at 125.

<sup>206</sup> LYONS & LAV, *supra* note 196, at 14.

<sup>207</sup> See S. 5509-A, 2007 Leg., 230th. Reg. Sess. (N.Y. 2007).

<sup>208</sup> See Galles & Sexton, *supra* note 203, at 131; TAX AND EXPENDITURES, *supra* note 198.

<sup>209</sup> LYONS & LAV, *supra* note 196, at 1.

<sup>210</sup> OLIFF & LAV, *supra* note 201, at 1.

more reliant on the state for local financing. During an economic slowdown, the state was forced to reduce aid, and localities were not able generate more revenue on their own through increased property taxes. As a result, local services were reduced including: closing fire stations, laying “off teachers, police officers, firefighters, and other public employees,” and not having money to pay for electricity.<sup>211</sup> Even if local government received a mandate from its citizens to increase revenue generation through higher taxes they could not do so because of the property tax cap. In effect, because of the cap, local financing decisions were transferred from the local to the state level.

Finally, when and if all means of replacing revenue lost at the local level due to a property tax cap are foreclosed, meaning when the tax cap is a true tax cut and not a tax shift, it has been shown that a consequence of a tax cap is that local services will be reduced. Property tax caps that impose a fixed rate such as the one proposed by former New York Governor David A. Paterson, have no relation to the costs incurred by local governments. For example, “[l]ocal governments in New York saw their expenditures on employee health insurance increase an average of 13 percent per year from 2000 to 2004,”<sup>212</sup> and pension costs in Buffalo, New York have increased six-fold over a period of five years, and in New York City, pension costs have quadrupled over a period of five years and “will soon consume 10 percent of the city’s budget.”<sup>213</sup> These figures have no bearing on the four percent property tax cap proposed by the former governor. If the rate of increase in cost in these items continues at the rates cited above, local governments would experience budget deficits as a result of a four percent tax cap because they would be forbidden from increasing revenue from the property tax at that rate. Provided no alternate source of revenue was found, it is likely that service cuts would be the result.

The state of Colorado experienced service reductions after Colorado enacted a revenue limit under their Taxpayer Bill of Rights (TABOR). The following observations were made about

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<sup>211</sup> *Id.* at 2.

<sup>212</sup> LYONS & LAV, *supra* note 196, at 6; PROPERTY TAXES IN N.Y. STATE, *supra* note 88, at 5.

<sup>213</sup> Danny Hakim, *Cost of Pensions Adds to Factory Town’s Troubles*, N.Y. TIMES, Sept. 4, 2006, available at <http://www.nytimes.com/2006/09/04/nyregion/04lockport.html?ex=1315022400&en=b32396a9590670f2&ei=5088&partner=rssnyt&emc=rss>.

the effect of TABOR on Colorado:

- “Under TABOR, “Colorado declined . . . from 35th to 49th in the nation in K-12 spending as a percentage of personal income;”<sup>214</sup>
- “Colorado’s average per-pupil funding fell by more than \$600 relative to the national average;”<sup>215</sup>
- “Under TABOR, higher education funding per resident student dropped by 31 percent after adjusting for inflation;”<sup>216</sup>
- “College and university funding as a share of personal income declined from 35th . . . to 48<sup>th</sup>” in the nation;”<sup>217</sup>
- “Colorado plummeted from 24th to 50th in the nation in the share of children receiving their full vaccinations. Only by investing additional funds in immunization programs was Colorado able to improve its ranking to 43rd in 2004;”<sup>218</sup>
- “Under TABOR, the share of low-income children lacking health insurance [has] doubled in Colorado . . . even as it [has fallen] in the nation as a whole. Colorado now ranks last . . . among the 50 states on this measure.”<sup>219</sup>

Massachusetts and Illinois also experienced local service reductions in the forms of: (1) reduced public services; (2) reduced salaries to public servants; and (3) canceled infrastructure projects as a result of property tax caps.<sup>220</sup>

Despite the problems with property tax caps, listed above, there is a benefit, which is that taxpayers will recognize a lower property tax bill. Even such a benefit, however, is not without demerits. Because property tax caps, like the one proposed by former Governor Paterson, are usually broad based, and not targeted to a specific class of taxpayers, all taxpayers, even those who can afford to pay the property tax will receive the benefit. It is possible to avoid this situation by attaching a circuit breaker to the tax cap. The tax cap proposed by Assemblywoman Teresa Sayward, for example, only applies to households earning less

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<sup>214</sup> LAV & WILLIAMS, *supra* note 199.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 2.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> LYONS & LAV, *supra* note 196, at 2.

than \$200,000.<sup>221</sup> Therefore, the cap is more likely to benefit only those who need it the most. A study by the Maine Center for Economic Policy has found that circuit breakers can effectively target property tax reductions to lower income households.<sup>222</sup>

Property tax caps may result in lower property taxes but often have unintended consequences as well, including an increase in other types of taxes, a decrease in services and a shift in tax burden among various types of taxpayers. Such consequences may be appropriate or desired for a given community, but they should be evaluated as such and not cloaked in the guise of a tax cut.

## 2. Circuit Breaker Programs

Circuit breaker programs target property tax relief to certain types of taxpayers.<sup>223</sup> Circuit breaker programs, however, are not tax reductions, but rather a tax shift from those who qualify for the programs to those who do not.

### a. Basic Structure

Circuit breaker programs are named after the electrical devices that shut off electric power to prevent circuits from overloading.<sup>224</sup> Circuit breaker programs attempt to direct property tax relief to specific categories of taxpayers.<sup>225</sup> These programs usually provide relief to low income homeowners and sometimes to renters as well.<sup>226</sup>

Under a circuit breaker, the amount of relief generally depends on household income, property value or the property tax bill.<sup>227</sup>

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<sup>221</sup> Press Release, N.Y. State Assembly, Sayward Proposes Income-Based Property Tax Cap (Dec. 20, 2010), *available at* [http://assembly.state.ny.us/member\\_files/113/20051220a/](http://assembly.state.ny.us/member_files/113/20051220a/).

<sup>222</sup> See MICHAEL ALLEN & RICHARD WOODBURY, ME. CTR. FOR ECON. POL'Y, MAINE PROPERTY TAXES: DOES THE CIRCUIT BREAKER RELIEVE THE BURDEN? 18 (2006), *available at* <http://www.mecep.org/view.asp?news=90>.

<sup>223</sup> INST. ON TAX'N AND ECON. POL'Y, PROPERTY TAX CIRCUIT BREAKERS 1 (2005) [hereinafter PROPERTY TAX CIRCUIT BREAKERS], *available at* <http://www.itepnet.org/pdf/pb10cb.pdf>.

<sup>224</sup> NAT'L CONF. OF STATE LEGS., A GUIDE TO PROPERTY TAXES: PROPERTY TAX RELIEF 15 (2002) [hereinafter NCSL, RELIEF], *available at* <http://www.leg.state.nv.us/73rd/otherDocuments/PTax/NCSL-gptrelief.pdf>.

<sup>225</sup> PROPERTY TAX CIRCUIT BREAKERS, *supra* note 223, at 1.

<sup>226</sup> *E.g.*, D.C. CODE § 47-1806.06(a) (LexisNexis Supp. 2009); PROPERTY TAX CIRCUIT BREAKERS, *supra* note 223, at 1.

<sup>227</sup> *E.g.*, MD. CODE ANN., TAX-PROP. § 9-104(h), (i) (LexisNexis Supp. 2007); *see*

Generally, circuit breaker programs are “threshold” programs that provide property tax credits to an eligible person whose property tax exceeds a certain percentage of his or her income<sup>228</sup> or overall wealth.<sup>229</sup> Some circuit breaker programs, known as “sliding scale” programs, provide a variable credit for property tax paid depending on income earned.<sup>230</sup> This is similar to the circuit breaker contained in the proposal by former Governor Paterson, mentioned above. Therefore, the credit amount varies depending on household income.<sup>231</sup> In either case, the amount of the tax relief depends on the particular financial situation of the property owner.

Local governments are forced to make important policy-driven eligibility decisions, such as exactly which property owners should and should not benefit from a particular circuit breaker program. Consequently, different states have developed different eligibility criteria.

#### b. Problems with Circuit Breaker Programs

If circuit breakers are not financed by the state, they will result in reduced local revenue. The benefit of a reduced property tax bill accruing to those who qualify for the circuit breaker will necessarily reduce local revenue, provided the state does not reimburse the locality. As a result, a circuit breaker that is not financed by the state will result in either a tax shift or reduction in local revenue. Reductions in revenue may cause localities to increase property tax rates, shift revenue collection to another source or reduce spending. Reduced spending generally results in reductions in municipal services.<sup>232</sup>

State-financed local property tax reduction programs are mere tax shifts and not true tax reductions. This is because the state must increase its revenue generation in order to reimburse the locality for revenue lost. The result is a shift in tax burden from

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also NCSL, RELIEF, *supra* note 224, at 16.

<sup>228</sup> *E.g.*, ME. REV. STAT. ANN. tit. 36, § 6207(1) (2010); OKLA. STAT. ANN. tit. 68, § 2802(9) (West 2001 & Supp. 2011).

<sup>229</sup> *E.g.*, MD. CODE ANN., TAX-PROP. § 9-104(h), (i).

<sup>230</sup> NCSL, RELIEF, *supra* note 224, at 16.

<sup>231</sup> *Id.*

<sup>232</sup> See Marisa Kwiatkowski, *Officials: Circuit Breaker Will Ravage Local Governments, Schools*, NORTHWEST IND. TIMES, Dec. 9, 2006, available at [http://www.nwitimes.com/news/local/article\\_af17a35b-c7bb-564f-bc33-b4cb9493cee2.html](http://www.nwitimes.com/news/local/article_af17a35b-c7bb-564f-bc33-b4cb9493cee2.html).

the local level to the state level.<sup>233</sup> In addition, because the amount of a circuit breaker exemption depends on the circumstances of an individual taxpayer, these exemptions cannot be automatically included in every property tax bill. Instead, taxpayers are forced to specifically apply for this type of a tax relief.<sup>234</sup> As a result, only informed taxpayers end-up receiving benefits from circuit breaker programs.<sup>235</sup>

Some of the problems with a circuit breaker, mentioned above, may also be viewed as a benefit. Although many taxpayers may not qualify for a circuit breaker, depending on how it is structured, the major benefit of a circuit breaker program is that it can be targeted to a select group, such as low-income taxpayers.<sup>236</sup> Therefore, the taxpayer's ability to pay becomes a factor in the property tax calculation. This factor brings a modicum of equity into the property tax structure.<sup>237</sup> Additionally, because only a fraction of taxpayers are eligible for the program, the concomitant reduction in local revenue is relatively low. As a result the tax shift, or revenue reduction, is mitigated. For example, the proposal by Assemblywoman Sayward would likely cost much less than the proposal by former Governor Paterson because it would apply to fewer taxpayers. Additionally, those taxpayers who would qualify for Assemblywoman Sayward's circuit breaker would likely be those who need property tax relief the most. Simply expanding a circuit breaker, would of course benefit more taxpayers, but could also become overly broad and expensive.

It is worthwhile to note that the low-income taxpayers, who typically benefit from circuit breakers, are less likely to itemize their federal tax deductions.<sup>238</sup> As a result, this type of property tax cut is less likely to be mitigated by an increase in federal tax liabilities (as a result of a decrease in property tax deductions).<sup>239</sup>

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<sup>233</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 13.

<sup>234</sup> PROPERTY TAX CIRCUIT BREAKERS, *supra* note 223, at 2; *see also* NCSL, RELIEF, *supra* note 224, at 9.

<sup>235</sup> *See* PROPERTY TAX CIRCUIT BREAKERS, *supra* note 223, at 2.

<sup>236</sup> *See* ALLEN & WOODBURY, *supra* note 222, at 18; STANLEY CHERVIN, TENN. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, PROPERTY TAX REDUCTION AND RELIEF PROGRAMS 5 (2007), *available at* [http://tn.gov/tacir/PDF\\_FILES/Taxes/property%20tax%20reduction.pdf](http://tn.gov/tacir/PDF_FILES/Taxes/property%20tax%20reduction.pdf) (homestead exemption amount based on other factors, such as income).

<sup>237</sup> CHERVIN, *supra* note 236, at 2.

<sup>238</sup> PROPERTY TAX CIRCUIT BREAKERS, *supra* note 223, at 2.

<sup>239</sup> *Id.*

c. Replacing the Property Tax with an Income Tax

Replacing the property tax with an income tax, or any other tax, is simply a tax shift. The tax burden is shifted from those subject to the property tax, to those who are subject to a greater extent to the income tax. An income tax may or may not be favorable to the property tax. There are benefits to each tax. The benefits most often associated with the property tax are that it is a stable tax and that it has a high rate of compliance.<sup>240</sup> Real property tax collections are relatively stable because the property values are not as quick to react to general economic fluctuations as taxpayers' income or level of spending.<sup>241</sup> Real property tax collections also have a high rate of compliance because they are easy to enforce; after all, it is difficult to hide a house.<sup>242</sup> On the negative side, the property tax is often viewed as inequitable<sup>243</sup> because it is not based on ability to pay; the property tax bill is based on the value of the taxpayer's home not on the taxpayer's income.

The question of what tax system should be used to raise revenue is a policy determination probably with no concrete answer. The choice, however, should be made based on facts and discussion and not in response to voter anger over high property tax bills.

d. Statewide Standard of Assessment

The fundamental problem with the property tax system in New

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<sup>240</sup> Charlie B. Tyer, *The Property Tax: Why it Persists*, 4 THE S.C. POL'Y FORUM MAG. 12, 20 (1993), available at <http://www.cas.sc.edu/poli/courses/scgov/Articles/Proptax.htm>.

<sup>241</sup> See, e.g., NCSL, ROLE, *supra* note 21, at 2; see also, PETER BLUESTONE ET AL., FISCAL RESEARCH CTR., GEORGIA STATE UNIV., FINANCING AN INCREASED STATE ROLE IN FUNDING K-12 EDUCATION: AN ANALYSIS OF ISSUES AND OPTIONS 65 (2005), available at <http://aysps.gsu.edu/frc/files/report114.pdf>; PROPERTY TAXES IN NEW YORK STATE, *supra* note 88; Larry DeBoer, *Capital Comments: Property Tax Stability and Circuit Breakers*, PURDUE EXTENSION, Oct. 28, 2004, available at <http://www.agriculture.purdue.edu/agcomm/newscolumns/archives/CC/2004/October/041028CC.htm>.

<sup>242</sup> See, e.g., W.A. STATE DEP'T OF REVENUE, DEPARTMENT OF REVENUE COMPLIANCE STUDY 1, 3 (2006), available at [http://dor.wa.gov/Docs/Reports/Compliance\\_Study/compliance\\_study\\_2006.pdf](http://dor.wa.gov/Docs/Reports/Compliance_Study/compliance_study_2006.pdf). (The ability to tax nonresident property owners who can often avoid the income or sales tax is also frequently cited as a reason for local government's favor the real property tax).

<sup>243</sup> See PROPERTY TAX CIRCUIT BREAKERS, *supra* note 223; Editorial, *House Would Link Property Tax, Income*, STAR TRIBUNE (Minneapolis, MN), Mar. 29, 2007, at 10A.

York is that it is inequitable and inefficient.<sup>244</sup> Any attempt to rectify either of those deficiencies is a step in the right direction. In New York, Assemblywoman Galef and others proposed to: (1) create a single statewide standard of assessment; (2) implement a mandatory three-year assessment cycle; and (3) entrust all assessments to be performed at the county level.<sup>245</sup> A uniform assessment process would go a long way in eliminating some of the inequities created by varying local standards of assessment. A single statewide assessment standard is progress in that direction. As we argue below, however, we believe the state should perform all assessments in order to eliminate the need for an equalization rate.

### *C. Summary*

Most of the proposed legislation cited above provides no relief for the ills of the property tax in New York State: inefficiency and inequality. Merely providing a lower property tax bill will not lower the costs facing local government. A tax shift or a reduction in services will necessarily occur. What New York State needs to do is create an equitable and efficient property tax system and then determine by debate, in each locality, what amount should be spent on local services.

## V. FUNDAMENTAL ISSUES AND PROPOSED SOLUTION

Two fundamental issues exist in the property taxation system in New York.<sup>246</sup> First, New York's property taxation system is inefficient; mainly because local governments, which have overlapping geographical boundaries and non-uniform assessment standards, duplicate their property tax assessment and collection efforts.<sup>247</sup> This duplication results in overly expensive and inadequate systems of property taxation. A second fundamental issue is the inequitable taxation of real property owners.<sup>248</sup> Too often, local governments apply property tax to values that do not reflect current market conditions.<sup>249</sup> Many

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<sup>244</sup> See *supra* Parts I–III.

<sup>245</sup> Assem. 1572, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

<sup>246</sup> See *supra* Introduction.

<sup>247</sup> See *supra* notes 49–68, 92.

<sup>248</sup> See *supra* Part II.

<sup>249</sup> See *supra* notes 81–88 and accompanying text.

localities have not revalued their property rolls for years and the implementation of the equalization rate in New York does not adequately ameliorate the discrepancy between assessing jurisdictions or between properties within a single jurisdiction.<sup>250</sup> As a result, people who own similarly situated properties are often taxed differently.<sup>251</sup>

These two fundamental issues result in unfair taxation practices and inefficient systems of property tax assessments.<sup>252</sup> In addition, they eliminate opportunities for local governments to fully benefit from economies of scale and various cost-sharing opportunities available with businesses and other governmental entities.<sup>253</sup> There is, however, a way to address these fundamental issues.

The proposed solution consists of three main sections. Section A proposes a centralization of the real property assessment and collection processes, by transferring these responsibilities from local governments to a state-centralized agency, while at the same time preserving local governments' independence and control. Specifically, the following issues are addressed: local governments' retention of control over the tax burden; control over the custody of collected tax revenues; statewide uniformity; control over spending; a system of checks and balances between state and local governments; and a sunset provision for the entire proposed consolidated legislation.

Section B of the proposal argues for improvements in valuations and proposes that properties be revalued annually. This section also argues that technological developments, opportunities for information and cost sharing arrangements, and annual revaluation-driven cost savings make annual valuations proposal financially feasible. Finally, Section C of the proposal suggests that the State must be reimbursed by local governments for the expenses it will incur when running the real property tax assessment function.

#### *A. Consolidation of Assessment Functions While Preserving Local Sovereignty*

In order for New York to achieve a more equitable and efficient

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<sup>250</sup> *See id.*

<sup>251</sup> *See supra* Part II.A.

<sup>252</sup> *See supra* Part II.A.

<sup>253</sup> *See supra* notes 242–246 and accompanying text.

system of real property tax assessment, it must have a centralized agency charged with carrying out these responsibilities.<sup>254</sup> This agency should oversee the entire assessment and collection process. An important aspect of this part of the proposal is that this agency would apply uniform assessment methods on a state-wide basis and not rely on the multitude of jurisdictions currently charged with these functions in New York. (In Maryland, for example, the governor-appointed Director of Assessments and Taxation monitors and enforces property tax assessment laws on a state-wide basis.<sup>255</sup> This “empowered” oversight facilitates uniformity of property assessment throughout the state.<sup>256</sup> As a result, the uniformity of assessments in Maryland has been measured as higher than in New York.)<sup>257</sup>

These improvements, however, must not be made at the expense of local governments’ sovereignty. If enacted, this new agency would create a better system of real property taxation than currently exists in New York.

Local and municipal governments must outsource real property tax assessment and collection functions to the centralized state-run organization. This change is necessary to make the real property tax assessment and collection process more efficient and equitable.

### 1. Operating Efficiencies

Centralization of the real property tax assessment and collection process will generate significant economic efficiencies. First, uniform standards employed statewide will eliminate many of the structural problems facing New York today. For example, the need to calculate and employ an equalization rate would be eliminated if all property in New York were valued under the same standards and at the same level of assessment because there would be no discrepancies between taxing jurisdictions. Additional economic savings will be achieved due to operating efficiencies commonly derived from any business combination.

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<sup>254</sup> Maryland is the only state where the assessment process is centralized at the state level.

<sup>255</sup> [2011 Md., Overview] Md. State Tax Rep. (CCH) ¶ 20-605.

<sup>256</sup> *Id.*

<sup>257</sup> See MD. DEP’T OF ASSESSMENTS & TAX’N, 2006 ASSESSMENT RATIO REPORT (2006), available at [http://www.dat.state.md.us/sdatweb/stats/06rr\\_rpt.html](http://www.dat.state.md.us/sdatweb/stats/06rr_rpt.html).

Through better utilization of assessors' time, New York should be able to use a smaller number of assessors while servicing the same total number of properties. These operating efficiencies will enable a state-run assessment and collection agency to conduct its operations in a more cost effective manner.<sup>258</sup>

Second, the centralization of the valuation process will enable New York to cultivate assessors with expertise in certain valuation areas. Presently, local government assessors have to value each type of property within their jurisdiction. More complex properties require more time spent on their valuations.<sup>259</sup> Lack of expertise results in difficult to value properties requiring more time currently spent by individual assessors than will be spent by state-employed specialists. These full-time specialists will apply their knowledge and experience to complex properties across the state.

Third, this centralized system will resolve local governments' infrastructure-related issues as well. Presently, many local governments "can not [sic] create and support their own specialized systems on a cost-effective basis."<sup>260</sup> The centralization will resolve this issue by eliminating a need for each village, town, and/or county to maintain separate real property tax assessment and collection infrastructures. Local governments will obtain any necessary information pertinent to their particular territory by logging into the centralized real property taxation database. This centralization will result in significant cost savings on municipal levels because local governments will no longer have to pay for the acquisition, operation, and maintenance of assessment and collection systems and databases. In addition, there will no longer be a need for each assessing unit to spend money recruiting, training, and employing their own assessors, administrators, and other supporting personnel.<sup>261</sup> Overall, the consolidation will result in

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<sup>258</sup> N.J. JOINT LEGIS. COMM., GOV'T CONSOLIDATION & SHARED SERVICES 44-45 (2006), [http://www.njleg.state.nj.us/PropertyTaxSession/OPI/jcgo\\_final\\_report.pdf](http://www.njleg.state.nj.us/PropertyTaxSession/OPI/jcgo_final_report.pdf).

<sup>259</sup> See N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., STATEWIDE REAL PROPERTY TAX EQUITY INFORMATION GATHERING (2007), <http://www.orps.state.ny.us/rpta/rptac/infoSessions/asmtadmin.htm>.

<sup>260</sup> See N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., 2006 REPORT ON EFFECTIVENESS OF STATE TECHNICAL & FINANCIAL ASSISTANCE PROGRAMS FOR ASSESSMENT ADMINISTRATION § III(C) (2006) [hereinafter EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE] *available at* <http://www.orps.state.ny.us/ref/pubs/2006report.htm>.

<sup>261</sup> At present, New York requires (although probably does not enforce) state

significant cost savings.<sup>262</sup>

## 2. More Equitable Assessments

State-run assessment and collection operations will make the real property tax assessment process more equitable. Presently, different assessors in different jurisdictions may be using different valuation methodologies and models, resulting in varying valuations for similar properties. As a result, it is currently possible for two similar properties to be valued materially differently simply because of the different methodologies and tools utilized by an individual assessor. Additionally, different assessing units may apply a different level of assessment. This creates a tremendous problem because taxing jurisdictions do not share the same geographic boundaries as assessing units. As a result, a single taxing jurisdiction applying a single tax rate will actually be applying a different overall tax burden to similar properties based on the assessing unit covering each property.<sup>263</sup> Equalization, discussed above, does not fix these inequities. Equalization fails to distinguish individual properties; even between commercial and residential property. Thus, the adjustment made to a particular property may bear little or no relation to the deviation from fair market of that particular property assessment. These practices inevitably result in inequities with some owners carrying a greater tax burden than owners of other similar property. Thus, the fact that all assessors will be operating under the same set of rules and procedures will translate into better consistency and, consequently, quality of valuations, assessments, and collections practices. The transfer of valuation, assessment, and collection processes involved in real property tax assessment to centralized, state-operated facilities will make the real property tax assessment process more efficient and equitable.

One likely criticism of the centralization proposal is that it is politically unattainable. Critics would argue that local residents

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sponsored training and continuous education. *See, e.g.*, N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., MEMBERS OF ELECTED BOARDS OF ASSESSORS: TRAINING & CERTIFICATION REQUIREMENTS (2008), [rps.state.ny.us/training/qualCert/Mem\\_elected\\_require.pdf](http://rps.state.ny.us/training/qualCert/Mem_elected_require.pdf).

<sup>262</sup> *See* N.Y. STATE OFFICE OF REAL PROP. TAX SERVS., MUNICIPAL OPTIONS FOR MORE EFFICIENT ASSESSMENT ADMINISTRATION (2008), *available at* <http://www.orps.state.ny.us/pamphlet/munioptions.pdf>.

<sup>263</sup> PROPERTY TAXES IN NEW YORK STATE, *supra* note 88, at 15.

and governments, in fear of losing the control over the assessment process, may not agree and, consequently, may not vote for the transfer of real property assessment functions to the state. The next section of this proposal addresses this valid concern.<sup>264</sup>

### 3. Protection of Local Governments' Autonomy and Control

While trying to improve the current revenue assessment and collection system, we must protect local governments' sovereignty. It is precisely the concerns over the potential loss of autonomy that has prevented any prior centralization attempts.<sup>265</sup> These concerns can be addressed in a number of ways. First, local governments must retain control over the determination of the tax burden. Second, local governments must have custody of collected tax revenues. Third, a decision on how the collected funds are spent must remain in local governments' control as well. Fourth, checks and balances must be put in place to ensure transparency of the newly created process. Finally, as a last precaution, there must be a sunset provision to the law that would mandate this centralization model. The subsections below will further discuss these five solutions.

#### a. Control Over the Tax Burden

Each individual taxing unit must retain control over the decision as to how much tax burden it wants to impose on taxpayers within its jurisdiction. This can be accomplished through a number of mechanisms. Each taxing unit should select a mechanism that best fits its needs.

Local governments must retain control over the exact tax burden it wants to place on particular sets of taxpayers. For example, a local government may want to put in place certain

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<sup>264</sup> Creating a separate commercial equalization rate, or making assessment and taxing jurisdiction boundaries contiguous are actions that would provide a modicum of fairness to New York's current system.

<sup>265</sup> As ORPS reported: "[N]o non-village assessing units have yet elected to take more fundamental steps toward consolidation, either through the Consolidated Assessing Unit option or in becoming part of a county assessing unit. This apparent reluctance to cede greater autonomy to supra-municipal organizations reflects a strong tradition of 'home rule' in New York, with many officials and citizens alike remaining skeptical about consolidating local governments or even their major functions." EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § IV(B).

circuit breakers to make sure that their full-time residents' property tax burden does not exceed certain percentage of the residents' adjusted gross income.

Alternatively, localities may want to encourage certain types of investment activities and consequently impose a lesser amount of tax on properties within desired territories when used for certain activities. For example, if a municipality desires to encourage tourism, it may want to assess less tax on a building used as a hotel, thus making it cheaper and, therefore, more attractive for businesses to operate hotels. These types of flexibilities are necessary in order for local governments to have influence over the activities within their borders.

#### b. Custody of Collected Tax Revenues

An additional way to address local governments' concerns over losing their autonomy to the state is to ensure local custody over collected funds. New York State must remit all property tax collections back to the taxing unit from which the tax was collected. This will help ensure that the tax revenues collected from properties located within certain local government borders will benefit only that and no other jurisdiction. In addition, the distribution of tax collection back to the local governments reinforces local control over spending.

#### c. Control over Spending

Local governments must retain the same amount of control over their budgetary and related spending decisions as they currently have. Retention of this control will address perhaps one of the most fundamental concerns localities would have when debating whether or not to outsource revenue assessment and collection functions to the state. Local governments want to retain control over the budget, which provides local governments with power.<sup>266</sup>

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<sup>266</sup> See *Local Property Taxes and New Jersey State Government*, N. J. STATE LEAGUE OF MUNICIPALITIES [hereinafter *Local Property Taxes and New Jersey State Government*], <http://199.236.89.49/SG-LGpropTax.pdf> (last visited May, 15, 2010) (opining that lack of local control causes more funds to be directed to state rather than local programs). See also BING YUAN ET AL., TAX EXPENDITURE LIMITATIONS AND THEIR EFFECTS ON LOCAL PUBLIC FINANCES (2007), available at [http://www.gwu.edu/~gwipp/lincoln/Yuan\\_Cordes\\_Brunori\\_Bell.pdf](http://www.gwu.edu/~gwipp/lincoln/Yuan_Cordes_Brunori_Bell.pdf); N. J. JOINT LEGIS. COMM., GOVERNMENT CONSOLIDATION AND SHARED SERVICES 35 (2006),

#### d. Checks and Balances

While local governments will turn over control of real property assessment and collection responsibilities to New York State, they must retain a right to verify that the state agency executes its function in a consistent and fair manner. To accomplish this goal, a system of checks and balances must be instituted. Local governments' authorized representatives must have a right to audit and, if necessary, dispute the state's property tax assessment practices.

In addition, state government must execute its administrative powers in a transparent manner. Local government must have access to any and all data, methodologies, and mechanisms employed by the state while assessing and collecting property tax within their respective jurisdictions. This transparency and the related ability of the local government to review state operations will reinforce the consistency of state's assessment and collection practices across various intra-state jurisdictions.

Under this proposal, local governments will have a right to audit and appeal New York State's valuation practices, methodologies, and results. This right of review and dispute will create necessary checks and balances aimed at ensuring that the State executes its new responsibilities in a manner acceptable to local governments.

In summary, local governments must retain the right to make sure that the State conducts real property tax assessment and collection activities in a way that is consistent with localities' expectations. Complete transparency of the process as well as local government's right to inspect and challenge the process will facilitate this goal.

#### e. A Sunset Provision

The proposed legislation must have a sunset provision—a clause that terminates or repeals all of the law after a specific date, unless further legislative action is taken to extend it.<sup>267</sup> This provision will serve as an important step toward giving local governments additional protection and corresponding peace of mind. The new rules will specify that after a certain number of

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*available at* [http://www.njleg.state.nj.us/PropertyTaxSession/OPI/jcgo\\_final\\_report.pdf](http://www.njleg.state.nj.us/PropertyTaxSession/OPI/jcgo_final_report.pdf).

<sup>267</sup> BLACK'S LAW DICTIONARY 1574 (9th ed. 2009).

years, unless the local governments' legislatures vote to make the above stated proposals permanent or extend the proposals for another term, the entire administration of property tax assessment and collection process reverts back to the localities. Such a provision, while allowing the proposed process to go into effect, would protect local governments from having to continue using the centralization model should it become politically unpopular to do so, or if local governments determined that state administration is inferior to local administration.

A five year initial period for any sunset provision should be suggested. Setting up and testing various methodologies will take a few years before the people and systems will reach their respective optimal level of operations. The sunset provision will make it easier for local governments to make a decision to turn over such a major function up to the state level.<sup>268</sup> It should be noted, however, that if New York maintains its current system of overlapping jurisdictions, the refusal of one locality to use the state agency could negate the benefits of the system for others. Therefore, for the system to work either all assessing units must use the proposed state agency, or, the geographical boundaries of assessing units and taxing jurisdictions must be redrawn so that no taxing jurisdiction falls within more than one assessing unit. If boundaries are re-drawn, the decision by one locality to "opt-out" of the state-centralized model would not affect other localities.

In summary, the concerns over local governments' potential loss of their autonomy to the state can be addressed in a number of ways. Local governments will retain control over the most important and fundamental aspects of their fiscal life. Under this proposal, local governments will be making decisions relating to the tax burden placed on residents and properties as well as on the way property tax revenues are spent. A system of checks and balances will further protect local governments from potential abuses and inequities. These types of controls will ensure that local governments' independence and sovereignty are not taken away or decreased by the state. A sunset provision will give local governments an additional layer of protection.

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<sup>268</sup> See EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § IV(B).

*B. Improvements in Valuations*

Real properties must be revalued annually. In addition, assessors should be appointed by state governments for long term assignments. Collectively, these changes will bring more equity and efficiency into the real property tax assessment process.

## 1. Annual Valuations

While it is obvious that annual revaluation will make things fairer, statistics showing the increase in equity remain impressive.<sup>269</sup> The latest technological advances, as well as opportunities for cost sharing arrangements, make annual revaluations possible.

Property valuations must be performed on an annual basis to make real property taxation more equitable.<sup>270</sup> Long intervals between reappraisals can increase the likelihood of significant differences between the assumed and actual fair market value of properties, which in turn causes inequity among taxpayers.<sup>271</sup> In areas where property taxes increase rapidly, several years of property appreciation, without reappraisal can cause large increases in property taxes.<sup>272</sup> As a result, taxpayers who should be paying more taxes do not, and those who should be paying fewer taxes pay more.<sup>273</sup> Since the tax base of the real property tax is determined based on real property values, it is imperative that the values used are as correct and, therefore, as current as possible.

More specifically, we propose that real properties be revalued annually through the use of the comparable sales data. At the same time, we propose that all properties undergo physical inspection every three years. This type of valuation, though more expensive, is more precise than other types of valuations, such as estimated valuation based on government databases which track

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<sup>269</sup> See *id.* at §IV(D). See also, N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., 2006 ANNUAL REPORT (2006), available at <http://www.orps.state.ny.us/pamphlet/annualrpt2006.html>.

<sup>270</sup> EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § IV(A).

<sup>271</sup> See *id.* at § IV(E)

<sup>272</sup> RAFOOL, *supra* note 19, at 6.

<sup>273</sup> See, e.g., *Local Property Taxes and New Jersey State Government*, *supra* note 266.

a myriad of factors such as average neighborhood values.<sup>274</sup> This is because physical inspection-driven valuations require that each property be physically inspected by the assessor or an appraiser.<sup>275</sup> The obvious advantage of physical inspection-driven valuation is that it will account for property-specific value changes. For example, physical inspection can identify major capital improvements that were made to the property. Improvements, such as construction of new decks, patios, and garages generally result in material appreciation of the property values.

In summary, we believe that properties must be revalued annually. Due to cost considerations, these annual valuations must be performed through the use of recent sales comparisons of similar properties. In addition, these annual revaluations should be backed up by the actual inspection-driven valuations.

This proposal is not without a possible criticism. Critics of this proposal may argue that the costs associated with annual revaluations are prohibitively expensive or that the equity and efficiency-related gains will not justify costs. We respectfully disagree with such arguments and address the costs issue in the remaining sections of this proposal.

#### a. Technological Developments

Performance of annual revaluations is not as expensive as it used to be. In the past, details of sales have been manually recorded in sales registrars.<sup>276</sup> This process made valuation by comparison to recent sales very time consuming and costly because assessors had to manually go through the recordings of comparable sales. Tremendous technological achievements now make annual revaluations significantly less expensive.<sup>277</sup> State and local governments already use electronic databases to record recent sales data. This makes the compilation of comparable sales data a relatively simple task.

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<sup>274</sup> See JOHN RAPP, CONN. OFFICE OF LEGIS. RESEARCH, PROPERTY TAX REVALUATION (2005), available at <http://www.cga.ct.gov/2005/rpt/2005-R-0751.htm>.

<sup>275</sup> *Id.*

<sup>276</sup> See, e.g., N.Y. STATE DEP'T OF TAX'N AND FIN., OFFICE OF REAL PROP. TAX SERVS., IMPROVING NEW YORK'S PROGRAM FOR EQUALIZING LOCAL ASSESSMENTS TO FAIR MARKET VALUE (1996), available at [http://www.orps.state.ny.us/ref/pubs/eq\\_reform/section3.htm](http://www.orps.state.ny.us/ref/pubs/eq_reform/section3.htm) (last modified June 2003).

<sup>277</sup> See *id.*

To make the process even more efficient and cost-effective, the state will also have to require that all local county clerks enter all real property sales into one centralized database. Such a database would allow searches of recently sold or otherwise transferred properties using various criteria. Such criteria can include price, location, square footage, and any other special or unique characteristics normally used by appraisers when determining a property's value.

Performance of a "complete" appraisal of each property on an annual basis may be unnecessary. Annual drive-by appraisals—which include manually inspecting the perimeter of a property but do not necessitate entering the property—represent acceptable cost effective alternatives and are already being successfully used by many municipalities across the United States. Subsequent to the first appraisal, which would include entering the property for inspection (presuming no sale or transfer has taken place), it is sufficient to perform a drive-by appraisal because an assessor should be able to perform a reasonably accurate assessment with the information obtained in the drive-by appraisal and the original "complete" appraisal. These drive-by appraisals combined with the electronic comparison of recently sold or otherwise disposed properties will result in cost effective valuations.<sup>278</sup>

Property assessments performed on an annual basis will undoubtedly increase costs. A better use of the currently available computer technology, however, combined with already used drive-by appraisals will assist states in significantly decreasing these costs.

#### b. Information and Cost Sharing Arrangements

New York State should share valuation-related data with various governmental, business, and non-profit entities. Many government agencies routinely use real estate data in their operations. Instead of generating information on their own and, consequently, bearing the full associated costs, these agencies should purchase the necessary data from the state at a fraction of the cost they would otherwise incur. For example, the information obtained through annual revaluation and drive-by appraisals (for example, pictures and narratives) can be used by

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<sup>278</sup> See *id.*

other governmental agencies, which regularly dispatch their own employees for drive-by examinations of real estate. These multiple agencies could consolidate their operations and eliminate redundant procedures in order to reduce the overall cost.

In addition, private industries will be willing to help finance part of the annual valuation costs. This is because many private industries, such as lending institutions and insurance companies, need to perform very similar, if not the same, drive-by inspections and/or valuations.<sup>279</sup> After all, any time an individual or corporation seeks to borrow funds against or obtain an insurance policy for real property, these institutions need to know the value and/or condition of the properties. Therefore, we should bring private industries into the picture, thus making the valuation process more affordable for the state, local governments, and private institutions.

In summary, properties must be revalued annually. Technological achievements make this enormously important proposition economically feasible. In addition, information and related cost-sharing arrangements with government, business, and non-profit entities will further decrease the associated costs.<sup>280</sup> The overall result will be a more equitable and efficient system of real property taxation than is currently in place.

### c. Annual Revaluation-Driven Cost Savings

Annual revaluations will also assist local governments in significantly decreasing their expenditures. For example, keeping their assessments current is likely to assist local governments in improving their credit rating.<sup>281</sup> Improved credit ratings decrease interest rates governments must pay on their loans.<sup>282</sup> Lower interest expenses will result in significant savings for municipalities and improve their cash flows.

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<sup>279</sup> The state can even slightly modify their procedures to make the resulting data more valuable to various industries. For example, assessors can take extra pictures of certain parts of the homes.

<sup>280</sup> See, EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § IV(B).

<sup>281</sup> See, e.g., Press Release, Moody's Investors Service, Moody's Upgrades Nassau County's (NY) Rating to A2 from A3; Outlook Revised to Stable from Positive (Nov. 7, 2007), available at <http://www.beurs.nl/nieuws/artikel.php?id=239760&taal=US>.

<sup>282</sup> *Id.*

In addition, annual revaluations will decrease the assessment-related costs. This is because there will be a decrease in the amount of valuation-related disputed and resulting litigation between taxpayers and local taxing authorities.<sup>283</sup> Taxpayers, frustrated with outdated or incorrect valuations, are taking their grievances to court in increasing numbers.<sup>284</sup> The legal proceedings take a tremendous toll on municipalities, which must incur costs to defend the law suit and often have to drastically alter their budget as a result of a reduced tax base. Such changes often force localities to issue debt to make up for the revenue shortfall, which in turn creates an additional interest expense.<sup>285</sup>

Therefore, annual revaluations will result in tremendous savings for local governments. Current assessments will decrease governments' cost of borrowing and litigation expenditures. These savings will further offset the costs associated with annual revaluations.

### *C. Long-Term Assessor Appointments*

The newly organized state-run office of real property tax assessment and collection must use assessors that are appointed for a long-term period. This is because the currently-existing practice of electing assessors results in a shorter period of time during which any particular assessor carries out his or her responsibilities. High turnover brings with it significant inefficiencies to the tax assessment process.

The long-term appointments are necessary to further improve the efficiency of the real property tax assessment process. Assessors must be highly skilled in many different areas, including the area of technology.<sup>286</sup> Long-term appointment will decrease the cost of training assessors as well as increase the

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<sup>283</sup> N.Y. STATE OFFICE OF REAL PROP. TAX SERVS., GUIDELINES FOR ANNUAL REASSESSMENT 1 (2007), available at <http://www.orps.state.ny.us/reassess/annualaid/overview.htm>.

<sup>284</sup> See *id.*

<sup>285</sup> See, e.g., Letter from Richard J. Rennard, N.Y. Office of the State Comptroller, to Hon. Wayne J. Hall Sr., Mayor of the Village of Hempstead, and Members of the Board of Trustees of the Village of Hempstead (Apr. 21, 2006); see also POCANTICO HILLS SCHOOL, BUDGET INFORMATION BULLETIN (2008), available at [http://www.pocanticohills.org/pubs/pdf/PHCS\\_Budget\\_Bulletin\\_2008-2009.pdf](http://www.pocanticohills.org/pubs/pdf/PHCS_Budget_Bulletin_2008-2009.pdf).

<sup>286</sup> See EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § II(A)(2), (4).

quality of assessments.<sup>287</sup>

Local assessors today frequently lack necessary skills to correctly value complex properties, which “often comprise a substantial share of the local tax base.”<sup>288</sup> This situation underscores the importance of having experienced and professional assessors.<sup>289</sup> Assessor appointments will certainly address this issue because appointed assessors will stay in their positions for longer periods of time and will gain experience and knowledge through required training. Better quality assessments will decrease the number of taxpayer disputes, which in turn will once again result in cost savings.

Thus, New York State should make long term appointments of assessors which should not be less than five years. These long term appointments will result in better skilled assessors, more precise valuations and a decrease in the amount of assessment-related litigation and costs.<sup>290</sup>

#### *D. Reimbursements by Local Governments*

Local governments must be required to reimburse New York State for their share of the real property taxation expenditures incurred by the state. Notwithstanding numerous cost-sharing arrangement opportunities that may be available for the state with private and public organizations previously discussed,<sup>291</sup> expenses, nevertheless, are likely<sup>292</sup> that will exceed non-tax revenues from cost sharing arrangements. Local governments must absorb the remaining costs.

A fair reimbursement mechanism must be developed. For example, local governments may be required to remit the fraction of total expenditures calculated based on the number of properties located in its jurisdiction. Some properties are more difficult and, consequently, more costly to value. In such cases, these types of properties can be assigned a greater weight to take into consideration higher valuation costs. In other words,

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<sup>287</sup> *Id.*

<sup>288</sup> *See, e.g.*, EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § III(E).

<sup>289</sup> *See id.*

<sup>290</sup> *See supra* notes 274–276 and accompanying text.

<sup>291</sup> *See supra* Part V.B.1.b–c.

<sup>292</sup> However, the total costs are bound to be less than those that would have been incurred by the individual municipalities had they had to run the same type of operations on their own.

localities containing properties that are more difficult and costly to value would pay more to the state for reimbursement than localities with relatively easy to value properties.

In summary, state and local governments, as well as taxpayers, stand to receive significant benefits if real properties are valued on an annual basis. Technological advances as well as information and cost-sharing arrangements will at least partially mitigate the costs associated with annual revaluations. In addition, long-term appointments of assessors will result in further improvements in quality and cost effectiveness of assessments. Finally, local governments will absorb any net costs associated with the states' property tax collection efforts. As a result, the system of real property taxation will be more equitable and efficient.

## VI. EVALUATION OF THE PROPOSAL

This proposal, much like any other proposal or currently existing system of taxation, necessitates making certain compromises and tradeoffs. A thorough evaluation of this proposal from the traditional equity, efficiency, and simplicity perspectives is warranted.

### *A. An Equity Perspective*

A system of taxation is equitable if the assessed tax is fairly allocated among taxpayers. Fairness in allocation is usually evaluated through two lenses—horizontal and vertical equities. Horizontal equity is concerned with whether people who are in similar economic positions pay similar amounts of taxes.<sup>293</sup> Vertical equity is concerned with progressivity issues—whether people with higher levels of tax base pay higher levels of taxes.<sup>294</sup>

This proposal, if implemented, will make the system of real property tax collection significantly more equitable with respect to both horizontal and vertical equity. Appointed assessors will have more experience and will generate valuations that will be

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<sup>293</sup> H. David Rosenbloom, *From the Bottom Up: Taxing the Income of Foreign Controlled Corporations*, 26 BROOK. J. INT'L. L. 1525, 1527 (2001) (“[P]ersons who stand in the same place insofar as the relevant target of tax is concerned are treated similarly by the tax regime.”).

<sup>294</sup> See WEST FEDERAL TAXATION: INDIVIDUAL INCOME TAXES 1–19 (William H. Hoffman et al. eds., 25th ed. 2002).

much closer to the property's true value than currently is the case. This will ensure that taxpayers who own properties with values that are in fact similar will pay similar amounts of real estate tax. In addition, the proposed annual revaluations will further the goal of making similarly situated taxpayers (in terms of the relative value of their real estate) pay similar amounts of taxes. This will be accomplished because more frequent annual revaluations will capture material market fluctuations and, therefore, significantly decrease the likelihood of the material difference existing between properties' actual and appraised value.

Annual revaluations combined with more accurate assessments generated by more experienced assessors will also improve horizontal equity among property owners. Taxpayers whose property increases in value will, assuming everything else is equal, pay more taxes. Taxpayers whose property decreases in value will experience the opposite effect. Additionally, state-wide uniformity will eliminate the need for equalization, a process which distorts horizontal equity.

Furthermore, centralization of the assessment and valuation functions will make the process of real property tax assessment and collection more consistent and, therefore, more horizontally and vertically equitable. This is because all assessors will follow one set of methodologies, technologies, and practices when generating their valuations and assessments. Consistent state-wide valuation practices will result in taxpayers paying similar property taxes on similar properties, even though these properties are located in different municipalities. In summary, this proposal will significantly improve both horizontal and vertical equity. Valuations will be more accurate, timely, and consistent.

### *B. Efficiency Perspective*

Efficiency is concerned with the extent to which tax laws alter taxpayers' behavior, with the least disturbance generally preferred.<sup>295</sup> Thus, a tax is considered efficient if it does not distort behavior as compared to behavior in a situation without

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<sup>295</sup> See Rosenbloom, *supra* note 293, at 1527 (quoting Professor Mark Gergen comparing the concept of efficiency to "the natural law of the parasite: Do the least damage to the host in extracting sustenance from it").

that tax.<sup>296</sup> Unlike many other models of property taxation, the proposed model has a relatively neutral impact on taxpayers' real estate investment decisions. Many of the existing proposals to alter the New York's property tax system, such as instituting a tax cap, simply defer a significant portion of real estate tax until the time when a property is sold or otherwise disposed, or they create a disincentive to sell based on a fear of losing a preferred property tax assessment. These incentives tend to impact taxpayers' real-estate acquisition or disposition-related decisions.<sup>297</sup> Under the proposed system, taxpayers can freely make their real estate acquisition or disposition decisions without considering any significant changes in the real estate tax imposed on their real properties.

This proposal makes the already existing and most widely utilized system of taxation more efficient to administer and easier to comply with. If this proposal is implemented, the property tax system will be less expensive, more accurate and more effective.<sup>298</sup> The financial difficulties encountered by taxpayers whose real estate taxes increase disproportionately to their income can be addressed by local governments and taxing jurisdictions via a number of circuit-breaker programs to decrease the real property tax burden for a protected class of taxpayers.<sup>299</sup>

This proposal would improve the accuracy and lower the cost of assessing real property by taking advantage of the increased efficiency that would occur from consolidating the duties of multiple local assessors and by eliminating the redundant activities of a myriad of unconnected intra-state agencies.

### *C. Simplicity Perspective*

A simplicity perspective addresses the degree of administrative burden the law places on taxpayers and the government.<sup>300</sup> It is

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<sup>296</sup> *But see* U.S. DEPT OF THE TREASURY, TREASURY CONFERENCE ON BUSINESS TAXATION AND GLOBAL COMPETITIVENESS: BACKGROUND PAPER 7–10 (2007), available at <http://www.ustreas.gov/press/releases/reports/07230%20r.pdf>.

<sup>297</sup> *See, e.g.,* Nada Wasi & Michelle J. White, *Property Tax Limitations and Mobility: Lock-in Effect of California's Proposition 13*, 2005 BROOKINGS-WHARTON PAPERS ON URB. AFF. 59, 65–67 (2005).

<sup>298</sup> *See supra* Part V.

<sup>299</sup> *See supra* Part III.A.2.

<sup>300</sup> *See* Rosenbloom, *supra* note 293, at 1528 (“The third fundamental characteristic of a sound tax system is ‘simplicity,’ which means favoring the less complex over the more complex to the extent a choice is available. Simplicity, like efficiency but perhaps not quite like equity, is a general goal, not

important that the tax laws be as easily understood by taxpayers as possible because taxpayers are more likely to comply with tax laws that they understand. Simplicity is arguably the most important of the three fundamental tax policy perspectives.<sup>301</sup> After all, a perfectly equitable and efficient tax system cannot exist if it cannot be effectively administered.

This proposal will simplify the current system of real property tax assessment and collection. One centralized agency operated by the state will execute and oversee the entire system of real property tax assessment and collection, with the exception of the rate-setting functions.<sup>302</sup> Annual valuations will eliminate the need to adjust the assessment rolls to put all properties on equal valuation “footing.” Thus, the proposal will eliminate the costly and complicated equalization rate computations and applications.

Furthermore, the elimination of the state equalization practices will reduce confusion among taxpayers who, at the present time, have to deal separately with duplicate jurisdictions (such as a village, township and state, to name a few) when paying their taxes.<sup>303</sup> A significant decrease in taxpayer confusion and disagreements will result in fewer disputes and less costly law suits. This will also improve taxpayer compliance and governments administrative efforts.

Finally, this proposal is practical. The implementation of this proposal does not necessitate complex transitional rules. Although immense in its approach and results, the proposal does not turn the currently existing system of real estate assessment and collection upside down. To summarize, this proposal makes significant achievements when judged from the traditional tax policy perspectives. If implemented, this proposal will make the property tax assessment and collection system more equitable, more efficient, and simpler.

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capable of being attained in anything resembling a pure state. It is valuable in its own right and also because it contributes to other aspects of a well-functioning tax system: Administrability (the capability of government officials themselves to understand the relevant rules and see to their implementation in practice); and transparency (the ability of the public to understand the rules, so that obligations are clear and the companion goals of efficiency and equity can be evaluated and intelligently discussed).”).

<sup>301</sup> *See id.*

<sup>302</sup> *See supra* Part V.A.

<sup>303</sup> *See* EFFECTIVENESS OF STATE TECHNICAL AND FINANCIAL ASSISTANCE, *supra* note 260, at § III(B).

## CONCLUSION

Every effort should be made to induce tax assessing units to develop equitable roles.<sup>304</sup> Changes are necessary to current nationwide practices of real property tax assessment. This need for improvement is necessitated by the fact that local governments carry out their real property tax assessment operations inefficiently and inequitably. Municipalities incur unnecessary and duplicate expenditures while executing their assessment functions. In addition, property owners are unfairly taxed because too often municipalities rely on wrong property values when determining their tax base. While numerous property tax improvement efforts have been proposed, each proposal fails to address these fundamental inefficiencies and inequities.

Therefore, we propose that the state and local governments fundamentally modify their real property tax assessment operations. In the first part of our proposal, we advocate that real property tax assessment functions be conducted at the state rather than on the local government level. This consolidation will result in operating efficiencies and more reliable valuations. To ensure that local governments do not forfeit their control over the property tax assessments as a result of the proposed consolidation, we propose that the determination of tax burden, custody of tax revenues and decisions over spending remain at the local government level. Furthermore, to ensure the transparency of state operations, we propose that an appropriate system of checks and balances be instituted to allow local government adequate oversight over tax assessment process. Finally, as a last precaution, we propose that the new system have a sunset provision to afford local governments an additional layer of protection.

In the second part of our proposal, we advocate an annual revaluation of real properties. The latest technological developments as well as numerous opportunities for cost-sharing arrangements with government, non-profit and, business enterprises make this proposition operationally and financially feasible. We also propose that assessors be appointed by the appropriate state agency for long-term periods. These proposals will further improve the quality of valuations and reduce related

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<sup>304</sup> *See id.*

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costs.

Finally, we advocate that the burden of financing the consolidated assessment and collection operations must continue to be borne by local governments. We propose that local governments reimburse the state for the net assessment and collection-related costs. This reimbursement will have to be carried out equitably according to pre-determined and agreed upon criteria. This proposal will make real property tax assessment more accurate, more efficient and simpler. Cost savings could potentially lead to lower property tax burdens, and increased accuracy would improve equality between all taxpayers.