



# ***Selected Readings 07***



■

# UNDERSTANDING PROPERTY LAW

SECOND EDITION

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## **Chapter 8**

# **HISTORY OF THE ESTATES IN LAND SYSTEM**

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### **§ 8.01 The Estates System**

What does it mean to “own” property? O, a layman, might believe that he “owns” his home. But technically O owns only an “estate” in the home,

probably fee simple absolute. O's estate consists of a cluster of legally-enforceable rights concerning the home.

*Estates and future interests* are the traditional building blocks of property law. The United States largely inherited the system of estates and future interests that evolved in England. Understanding the historical context in which this system arose—the focus of this chapter—is crucial to understanding modern property law. The current law governing estates is discussed in detail in Chapters 9–11, while future interests are covered in Chapters 12–14.

## § 8.02 Defining “Estate” and “Future Interest”

A *present estate* (sometimes called a *possessory estate* or just abbreviated as *estate*) is a legal interest that entitles its owner to the immediate possession of real or personal property. For example, if A owns a present estate in the farm known as Greenacre, he may now reside on Greenacre, cultivate its fields, harvest its crops, exclude other persons, and otherwise use the land. A does not “own” the land that comprises Greenacre. Rather, A owns an estate “in” Greenacre. The cluster of legal rights that constitute A's estate is seen as conceptually different from the land.

What if B now has a legal right to take possession of Greenacre in the future (e.g., “five years from now” or “upon A's death”)? B does not hold a present estate because he is not entitled to immediate possession. Instead, his right is classified as a *future interest*. A future interest is a non-possessory interest that will or may become a present estate in the future.

The universe of estates and future interests concerns only the basic rights and duties of an owner in relationship to other private persons. It does not address the separate subject of land use regulation: the rights and duties between an owner and the state in relation to land (*see* Chapters 36–40).

## § 8.03 Property Law in Feudal England

### [A] The Feudal Foundation

The English property law system may be traced backward in time to a single defining event: the Norman Conquest of 1066.<sup>1</sup> William the Conqueror became the King of England after leading his invading Norman army to victory over the ruling Saxons at the Battle of Hastings. However, as one historian observed, “[f]or nearly twenty years after the Battle of Hastings, the chances were against survival of the Anglo-Norman monarchy.”<sup>2</sup> William's reign was threatened by continued domestic rebellion and

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<sup>1</sup> For detailed discussion of the development of the feudal property system in England, see generally Cornelius J. Moynihan & Sheldon F. Kurtz, *Introduction to the Law of Real Property* 1–23 (4th ed. 2005); Theodore F.T. Plucknett, *A Concise History of the Common Law* 507–45 (5th ed. 1956); Powell on Real Property §§ 3.01–3.17 (Michael Allan Wolf ed., Matthew Bender).

<sup>2</sup> Frank M. Stenton, *The First Century of English Feudalism, 1066–1166* 148 (1932).

by the risk of foreign invasion. How could a small group of Normans occupy and defend the whole of England? William met this challenge by creating a complex military and governmental organization resting on principles of feudal *tenure* borrowed from Europe.

The heart of the new feudal system was a huge redistribution of land under terms imposed by the crown. William, as king, was quickly deemed to “own” all land in England. The Saxon nobles who had opposed William forfeited their lands to him; and other landowners—more or less voluntarily—ceded ownership to William in a process known as commendation. Over time, William transferred control over large tracts of land to approximately 1,500 supporters known as *tenants in chief*, in return for military service and other carefully-defined duties that were seen as a burden on the land itself. The results of this land redistribution were chronicled in the Domesday Book of 1086, which catalogued the landholdings of each tenant in chief.

The relationship between William and his tenants in chief was not a commercial, arms-length one, as is found in a modern sale of land. Rather, the feudal relationship between a lord and his vassal was intensely personal. In an elaborate ceremony known as *homage*, the vassal knelt and swore personal allegiance to the lord, creating mutual obligations of loyalty and support. Thus, when William, as lord, granted land to his tenants in chief, as vassals, they were considered to “hold” the land “of” the king. The tenants in chief did not “own” land in the modern sense. Rather, they essentially had the right to use, possess, and enjoy the land, but on the king’s behalf. Initially, William granted land only for the lifetime of the tenant in chief. When the holder died, William might regrant the land to the holder’s eldest son as a favor, but had no obligation to do so. In a sense, the tenant in chief was more akin to a well-trusted provincial governor than to a contemporary landowner.

The relationship between William and his tenants in chief became the basic model for landholding arrangements throughout feudal England. Through a process called *subinfeudation*, the tenants in chief created similar arrangements with their own vassals, who in turn created similar relationships with others, and so forth.

## [B] Feudal Tenures

### [1] Free Tenure and Unfree Tenure

Over time, feudal England recognized two categories of landholdings: *free tenures* and *unfree tenures*. The free tenures could be held only by the upper classes, essentially nobles and gentry, whose dignity and social position were incompatible with physical labor. The unfree tenures were held by the peasants or *villeins* who actually worked on the land. The king’s courts protected only the rights of tenants holding free tenures, and thus set the stage for the later development of the common law of property.

The free tenures—based on the relationship between William and his tenants in chief—were by far the most important category. All of these

tenures shared a common core: each tenant owed the lord both *service* and *incidents*. And the obligation to provide service and incidents was considered to be attached to the land, thereby binding the tenant's successors in perpetuity.

## [2] Services

Four free tenures were recognized in feudal England, each characterized by the type of service the tenant owed to the lord. The Normans had four basic needs: "safety, subsistence, salvation, and splendor."<sup>3</sup> Each need was met by a different type of tenure.

*Knight service* was the most honorable (and initially the most important) form of tenure. Most of the tenants in chief held their lands in knight service, which required them to provide a specified number of fully equipped knights to the king for 40 days of military service each year.

*Socage tenure* addressed the subsistence element. It required the tenant to periodically furnish to his lord a specified money payment (e.g., 20 pence), a fixed quantity of a particular agricultural product (e.g., 20 hens), or a defined labor (e.g., plowing a field two days each week).

*Frankalmoign tenure* involved a grant of land to a priest, church, or other religious body, accompanied by the service of praying for the grantor's salvation. Almost half of England was once held in frankalmoign tenure.

Finally, *serjeanty tenure* usually required the tenant to perform ceremonial or personal services to the king.

## [3] Incidents

### [a] Incidents During the Tenant's Lifetime

In addition to service, each free tenant owed the lord various other obligations, together called the *incidents* of tenure. Like service, the incidents were considered to burden the land. Four incidents existed during the tenant's lifetime:

- (1) *homage* (the ceremony by which the tenant became a vassal);
- (2) *fealty* (the oath by which the tenant promised to be loyal to the lord);
- (3) *aids* (the tenant's duty to provide financial support to the lord on specified occasions, e.g., ransoming the lord from imprisonment); and
- (4) *forfeiture* (the return of the land to the lord if the tenant was disloyal or failed to perform the required service).

### [b] Incidents at Tenant's Death

At the tenant's death, four other incidents might arise: escheat, relief, wardship, and marriage. Over time, these incidents became far more

<sup>3</sup> Powell on Real Property § 3.05 (Michael Allan Wolf ed., Matthew Bender).

valuable than the tenurial service or the lifetime incidents, and this development in turn influenced the law's evolution.

Suppose tenant in chief A held land of the king in knight service. If A died without heirs, the land would return or *escheat* to the king, who could then grant it anew to another noble. Modern law recognizes the same basic concept; if a person dies intestate without heirs today, his or her property escheats to the state.<sup>4</sup>

Alternatively, suppose that A was survived by two grown sons, B and C. Although initially the king could regrant the land to whoever he pleased in this situation, over time the custom arose—later converted into an obligation—that the land would pass to the tenant's eldest son.<sup>5</sup> However, the heir was required to pay the king a fixed sum, called a *relief*, to obtain the land. The modern counterpart to the relief is the inheritance tax.

Wardship and marriage, the two remaining incidents, applied only to knight service and serjeanty tenure. Suppose A died leaving D, a five-year-old boy, as his only heir. The incident of *wardship* allowed the king, as overlord, to have possession of A's lands until D reached the age of 21; during this period, the king was entitled to the rents and profits from the land. The incident of *marriage* allowed the lord to sell the right to marry the heir. D, the minor heir, could refuse the marriage, but was then required to pay the lord a substantial fine.

### [C] Subinfeudation and the Feudal Pyramid

Each tenant holding "of" a lord could create subtenures through a process called *subinfeudation*. Over time, this produced a complex pyramid of landholding arrangements that evolved into the Anglo-American system of estates in land.

Suppose again that tenant in chief A holds of the king in knight service the modern equivalent of 50,000 acres of land; A is required to provide five equipped knights for the king. A might grant the use of 5,000 acres to K, one of his knights, in knight service; K would be required to provide one knight to A, and would also owe to A the feudal incidents. K, in turn, might subinfeudate 1,000 acres to F in socage tenure, receiving in return the fixed sum of 1,000 pence per year and feudal incidents. The result is a chain of feudal relationships among the king, A (tenant in chief), K (called a *mesne lord*), and F (called a *tenant in demesne*). Each occupies a particular niche or *status* in the feudal pyramid. K, for example, owes service and incidents to A, but receives them from F.

As a result of subinfeudation, one parcel of land could simultaneously be the subject of many different tenures. F's 1,000-acre parcel, for example, is burdened by two tenures in knight service and one socage tenure. Thus, in effect, multiple persons could "own" property rights in the same land at

<sup>4</sup> See, e.g., *In re O'Connor's Estate*, 252 N.W. 826 (Neb. 1934).

<sup>5</sup> The principle that the eldest son inherits, called *primogeniture*, dominated English law until its abolition in 1925.

the same time. Under this example, F holds the right to present possession of the 1,000-acre tract. Yet K, A, and the king all hold rights in the same tract that may give them possession in the future. For instance, if F dies without heirs, the land will escheat to K.

## **[D] Evolution of the Estates in Land System**

### **[1] Problems Produced by Subinfeudation**

Over time, the feudal tenures withered away under the pressure of social and economic changes, to be replaced by the modern estates in land. The transformation was initially sparked by a decline in the value of the feudal services. As changes in the technology of warfare rendered knights obsolete, knight service became irrelevant. Further, as inflation eroded the purchasing power of money, the socage tenures which required fixed monetary payments lost most of their value. However, because the value of land rose with the prevailing inflation, the feudal incidents that were tied to the possession of land—escheat, marriage, and wardship—retained their value.

As incidents became far more valuable than services, subinfeudation increasingly undercut the rights of the lords. Suppose that F is about to die without heirs, and realizes that his land will then escheat to his lord, K. Due to inflation, the fixed rent of 1,000 pence has minimal value; assume that the reasonable rental value of the land is 10,000 pence annually. F might altruistically subinfeudate to B, a worthy but poor young farmer, in socage tenure for 10 pence per year. When F dies, the land does not escheat to K. Rather, K is entitled to the service due from F (1,000 pence per year) and succeeds to F's rights against B (10 pence per year). But the worth of this service to K is comparatively small. K loses the opportunity to receive the current rental value, 10,000 pence, because F has circumvented the incident of escheat. In this manner, tenants like F used subinfeudation to avoid the valuable incidents of escheat, marriage, and wardship.

### **[2] Statute Quia Emptores**

The lords responded in 1290 with the enactment of the Statute Quia Emptores,<sup>6</sup> which abolished subinfeudation, and thus, in the short run, shored up the feudal system. Yet in the long run Quia Emptores ensured the disintegration of the system for two reasons. First, Quia Emptores greatly simplified landholding arrangements. No new tenures could be created and the existing tenures slowly disappeared with escheat or forfeiture. Over time, the middle layers of the feudal pyramid vanished, until most tenants in possession of land held directly of the king. Second, in exchange for banning subinfeudation, the lords allowed each free tenant to substitute another tenant in his stead without securing the lord's approval. In effect, a tenant could freely alienate his interest in land. No longer would each tenant and lord be bound together in the personal

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<sup>6</sup> 18 Edw. I, ch.1 (1290).

obligations of loyalty and support that characterized the early feudal system. Instead, the relationship between tenant and lord was increasingly viewed in economic terms.

### [3] From Tenures to Estates

With the principle of free alienation firmly established by *Quia Emptores*, it became possible to transfer—and thus create—different forms of land ownership known as estates. Each free person occupied a niche or *status* in the feudal pyramid; as feudalism waned, the related term *estate* was used to describe these new forms of landholdings. The estate system was built on the basic feudal contours. Multiple persons could hold interests in the same land at the same time. One person could hold the right to immediate possession of land, while others could hold a right to acquire possession in the future.

Over time, the king's courts recognized and protected three basic *freehold* estates—the life estate, the fee tail, and the fee simple (*see* § 9.05). In a sense, each estate was an echo of the feudal past. The life estate endured for the life of a specific person or persons, like the original grants of William the Conqueror. The fee tail endured from generation to generation as long as the bloodline of the original holder continued; like William's later grants, it expired if a holder died without closely-related heirs. Finally, as the logical consequence of *Quia Emptores*, the fee simple was freely transferable and endured literally forever; it escheated to the king only if the holder died without any heirs.

Even as these new estates developed, an intricate network of future interests arose (*see* § 12.04). By definition, if an owner holding fee simple transferred a lesser estate, such as the life estate or the fee tail, one or more future interests were created.

## § 8.04 Property Law in Post-Feudal England

### [A] New Economic and Social Conditions

Between 1500 and 1700, evolving economic and social conditions opened a new chapter in the development of English property law. Agriculture shifted from subsistence crops to farming for national and foreign markets, as innovative techniques enhanced production and transportation facilities improved. With increased demand for manufactured woolen goods, sheep-raising efforts expanded. In turn, as ownership of land became more profitable, new tensions arose that shaped the law's future evolution.

Two themes dominated the era. One was the demise of feudalism. Over the kings' stubborn objections, the remaining feudal remnants were slowly swept away by a rising tide of private property law centered on estates in land. The other, somewhat overlapping theme, was an epic battle to determine the future course of the new estates in land system. Would it tilt toward protecting the autonomy of existing landowners to transfer their

lands on whatever terms they chose? Or would it tilt toward restricting such rights in order to ensure that land was freely alienable, as the newly-wealthy commercial interests desired?

## [B] The Demise of Feudalism

Feudalism was an anachronism in England long before 1500. In particular, landowners resented the burdensome feudal incidents—which were by now usually owed directly to the king—just as modern landowners dislike taxation. Beginning in the 1300s, landowners sought to avoid the incidents through a creative technique known as the *use*. O, an owner, could convey his land to T, a trusted person, for the use or benefit of B, a relative or friend of O. This arrangement deprived the lord of the incidents that would otherwise arise on O's death; and B could enforce T's obligation in chancery court. In 1535, King Henry VIII was able to protect his revenues by abolishing the use through the famous Statute of Uses,<sup>7</sup> a temporary reprieve for the feudal system.

Yet almost immediately, the collapse of feudalism continued. An initial step was the enactment of the Statute of Wills<sup>8</sup> in 1540. Under prior law, an estate in land could not be devised; if a tenant died without an heir, it escheated to the lord. The Statute of Wills permitted the tenant to devise his rights, thus narrowing the incident of escheat.

In 1660, the Statute of Tenures<sup>9</sup> effectively ended feudalism. It abolished the feudal incidents of aids, homage, marriage, relief, and wardship, and converted all lingering knight service tenures into socage tenures. After 1660, if O, an English landowner, held fee simple, he could be said to hold the modern equivalent of full ownership. Certainly, the concept of tenure remained in theory; O was still deemed to "hold" "of" someone else, not to "own" land directly. But with the demise of the feudal incidents, tenure had no practical significance other than the residual incident of escheat if O *both* died without heirs *and* failed to devise his estate.

## [C] The Battle Between Autonomy and Free Alienation

### [1] The Basic Tension

As feudalism waned, a second epic struggle developed: would the emerging property law system favor owner autonomy or free alienation? The basic battle lines were drawn between large landowners, on the one hand, and newly-wealthy trading and commercial interests, on the other.

Large landowners sought unfettered autonomy to transfer their rights on whatever terms they deemed appropriate, regardless of the impact on society in general. In an era when land was the principal form of wealth, these owners wished to control the disposition of their property long after

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<sup>7</sup> 27 Hen. VIII, ch. 10 (1536).

<sup>8</sup> 32 Hen. VIII, ch. 1 (1540).

<sup>9</sup> 12 Car. II, ch. 24 (1660).

their deaths in order to protect the economic, political, and social power of successive family generations. For example, suppose O devises Redacre, a large farm, "to my elder son G and his heirs, on condition that Redacre is always used for growing turnips, and if not so used, then to my younger son H and his heirs." G holds a special form of fee simple called fee simple subject to an executory limitation, while H owns a future interest called an executory interest; if G or any of G's successors ceases using Redacre for growing turnips, then H or his successor acquires fee simple absolute in Redacre. From O's perspective, the restriction makes sense; it encourages G and his successors to continue the currently desirable use of growing turnips on Redacre, which will provide income for their support without risking the family wealth in speculative ventures.

The trading and commercial forces, on the other hand, tended to view land as an economic investment. They argued that land should be freely transferable or *alienable* (like iron, fish, timber, and other commodities) to maximize its profitability. Accordingly, this group opposed future interests that tended to restrict the free transfer of rights in land. Consider again the farming restriction that O imposed on Redacre in the hypothetical above. Suppose that 100 years after O's death, raising turnips on Redacre no longer makes economic sense; the land is more valuable for other uses (e.g., as a factory site). Yet G's successor M is effectively locked into the low-value use of turnip farming. M cannot sell the land to an investor seeking a factory site; nor can M mortgage it in order to develop a factory on the land. Why? Because any buyer or lender would lose all rights once the turnip growing use terminated. If all English land could be burdened with similar restrictions, national economic development would be impaired.

## [2] A Swinging Pendulum

The evolution of English property law between 1500 and 1700 can be broadly described as a pendulum swinging first toward owner autonomy and then back toward free alienability.

The period began with an explosion in future interests. In 1472, the decision in *Taltarum's Case*<sup>10</sup> ended the practical effectiveness of the fee tail by allowing a collusive lawsuit to end the entail. As a result, the landed gentry increasingly turned to various types of future interests—particularly contingent remainders held by transferees—to control future inheritances. During the early 1500s, courts expanded the types of remainders that could be created in real property.

This trend accelerated with the enactment of the Statute of Uses<sup>11</sup> in 1535, which similarly enlarged the categories of permissible interests in land. It permitted the creation of a second major type of contingent future interest that could be held by transferees: the executory interest. It also allowed the creation of trusts, and thus authorized a new layer of future

<sup>10</sup> Y.B. 12 Edw. IV, fol. 19, pl. 25 (1472).

<sup>11</sup> 27 Hen. VIII, ch. 10 (1536).

interests in equity. Finally, the Statute of Wills<sup>12</sup> in 1540 allowed owners to transfer rights in property by devise. This provided an efficient vehicle for creating the broad range of future interests that was now authorized.

The swing of the pendulum back toward free alienability is symbolized by a series of common law restrictions that progressively curtailed future interests, such as the Rule in Shelley's Case<sup>13</sup> (1581) (see § 14.13) and the Rule Against Perpetuities (see §§ 14.10, 14.11), which effectively began with the *Duke of Norfolk's Case*<sup>14</sup> (1681).

### [D] The New Estates in Land System

By 1700, the English common law of property was relatively settled. Almost all of this body of law dealt with estates in land and their accompanying future interests. Little or no attention was devoted to areas that today form major components of modern property law, such as sales, financing, and public land use restrictions. Rather, the common law was primarily concerned with classifying different estates and interests held by private owners and describing the legal effects that flowed from these classifications.

As the product of over 600 years of legal evolution since the Norman Conquest, the estates in land system was extraordinarily complex. A few of its components were meaningless relics of feudalism. Others were products of the struggle against feudalism. Still other aspects were compromises forged in the tug of war between supporters of owner autonomy and advocates of free alienability.

## § 8.05 Estates in Land in the Early United States

### [A] The "Reception" of English Property Law

Independence confronted our new nation with a dilemma: should we follow traditional English property law or create a uniquely American property law system? In the short run, necessity compelled the states to continue the use of relatively familiar English common law, which had been employed during the colonial era, despite the prevailing revolutionary antipathy toward the crown. This process is called the *reception* of English common law.

Thus, the states largely adopted the English principles governing estates in land and future interests. The feudal relic of tenure, however, was rejected. The Revolution was seen as severing all ties between American landowners and the king, including the traditional (although already irrelevant) notion of tenure. Although some states viewed themselves as

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<sup>12</sup> 32 Hen. VIII, ch. 1 (1540).

<sup>13</sup> 1 Co. Rep. 93b, 76 Eng. Rep. 206 (K.B. 1581).

<sup>14</sup> 22 Eng. Rep. 931 (1681).

successors to the crown, most states abolished tenure. In addition, other factors narrowed the influence of the English system.<sup>15</sup>

### **[B] Simplification Due to Lack of Legal Resources**

As a practical matter, the states were able to implement only a simplified version of English property law due to a lack of legal resources. English-trained lawyers were quite rare; most American lawyers and judges had learned the law through a combination of self-education and apprenticeship. Also, English law books were relatively scarce in America. Blackstone's eminently readable—but oversimplified—*Commentaries on the Laws of England* became the standard legal treatise, perhaps even more popular in the United States than in England. Accordingly, much of the complexity and nuance that characterized the English system was lost in the transplantation process.

### **[C] Express Exception for Local American Conditions**

In embracing the common law, each state added a major exception: English principles would apply only to the extent consistent with local American conditions. In terms of property law, one fundamental difference between England and the new United States was geography. Most of the English land surface was devoted to agricultural use, and its property law system was accordingly attuned to a mature agrarian economy. Applying English rules to the vast, unowned wilderness of the United States often made little sense. For example, in England the holder of a mere life estate had only a limited right to cut timber due to the shortage of remaining forest. This rule was unnecessary (and indeed, counterproductive) in the United States, where the vast forests were considered the equivalent of weeds—obstacles to agricultural development.

### **[D] Little Demand for English Complexities**

The surplus of “unowned” American land meant that much of the English system was irrelevant. The key feature of the system was that multiple persons could own simultaneous interests in the same property. There was little demand for this multilayered structure in the United States, where fee simple absolute land was abundant but labor was scarce. Why should citizen C hold land as a mere life tenant or tenant for years when fee simple land was freely available in the West?

### **[E] Democratic Concerns**

Finally, certain feudal aspects of English property law were rejected outright as inconsistent with the goals of American democracy. For example, the states rejected the English rule of *primogeniture*, which restricted

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<sup>15</sup> See John G. Sprankling, *The Antiwilderness Bias in American Property Law*, 63 U. Chi. L. Rev. 519, 521–56 (1996) (discussing the early development of American property law).

inheritance to the eldest son, as inconsistent with social equality. States similarly abolished the estate in fee tail—which allowed an owner to transmit property through generations of descendants without any sale to third parties—due to the fear of creating a landed aristocracy that would dominate American political life.

## § 8.06 Trends in Modern Law Governing Estates in Land

### [A] The Victory of Fee Simple Absolute

The modern law governing estates in land is a jigsaw puzzle consisting of both new and archaic pieces. Developments in the United States have eroded away much of the elaborate English system in favor of fee simple absolute, the most basic estate. Because of changing cultural attitudes, freehold estates other than fee simple absolute are rarely created today. Moreover, contemporary legislatures and courts are typically hostile toward such other estates for two reasons. First, the future interests that accompany other estates tend to limit the free alienation of property, anathema in a society that increasingly views land as a commodity. Second, there is a clear movement toward disregarding “dead hand” control of land, in favor of protecting the good faith expectations of living property owners.

Today, virtually all land in the United States is held in fee simple absolute, unencumbered by any future interests. The law governing the fee simple absolute is relatively straightforward. Accordingly, the importance of estates in land as a discrete area of property law is slowly declining. Many of the traditional freehold estates in land—and the intricate future interests that accompanied them—are now increasingly obsolete (*see* Chapter 9). Yet remnants of the common law complexity linger, causing confusion to judges, attorneys, and law students alike.

### [B] Developments in Communal Ownership

Communal ownership was a central feature of English property law. Multiple persons could share a concurrent estate in land, each having an equal right to possession and enjoyment of the entire parcel. American states largely adopted the English system of concurrent estates. Two of these estates—the tenancy in common and the joint tenancy—remain in widespread use today with only minor modifications from their common law ancestors, particularly as vehicles for owning family property (*see* Chapter 10). Beginning in the 1960s, the rise of condominium development produced an explosion in the use of concurrent estates among non-family members, which continues today.

### [C] Toward Gender Equality in Marital Property Ownership

The modern law governing marital property largely ignores the traditional English common law approach (*see* Chapter 11). Driven by feudal

principles, the English system was premised on gender inequality; it vested virtually total control over family property in the husband. Modern American law has steadily moved toward gender equality.

**THE TOP 40 REAL PROPERTY TAX TERMS**

Real property tax terms are often confusing and misunderstood. This SRS *Issues in Focus* is designed to act as a quick reference. The ease of having these selected and common definitions available should save the reader time by not having to wade through New York State Law and the New York Codes, Rules and Regulations in order to find them. These definitions are presented in alphabetic order, with the term identified in italics.

**SRS ANALYST: Jason Scott**

**July 19, 2000**

**#I00-52**



## BACKGROUND

According to the State Comptroller's *Special Report on Municipal Affairs*, for the fiscal year ending in 1996 (latest year for which data are available), real property taxes accounted for 29% of the \$81.5 billion in total revenues for all local taxing jurisdictions. These taxes represented an especially significant share of total revenue for villages (47%), school districts (42%), and towns (54%). The money funds schools, pays for police and fire protection, goes to maintain roads, and funds other municipal services enjoyed by residents. Property taxes are also important to those who have to pay them, so familiarity with the various terms related to their administration is a necessity. Although by no means complete, the selected definitions provided here should help the reader better understand the terminology used in discussing real property taxation.

### REAL PROPERTY TAX TERMS

Unless otherwise noted, the following definitions are derived from Title 9, Volume A-2, of the New York State Codes, Rules and Regulations and Articles 1 through 20 of the New York State Real Property Tax Law.

*Adirondack Park parcels* — parcels of wild or forest lands, owned by the State and located within the boundaries of the Adirondack Park, that are subject to taxation, in whole or in part, pursuant to Section 532(a) and (b) of the Real Property Tax Law, and for which assessments were approved by the State Board for the 1960 assessment roll.

*Adjudicatory proceeding* — any activity that is not a rule-making proceeding, a hearing to afford a party an opportunity to be heard in relation to the determination of rates, ratios, or assessments, an employee disciplinary action in which the rights, duties, or privileges of named parties are to be determined on a record after a hearing, or a review of a local disciplinary action by an appointing authority against an assessor.

*Adjusted prior assessment* — a prior assessment increased by reason of the addition of new property or decreased by reason of fire, demolition, or destruction, adjusted in accordance with the provision of subdivisions (4) and (5) of Section 1904 of the Real Property Tax Law.

*Arm's-length transfer* — a sale of a fee or all undivided interests in real property in the open market, between an informed and willing buyer and seller where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the full sales price is not equal to the fair market value of the property assuming fee ownership.

*Assessed value* — the monetary amount at which a property is put on the assessment roll.

*Assessing unit* — a city, town, or county with the power to assess real property, unless the city, town, or county is part of a consolidated assessing unit, or a village as provided in Real Property Tax Law Section 1402.

*Assessment information file* — a collection of records for every parcel shown on the assessment roll, where related information for assessment administrative purposes, including the initial recording of all transfers, is maintained.

*Base year assessment roll* — the roll from which the State Board of Real Property Services selects its samples for the purpose of a market value survey.

*Common law easement* — an easement created pursuant to common law (i.e., the body of law developed primarily from judicial decisions based on custom and precedent, unwritten in statute or code) for conservation purposes acquired on or before January 1, 1990, on land within the Adirondack or Catskill parks.

*Complaint review panel* — a group of staff members of the Office of Real Property Services (ORPS) that provides for compliance with statutes, rules, and procedures in the review of the State equalization rate, class equalization, and class ratio complaints.

*Conveyance* — every instrument in writing, by which any estate or interest in real property is created, transferred, assigned, or surrendered, excluding a will, easement, right-of-way, lease, license agreement, or mortgage.

*Current roll* — the assessment roll for which a State equalization rate, special equalization rate, class equalization rate, or class ratio is determined, and the assessment roll for which an assessor's report is being completed.

*Easement* — a right to use another person's real estate for a specific purpose. The most common type of easement is the right to travel over another person's land, known as a right of way. In addition, property owners commonly grant easements for the placement of utility poles, utility trenches, water lines, or sewer lines. The owner of property that is subject to an easement is said to be "burdened" with the easement, because he/she is not allowed to interfere with its use. (Source: Nolo.com.)

*Equalization Rate* — a measure, based on sampling by the State Board of Real Property Services, of the average level of assessment in an assessing unit. Simply put, it is a statement of the average percentage of full value at which assessments have been set by the assessor, based on the State Board's valuation date. For example, suppose a town has a total assessed value of \$10 million, and it was determined that the full value is \$50 million. Dividing the assessed valuation (\$10,000,000) by the full valuation (\$50,000,000) produces an equalization rate of .20, or 20%. The reader should note that there is a lag between the valuation date on which an equalization rate is based and the year the rate is used. As a result, a community's equalization rate, in most cases, is not the **current** ratio between its assessed value and its full market value.

*Exempt assessed value* — the part of the assessed value of a parcel exempt from taxation.

*First levy date* — the last statutory day for the levy of any tax for any purpose upon the final assessment roll or a portion thereof.

*Full sales price* — the price actually paid or required to be paid for real property or an interest therein, whether paid or required to be paid by money, property, or any other thing of value, including the cancellation or discharge of an indebtedness or obligation, and the amount of any lien or encumbrance on the real property, or interest therein, that existed before the delivery of the deed and that remains thereon after the delivery of the deed, but excluding the fair market value of any property received by the buyer.

*Full value standard* — for the purposes of a State equalization rate, the manner in which the full value of taxable real property is determined when computing a State equalization rate. Where only one market value survey is used in the computation of an equalization rate, the full value of the taxable real property is the value as of the valuation date. Where two surveys are used, the full value of the taxable real property is a weighted average of the values as of each of the valuation dates.

*Grievance day* — the date on which local officials hear complaints in relation to assessments. This is generally the fourth Tuesday in May, but many localities change this date for one reason or another, so it best to check with your local assessor.

*Homestead class* — (1) all one-, two-, or three-family-dwelling residential real property, including such dwellings used in part for nonresidential purposes but primarily for residential purposes, and farm dwellings; (2) all other residential real property consisting of more than three dwelling units held in condominium form of ownership, provided certain special conditions are met; (3) all vacant land parcels located in an assessing unit that has a zoning law or ordinance in effect, provided that such parcel does not exceed 10 acres and is located in a zone that does not allow a residential use other than that described above; and (4) land that is used in agricultural production and is eligible for an agricultural assessment as defined in Section 305 or 306 of the Agriculture and Markets Law, where the owner of such land has filed an annual application for an agricultural assessment, and farm buildings and structures thereon. A mobile home or trailer does not constitute a homestead unless it is owner-occupied and separately assessed.

*Land parcel* — used interchangeably with *lot* in tax mapping. All real property parcels separately assessed apart from the land are to be identified to the land parcel.

*Lending institution* — any bank, trust company, national bank, savings bank, savings and loan association, federal savings bank, federal savings and loan association, private banker, credit union, investment company, pension fund, licensed mortgage banker, or any other entity that maintains a real property tax escrow account for real property located in New York State.

*Levy roll* — the final assessment roll upon which taxes are to be levied.

*Market value ratio* — the ratio of assessed value to full value of the taxable real property on a final assessment roll.

*Measured roll* — an assessment roll from which observations, either sample parcels for appraisal or sales, are chosen in conducting a market value survey or from which aggregate full values are

estimated based upon local reassessment activity. The procedures for market value surveys are to provide which assessment rolls are to be measured.

*Municipality* — a city, town, or village, other than a village that is not an assessing unit.

*Nonhomestead class* — all real property not included in the homestead class.

*Nonresidential property* — locally assessed properties that are not residential property.

*ORPS* — Office of Real Property Services.

*Physical or quantity change* — either an increase in assessed value from the prior roll to the current roll resulting from new construction, property annexed from another assessing unit, property omitted from the prior roll, property discovered during tax mapping, and property that has become a locally assessed property or taxable State land, or a decrease in assessed value from the prior roll to the current roll resulting from fire, demolition, loss of parcels from the roll due to tax mapping, removal of mobile homes, removal of duplicate parcels from the roll and property which is no longer a locally assessed property or taxable State land. It is not the result of the splitting or merging of parcels. Increases in assessments of oil and gas rights assessed pursuant to Real Property Tax Law Article 5, Title 5, that are a result of increased production are to be treated as increases resulting from new construction. Decreases in assessments of oil and gas rights assessed pursuant to the same section of law that are the result of decreased production are to be treated as decreases resulting from demolitions. Where new property has replaced existing property, the installation of new property will be treated as new construction and the removal of the previously existing property will be treated as a demolition, notwithstanding that the new property may be similar or identical, in function or otherwise, to the previously existing property. In special assessing units or homestead assessing units, physical or quantity changes also include a change in class designation and the annexation or removal of a parcel from a portion.

*Residential Assessment Ratio* — established by the State Board of Real Property Services according to law, the residential assessment ratio, or RAR, is the midpoint of a list, ranked from highest to lowest, of ratios of assessed value to sales price for each usable residential sale. The RAR is an indication of the level of assessment of residential property in a community. Residential property owners can use the RAR in an attempt to prove that their homes are assessed at a higher level than other homes on the assessment roll.

*Residential property and residential real property* — these terms are defined differently for different purposes, but generally mean one-, two-, and three-family residential property, including such dwellings used in part for nonresidential purposes but primarily for residential purposes, but excluding parcels with an assessment limitation and parcels held in a cooperative or condominium form of ownership.

*Revaluation, reassessment, or update* — a systematic review of the assessments of all locally assessed properties, valued as of the valuation date of the assessment roll containing those assessments.

*Special ad valorem levy* — a charge imposed upon benefited real property, in the same manner and at the same time as taxes for municipal purposes, to defray the cost, including operation and maintenance, of a special district improvement or service, but not including any charge imposed by or on behalf of a city or village.

*Special district* — a town or county improvement district, district corporation, or other district established for the purpose of carrying on, performing, or financing one or more improvements or services intended to benefit the health, welfare, safety, or convenience of the inhabitants of such district or to benefit the real property within such district, and in which real property is subject to special ad valorem levies or special assessments for the purposes for which such district was established.

*State equalization rate* — the percentage of full value at which taxable real property in a county, city, town, or village is assessed as determined by the State Board.

*Tax billing address* — the address designated by the buyer of the property to which tax bills are to be sent. A tax billing address may be expressed in the form of a code.

*Tax lien* — an unpaid tax, special ad valorem levy, special assessment, or other charge, imposed upon real property by or on behalf of a municipal corporation or special district, that is an encumbrance on real property, whether or not evidenced by a written instrument.

*Taxable status date* — the date as of which the taxable status of the property is determined according to its condition and ownership, and by which many municipalities require property tax exemptions to be filed (generally March 1st, but may vary depending on the locality).

*Valuation date* — the date when the full market value of the property is determined (generally January 1st, but may vary depending on the locality).

## LEGISLATIVE ACTIVITY — 2000

The following bills proposing changes to real property tax definitions have been introduced to date in the 2000 Session:

- S. 963 — allows the governing body of any approved assessing unit except New York City, by referendum, to include owner-occupied four-family residential dwellings within the definition of *homestead class* (No Action);
- S. 2088 — includes, within the definition of *homestead class*, for purposes of class share tax treatment, residential real property consisting of more than three dwelling units held in cooperative form of ownership (Passed Senate); and
- S. 6462 — includes, within the homestead classification, residential real property held in cooperative form of ownership (No Action).

## **ADDITIONAL SOURCES OF INFORMATION**

New York Codes, Rules and Regulations. Title 9, Volume A-2, Section 185.

New York State. Office of the State Comptroller. *Special Report on Municipal Affairs*. 1996.

Senate

Research  
Service

# ISSUES IN FOCUS

## NEW YORK PROPERTY TAXES — A REVIEW OF TWO REPORTS

Property owners in New York State recently had an opportunity to see somewhat different perspectives on real property taxes in New York. In early 2006, the Senate Finance Committee released a study on the cost of local government it had commissioned from Global Insight, Inc. (GI). In April of 2006, the Office of the State Comptroller published a research brief that summarized the issues associated with property taxes.

Prior reports on property taxation in New York have found that State residents pay substantially higher local taxes per capita than does the average American, whereas the State tax rates are much nearer to national averages. These reports agree about the high rates, but as with any group of reports that examine the same subject matter, there are also instances where the reports disagree. Generally speaking, the GI and OSC reports complemented each other.

Despite recent clamoring for increased State education aid as a mechanism to lower local property taxes, the OSC study found that having a single major identifiable local revenue source for municipalities and schools offers direct accountability and keeps the pressure on these local governments to carry out their operations in a cost-effective manner. OSC further notes that State aid, such as the STAR (school tax relief) program, lowers the effective tax rate on homeowners — the largest group of people who vote on and otherwise influence local school budgets. For many seniors, STAR has effectively eliminated their school tax burden.

GI found that the high local tax burden is due primarily to high growth rates in local government spending. New York State has a multiplicity of local governmental units, which results in the duplication of resources, inefficient service delivery, and ultimately higher costs and higher local taxes. Localities also have high levels of government employment and large payrolls because of duplication and overstaffing.

This SRS *Issues in Focus* summarizes and contrasts the Global Insight and State Comptroller studies.

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**July 31, 2006**

**#I06-59**



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## INTRODUCTION

Two significant reports that examine real property taxes in New York State were recently published, giving property owners an opportunity to see somewhat different perspectives on this politically charged topic. In early 2006, the State Senate Finance Committee released a study on the cost of local government it had commissioned with Global Insight, Inc. In April of 2006, the Office of the State Comptroller (OSC), through its Division of Local Government Services and Economic Development, published a research brief that summarized the issues associated with property taxes.

While the OSC brief is largely descriptive, both publications offer at least limited proscriptive counsel for the lowering of property taxes in the State. What follows is a summary of the main points of each report (neither of the reports are of such brevity as to allow them to be fully explained here) and some conclusions that can be drawn from a comparison of the two. Sources for copies of the individual reports can be found in "Additional Sources of Information," below.

## BACKGROUND

The cost of local government is influenced by many factors, including the mix and quality of local services provided; the shares of local services paid for by the State; population size, age distribution, and density; land development patterns; income and property value levels; and attitudes towards taxation. However, the sources of funding for local government activities are more easily discernible (see table below).

| <i>Units</i>     | <i>Number</i> | <i>Percentage of revenues from:</i> |                  |
|------------------|---------------|-------------------------------------|------------------|
|                  |               | <i>Real property tax</i>            | <i>Sales tax</i> |
| Cities           | 61            | 22.5%                               | 17.3%            |
| Counties         | 57(1)         | 21.4%                               | 23.8%            |
| Towns            | 932           | 50.1%                               | 9.4%             |
| Villages         | 554           | 43.0%                               | 5.6%             |
| School Districts | 703(2)        | 51.7%                               | (3)              |
| Fire Districts   | 862           | 92.1%                               | N/A              |

N/A = Not applicable  
(1) Excluding the 5 boroughs of New York City.  
(2) Includes both independent and dependent districts.  
(3) A relatively small number of districts receive sales tax distributions or impose a consumer utility tax. Most of the remainder of school district funding (38%) is State aid.

Prior reports on property taxation in New York have found that State residents pay substantially higher local taxes per capita than do average Americans, whereas the State tax rates are much nearer to national averages. Unlike sales taxes and State aid, the property tax is a relatively stable, locally

controlled revenue source. Earlier studies have also suggested that the State's multiple local governmental units duplicate resources and services, provide inefficient service delivery, and generally have an inability to capture efficiencies and economies of scale in service delivery. Due to such duplication and, according to some, overstaffing, local governments experience high employment costs.<sup>1</sup>

In 2002, there were 3,704 units of local government units in State, excluding units located in New York City. In addition to the units presented in the table above, there were 200 joint activities agencies, 116 industrial development agencies, and 219 special purpose units.

### REPORT FINDINGS IN COMMON

As with any group of reports that examine the same subject matter, there are numerous instances where the reports express agreement. Such findings include the following:

- In 2002, New York State ranked first in the continental United States in the amount of all local taxes levied, at \$6,377 per household; local property tax revenues per household in New York State totaled \$3,750 as compared with the median for all states of \$2,254 (third highest in the nation, exceeded only by Connecticut and New Jersey).
- Local government spending in 2002 was \$4 billion higher in New York than the average of 10 states delivering similar services.
- In 2002, New York State provided approximately 38% of the revenues for local elementary and secondary education spending.
- Property taxes are the largest tax imposed by local governments in the State, representing 79% of all local taxes, not including New York City. (New York City's property taxes are relatively low compared with other localities because the City collects revenue from a number of other local taxes, including a personal income tax.)
- Local property tax levies grew by an unadjusted 60% from 1995 to 2005; most of this growth occurred between 1997 and 2002, when local government expenditures increased approximately 13% in real terms (i.e., after adjusting for inflation), while real property and sales taxes rose 19.6% in real terms over the same period. This resulted in rising tax burdens locally and relative to comparable states.
- In 2005, the revenue generated through local property taxes exceeded the amount levied via the State's personal income tax by roughly \$10 billion for the same year.
- Excluding New York City, the downstate area (in this instance defined as Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties) has far higher tax bills, but far lower tax rates than the upstate area.

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<sup>1</sup> Cabalquinto, Casey, and Matthew Gardner. *Achieving Adequacy: Tax Options for New York in the Wake of the CFE Case*. Washington, DC: Institute on Taxation and Economic Policy, April 2005. Also, Public Policy Institute of New York State. *How High Is the Upstate Tax Burden — and Why?* August 16, 2004.

What follows is a closer look at each of the 2 reports and some conclusions that can be drawn from their findings.

### **REPORT 1: *ASSESSING THE COMPARATIVE COST OF LOCAL GOVERNMENT SERVICES IN NEW YORK STATE***

Commissioned by the Senate Finance Committee, Global Insight, Inc. (GI), a recognized international economic analysis service, analyzed aggregate local government revenues and expenditures. The resulting report, *Assessing the Comparative Cost of Local Government Services in New York State*, was released in December 2005.

GI examined the differences between upstate and downstate in those variables, as well as nationally and against a smaller cohort of similar states. Specifically, New York was compared to 10 other large states with major urban centers and local governments that provide a range and level of services similar to those provided in New York, namely, California, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, and Texas.

The analysis distinguished among general governmental and education spending, transportation and employment costs, and Medicaid expenditures and revenues. Not all of the results were statistically significant; only the major findings, conclusions, and recommendations are presented here.

#### **Employment**

GI found that the rate of local government employment in New York State was almost 26% higher than the national average. For the continental United States, the average size of a unit of government (city, town, village, etc.) in 2002 was 1,926 households; in New York State it was 1,493, excluding New York City. In 2002, the number of households per education unit (i.e., school district) was 5,733, excluding New York City, which was well below the 48-state median of 7,406.

As stated in the GI report, "These below-average figures suggest the possibility of both overlapping governmental units and the existence of too many small local government units, each serving a low number of households. Though these differences may be due to other factors, such as demands for higher-quality local services (e.g., smaller class sizes in schools; more police and fire personnel per household, etc.) and the broader range of services provided by local governments, they may also be due in part to the large number of local governments in the state."

Local government employment in New York State has risen in both absolute and unit terms. According to the report, in 2002, New York State had the second-highest level of local education full-time employees in the 11 states (0.076 per household) even before New York City was excluded, trailing only Texas at 0.079.

The federal Bureau of Labor Statistics states that total local government employment in the State rose from 1.007 million in 1997 to 1.092 million in 2004. Wages and salaries plus benefits comprised about 50% of total expenditures of local governments, including education employment, in the State in 2002. GI found that higher local government employment levels meant higher growth rates in local costs, as total compensation has been rising faster than has the rate of inflation.

Since local government services are labor-intensive, total compensation often comprises the majority of annual expenditures, so that the rate of government employment in workers per household has a significant effect on local government spending. The local government employment levels per household are only slightly lower upstate than downstate, but given the greater financial resources available downstate, GI expected to see larger percentage differences in the levels of compensation than it did, suggesting that there are too many local government workers upstate given the local resources available to pay for them.

What GI found was that higher local government spending and local tax levels in New York State may be due more to the number of workers and less to the average salaries paid. Noting that inefficiencies result when providing local government services in the sparsely populated, rural counties, GI stated that government services in such counties may require more workers per household. Structural factors prevent economies of scale from being realized in such areas.

According to GI, merely reducing the local government employment levels to those of the comparable states will not solve the problem of the cost of local government services. In addition to lowered employment levels, localities would also have to adjust the quality of services provided, alter employee wage and benefit levels, and revise local tax systems.

GI predicted that the size of the potential savings that could be obtained by improving the efficiency of delivering local government services in New York State is quite large, and presented an upper-bound estimate of \$2.465 billion upstate and \$0.99 billion downstate. Stated another way, “[T]he \$2.465 billion are local revenues that would not have been required if the local expenditures and taxes in the upstate counties had been based on the lower employment rates in the comparable states.”

## **Expenditures**

There was a marked increase in the level of local government expenditures in recent years. From 1997 to 2002, local government expenditures increased nearly 30% in nominal terms and 13% in real terms (i.e., after adjusting for inflation). The sharp increase in local government spending in recent years has produced a similarly high growth rate in locally generated revenue, primarily that of real property and sales taxes. By way of example, real property tax collections, which represent around 41% of all local government revenues, increased 19.6% during the period 1997-2002, according to the Comptroller’s 2004 Annual Report, resulting in rising local tax rates.

The growth in local property tax that exceeded the rate of inflation from 1995 to 2005 raised the actual tax burden not only in real terms, but relative to comparable states as well. The GI analysis “compared local government expenditure, employment, and tax revenue levels in New York State to those in the 48 other states (Alaska, the District of Columbia, and Hawaii were excluded because they were not comparable), and then to a smaller set of 10 comparable states.”

Among the findings presented in the GI report:

- Total local government expenditures per household in New York State were \$15,172, well above the 48-state average of \$8,802. When New York City was excluded, the New York State figure was still approximately \$12,300 per household.
- The expenditure difference per household between New York and the other states is wider for local, general government services than for education services. Local, general government expenditures in New York State (including New York City) were \$9,747 per household in 2002, 94% higher than the 48-state average of \$5,030.
- Local education expenditures per household were \$5,425 in New York State, 44% above the 48-state average of \$3,772. According to *Education Week*, per-pupil spending in New York State in the 2001-02 school year was \$10,002, third-highest in the United States and 29% above the U.S. average of \$7,734.
- Local government employment expenditures per household was higher in New York State than in the other states, again with the difference greater for local, general government than for education.
- Because of high expenditure levels, local tax revenues per household in New York in 2002 for both local, general government and education services were 60% and 83% higher, respectively, than in other states.

In addition to measuring New York against the nation, GI also compared the State to 10 other large, comparable states with major urban centers, specifically, California, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, and Texas. The levels of both local, general government and education expenditures in New York State were higher than comparable state averages, and the differences were statistically significant to a high degree.

All tax revenues per household in New York were higher than the 11-state average. The comparison of revenue, expenditure, and local tax levels in New York with those in the 10 other states shows that the levels are consistently higher in New York, even when the distorting effects of New York City are excluded. These differences exist for both local, general government and education services, and the expenditure differences are slightly higher than the revenue differences. Finally, the differences between New York and the comparable states are somewhat greater for local, general government services than for education.

### **Units of Local Government**

GI notes that, along with rising expenditures, there is a link between the structure of local government in New York State and the above-average tax burdens borne by its residents, as suggested by a series of recent studies. In particular, much attention has been focused on the fact that multiple government bodies within each county have the power to raise revenues through direct taxation, yet often provide overlapping services. Most municipal corporations, specifically including counties, cities, fire districts, school districts, towns, and villages, are authorized to levy taxes.

GI cites the following examples of the multitude of local government units: Seneca County, which has a population density of 108 persons per square mile, is served by 28 governments, and Chautauqua County, which has a population density of 130 persons per square mile, is served by 88 governments.

The report did not rely solely on anecdote, however. The number of households per unit of local government in New York State, for both education and general government, was found to be below the U.S. averages, especially in the upstate counties. There, the number of households per local noneducation unit of government is 52.6% less than in the downstate counties. This implies that New York, compared to the average state in the nation, supports significantly more units of local government to provide necessary services.

GI goes so far as to state, “[W]e conclude that local government services, notably local, general government, are not being delivered as efficiently as they could be in New York State, especially in the upstate counties.” It further finds that significant local tax revenues and State funding can be saved by promulgating policies designed to streamline government and share services. The report concludes, “It is difficult to state precisely what share of the additional local expenditures and taxes presented above are directly attributable to inefficiencies in providing local government services in New York State, but if we assume the share is half, then the additional local government expenditures were \$2.24 billion upstate and \$1.82 billion downstate, with additional local taxes paid of \$1.00 billion in the upstate counties and \$1.32 billion downstate.”

### **Other Factors**

The report produced by GI mentions several other factors that have contributed to the State’s high property taxes. These include the higher cost of living generally in the Northeast, especially in the downstate region, and higher service standards, such as smaller classroom sizes or more days per week of trash collection.

In addition to streamlined government and consolidated services, the report finds that local property taxes could be lowered by altering how services are provided (i.e., what level of government provides the services) and/or how the services are funded. For example, in some states, highway maintenance is primarily the responsibility of county highway departments, while in others, local road maintenance is handled at the state level. Similarly, in many states, the state government pays the majority of local education costs, whereas in 2002, New York State provided approximately 38% of the revenues for local elementary and secondary school spending.

## **REPORT 2: PROPERTY TAXES IN NEW YORK STATE**

The OSC, as part of its Local Government Issues in Focus series, published a 22-page “research brief” that summarized the issues associated with real property taxes and provided an analysis of recent trends. It should be noted that the OSC report, *Property Taxes in New York State*, was not as detailed or comprehensive as that done by GI. The OSC report concurred with the GI report in that tax burdens in New York State are generally higher than in the rest of the nation.

## **Regional Differences**

The OSC report had mixed things to say about regional differences in property tax levels, growth rates, and relative burden. It found a great deal of variation across the State. Although taxpayers in suburban downstate counties pay the highest property tax bills per household, they have some of the lowest tax rates in the State, since their property values are much higher as well. These low rates are partly due to the growth in property values between 1995 and 2005, which was much stronger downstate than upstate, according to the OSC.

The fact that total taxes per household are higher in downstate counties, however, may not indicate by itself that property taxes are more burdensome there. Downstate residents are generally wealthier, and therefore may be able to afford higher taxes. As stated in the report, “[B]y this measure, downstate property taxes look much more affordable than average, especially in property-wealthy Suffolk and Westchester counties.”

## **Property Tax Growth**

Generally speaking, property taxes are used to balance municipal budgets after accounting for all other sources of revenue, which means that property taxes tend to increase more quickly if other revenues stagnate or decline. During the late 1990s, the economic expansion allowed most local governments to keep property tax increases below inflation. According to the OSC report, school districts were the only local government units to have property tax growth that outpaced inflation between 1995 and 2000.

As the expansion cooled, however, the trend reversed. Economic slowdowns and resulting contractions in other revenues have placed additional pressure on local property tax levies. The OSC report said that, as a result, the property tax is currently the fastest growing local revenue in the State. It further declared, “Most [property tax] growth occurred in the last 5 years — when property tax levies increased by 42%, compared to inflation of 13%.”

In its discussion of the trends associated with property taxes, the OSC report specifies that local governments as a whole had average annual increases in the property tax levy of only 2.3% during the 1990s, and counties, cities, towns, and villages all kept annual levy increases below the inflation rate of 2.5%.

Slow property tax growth during that period was also related to increased growth in other sources of revenue (especially sales tax revenue growth due to the healthy economy) and moderating costs, including low interest rates for capital projects and lower-than-usual pension contributions. The low pension contributions were driven by 2 factors: then-Comptroller Carl McCall’s decision to reduce, and in some instances even eliminate, local pension contributions; and extraordinary returns on pension fund investments during that period.

The OSC found that from 2000 to 2005, the economic impact of the recession and the attacks of September 11, 2001, reduced State aid at the same time other local revenues declined. These changes, coupled with growth in local costs for health care and employee benefits, produced more rapid property tax growth. All classes of government shared in this acceleration, with levies growing faster than inflation during the period.

School district levies grew at an average annual rate of 7.3%, significantly outpacing inflation even after accounting for STAR. According to the Comptroller, the primary reason for this is that schools consume more public resources than other types of local government, accounting for 48% of total local government expenditures in 2004, and demands upon public education have been escalating. State revenue sharing and school aid increases also may have had an impact.

Preliminary school district and village levy data show growth slowing for those classes of government as well, although less dramatically (from 7.8% in 2005 to 6.8% in 2006 for school districts, and from 6.3% to about 5.5% for villages). However, growth rates for most classes of local government continue to be substantially above inflation.

And yet, not all of the news reported by the OSC was bad. Levy increases have moderated somewhat in 2006, particularly for counties, which benefited from last year's Medicaid cap (Chapter 58, L. 2005). However, Medicaid constitutes only a small portion of total local government expenditures; in 2002, local government spending attributable to Medicaid averaged only 2.6% of total spending. Nevertheless, as described in a recent OSC update separate from the aforementioned report, county tax levy increases slowed from an annual average increase of 7.0% statewide from 2000 to 2005 to 3.3% in 2006, a sizable portion of which can be attributed to the recent Medicaid cap.

### **Assessment Reform**

One area examined in the OSC report, but not in the GI report, was property assessments. The Comptroller's Office found that assessment quality varies throughout the State, and in many areas properties with similar market values may have very different assessments and tax bills. Such discrepancies can lead to dissatisfaction and assessment challenges, which in turn may have a significant impact on the property tax base.

Although national standards call for property revaluation every few years, State law does not require jurisdictions to assess real property at full market value. Recent statistics from the Office of Real Property Services show that only two-thirds of assessing jurisdictions are achieving satisfactory uniformity in residential assessments. A 1996 interagency task force on real property valuation recommended that assessment requirements be strengthened in New York State. Specifically, State law should be amended to require that all assessing jurisdictions assess real property at market value, in accordance with standards promulgated by national standard-setting agencies — including updated assessments on a regular cycle, not to exceed 4 years. As indicated in the report, the Comptroller's Office would like to see the task force's recommendations acted upon.

### **CONCLUSION**

The reports in question agreed on several points. There were also some variables that were considered by one report, but not the other. And then there were instances where the reports diverged in opinion as well. Generally speaking, the GI and OSC reports complemented each other.

Based on their multistate analysis, GI found that 2002 local government spending was up to \$4 billion higher in New York than the average of 10 states that deliver similar services. Education

spending accounted for 49.8% of all local spending, and local government spending on all other services, e.g., highways, water, public protection, and sanitation, represented 47.6% (the report did not detail how the remaining 2.6% was spent).

The OSC found that economic vagaries largely contributed to the jump in property taxes in the late 1990s and early 2000s, and that more favorable current economic conditions appear to have reduced the rate of property tax rate increases. For its part, GI attributed rising property taxes to New York's multijurisdictional approach to delivering local government services as well as a higher cost of delivering these services, requiring \$2.3 billion in additional local taxes and \$1.7 billion in additional State support.

### **Education Spending**

New York employs more education workers than average, and total spending per pupil for K-12 education in the State far exceeds the U.S. average. Specifically, GI found that per-household, local education expenditures in 2002 were \$5,425 in New York State, 44% greater than the 48-state median of \$3,721. It also found that local educational employment in the State also exceeded that seen elsewhere. In 2002, the New York State level of 0.074 education employees per household was, respectively, 13.9% and 7.2% greater than the 48-state average and median figures of 0.065 and 0.069.

GI also noted that *Education Week's* "Quality Counts 2005: No Small Change," an annual report evaluating state school financing systems, indicated that annual, per-pupil spending in New York State in the 2001-02 school year was the third-highest in the nation and the State financing of education was 29% higher than the national average. According to GI, the State also enjoys smaller class sizes on average than the rest of the nation.

### **Increased State Aid to Lower Local Taxes**

Recently, several groups have sought increased State education aid as a mechanism to lower local property taxes. As the STAR reimbursements made by the State come from the General Fund and are paid directly to local school districts, it can be considered a form of State education aid; households receive a portion of their State tax payments back in the form of lower school property tax levels.

According to the OSC, however, such programs may encourage growth in spending, particularly in higher-wealth, higher-spending areas. As stated in the Comptroller's report, "Having a single major identifiable local revenue source for municipalities and schools offers direct accountability and keeps the pressure on these local governments to carry out their operations in a cost-effective manner." It further cautions that STAR lowers the effective tax rate on homeowners, the largest group of people who vote on and otherwise influence local school budgets. For many seniors, STAR has effectively eliminated their school tax burden.

The OSC says that by reducing the local tax share paid for greater school spending, State education aid may actually provide an incentive to increase school spending, an impact the OSC notes has been described in several studies. OSC cautions that while short-term property tax relief may be the perceived effect of increased State education aid, the long-term outcome of such tax shifts may well be an overall increase in both State and local taxes.

## LEGISLATIVE ACTIVITY — 2006

Each year, the Legislature considers a multitude of bills that would effect changes in the real property tax system. The following bills have seen action in the Senate in 2006:

- S. 101 — authorizes granting of a school tax exemption to veterans with at least 40% disability (Passed Senate);
- S. 734-A — provides State assistance for revaluation of school district assessments at full value (Passed Senate);
- S. 884 — permits tax jurisdictions to apply for and receive from the courts incidents of ownership of land subject to foreclosure to permit an environmental investigation (Passed Senate);
- S. 1975 — exempts from real property taxation property leased by a municipality for a public library for a period of 20 years or more (Passed Senate);
- S. 2224 — defines the War on Terrorism as a “period of war” for purposes of the veterans’ alternative property tax exemption (Passed Senate);
- S. 2353 — authorizes certain cities and villages to expedite foreclosure on substantially physically distressed and unoccupied residential, commercial, or industrial properties (Passed Senate);
- S. 2847-B — creates an exemption for increased value of property in certain areas of the Adirondack Park (Passed Senate);
- S. 3309 — grants the 80% real property tax exemption to forest lands subject to a recognized forest certification program (Passed Senate);
- S. 3691 — removes the distinction between owner-occupied and nonowner-occupied family properties in terms of eligibility for the small claims assessment review program (Passed Senate);
- S. 4018 — grants a 50% exemption for certain cold storage facilities used to hold fruit (Passed Senate);
- S. 4939 — provides for a third party designation by eligible senior real property owners for notices regarding annual recertification (Passed Senate);
- S. 5607 — provides third-party notice option for property owners eligible for the tax exemption for persons with disabilities (Passed Senate);
- S. 5966-A — extends, until January 1, 2011, the expiration of the law relating to the tax exemptions for solar, wind, or farm waste energy systems (Passed Senate); and
- S. 6830 — provides for adjusted homestead and non-homestead adjusted base proportions in assessing real estate taxes in Nassau County (Chapter 24, L. 2006).

## ADDITIONAL SOURCES OF INFORMATION

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World Wide Web site:

United States Census Bureau — *2002 Census of Governments*  
(<http://www.census.gov/govs/www/cog2002.html>)

**ROAD MAP OF THE STATE BOARD  
OF REAL PROPERTY SERVICES**

The State Board of Real Property Services is a five-member body, appointed by the Governor, whose function is to oversee the administration of real property assessments in New York. The Board is required to establish State equalization rates, assess special franchises, investigate the methods of assessment throughout the State, and support real property tax equity. The body that carries out the Board's policies and programs is the Office of Real Property Services (ORPS). Through its six regional offices located throughout the State, ORPS provides several types of assistance to localities.

This SRS *Issues in Focus* describes the State Board of Real Property Services, including its membership and their powers and duties, and the role of ORPS.

**SRS ANALYST: Jason Scott**

**June 6, 2000**

**#I00-43**



## **WHAT IS THE STATE BOARD OF REAL PROPERTY SERVICES?**

In 1960, the Legislature created the State Board of Equalization and Assessment (Chapter 335, L. 1960). While it was renamed in 1994 to the State Board of Real Property Services, the Board's mission and function has not changed since its inception. As outlined in Article 2 of the Real Property Tax Law, the Board is a five-member body appointed by the Governor, with the advice and consent of the Senate, whose function is to oversee the administration of real property assessments in New York. The members of the Board are appointed for eight-year terms. They receive no monetary compensation for their membership, but are reimbursed for expenses incurred while on State business. Other than the statutory requirement that one of the members be "an individual actively engaged in the commercial production for sale of agricultural crops, livestock and livestock products of an average gross sales value of ten thousand dollars or more," it is the task of the Governor and Senate to appoint and approve qualified members to the Board.

## **WHO IS ON THE BOARD?**

The current members of the Board are Chairwoman Ifigenia T. Brown of Ballston Spa (Saratoga County), John M. Bacheller of Latham (Albany County), Frank B. Cernese of Montrose (Westchester County), Ruth L. Henahan of Delmar (Albany County), and Leon E. Wright, Jr. of Franklinville (Cattaraugus County). Thomas G. Griffen of Kinderhook (Columbia County), Executive Director of the Office of Real Property Services (ORPS), also serves as the executive officer for, and secretary of, the Board. (The executive officer of ORPS is not appointed by the Governor but rather is appointed by the Board itself.)

The Board convenes several times a year for public meetings, which are usually held at ORPS's Sheridan Avenue office in Albany.

## **POWERS AND DUTIES OF THE STATE BOARD**

Overseeing the administration of real property assessments in New York is no easy task. As part of that responsibility, the Board is required by law to:

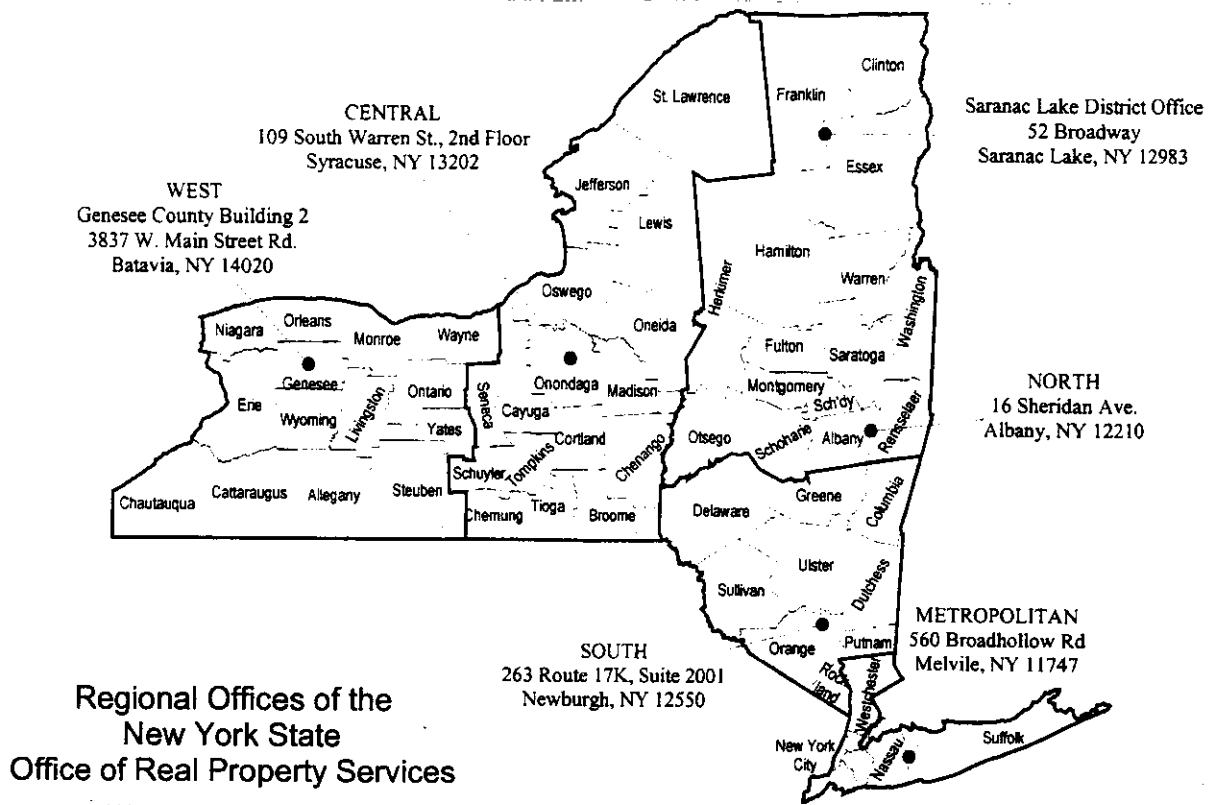
- establish State equalization rates for each county, city, town, and village;
- hear and determine reviews relating to determinations made by county equalization agencies;
- assess special franchises;
- approve assessments of State lands subject to taxation;
- have general supervision of the function of assessing throughout the State;
- investigate the methods of assessment throughout the State and confer with, advise, and assist assessors and other officials whose duties relate to assessments;

- furnish assessors with information and instructions that may aid them in making assessments;
- prescribe forms relating to assessments, including applications for exemption from real property tax;
- inquire into the provisions of the laws of other states and confer with the appropriate officials thereof regarding the most effectual and equitable methods of assessing and taxing real property;
- prepare an annual report to the Legislature that will include recommendations concerning amendments to existing law and other information that may be advisable;
- establish railroad ceilings for railroad real property;
- monitor the quality of local assessment practices by individual assessing units;
- impose, collect, and receive fees or charges that may be authorized by statute;
- adopt rules and regulations to implement the computerized statewide school district address match and income verification system as detailed in Section 171 of the Tax Law;
- administer oaths, take affidavits, and certify acknowledgments in relation to any matter or proceeding in the exercise of the powers or duties of the Board;
- meet with local officers concerning assessment and real property taxation matters if such a meeting is seen as necessary by the Board;
- make official visits to counties not more than once every two years to discuss matters relating to assessment and real property taxation; and
- direct disciplinary actions against officials who neglect or refuse to perform official duties.

### **THE ROLE OF THE OFFICE OF REAL PROPERTY SERVICES**

The New York State Office of Real Property Services (ORPS), formerly the State Division of Equalization and Assessment, carries out the policies and programs of the Board. Its mission, "To lead the State's efforts to support local governments in their pursuit of real property tax equity," is brought to the Board by Executive Director Thomas G. Griffen.

ORPS maintains its principal office in Albany and extends its operations through regional offices in Batavia, Melville, Newburgh, Syracuse, and Albany. ORPS also maintains a full-service office in Saranac Lake. The map on the following page shows the counties served by each of the regional offices.



Using data processing equipment, these regional offices generally provide direct technical assistance to localities in the installation of the Real Property System (a computer program) and related real property administrative services, such as the municipal full-value measurement survey. In addition, the regional offices supply the following types of assistance:

- **Project Planning** — The regional staff assist localities in analyzing their needs and putting together work plans and timetables of project plans.
- **Initial Revaluation Projects and Valuation Updates** — The regional staff monitor the work of private valuation contractors and provide assistance, i.e., training, if needed. If a private contractor is not involved, then the regional staff run the initial revaluation project or valuation update by working with the local assessor(s).
- **Real Property System (RPS) Conversion** — RPS is a computer program that helps localities and assessors with the assessment process. The regional staff help the locality convert its existing files to the RPS.
- **Assessor Training** — This is part of the comprehensive services offered to local government.
- **Market Survey** — The regional staff assist ORPS with the responsibilities associated with doing market value surveys that produce municipal full-value estimates for the creation of equalization rates.

## **LEGISLATIVE ACTIVITY — 2000**

A number of bills affecting the New York State Board of Real Property Services have been introduced in the current session. One measure provides that the Board may not cause a school district to be part of more than one regional service area when establishing regional offices to serve different areas of the state (A. 6147, No Action). Another authorizes the Board to study the fiscal impact of granting local school districts the authority to implement an income tax surcharge (S. 3130, No Action).

### **ADDITIONAL SOURCES OF INFORMATION**

New York Codes, Rules and Regulations. Volume 9, Subtitle F.

New York State Consolidated Laws. Real Property Tax Law, Article 2.

World Wide Web site:

New York State Office of Real Property Services ([www.orps.state.ny.us](http://www.orps.state.ny.us))