Is Underassessment Legal?

by MEIGHEN VAN NIEUWSTADT

THE reasons for the assessment of property at a small fraction of the legal level—a common practice throughout the United States—are explored in a recent article in The Hastings Law Journal, a University of California periodical. Entitled "Fractional Assessments—Do Our Courts Sanction Inequality?" the article examines the political and economic background of court decisions which allow California assessors to disregard the constitutional mandate that "All property subject to taxation shall be assessed for taxation at its full cash value." These decisions are based on the ground that the administrative construction resulting in the assessment of taxable property at a uniform fraction of full cash value has been common practice during the past seventy-five years. "But," states this article, "a long continued, systematic violation of law is no accident. Its explanation lies in the interests it serves." The reader is asked to consider what interests are so well protected by this practice that it should survive seventy-five years and at last subvert the constitution that stood in its way.

Fractional assessment originated when the state itself levied a property tax. A county assessor trimmed his valuation to shift the burden from his own constituents to those of other counties. A major motive in our own day is that tax and debt limits are fixed by law in terms of percentages of total assessed valuation. By assessing below full cash value, an assessor restricts the power of local governments to tax the holdings of large real estate owners. This constitutes an extra-legal power as the assessor can in this way define local taxing and borrowing power without recourse to regular legal channels under the control of voters. Thus a straightjacket is placed on local government. Vitally needed services are crippled and the result is further demands by local governments for state assistance. Very quickly other taxpayers make up the difference.

But these other taxpayers, victims of fractional assessment are mainly nonproperty owners. When an assessor's undervaluation causes tax and debt limits to strangle the fiscal powers of local government and send them to state and Federal capitals for aid, it is nonproperty owners who pick up the bill in the form of higher sales and income taxes. When undervaluation shifts taxes to state-assessed utilities, it is again nonproperty owners who pay in the form of higher rates for utility service. Small property owners do not benefit by this shift because a family with two or more children, living in a modest residential neighborhood, finds its property tax savings wiped out by the increase in sales taxes, income taxes and utility rates. Instead it is the owners of large undeveloped holdings which support no taxable production and require no community services who benefit.

Shifting taxes to property owners and nonproperty owners are highly different undertakings. Insofar as the victims of underassessment are other property owners, they are the political and economic peers of the beneficiaries and have the capacity to fight back through their own assessor, the courts, the legislature and the board of equalization. That they do fight back is shown by the perpetual concern over equalization. All property tax exemptions are under constant scrutiny by

politically powerful property owners who must make up the difference in their own tax bills. If underassessment merely shifted taxes from one property owner to another, it could not have survived three-quarters of a century and won the implicit approval of our highest courts.

The political strength of fractional assessment lies in its capacity to shift taxes to nonproperty owners. The burden of sales and income taxes and utility rates is diffused over such a large number of individuals that political organization on the basis of self interest is difficult for them. By contrast, holders of valuable central and peripheral land are relatively small in number and can well afford to defend their interests politically.

The reports of legislative tax committees abound with concessions to this difference. For example, the latest California Assembly report calls it "obviously unfair" and "completely unjustified" that owing to different assessment levels, a rapid transit taxpayer in Contra Costa County with property worth $100,000 would pay a tax on $23,400 of assessed value while in San Francisco the owner of property worth $100,000 would pay tax on $21,700. But on the same page the report declares "An assessor is still wise to use low fractional assessments. . . . In a county with low fractional assessment and a high tax rate, the utilities will pay more taxes. . . . " The unmistakable meaning is that fractional assessments, insofar as they injure property owners are unjustified but insofar as they injure nonproperty owners are wise.

The author of this heavily documented article is Robert Tideman, Executive Secretary of the Northern California Extension of the Henry George School. Copies may be obtained at 15 cents each by writing to the Henry George School at 833 Market Street, San Francisco, California 94103.

Renaissance in Milwaukee

Milwaukee developers are getting a tax break in the form of a limited tax freeze similar to the plan which caused the New York building boom in the 1920's when new structures were excluded from taxation for a 10-year period. As a result, the postwar housing shortage was successfully relieved, in contrast to conditions after World War II.

Milwaukee's assessment freeze permits deferment of full taxes on certain buildings erected on substandard land, for a specified time. The law allows approved developers to pay taxes only on the assessed value of the property prior to the new construction for a variable period, after which taxes will be levied on the full assessment of the improvements.

The purpose is to eliminate blight, and several splendid buildings are being planned as evidence of the desired result. Milwaukee was slow to take advantage of the state law passed in 1943, which enables cities to grant deferments up to 30 years. A 21-story office and bank building, with parking structure, is to replace inadequate quarters, on deferment grants of three and four years in one case where developers would have had to curtail plans if deferment had not been granted.