

June 1967

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Recommended Citation

James S. Wershow, *Recent Developments in Ad Valorem Taxation*, 20 Fla. L. Rev. 1 (1967).

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RECENT DEVELOPMENTS IN AD VALOREM TAXATION

JAMES S. WERSHOW*

Two years have elapsed since publication of the article *Ad Valorem Assessments in Florida — Whither Now?*¹ Today the ad valorem dilemma in Florida remains largely unsolved. During the intervening period futile attempts have been made to alleviate administrative difficulties surrounding the word "assessment."² This article describes the resulting quandry and its causes and outlines several alternative assessment procedures.

THE HISTORICAL BACKDROP

Evaluation of the problem demands a brief review of the factors that have led to its present complexity. Until the Florida "boom or bust" of 1925, the ad valorem tax functioned well. The Florida Constitution of 1885 set forth the guiding principle that permeated the relationship between the elected tax assessor (a constitutional officer) and the owner of real property. Since Florida had an abundance of county tax assessors and a predominantly agrarian society, the personal factor tended to equalize incipient inequalities in a particular area. The close relationship between taxing and assessing authorities, on one hand, and those who owned and used the land, on the other, deterred the more formal procedures that would otherwise have been required to relieve individual inequities. Moreover, the tug-of-war by particular interests for use of specific land had not yet brought forth active competition for the use and possession of particular parcels of land. The county tax assessor usually possessed a basic knowledge of his county and its inhabitants. By applying this knowledge to specific complaints he usually reached a correct assessment without more than formal adherence to the Florida Constitution's provision for a "uniform and equal rate of taxation" and a "just valuation of all property."³ The key terms "uniform and equal" and "just valuation" thus developed local and sectional connotations within the state. The human factor, rather than strict legal procedure, determined the course of ad valorem assessment in Florida.

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

2. R. GARRETT & R. LASSITER, *THE BURDEN OF AD VALOREM REAL PROPERTY TAXES UNDER VARYING ASSESSMENT RATIOS: A CASE STUDY* (1965) (Studies in Public Administration No. 28, Public Administration Clearing Service, U. Fla.).

3. FLA. CONST. art. IX, §1.

With the advent of increased population concentrations and the attendant demand for more public services, the benevolent rule of the local tax assessor as the local arbiter of land assessment began to weaken. The land use factor began to create disturbing tremors around land values. Agricultural lands could be used for other purposes and were often held for speculation as well as for their primary uses. While the tax assessment procedure in Florida had evolved informally by adapting itself to local situations, the new "urban sprawl" foreshadowed basic problems in land valuation and assessment that could not be solved under this system. At this juncture, the competing forces that desired possession of land began to develop conflicting concepts of land assessment and valuation. These concepts were primarily economic in nature and self-serving in intent. Since these phenomena have been discussed in earlier articles, the details of the struggle will not again be reviewed.⁴ Suffice it to say that these variant concepts gave rise to economic philosophies that paid lip service to the basic tenets of ad valorem taxation, but developed their own measures and standards of land valuation.

CONSTITUTIONAL ASSESSMENT STANDARDS

When the present Florida Constitution was adopted in 1885, Florida was primarily an agrarian society. The framers of this constitution, which remains the basic document to this day, followed in the footsteps of established American tradition and adopted article IX, section 1, as the cornerstone of taxing power by the state. This article provided:

The Legislature shall provide for a uniform and equal rate of taxation, except that it may provide for special rate or rates on intangible property . . . [A]nd shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purposes.

However, another equally important section of the 1885 Constitution was article VIII, section 6, which provided for the office of tax assessor and set forth the duties and responsibilities of the office. By direct reference the county tax assessors were thus deemed constitutional officers with peculiar emphasis on their inherent powers. Yet their specific duties had to be prescribed by statute. The impact of the resulting legislative action, as illustrated below, has resulted in changes of great economic and legal significance.⁵

Within this constitutional framework, ad valorem taxation has developed, not from preconceived economic or legal theories, but rather under the mantle of haphazard legislative action and local sufferance. The courts, while usually recognizing local equities, nevertheless have adhered to strict constitutional symbolism. In this manner the legal fictions surrounding article IX,

4. See generally Wershow, *Ad Valorem Assessments in Florida—Whither Now?*, 18 U. FLA. L. REV. 9 (1965); Wershow, *Ad Valorem Taxation and Its Relationship to Agricultural Land Tax Problems in Florida*, 16 U. FLA. L. REV. 521 (1964); Wershow, *Agricultural Zoning in Florida—Its Implication and Problems*, 13 U. FLA. L. REV. 479 (1960).

5. *State ex rel. Butscher v. Dickinson*, 196 So. 2d 105 (Fla. 1966).

section 1, concerning uniform and equal rates of taxation and just value, have been maintained. The same was also true of the powers of the assessor as set forth in article VIII, section 6.⁶

STATUTORY ASSESSMENT STANDARDS

The legislative enactments under both of the above constitutional sections are worthy of close scrutiny. First, let us turn to the uniformity and equal rate of taxation provisions of article IX, section 1, of the Florida Constitution, quoted above. As the author has discussed in previous articles, legislative enactments in this area have resulted from concentrated efforts by various interest groups to secure economic advantages for themselves.⁷ The enactment and subsequent history of Florida Statutes, section 193.11 (3), illustrate this trend. To summarize, this statute was enacted in 1957 to sweep away remnants of the 1925 boom subdivisions in Dade County.⁸ It provided for assessment of agricultural lands upon an acreage basis regardless of the fact that any or all of the lands were embraced in the plat of a subdivision or other real estate development. Only incidentally was "agricultural purposes" defined. A subsequent 1963 legislative amendment to section 193.11 (1) further emphasized the "assessment" as opposed to the definitional role of this statute.⁹ The statute served as the foundation for pronouncements of the Supreme Court of Florida in *Tyson v. Lanier*¹⁰ on preferential land assessment.

A true "green belt" statute, section 193.201, giving protection to agricultural lands was enacted in 1959.¹¹ Each county could adopt or reject the statute within its discretion. Once land had been designated as agricultural, the tax assessor could assess such lands only on the basis of their agricultural use. Unconsciously the legislature was complicating the assessment procedure, for specific factors were set forth to guide the tax assessor in these value determinations. As a rural-oriented legislature groped to protect agricultural lands from the onslaught of the urban sprawl, other potent forces were at work attempting to secure compliance with full cash value statutes of long-standing, which were being patently disregarded by both the courts and the county tax assessors. The urban demand for better schools, roads, increased fire and police protection, and more effective public health measures caused greater demands upon the ad valorem tax structure in each county. Moreover, the Florida homestead exemption amendment, allowing a 5,000 dollar deduction on the taxpayer's domicile before the imposition of land taxes, provided a tax shelter for many home owners and allowed many residents to avoid the payment of land taxes.¹² These homeowners still secured the services that ordinarily arise from such impositions.

6. *McNayr v. State ex rel. Dupont Plaza Center, Inc.*, 166 So. 2d 142 (Fla. 1964); *Henderson v. Leatherman*, 120 Fla. 496, 507, 163 So. 310, 314 (1935).

7. Articles cited note 4 *supra*.

8. Fla. Laws 1957, ch. 195, §1, at 356.

9. Fla. Laws 1963, ch. 250, §3, at 601.

10. 156 So. 2d 833 (Fla. 1963).

11. Fla. Laws 1959, ch. 226, §1, at 865. An amendment to this statute was adopted by the 1967 legislature. The statute as amended by H. B. 350 appears in Appendix I of this article.

12. FLA. CONST. art. X, §7.

Justice Thomas of the Florida Supreme Court in the recent case of *Burns v. Butscher* stated:¹³

As early as 10 July 1942 we observed the requirement of Sec. 2 of Chapter 20722, Laws of Florida, Acts of 1941, that all property be assessed by tax assessors at full cash value was not an innovation since Sec. 905, C.G.L. 1927, contained a similar mandate. And we pointed out that the rate of taxation and the percentage of assessed valuation no longer so complemented each other that assessments of less than 100 per cent. would distribute the tax burden equally as long as the assessments were uniformly applied.

Yet the courts in Florida quickly recognized that "just value" under article IX, section 1, was not synonymous with full cash value. In fact in *Henderson v. Leatherman*,¹⁴ an admission was made that most land in Florida was assessed at no more than fifty per cent of its full cash value.¹⁵ Such a situation prompted a series of confused decisions by the Florida courts. How could the judicial process reconcile constitutional mandate and legislative enactment when obviously the local tax assessors were in practice avoiding both? For a period of time semantic legerdemain was the answer. Why come to grips with the basic issue when individual case solutions would suffice? The process was like trying to alleviate the symptoms of the ailment rather than to cure it.¹⁶

The process of judicial evasion could not long continue. In 1963 the legislature passed section 193.021. This was motivated by a sincere desire to give the county tax assessors a tentative yardstick to evaluate "just value" in accordance with article IX, section 1, of the Florida Constitution. To effectuate this move, the "full cash value" standard was deleted from sections 193.06 and 193.11 (1). The factors comprising the just value yardstick have become increasingly important in subsequent judicial interpretation. They are set forth in the statute as follows:¹⁷

- (1) The present cash value of the property;
- (2) The highest and best use to which the property can be expected to be put in the immediate future; and the present use of the property;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property.

Section 193.201, passed by the legislature in 1959, attempted to give a similar yardstick to the county tax assessor in assessing agricultural lands. It was far more restrictive, for it compelled the tax assessor to interpret the "use factors" as pertaining to agricultural use only.

13. *Burns v. Butscher*, 187 So. 2d 594 (Fla. 1966). 14. 120 Fla. 496, 163 So. 310, (1935).

15. *Id.* at 507, 163 So. at 314. See *Schleman v. Connecticut Gen. Life Ins. Co.*, 151 Fla. 96, 9 So. 2d 197 (1942).

16. See *Stiles v. Brown*, 177 So. 2d 672 (1st D.C.A. Fla. 1965).

17. FLA. STAT. §193.021 (1965).

Reference should be made to the so-called Pope Bill, or as it is more commonly known, the "Russian Roulette Statute."¹⁸ Here was a distinct departure from the traditional ad valorem assessing procedure. The statute in effect allows a landowner in disagreement with the assessor's determination of value to file a certificate with the tax assessor stating his estimate of the just value of the property that he owns. The property is then auctioned by the tax assessor at a price no less than the value determined by the taxpayer's self-assessment. If no bid is received for the property, the taxpayer's determination is established and entered on the tax rolls as the just value of the property. If a bid higher than the self-determined value of the taxpayer is received at the auction, the taxpayer may sell the property to the high bidder, or he may elect to forfeit the required bond posted prior to the auction. The bond amounts to ten per cent of his self-determined value as set forth in his original certificate. In this case the tax assessor's original assessment will stand on the tax rolls.

Aside from the doubtful status of this statute under the Florida Constitution because of its delegation of the tax assessor's duty to a lay individual or the property owner, it presents a definite hazard to the orderly assessing and collecting of taxes. A significant number of disgruntled taxpayers could tie up the administration of government within the county by challenging their assessments. The auction procedure could complicate the tax assessor's task and seriously impede the efficient functioning of his office. Although taxpayers have invoked the procedure in both urban and rural counties, a case involving the constitutionality of this act has not yet reached the appellate courts.¹⁹

THE ROLE OF THE COMPTROLLER AND BUDGET COMMISSION

The statutory role of the comptroller and the state budget commission is a complicating factor in the already confused assessment process that is too often forgotten. Section 192.31 (1) states that the comptroller upon approval of the state budget commission shall establish and promulgate standard measures of value to be used by the tax assessors in all counties. Subsection (2) further provides that standard measures of value promulgated by the comptroller shall not become effective until approved by the state budget commission.

Examination into the status of these standards reveals that the comptroller, in the exercise of his authority under section 192.31 (2), completed a manual or guide for county tax assessors in 1959.²⁰ This manual was approved in due form by the state budget commission as required by statute. The comptroller made major revisions in 1963 and 1964 pursuant to new legislative

18. FLA. STAT. §193.271 (1965).

19. The tax assessor of Palm Beach County has asked for a declaration that the "Russian Roulette" statute is unconstitutional because it violates FLA. CONST. art. IX, §1 and usurps the function of the tax assessor. *Maxwell v. Badcock Economy Furniture Store, Inc.*, No. 66 C 2551-C (15th Judicial Cir. Fla.); *Maxwell v. Luebking*, No. 66 C 2729-D (15th Judicial Cir. Fla.).

20. COMPTROLLER'S OFFICE, STATE OF FLORIDA, *FLORIDA TAX ASSESSOR'S GUIDE* (1959).

enactments during those years. However, revisions since 1959 have never been approved by the state budget commission, and consequently their legal status is in doubt. As might well be expected, any group attempting to set up standards of value with regard to property, both real and personal, will be subjected to pressures from special interest groups. The story is no different here, where existence of such competing forces may explain the apparent as well as latent reasons for the failure of the budget commission to act on this important matter. The unapproved status of the tax manual becomes even more significant when one realizes the vast role that it plays in local tax assessment. The comptroller in the tax manual has attempted to integrate constitutional authority and legislative enactments with the basic principles of the science of land appraisal. Since many county tax assessors have little experience in land appraisal, the manual's criteria serve as controlling guideposts in the assessment process. Just as Justice Thomas stated in *Walter v. Schuler*²¹ that the just value is attained by determining X, so the manual attempts to lead the county tax assessor down the thorny, winding road to gain this objective. What is X? Justice Thomas supplied the answer in *Burns v. Butscher*,²² decided in June 1966:²³

[A]ssessments of less than 100% could not be tolerated and that "X" should be fixed by applying the classic formula for establishing fair market value, namely the amount a purchaser under no stress to buy a given piece of property would pay a non-necessitous seller. [When "X" is so obtained it represents "just value."]

As stated above, the comptroller, with budget commission approval, is directed "to establish measurements of values, consistent with those fixed by law . . . [that] are declared to be prima facie evidence of just valuation."²⁴ Thus the focal point moves back to the standard methods of appraisal that are set forth in the *Tax Assessor's Guide*. Here three basic methods of appraisal are set forth. All attempt to approximate the classic definition of fair market value:²⁵

Cost Estimate. The current replacement cost less depreciation from deterioration and obsolescence.

Income Analysis. The value the property will produce determined by capitalization of net income.

Market Comparison. The value as shown by recent sales of comparable property.

It is beyond the scope of this article to analyze the intricate art of land appraisal. Yet it is important to realize that "appraisal" is an art rather than a science. Experts in this field often have honest differences of opinion over what is the "true market value" after examining the same property and using the same available data. It is at this point that special

21. 176 So. 2d 81 (Fla. 1965).

22. 187 So. 2d 594 (Fla. 1966).

23. *Id.* at 594-95.

24. *Id.* at 595.

25. COMPTROLLER'S OFFICE, STATE OF FLORIDA, FLORIDA TAX ASSESSOR'S GUIDE §3.7, at 113-15 (1959).

economic interests have advanced competing arguments by using classic methodology to anchor their conflicting ideas of value. In other words, by using syllogistic reasoning different results have been obtained.

To illustrate from the *Tax Assessor's Guide* prepared by the comptroller, the section on woodland describes a procedure for the appraisal of woodland on the basis of average annual growth from seedling to mature timber. Actually this is a modified "sustaining yield" method that recognizes the annual increment of value represented by growth, rather than a "liquidation" value. The growth increment is converted into a dollar value. All expenditures, including but not limited to management and production, are deducted and the resulting annual net income is capitalized in the same manner as that described for other agricultural lands.²⁶ This method of timberland valuation is based on a thirty-year production cycle. It averages value by area and species rather than by examining the timber in a specific tract with regard to sales of comparable land or the liquidation value of such timber. A similar dual valuation technique applies to pasture land used for raising cattle.²⁷ Naturally those who are in the timber or cattle business will adopt the theory that will ultimately benefit them the most. Where does the harried tax assessor stand?

The supreme court in *Burns v. Butscher*²⁸ was confronted with the basic issue of the relationship of the tax assessor to the comptroller and budget commission. Section 6 of article VIII of the Florida Constitution, in addition to creating the office of county tax assessor, provides that the duties of these assessors shall be prescribed by law. Justice Thomas in *Butscher* clearly defined the role of the comptroller in the assessment process. He first swept away the argument that the comptroller was usurping the constitutional powers of the tax assessor:²⁹

We do not construe the statute [Florida Statutes, section 192.31] as an attempt at usurpation by the Comptroller and Budget Board of the duties of tax assessors or materially to interfere with their discretion in discharging their duties.

He also stated:³⁰

The Comptroller with the approval of the Budget Commission is mandated to establish measurements of values consistent with those fixed by law, and these standards are declared to be prima facie evidence of just valuation. Any assessor refusing to adhere to them assumes the burden of overcoming the presumption of their merit.

In other words, the tax assessors, although constitutional officers, are limited in their discretion and must follow legislative fiat under the guidance of the comptroller and budget commission. Has the budget commission's failure to validate the guidelines of the *Tax Assessor's Guide* allowed the assessor too much discretion in administering the statutory criteria?

26. *Id.*

27. *Id.* §3.6, at 95-112.

28. 187 So. 2d 594 (Fla. 1966).

29. *Id.* at 596.

30. *Id.* at 595.

JUDICIAL ASSESSMENT STANDARDS

In addition to constitutional, statutory, and administrative restraints on the assessing power of the tax assessor, recent case law has also decreased the discretionary authority of the office. *Tyson v. Lanier*³¹ limited the discretion of the tax assessor by classifying and valuing agricultural land in accordance with set legislative standards. In *Walter v. Schuler*³² the supreme court determined that the "just value" factors of section 193.021 were to be solved in terms of X, which in turn was defined as "full cash value." To use Justice Thomas' words:³³

We have said much about "X", the unknown quantity, and nothing about how to set it within the bounds prescribed by the legislature in Sec. 193.021. The more we ponder the problem the more difficult the solution appears. But settle it we must and we have concluded after earnest study that the sensible way to do so is to adopt the chancellor's idea that "fair market value" and "just valuation" should be declared "legally synonymous" and that such is the best way to arrive at the definition of "X." The former term is a familiar one and, it in turn, may be established by the classic formula that it is the amount a "purchaser willing but not obligated to buy, would pay to one willing but not obliged to sell. . . ."

If assessors will apply that test and in doing so observe the seven guideposts in Sec. 193.021, justness [*sic*] should be secured to the taxpayer and the tangle that has developed should be unraveled.

A further development in the same trend occurred in *Lanier v. Overstreet*.³⁴ After upholding the contention that the uniformity requirement of article IX, section 1, applies only to the *rate* of taxation, the majority tackled the problem of the legislature's power to classify property to secure just *valuation*. The court stated:³⁵

If a legislative directive designed to secure a just valuation of a particular class of taxable property is reasonable, not arbitrary or unjustly discriminatory, and applicable alike to all similarly situated, it should be upheld by the courts.

The court did not stop there. It turned its attention to section 193.021, the "just value" statute and singled out subsection (2) ("The highest and best use to which the property can be expected to be put in the immediate future; and the present use of the property . . ."):³⁶

[T]here is nothing in the legislative regulations respecting the "just valuation" of taxable property to authorize the assessment of property in accordance with a *potential* use which *might* be made of the property at some future time. In [Florida] the ad valorem tax on real and personal property accrues as of January 1 of the tax year.

31. 156 So. 2d 833 (Fla. 1963).

33. *Id.* at 85-86.

35. *Id.* at 523.

36. *Id.*

32. 176 So. 2d 81 (Fla. 1965).

34. 175 So. 2d 521 (Fla. 1965).

All of the legislative directives in this field appear to have been designed to make sure that, in doubtful areas, the assessment will be made on the basis of the actual use to which the property is to be put during the particular tax year. Thus, the discretion of the county tax assessor in determining the "potential" and "highest and best use" of the property is again curtailed. The use must be *expected*, not merely *potential*, and it must be expected immediately.

A strong minority opinion by Justice Drew in *Overstreet* pointed out that a dual system of assessment with use of different assessment factors could only lead to the destruction of the ad valorem tax system.³⁷

To recognize the power of the Legislature to grant exemption from taxation to certain classes — and that's what it amounts to — will be to destroy the ad valorem taxing system in this State and to place the burden of government on those who are not fortunate enough to be brought within a favored class. The Legislature has no power, under our constitution, to exempt any property from taxation. If this is to be changed, it should be done by amendment to the Constitution and not by edict of this Court.

This articulate dissent, in which Justice Drew was joined by Justices Thomas and O'Connell, contains more than a kernel of truth and cannot be easily swept aside. It illustrates the basic struggle that has resulted from legislative attempts to secure preferential assessment for favored groups, no matter how worthy the purposes.

In *Markham v. Blount*,³⁸ the Florida Supreme Court attempted to blaze a trail for the tax assessor through the conflicting directives of sections 193.11 (3), 193.021, and 193.11 (1) of the Florida Statutes. Section 193.11 (1) states that the county tax assessor shall assess all property on the basis provided in section 193.021, commonly called the "just value" statute. This section substitutes the seven value criteria listed previously for the former standard of full cash value or true value. Yet section 193.11 (3) states: "[T]his subsection shall not be construed, interpreted, or applied so as to permit lands being used for agricultural purposes to be assessed other than as agricultural lands and upon an acreage basis." Surely the tax assessor had need for guidance in bringing these conflicting directives before the court. The supreme court by split decision resolved the difficulty by harmonizing the statutes without resolving the basic issue. The majority used the philosophy of infiltration and evasion: "The courts, in construing a statute, must, if possible, avoid such construction as will place a particular statute in conflict with other apparently effective statutes covering the same general field."³⁹ Consequently, all three sections were found constitutional and are valid exercises of the legislative power. The court continued:⁴⁰

37. *Id.* at 526 (dissenting opinion).

38. 175 So. 2d 526 (Fla. 1965).

39. *Id.* at 528.

40. *Id.*

"In reading the factors of 'just valuation' prescribed by Section 193.021 for agricultural property, the agricultural factor must be taken into account as the only factor in each instance, concerning agricultural land. For example, the factor described in Subsection 1 of 193.021 of 'the present cash value of the property' as to agricultural property would be read and interpreted as if it stated 'the present "agricultural" cash value of the property,' and so on through the remaining six criteria or factors of value described in said Section 193.021, Subsections (1) through (7), both inclusive."

Although a synthesis was effected, such reasoning did not convince Justices Drew or Thomas, who stood on their dissenting opinions in *Tyson* and *Overstreet*.

Thus it appears that under the present statutes, the county tax assessor no longer occupies his former autonomous role. Technically he has not been shorn of his constitutional powers, but in actual practice legislative enactments and court interpretation of these enactments have diminished his personal role in the assessment process. The elected county tax assessor is now caught in a dilemma that cannot easily be solved. How can he perform his duties under dual assessment procedures set up by the courts and the legislature and yet continue to assess in such a manner as will do equity to the property holders in his political constituency? The answer is not found by cutting the "Gordian knot." A solution stemming from further research hopefully will enable the ad valorem tax to continue as a prime source of revenue without engendering basic inequities that might destroy the entire system.

ASSESSMENT IN OTHER JURISDICTIONS

Today the ad valorem tax in Florida is beset with problems. This primarily American creation must be adapted to a changing Florida if it is to survive and serve its purpose as a prime source of revenue for local government. Actually, the assessment of this tax is on the property itself rather than on the individual who owns the property. There is no direct relationship between the ability to pay the tax and the object upon which it is levied. The farmer needs land for the earning of his livelihood. But often he is taxed as the speculator who holds dormant land to profit from its increase in value due to economic or social changes to which he does not contribute. The growing "urban sprawl" has heightened this rivalry for the possession of desirable land. The agrarian American society, where land was economic wealth and property was "legal rights," has given way to newer social concepts, the full significance of which are yet unknown.⁴¹

As early as the 1900's, signs indicated that taxation under the "ad valorem" system had basic flaws. Henry George, in his book *Progress and Poverty*, paved the way for a barrage of criticism on the concept of the land tax. With his proposal of a "single tax" on the unearned increment of land, he foreshadowed a group of social reformers who cast doubt on the continued eco-

41. Dall, *Law and Resources Problems*, 53 A.B.A.J. 434 (1967).

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conomic and social acceptability of ad valorem taxation in its present form. However, since common law concepts of property rights in land were so firmly entrenched in the United States, little dent was made by the legal application of this doctrine in America. His doctrines were not without influence elsewhere, for as shown later they were embodied in English thought and action.

In the United States the ad valorem tax structure has produced at least four basic offspring that to some extent have attempted to harmonize the traditional ad valorem concepts with newer evolutionary motivations. All have arisen basically from agrarian-oriented sources — from an agrarian discontent that has arisen mainly from urban expansion. As population has increased, there has been a corresponding demand for increased governmental service; this in turn has generated a need for more revenue, and naturally the ad valorem tax has been the prime source of this local revenue. Although “the urban sprawl” has increased the potential value of the farmer’s land, the farmer’s income has not risen correspondingly. According to estimates of the United States Department of Agriculture, farms in Standard Metropolitan Statistical Areas (SMSA) were taxed at more than 2½ times the rate imposed on farms in counties adjacent to SMSA’s and at more than five times the rate levied on those in rural counties some distance away from metropolitan centers.⁴²

Preferential Assessment

The first offspring generated by agrarian discontent is a simple preferential assessment approach. This system is immediately open to criticism because it patently gives a clear tax advantage to the owner of farmland and requires very little from him in return. The charge is made that it aids land speculators as well as the bona fide farmer. This is one of the methods that has been followed in Florida.⁴³

The Maryland law on preferential assessment follows a similar approach. In 1960, after much controversy, the Maryland Constitution was amended to reflect the principle that land used in bona fide farming operations should be assessed on the basis of farm use rather than by other criteria.⁴⁴ To further this end, the Maryland General Assembly authorized the State Department of Assessments to establish standards for determining who would qualify as bona fide farmers under the assessment act. The chief criticism of this approach is that instead of preserving farming in rural-urban marginal areas, it primarily subsidizes farmers who are holding their lands until they can be converted into suburban uses.

42. Spears, *Taxes on Farmland in Metropolitan Areas*, 23 AGRICULTURAL FINANCE REV. 22 (1962).

43. See generally articles cited note 4 *supra*.

44. Md. CONST. Decl. of Rights art. 15. For the preceding constitutional struggle, see *State Tax Comm'n v. Wakefield*, 222 Md. 543, 161 A.2d 676 (1960). See also MD. ANN. CODE art. 81, §19 (b) (Supp. 1965).

Green Belting

The second offspring ties agricultural "use-value" assessments to the zoning process.⁴⁵ Agricultural lands are zoned as such by the local authorities and then assessed solely according to their agricultural value. This is commonly called "Green Belting" and implies vigorous and forceful planning. As yet this approach has not proved popular in this country. A permissive statute of this nature was passed by the Florida Legislature in 1959,⁴⁶ but the author knows of only two counties in Florida that have availed themselves of its provisions.⁴⁷ The traditional individualism of the farmer as well as the reluctance of county officials to inaugurate such wholesale zoning procedures has thwarted its implementation. Since it prevents individuals from having their cake and eating it too, it has not had easy sailing. Yet the plan does have merit. Long range planning objectives can be achieved without severe hardship to the individual farmer. Moreover, a recapture provision can be inserted into the zoning act to allow levy of an additional tax on any parcel of agricultural land that is sold for purposes other than continued farming. This type of act can also promote economy and efficiency in local government, for the appropriate authorities can plan public services and public facilities far in advance of present need. The interested parties have not yet been willing to pay the price.

Deferred Tax Method

The third offspring is loosely termed the "deferred tax" approach. Here the local tax assessor uses a dual system of determining land values. For all farm land he asserts an agricultural value for preparation of the annual county tax roll. He also determines a full valuation of the same property without regard to its agricultural use. This value is also recorded. When property is passed or sold for other than agricultural use, a rollback collects any differences between the lower preferential assessment and the higher general assessment.

After many years of heated struggle, the farmers of New Jersey secured passage in 1963 of what is popularly known as the "Farm Land Assessment Amendment" to the New Jersey Constitution.⁴⁸ This amendment appeased the nonfarm partisans by containing a strong tax deferral provision. The amendment provides that land that is actively devoted to agricultural use for at least two consecutive years and is over five acres in area shall be assessed on its agricultural use valuation. It also provides for placement of a lien on land assessed under the provisions of the amendment by which a maximum of two years' back taxes can be collected upon termination of the agricultural or horticultural use. The amount of the additional tax equals the difference,

45. See Appendix I *infra*.

46. Fla. Laws 1959, ch. 226, §1, at 865.

47. Marion and Clay Counties.

48. N.J. CONST. art. VIII, §1, para. 1. See also N.J. STAT. ANN. §§54:4-23.1 to .23 (Supp. 1966).

if any, between the taxes paid or payable on the basis of the agricultural assessment, and the taxes that would have been paid or were payable had the land been valued and assessed as otherwise provided in the New Jersey Constitution, in each of the tax years immediately preceding, but not in excess of two years.⁴⁹ In other words, a rollback can be levied for the year in which the use changes and for the two immediately preceding years. Oregon has a similar law with a five-year rollback provision.⁵⁰ These rollback provisions secure the bona fide farmer a reasonable land assessment based on use and discourage speculators on the urban-rural fringes. It is too early to see whether the law's objectives will be achieved.

Development Easements

The fourth offspring is relatively new and is now followed in only a limited fashion. Under this system a local governmental agency obtains a "development easement" on the land either through purchase, donation, or lease.

In 1959 California enacted a law permitting the acquisition of land for conservation easements:⁵¹

It is the intent of the Legislature in enacting this chapter to provide a means whereby any county or city may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment.

The program made little progress because the act provided no compensation for the landowner, and the local units had no money to buy such easements. By itself it did nothing to protect valuable farmlands and agricultural resources.

By 1965 California had become alarmed by the haphazard development of its metropolitan areas and discouraged by fruitless attempts at green belting and zoning. It decided to inaugurate a program that could accommodate the tax interests of the agriculturalist and yet prevent unbridled speculation in rural areas on the fringe of metropolitan development. The California Land Conservation Act of 1965 was the result.⁵² Its prime purpose was to lessen the economic and social consequences of premature, and many times disoriented, land conversion. It attempts to combine zoning with a voluntary contract between the landowner and the local governmental unit. This contract, which runs for a ten-year period, limits prime agricultural land to solely agricultural use. During the ten-year period the farmer surrenders his nonagricultural development rights to the local government. The local unit, usually

49. *Id.*

50. ORE. REV. STAT. §§308.370, .390, .395 (1965).

51. Cal. Stat. 1959, ch. 1658, §1.

52. Cal. Stat. 1965, ch. 1443, §1, at 3377. For a full discussion see Snyder, *A New Program for Agricultural Land Use Stabilization: The California Land Conservation Act of 1965*, 42 LAND ECONOMICS 29 (1966).

the county, acquires these rights in the nature of a trusteeship. These contracts are automatically renewed unless one of the parties gives notice that it wishes to terminate. The contract tends to stabilize both agricultural land values and assessment since it is basic evidence in itself that agriculture is the highest and best use of the land.

To be eligible for a contract, the owner must possess land with certain qualifications: first, the land must produce an agricultural commodity for commercial purposes; second, it must be located within an area reserved for agricultural purposes; and third, it must be prime agricultural land according to soil conservation, land-use capability criteria. The owner of the land receives no compensation at the outset of the contract. If, however, the assessment is raised on land under contract, the farmer receives a payment of five cents for each one dollar increase in assessed value. Since this five cents is paid by the county itself, there is very little likelihood of spectacular increases in assessments on land so contracted. Furthermore, a 1966 amendment to the California Constitution requires assessors to determine a use-value for land where restricted use is guaranteed by participation in statutory programs.⁵³ In this manner, assessment values are stabilized and orderly development of fringe areas can be anticipated and planned for. If a farmer before the end of a ten-year period gives notice that he desires to terminate his contract, developers and speculators know the land is ready for their activities. Likewise the county tax assessor knows that the time has arrived when he can reassess the involved land for a nonagricultural use. This program's design is consistent with the legal symbols connoted by the free enterprise system. Its effectiveness is yet to be proved.

The English Experiment

No discussion of land valuation and the assessment process would be complete without a reference to what is happening in another common law country — England. Here the ideas of Henry George fell on fertile ground. In the 1900's, England, aroused by the Fabian Socialists, began to develop a social consciousness that soon gave rise to new legislation governing the "unearned increment" on raw land. By 1947 a unique British policy of land development had become apparent.⁵⁴ Here was an attempt to combine the traditional land market with new and powerful governmental machinery for controlling land use.⁵⁵ According to the new scheme, unfettered private development too often resulted in private gain at the expense of the public welfare. Since market value reflects the planning permission given to the land, it is only natural that the public, rather than the individual who happens to own the land, should reap the benefit of such planning. Any such enrichment or "betterment" resulting from community action should properly pass to the communal benefit, reasoned the British plan.

53. CAL. CONST. art. XXVIII, §2.

54. Hall, *Land Value's Problem and Its Solution*, in LAND VALUES — A COLLOQUIUM (1965) (under auspices of Action Society Trust, March 13-14, 1965).

55. Hall, *supra* note 54.

The Town and Planning Act of 1947 went a step further.⁵⁶ Development rights were permanently nationalized. Compensation for the resulting loss of "betterment rights" is now paid out of a fund representing the total of land values as of a certain date. Subsequent increases in land value that arise from community planning or state development belong to the community. This position represents the opposite of that existing in the United States, where any increase in land value accrues to the individual who possesses the legal title to the property involved.

CONCLUSION

An unsuccessful attempt was made during the 1967 legislative session to ameliorate the practical problem of individual assessment disputes. The proposed bill established regional boards of equalization to hear and resolve taxpayers' assessment protests in an impartial and professional manner.⁵⁷ By using qualified experts and abolishing each county commission's power as a board of equalization, the plan's sponsors hoped to establish acceptable regional standards that would accommodate actualities in land assessment with basic legal symbols inherent in the field of ad valorem taxation. As regional standards evolved, the ad valorem tax problems would tend to erode naturally.

It would be a figment of one's imagination to assume that the ad valorem tax problem can truly be resolved at this time. Part of the difficulty arises from the lack of communication among the various participants in the controversy. The tax assessor follows the accepted practices of appraisal and has his fixed notions of value. The farmer uses the land to make a livelihood and has other notions of value. The lawyer who is called upon to express value uses another traditional set of standards and instrumentalities. The judge called upon to arbitrate this complexity of parallel division must make expedient decisions based upon the prevailing concepts of law. Interposed among these is the layman attempting to gain a glimmer of the truth from the expertise that hovers about him. Before achieving a lasting solution to the ad valorem tax problem, the participants must establish a basic communication and understanding of the dilemma and its possible solutions. Their creative vision must no longer be obstructed by the verbal mirages of the past.

56. This act is discussed at length in Parker, *The History of Compensation and Betterment Since 1900*, in *LAND VALUES—A COLLOQUIUM* (1965) (under auspices of Action Society Trust, March 13-14, 1965).

57. See Appendix II *infra* for relevant portions of this proposal.

APPENDIX I

Florida Statutes, section 193.201, as amended by FLA. H.B. 350 (1967):

193.201 *County Agricultural Zoning Boards; Assessment of Lands Zoned Agricultural.*—

(1) There shall be in each county an agricultural zoning board, which shall be comprised of the board of county commissioners, county agricultural agent and the tax assessor.

(2) The county agricultural zoning board, in order to promote and assist a more orderly growth and expansion of urban and metropolitan areas, shall on an annual basis zone all lands within the county as either agricultural or nongricultural.

(3) No lands shall be zoned as agricultural lands unless a return is made as required by law which shall state that said lands on January 1st of that year were used primarily for agricultural purposes and the board, before so zoning said lands, may require the taxpayer or his representative to furnish the board such information as may reasonably be required to establish that said lands were actually used for a bona fide agricultural purpose. All lands which are used primarily for bona fide agricultural purposes and are not contiguous to urban or metropolitan development shall be zoned agricultural. The maintenance of a dwelling on part of the lands used for agricultural purposes shall not affect the right to have such lands zoned as agricultural lands.

(4) When property which is zoned as agricultural is diverted to another use or ceases to be used for agricultural purposes, the board shall reclassify such property as non-agricultural.

(a) The board may also reclassify lands zoned as agricultural as nonagricultural when there is contiguous urban or metropolitan development on two or more sides and when the board finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.

(5) For the purpose of this section, "agricultural lands" shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee and all forms of farm products and farm production.

(6) The county tax assessor in assessing such lands so zoned and primarily used for agricultural purposes as described and listed shall consider no factors other than those relative to such use. The tax assessor in assessing land within this class shall take into consideration the following use factors only: the present depreciated value of improvements thereon, quantity and size of the property, the condition of said property, the present value of said property as agricultural land, based upon income produced by said property, the character of the area or place in which said property is located and such other agricultural factors as may from time to time become applicable.

APPENDIX II

Proposed amendment to Florida Statutes, chapter 193:

193.251 Regional board of equalization. —

(1) CREATION, MEMBERSHIP, APPOINTMENT, TERMS. — There are hereby created five (5) regional boards of equalization, such boards to be nominated by the state budget commission and appointed by the Governor.

(a) Membership on regional boards of equalization shall consist of:

1. A member of The Florida Bar who has practiced law in Florida for five (5) or more years.
2. A person qualified in the profession of appraising.
3. A layman.

(b) Each member of the regional boards of equalization shall be appointed for a term of three (3) years;

. . . .

(2) **AUTHORITY OF BOARD.**—The regional boards of equalization shall have authority to hear complaints by a property owner as to the assessed valuation of the property in question and the classification of said property as determined by the county tax assessor. The board shall have the authority to raise or lower any assessment placed on the county ad valorem tax rolls by the tax assessor and to classify or reclassify properties where complaints within the scope of this section have been heard.

. . . .

(4) **HEARINGS.**—

(a) The regional boards of equalization shall be required to meet not less than three (3) months each year beginning on August 1 and shall transcribe their proceedings.

(b) The regional boards shall conduct hearings in the county seat in each county within the district at a designated time to be set by the board. Notice of the hearing shall be published in a daily newspaper having a general circulation in the county of not less than four thousand five hundred (4,500), once a week for three (3) consecutive weeks.

(5) **PROCEDURE.**—The following procedure shall be followed in contesting an assessment valuation on the county ad valorem tax roll or a classification of property as determined by the county tax assessor and shall conform to the administrative procedures act contained in chapter 120, Florida Statutes:

(a) The property owner, upon receiving the assessment valuation or property classification as determined by the county tax assessor, shall file a written notice of appeal to the regional board of equalization at the headquarters of the board of that region. Notice of appeal shall be filed on forms prescribed by the state comptroller within sixty (60) days after the assessment or classification has been mailed to the property owner by the tax assessor. A copy of the notice of appeal shall be filed with the tax assessor.

(b) The regional board of equalization shall take testimony on each complaint as to assessed valuation or property classification. The tax assessor shall be required to appear before the regional board of equalization and present to the board the basis on which he arrived at the assessed valuation or property classification on the property referred to in the complaint. The regional board of equalization shall have the authority to compel attendance of witnesses and production of evidence.

(c) The regional board of equalization shall certify their findings to the tax assessor as to the complaints registered before the board within thirty (30) days after reaching a final determination.

(d) The tax assessor shall, upon receiving certification from the regional board of equalization, adjust the assessed valuation or classification as determined by the board.

. . . .

Section 3. There is appropriated annually out of the general revenue fund sufficient funds to finance this method of equalization program.

Section 4. This act shall take effect January 1, 1967.