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State Equalization of Local Property Tax Assessments at Fifty Percent

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STATE EQUALIZATION OF LOCAL PROPERTY TAX ASSESSMENTS AT FIFTY PERCENT

The Snohomish County assessor revalued the real property in two school districts of the county. Once he had determined the true and fair value of each parcel and improvement, he computed the assessed value by utilization of a 25 percent assessment ratio.[1] The property not included in the revaluation program was assessed at 20 percent of true and fair value.[2]

The Department of Revenue[3] ordered[4] the County Board of Equalization to reconvene for the purpose of equalizing assessments within the county. The order required the Board to apply uniformly a 20 percent assessment ratio or to propose a reasonable alternative, subject to the approval of the Department.

Petitioners, Snohomish County and its assessor, sought a Writ of Prohibition[5] to restrain permanently enforcement of the order, contending that the Department had no statutory or constitutional power to issue equalization orders. In an original proceeding the court granted the writ, but on grounds other than those argued by the petitioners. *Held*: The Department of Revenue does not possess legal authority to order use of a uniform assessment ratio of other

[1] The county assessor computes the property tax in three steps. First, he determines the "true and fair value" of property by periodic, personal inspection of property in the county. Second, he determines the assessment ratio (a percentage), which is multiplied by true value to determine the assessed value of property. The constitution provides for an assessment ratio of 50%, but most assessors currently employ an assessment ratio of about 25%. The assessed value of property (true value times the assessment ratio) is the property tax base. Third, he determines the millage rate (10 mills = 1%). The constitution sets a ceiling of 40 mills which can be levied for all local and state purposes except by special bond election. In implementing the 40 mill limit, the legislature sets maximum millage rates for the various local and state taxing districts.

The tax is computed by use of the following formula: true value multiplied by the assessment ratio equals assessed value; assessed value multiplied by the millage rate equals the tax due. *E.g.*, if the assessor values property at $10,000, applies a 25% assessment ratio to determine a tax base of $2,500 and applies a 40 mill tax rate, the tax is $100. If the assessment ratio were increased to 50% and a 20 mill tax rate were applied, the tax would still be $100.

[2] By adjustment of the assessment ratio, the assessor can substantially alter the property tax levy of individual taxpayers. In the principal case, the taxpayers in the two schooi districts involved in the revaluation program were subject to a 25% higher tax burden as a result of the assessor's use of a 5% higher assessment ratio. The contested order of the Department of Revenue was designed to prevent this lack of uniformity in tax burden.

[3] Formerly known as the Washington State Tax Commission. The functions of the renamed agency are essentially the same. *See* ch. 26, § 2, [1967] Wash. Laws Ex. Sess. 792.

[4] The Department acted pursuant to WASH. REV. CODE § 84.08.060 (1965).

[5] WASH. APP. R. SUP. CT. 58.

than 50 percent of true and fair value. *State ex rel. Barlow v. Kinnear*, 70 Wash. Dec. 2d 460, 423 P.2d 937 (1967).

Legislative control of local property tax administration in Washington has been severely limited by a restrictive interpretation of the "home-rule" provision[6] of the state constitution. This provision forbids legislative imposition of taxes on local property for local purposes, while permitting delegation of assessment and collection functions to local authorities. Traditionally the court has considered uniform valuation of property to be a function of the assessment process. Where the valuation is to be utilized in taxation for local purposes,[7] its determination is exclusively delegated to local authorities—county assessors and county boards of equalization. Legislation granting power to the Department of Revenue to accomplish uniform assessment and valuation at the local level has been held an interference with the local assessment process, and thus an unconstitutional taxation of local property for local purposes.[8]

Under the traditional formulation, the legislature has been forced to rely on the good faith of local authorities for implementation of constitutional standards. County assessors have ignored amendment XVII,[9] which calls for assessment at 50 percent of true and fair value. Most assessors currently use a 25 percent assessment ratio,[10] thus causing an erosion of the property tax base.

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[6] WASH. CONST. art. XI, § 12:

> The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

[7] *See* Harsch and Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 WASH. L. REV. 225, 265-68 (1958).

[8] State *ex rel.* State Tax Comm'n v. Redd, 166 Wash. 132, 6 P.2d 619 (1932).

[9] WASH. CONST. art. VII, § 2 (amend. XVII):

> [T]he aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing and hereafter created, shall not in any year exceed forty mills on the dollar of assessed valuation, which assessed valuation shall be fifty per centum of the true and fair value of such property in money....

This provision has two functions: (1) it sets the maximum ceiling on revenue available from property tax in the state, without a vote of the people in the taxing district concerned; (2) it furthers the goal of uniformity by establishing a state-wide assessment ratio of 50%.

WASH. REV. CODE § 84.40.030 (1965), implementing amendment XVII, provides:

> All property shall be assessed fifty percent of its true and fair value in money. In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation....

[10] The average assessment ratio was 20.8% in 1966 as compared with 18.8% in 1965. WASH. STATE RESEARCH COUNCIL MONTHLY REP., at 5 (June, 1967).

County boards of equalization[11] are the primary agencies for assuring equality and uniformity guaranteed by amendment XIV[12] of the state constitution. While the Department of Revenue has been permitted narrow appellate[13] and regulatory[14] control of the county boards, these sanctions have proved inadequate to prevent inequitable[15] assessment practices at the local level.

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[11] WASH. REV. CODE § 84.48.010 (1965).

In State *ex rel.* State Tax Comm'n v. Redd, 166 Wash. 132, 6 P.2d 619 (1932), the court relied on the home-rule provision to hold a statute giving the Department of Revenue power to revalue and reassess property for local tax purposes unconstitutional. While the court recognized that the law had been passed for the purpose of obtaining uniformity and equality in tax burdens, it concluded that county boards of equalization were the proper agencies to accomplish intra-county uniformity.

[12] WASH. CONST. art. VII, § 1 (amend. XIV):

> All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.

[13] State *ex rel.* King County v. State Tax Comm'n, 174 Wash. 668, 26 P.2d 80 (1933), modified the broad rationale employed by the court in the *Redd* decision, *supra* note 11. While the Department of Revenue could not act independently of the county assessor and county board of equalization in reassessing and revaluing property, the Department could review the proceedings of county boards of equalization. Thus the Department, in an appellate capacity, could act to safeguard intra-county uniformity. While helpful in protecting individual taxpayers from grossly discriminatory assessments, this concession of Department power was clearly inadequate to assure uniformity on a broad scale.

Ch. 26, § 30. [1967] WASH. Laws Ex. Sess. 792, has established a board of tax appeals as a subdivision of the Department of Revenue; this board will handle appeals from county board of equalization decisions.

[14] Schneidmiller & Faires, Inc. v. Farr, 56 Wn. 2d 891, 896, 355 P.2d 824, 827 (1960):

> [T]he mere regulation by the tax commission of local boards of equalization in ministerial matters, which does not reduce the board to a rubber stamp by dictating the detailed results of the board's action, does not violate the spirit of the "home rule" provision of the constitution and does not constitute taxation of local property for local purposes.

Schneidmiller expressly overruled State *ex rel.* Yakima Amusement v. Yakima County, 192 Wash. 179, 73 P.2d 759 (1937), which had held there was no distinction between the Department reassessing local property and the Department ordering a county board of equalization to reconvene in order to reassess local property.

[15] *See* U.S. BUREAU OF THE CENSUS OF GOVERNMENTS: 1962, Vol. II, *Taxable Property Values* 98-99, 136-37 (1963). The report determined a median assessment ratio for property sold in selected areas of Washington during a six month period in 1961. The report disclosed that although the median area ratio was 16.3%, the coefficient of intra-area dispersion was 25.0%. Thus, on the average, the assessed valuation for each individual piece of property differed by 25% from the median assessed valuation. The coefficients of dispersion ranged from 12.5% in Benton County to 43.1% in Grays Harbor County. It is thus common practice for the tax base of taxpayer A to be $.75 while the tax base of taxpayer B is $1.25, even though the same assessor has assessed and valued the property of A and B.

See also SUBCOMM. ON REVENUE AND TAXATION OF THE WASHINGTON STATE LEGISLATIVE COUNCIL, 1953-1955 BIENNIUM, A STUDY OF REAL PROPERTY ASSESSMENTS IN THE STATE OF WASHINGTON 11 (1954). The report utilizes a sales sample comparable to that employed by the Bureau of the Census, *supra*, to determine average assessment ratios by property types. The results demonstrate that county assessors discriminate in assessing various types of property. While the average assessment ratio for all property is 19.6%, single family dwellings are assessed at 18.9% and warehouses are assessed at 37.7%. Rural property is assessed at 21.6%, retail stores at

In the principal case the court purported to define the powers and duties of the Department of Revenue under statute and constitution. The court reasoned that the legislature has delegated to the Department the duty to supervise and control county assessors and county boards of equalization "to the end that equalization and uniformity is secured throughout the state." In fulfillment of this end, the Department has the power to issue assessment equalization orders. However, this power must be exercised consistently with the guidelines established by statute and constitution, including the *mandatory* provisions for assessment at 50 percent of true and fair value.[16] Experience had shown that assessors would not follow the mandate of 50

27.1%, duplex dwellings at 21.1%, multiple family dwellings at 19.3%, motels at 19.1%, and industrial improvements at 32.6%.

[16] For the text of the 50% provisions, see note 9 *supra*.

Judge Ott dissented on this point. He argued that the principal case was not the proper medium in which to decide whether 50% assessment is mandatory or permissive. Since neither respondent nor petitioner raised the issue, it was not properly before the court. Further, the scope of the controversy precluded the court from harmonizing contradictory legislation and inconsistent court decisions. The opinion concluded that the Department has constitutional authority to require equalization of assessment ratios within a county, and that the majority of the court, by interjecting an uncontested issue, had prevented needed state supervision of local assessment practices.

The opinion is correct in its suggestion that past legislation and court decisions had treated the provisions as permissive. The legislative creation of both a county board of equalization and a state board of equalization presupposes that county assessors are utilizing an assessment ratio of less than 50%, since one of the duties of the state board is to convert local assessed value by use of an actual ratio of 50% before the state property tax is levied.

The court had never directly considered whether amendment XVII requires 50% assessment. However, *State v. Redd, supra* note 11, implicitly held the division of power between the state boards of equalization constitutional, and in several cases, *e.g.*, Savage v. Pierce County, 69 Wash. 623, 123 P. 1088 (1912), the court produced equality between taxpayers by lowering excessive assessments to a common level below the assessment ratio provided in statute, rather than by raising the assessments of all taxpayers to the statutory ratio. Judge Ott concluded that these judicial actions were effective holdings that amendment XVII was permissive rather than mandatory.

The majority correctly rejected this position. The court had not previously construed the 50% provisions due to the restrictive view of state power taken in *State v. Redd*. Commentators were in agreement that, under *Redd*, state authorities were powerless to compel assessment at 50% of fair value. *See* Harsch, *The Washington Tax System—How It Grew*, 39 WASH. L. REV. 944, 955 (1965):

> As a consequence of this decision [*State v. Redd*], and others in the same vein which followed, it became, and continues to be, impossible for the state or its officials to require the county assessors to strictly adhere to the statutory, and now the constitutional, mandate that taxable property be assessed at fifty percent of its value.

See also Harsch and Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 WASH. L. REV. 225, 270-74 (1958); Eldridge, *The Determination of Property Taxes in Washington*, 16 WASH. L. REV. 13 (1941).

By distinguishing *Redd* in the principal case, the court for the first time made it possible for the legislature and the Department of Revenue to enforce the constitutional provisions. Thus the issue of the proper construction of the provisions was properly before the court.

percent assessment.[17] The court was not willing to condone continued disregard by state authorities of the mandate.

The failure of the court to take the additional step of compelling assessment at 50 percent ignored the active role which state courts have taken recently to enforce full value provisions.[18] The reluctance of the court was apparently grounded in the belief that implementation of 50 percent assessment was a legislative, rather than a judicial, concern. By its refusal to tolerate evasion of the statutory and constitutional language, the court probably intended to force legislative

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Judge Hamilton also dissented from the majority's treatment of the 50% provisions. While in agreement with the premises of the majority, the opinion suggested that the entire order of the Department should not have been voided. While the Department could not order utilization of a 20% assessment ratio, the court should have required the county board of equalization to present to the Department a plan consistent with the constitutional limitations.

This result could have been accomplished by refusing to enforce § 1 of the order calling for 20% uniform assessment, but requiring the assessor to comply with § 2, which called for the county board of equalization "to present...an alternative plan...for achieving the maximum uniformity in the level of assessment throughout the whole of Snohomish County...."

The reasons for the majority's failure to take this step are discussed in text at p. 860 *infra*.

[17] This provision has been universally disregarded by Washington county assessors. *See* note 10 *supra*. Various explanations for the practice of underassessment of property have been offered: (1) assessors tend to feel they have a wider margin for error; (2) assessment at less than the statutory level conceals inequality from the taxpayer and makes challenges difficult; (3) a county which succeeds in lowering the assessed value of property may avoid a tax burden compared with other counties which assess at the statutory level, and may receive greater assistance from the state for schools and other local needs. *See generally*, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX (1963); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374 (1962).

Legislation in recent years has eliminated many of the benefits of underassessment by revising assessed valuation before that basis is used for state property tax assessments, and by maintaining closer control of state aid to local districts. Nevertheless, the practice continues, grounded in inertia and in the fear that an increase in the assessment ratio will result in a sudden increase in property tax levies. The practice makes it difficult for a taxpayer to recognize and appeal an inequitable assessment.

[18] In Switz v. Township of Middletown, 23 N.J. 580, 130 A.2d 15 (1957), the court ordered county assessors to equalize assessments and retained jurisdiction to insure that the decision was carried out. Contrary to the principal case, the court held that assessment on a uniform basis, even though below the statutory standard, would be sufficient. Two more recent state court cases have demanded assessor compliance with the statutory standard. Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965); Walter v. Schuler, 176 So. 2d 81 (Fla. 1965). These decisions are consistent with Township of Hillsborough v. Cromwell, 326 U.S. 620 (1946). Under that decision a taxpayer is entitled to have his assessment reduced to the standard level utilized in the taxing district. But if the state contends that that assessment is beneath the statutory level, though above the actually utilized level, the state cannot force the taxpayer to seek a political remedy to have all assessments raised to the statutory level. Rather, the state itself must remove the discrimination. For an excellent discussion of recent developments in state court action see Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374 (1962). *See also* Conlon, *Impact of Recent Judicial Decisions* in TAX INSTITUTE OF AMERICA, THE PROPERTY TAX: PROBLEMS AND POTENTIALS 43-56 (1967).

reconsideration of the property tax structure, while assuring that future alteration of the system would be accomplished in compliance with the provisions of the constitution.

The principal case calls for legislative action by making possible (1) extended state control of local property tax administration and (2) substantial increases in revenue obtained from the property tax. The legislature has not reacted as the court anticipated. Fearful of a sudden increase in property taxes,[19] the legislature has ignored the potential for solution of inequities existing in the present property tax structure. The purpose of this note is to suggest the scope of reform made possible by the principal case and to demonstrate that reform can be accomplished without an increase in property taxation.[20]

In reaching its decision the court did not explicitly reject the traditional formulation[21] of the home-rule provision.[22] The opinion failed to mention the provision. Yet the issuance of assessment equalization orders by the Department cannot be reconciled with the traditional formulation.

In *Schneidmiller and Faires, Inc. v. Farr*[23] the court held that while the Department had the power to order reconsideration of county board of equalization activities, it could not dictate board results. Yet in the principal case the court held that the Department could order boards to equalize at 50 percent.

An equalization order is directed toward the goal of obtaining intra-county uniformity by readjustment of assessed valuations. According to *State ex rel. State Tax Comm'n v. Redd*,[24] pursuit of this goal is exclusively the prerogative of local authorities, with the Department limited to handling individual appeals from county board of equalization proceedings.

The court distinguished *Redd* on the ground that an order to equalize assessment ratios would not constitute an exertion of "original"[25]

[19] *See* note 37 *infra*.

[20] One of the effects of requiring assessment at 50% would be to increase revenue available from the property tax without exceeding the constitutional ceiling. *See generally* Harsch and Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 WASH. L. REV. 225 (1958). However, the legislature has demonstrated that it opposes the securing of additional revenue from the property tax. Recent legislation has frozen tax revenue at a level substantially less than the constitutional limit. *See* notes 34 and 37 *infra* and text accompanying.

[21] *See* notes 6-15 *supra* and text accompanying.

[22] Note 6 *supra*.

[23] 56 Wn. 2d 891, 355 P.2d 824 (1960). *See* note 14 *supra*.

[24] 166 Wash. 132, 6 P.2d 619 (1932). *See* note 11 *supra*.

[25] *I.e.*, that the Department of Revenue could not, independently of the county assessor and county board of equalization, reassess and revalue property in order to prevent an inequitable tax assessment. By limiting *Redd* to its narrow factual

assessment powers. However, the rationale of *Redd* draws no distinction between reassessment by the Department, and an order of the Department dictating reassessment or revaluation by local authorities. Both are inconsistent with home-rule.

It might be argued that the court has merely carved out a narrow exception to the *Redd* rationale. There is no explicit dismissal of this position in the opinion. However, the court tests the validity of the Department order by questioning whether it furthers the end of uniformity and equality. An inference is that other steps taken by the Department to achieve uniformity and equality are permissible.

While it is apparent that the principal case has expanded the scope of permissible Department action, the opinion does not detail the scope of state control which can be asserted over local assessment and valuation processes. The vague standard of uniformity and equality, while having value as a general guideline for legislative action, does not provide a precise test of permissible state control.

In formulating such a test, the court should clearly repudiate the traditional formulation of the home-rule provision. The basic premise of *Redd* was that Department alteration of local assessments constituted an imposition of tax. Proponents of this position misconceive the function of the assessment process. Assessed valuation is the tax base utilized in establishing the aggregate tax burden of a taxing district. Its crucial function is the equitable apportionment of the tax burden among taxpayers. Within maximum levels set by the legislature in implementing the 40 mill limit,[26] the taxing district is free to determine its tax revenue by adjustment of millage.[27]

As long as the Department permits local authorities to continue the ministerial[28] functions of assessment and collection, it should be

holding, the court disregarded the rationale of *Redd* that the delegation of the power to tax for local purposes was absolute, so that the revising or equalizing of taxes imposed upon property for local purposes was the prerogative of county boards of equalization.

[26] *See* note 9 *supra*.

[27] *E.g.*, in the principal case the county assessor discriminated among taxpayers by utilizing two assessment ratios (20% and 25%) within the county. An order of the Department to equalize assessments at 50% would have the effect of doubling the aggregate assessed valuation of the county. However, the local authorities could, by reducing the millage applied to that assessed valuation, keep the aggregate tax burden of the district at its previous level.

[28] The home-rule provision (*supra* note 6) provides that assessment and collection are functions of local authorities. However these terms should not be defined expansively so as to give political power to county assessors. Assessment is essentially a process of personal inspection of property in order to determine its true and fair value. County assessors, and not the Department of Revenue, should continue to make personal inspections. However, the Department should have the power to compel reassessment if the true and fair value figure determined by the county

free to pursue activities[29] reasonably related to the goal of obtaining state-wide uniform assessed valuation,[30] *i.e.*, a uniform tax base. Exercise of this power would lead to closer supervision and control of local assessment practices, thus providing an effective deterrent to discriminatory assessment practices at the local level.[31]

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assessor is inaccurate when compared with sales prices and assessments for similarly situated property. *See* note 15 *supra.*

[29] For suggested legislative programs to accomplish equitable tax administration, see generally ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX (1963); TAX ADVISORY COUNCIL OF THE STATE OF WASHINGTON, REPORT ON FINANCING STATE AND LOCAL GOVERNMENT IN WASHINGTON (1958); note 38 *infra.*

[30] ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 41 (1963):

> To meet the requirements of uniformity, the assessor, using the particular valuation methods that are most suitable for each class of property, must produce not only intraclass but interclass uniformity. This means, for example, that his appraisal of any given dwelling not only must have the same relation to market value as his appraisal of any other dwelling but must have the same relationship as that for any factory, grocery store, vacant lot or item of personal property.

Note 15 *supra,* illustrates the current lack of uniformity, both intraclass and interclass.

While it is impossible to achieve perfect uniformity in assessment, sound assessment policies can keep fluctuations within reasonable limits. *Id.* at 42-43. *But see* Hart, *Can Individual Assessments be Effectively Equalized by State Administrative Action?* in INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, ASSESSMENT ADMINISTRATION 36-41 (1963).

It has been suggested that interclass uniformity in assessed valuation leads to economic inequality in tax burden by placing a greater tax burden on property-intensive economic activities. This is not a viable argument for maintaining the present system of tax administration in Washington.

While present assessment practices foster a lack of uniformity among classes of property, this lack of uniformity is not rationally related to obtaining economic equality. This is particularly true since variations within classes of property are much wider than variations among classes. *See* note 15 *supra.*

Legal uniformity in assessed valuation does not prevent methods of assessment which take into account the different types of economic activity being conducted on real property. While WASH. CONST. art. VII, § 1 requires that all real property be taxed at the same rate, it permits the legislature to differentiate among classes of personal property.

Ultimately, the objection that legal equality in tax assessment produces economic inequality makes a judgment on the equities of an ad valorem tax. The purpose of this note is to advocate a reasonable administration of the present system, rather than to make such a judgment. For a criticism of the present property tax structure, coupled with alternative formulations for the property tax, see D. NETZER, ECONOMICS OF THE PROPERTY TAX (1966).

[31] In the past taxpayers have been forced to depend on individual protest to assure a fair tax assessment. The courts have proved ineffective in achieving equitable taxation. *See generally* Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill,* 75 HARV. L. REV. 1374 (1962).

The Department of Revenue is far better equipped than the courts to assure that abuses in local property tax administration are cured. Court recognition of Department expertise and power over local property tax should improve local administration of the tax for several reasons: (1) because only a few appeals are taken each year, the court is not in a position to effectively deal with the wide abuse currently tolerated in the system; (2) action by the Department can be taken before the inequity becomes entrenched, and Department orders have a far wider range of effect. If the Department order had been upheld by the court in the principal case, not only the individual taxpayer would have been affected, but also all taxpayers

The court conditioned its recognition of extended state control of local assessment practices by requiring that the legislature first comply with the constitutional requirement of 50 percent assessment. Since county assessors currently utilize assessment ratios near 25 percent of fair value, enforcement of the 50 percent provisions would have the effect of doubling the aggregate property tax base. If the legislature continued to authorize use of the maximum tax rate of 40 mills allowed by the state constitution,[32] revenue from property taxes would be doubled.

The legislature has evidenced unwillingness to implement the 50 percent provisions. Rather, the legislature has continued its enactment of laws which treat the provisions as permissive, and which in practical effect substitute a 25 percent ratio: (1) the legislature has reshaped state aid to local school districts so that a county using less than a 25 percent ratio loses valuable school aid;[33] (2) the legislature has set an irremovable ceiling on revenue which a local taxing district can obtain from property taxation, computed by multiplying the maximum millage allowable to the taxing district by the assessed value of property using a 25 percent assessment ratio.[34] This ceiling is sub-

within the districts subject to a 25% assessment ratio; (3) particularly in its role as state board of equalization, the Department has full knowledge of actual as well as mathematical ratios, and inspects individual tracts on its own. Thus the Department is more ably equipped to recognize inequitable assessment practices; (4) the Department can maintain continued observation and control more effectively than can the courts.

Even assuming that local administrators function specifically as directed by law, state supervision is crucial to the proper functioning of the tax structure. *See generally* ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX (1963). At 18, the Commission observes:

> Any widely decentralized operation needs central supervision and coordination to produce a uniformly standard product. Even if a State has a geographically efficient local assessment district organization, with each district adequately staffed with professional personnel, the key to uniformity of assessment on a statewide basis is a capable central supervisory agency with all appropriate powers and facilities.

[32] *See* note 9 *supra.*

[33] Ch. 171, [1965] Wash. Laws Ex. Sess. 733. The effect of this legislation is explained by the Department of Revenue in Wash. State Tax Comm'n Property Tax (1965) Bull. No. 65-1 (1965):

> Thus for 1967 and thereafter, the amount apportioned by the superintendent will be based on the assumption that local revenue will be received from 14 mills at a 25% ratio. Unless the district is at the millage and assessment level it will not be receiving the maximum amount of local tax revenue Chapter 171 assumes it is receiving. School districts will therefore want to have a 25% assessment ratio and 14 mills.

[34] The ceiling was originally imposed by ch. 174, [1965] Wash. Laws Ex. Sess. 757, but this legislation was substantially amended by ch. 146, [1967] Wash. Laws Ex. Sess. 1061. The law is complex and confusing, but its basic structure is explained clearly in WASHINGTON STATE RESEARCH COUNCIL MONTHLY REPORT (Sept., 1967): (1) an irremovable ceiling is established for all local taxing districts, including school

stantially lower than the ceiling imposed by the 40 mill limit provision of the state constitution. The primary difficulty with the recent legislation is that it does not conform to the 50 percent provisions interpreted as mandatory in the principal case and is, therefore, susceptible to constitutional attack.

Legislative justification for practical substitution of a 25 percent assessment ratio is two-fold: (1) assessors currently utilize ratios near 25 percent,[35] and thus a 25 percent ratio would be easier to enforce;[36] (2) enforcement of the 50 percent ratio would result in a sudden increase in property taxes.[37]

Neither justification is compelling. Judicial recognition of Department power to compel assessment equalization has removed the necessity for the legislature to adopt indirect inducements for assessor compliance with a uniform ratio. A number of reasonable alternatives[38] are open to the legislature which would enable it to assure application of a uniform ratio without a sudden increase in property taxes resulting: (1) imposition of a tax ceiling at 20 mills determined by use of a 50 percent ratio, rather than at 40 mills determined by use of a 25 percent ratio; (2) constitutional revision to require assessment at 25 percent of true value; (3) abolishment of fixed assessment levels, coupled with a requirement that the Department of Revenue determine annually by assessment ratio studies the average level of

districts. This ceiling is the dollar amount which would be produced by the maximum millage rate applied to an assessed valuation equal to 25%. The ceiling may not be removed by popular vote; (2) the law also restricts the levy which may be made by all taxing districts, except school districts, to the dollar amount which would be produced by applying the millage rate of the preceding year to a tax base increased only by the addition of new property to the assessment rolls. Thus the tax base may not be increased simply by increasing the assessment ratio employed by the assessor in the previous year. This *removable* ceiling can be lifted by a majority vote of the district's taxpayers, thus permitting the tax levy to rise to the irremovable ceiling of (1) above.

[35] *See* note 10 *supra*.

[36] For a criticism of such an approach, see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 10 (1963).

[37] WASH. STATE RESEARCH COUNCIL MONTHLY REP., 2 (Sept. 1967):

> The Department of Revenue states that the purpose of the property tax limitation law is "to place a ceiling on the total dollar amount which a taxing district can levy in its regular property tax levy." However, this ceiling is but a means to an end. The real goal is to protect taxpayers from sudden increases in property taxes attributable solely to changes in assessment rates.

[38] In light of court recognition in the principal case of increased power of the Department of Revenue to supervise local tax administration, the legislature has more flexibility in revision of the tax structure. There are a number of alternatives available to the legislature to resolve the specific problem of enforcing the statutory assessment ratio while avoiding the danger of a sudden increase in taxes. These alternatives are clearly spelled out in ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 THE ROLE OF THE STATES IN STRENGTHENING THE

assessment in each district.[39] Assessed valuation as determined by the Department would be employed as the regulatory and measurement base.

In the principal case the court has taken a position which will permit greater legislative flexibility in designing devices to achieve state-wide uniform valuation. Such uniformity is crucial to the proper functioning of the property tax structure because it conforms with constitutional mandates,[40] simplifies and clarifies the system,[41] aids in preventing discriminatory assessment practices at the local level,[42] and more accurately than the present system reflects uniform economic incidence of property taxation.[43] Yet the legislature has reacted by failing to take advantage of this judicial tolerance. Ironically, rigidity in the tax structure has been perpetuated because of the senseless conflict between court and legislature over the 50 percent provisions. The legislature must recognize that the crucial problem is not which ratio is applied,[44] but whether the ratio decided upon is applied uniformly. Department enforcement of a state-wide assessment ratio is necessary for uniformity of tax burden and proper state control of taxation.

PROPERTY TAX 10 (1963): (1) effective enforcement of the existing law; (2) constitutional revision to conform the assessment ratio more closely to prevailing assessment practice; (3) abolishment of fixed assessment levels.

[39] This alternative would seem to be the most sensible; it has been endorsed both by the Advisory Commission on Intergovernmental Relations and by the Washington Tax Advisory Council. TAX ADVISORY COUNCIL OF THE STATE OF WASHINGTON, REPORT ON FINANCING STATE AND LOCAL GOVERNMENT IN WASHINGTON 31-32 (1958). The revision could be accomplished without the strong public opposition which would accompany an increase to a 50% assessment ratio. At the same time the legislature would be placed in a position where it could if necessary garner additional revenue by use of the property tax. *See* Harsch and Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis,* 33 WASH. L. REV. 225 (1958).

[40] *See* notes 9 and 12 *supra.*

[41] *See* note 31 *supra.*

[42] *See* note 31 *supra.*

[43] *See* note 30 *supra.*

[44] The assessment ratio is simply a mathematical figure which by itself is insignificant. As long as the ratio established is applied uniformly, it could vary from 25% to 100% without disturbing the equities between taxpayers. It is true that there should be a close correlation between revenue collected by the tax and funds necessary for public purposes. However, this correlation can be obtained by adjusting the millage rather than the ratio. Such an adjustment would have several advantages over the present approach of adjusting the assessment ratio. First, the legislature may constitutionally manipulate millage rates from year to year in order to obtain necessary revenue. Second, by eliminating assessor regulatory power in adjustment of assessment ratios, uniformity among taxpayers is more likely to be obtained.