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EQUALITY IN PROPERTY ASSESSMENTS

H. H. WALKER LEWIS*

The Maryland Constitution of 1776 established equality as a basic principle of property taxation. This was with good reason. The American Revolution was not only a war for independence but was also a local revolution against existing undemocratic methods of government, including oppressive taxes.

Most of the pre-Revolutionary antipathy to local taxes was directed against the use of poll taxes as a major source of revenue, *i.e.*, taxation by the head rather than according to the financial worth of the taxpayer. This issue was settled by the 1776 Constitution which provided¹:

“That the levying of taxes by the poll is grievous and oppressive and ought to be abolished.”

But property taxes, though less important in those days from a revenue standpoint, were also a source of bitter controversy. One of the major political issues was whether and to what extent the lands of the proprietor should be taxed, the proprietary representatives having insisted that property taxes should not apply to the property of the proprietor. Although this issue was compromised, substantial inequalities of treatment remained. The property tax was also arbitrary and discriminatory in other respects. For example, the Act of 1756² placed twice as heavy a tax on the property of papists as on that of non-papists.

As a result of these discriminations it was provided in the 1776 Constitution^{2a} that:

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¹ Art. XIII, Declaration of Rights, Md. Const. of 1776.

² Ch. 5, Acts of 1756. This Act imposed an annual tax on all freehold estates of one shilling per 100 acres, two shillings if belonging to papists. It also imposed a number of special taxes, including a “duty on all Bachelors of twenty-five years of Age and upwards” of five shillings per annum on all with 100£ and under 300£, and twenty shillings per annum if worth 300£ or upward. The Act was by its terms to continue for five years, was extended by Ch. 9, Act of 1760, and finally expired November 26, 1763.

^{2a} *Supra*, n. 1.

“every person in the state ought to contribute his proportion of public taxes, for the support of government, according to his actual worth, in real or personal property, within the State;”

This language remained in the later Maryland Constitutions of 1851, 1864 and 1867 without substantial change until the 1915 Amendment³ substituted for it the existing provision that:

“all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respecting taxing powers may have directed to be subjected to the tax levy;”

It does not seem necessary for our present purposes to go into the reasons for this change except to emphasize that it was *not* for the purpose of relaxing the principle of equality in property taxation. The contrary was the case, as stated by Judge Offutt in *Susquehanna Power Co. v. State Tax Commission*,⁴ as follows:

“Although the phrase of the Maryland Bill of Rights, stating the just and salutary principle that ‘every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property’, was omitted from the article as amended by chapter 390 of the Acts of 1914, ratified November 2nd, 1915, yet it is implicit in the . . . language of the article as amended.”

The principle of equality is essential not only as between individual taxpayers in a single taxing district but also as between the different taxing districts of the State. It is the latter of these two, *i.e.*, equality between taxing districts, to which this paper is primarily directed.

³ Laws 1914, Ch. 390, ratified November 2, 1915.

⁴ 159 Md. 334, 343, 151 A. 29, 33 (1930).

A. PRESENT IMPORTANCE OF EQUALITY

It has been thought by some that the reduction of the State property tax to its present low level has largely eliminated the problem of inequality in property tax assessments as between the different taxing districts of the State. This is not true. The lowering of the State property tax rate may have reduced the incentive to undervalue property with a view to obtaining a tax advantage for a particular locality, but much of the stimulus still remains and there are other serious inequalities as well. The more important of the evils resulting from sectional underassessment are as follows:

1. *Inequality in State property tax.* It is obvious that a county which assesses its property at only 50% of true value will pay only one-half its share of the State property tax as compared with other localities which assess at 100%. For this reason, among others, some of the counties have in the past systematically undervalued property and have thus obtained an unfair advantage as against other sections of the State. The City of Baltimore has traditionally been the prime victim in this game.

2. *School funds.* The present law provides for the distribution of State funds for public education on a basis which puts a premium on under-assessment. Under the plan of the so-called Equalization Fund⁵ each county (and the City of Baltimore) is required in effect to dedicate to school purposes 65¢ of its annual tax rate (*i.e.* 65¢ on each \$100 of assessed value). To the extent that the sum which this realizes is not sufficient to enable a particular county to meet the minimum salary and other educational standards established by the State, the county is entitled to receive payments from the Equalization Fund. The money thus distributed is, of course, raised by general State taxation, a very large portion of the total being derived from Baltimore City.

The lower a county succeeds in assessing its property, the more it stands to get from the Equalization Fund.

⁵ Md. Code (1939) Art. 77, Sec. 196.

Sixty-five cents on the tax rate of a county which assesses on a 50% basis will only produce half as much as sixty-five cents on equivalent property assessed at 100%. During the 1947 fiscal year all counties shared in the distribution of the Equalization Fund except Baltimore City and Baltimore County, the total amount distributed from general moneys of the State having been \$3,993,874.35.

A somewhat similar situation exists with respect to the distribution of State funds for school building purposes,⁶ but the potential discrimination is not, as a practical matter, as important as under the Equalization Fund.

3. *Public Welfare.* Under the present law the Federal and State governments make available to the localities funds for aid to dependent children. The localities are also required to put up money for this purpose, but what they contribute is based on assessed values (being required to be 1¢ on each \$100 of assessable property),⁷ whereas what they get is in effect based upon the number of dependent children in question. As a result, the lower a locality assesses its property, the less is its proportionate contribution to the funds for aid to dependent children.

4. *Corporate Assessments.* Under the present law the State Tax Commission assesses all tangible personal property of ordinary business corporations⁸ and all operating property other than land of public utilities.⁹ It also assesses the shares of corporations which are subject to the State capital stock tax,¹⁰ and certain other property. For the year 1946 assessments made by the State Tax Commission amounted to approximately one-third of the total property assessments in the State, including real property as well as personalty.

In assessing the property of corporations the State tax Commission strives to reach what it considers full cash value. It does not diminish its assessment by reason of the fact that other similar property in the same locality is subject to local assessment on a lower level. Consequently,

⁶ Md. Code (1939) Art. 77, Sec. 199c.

⁷ Md. Code (1939) Art. 88A, Sec. 48.

⁸ Md. Code (1939) Art. 81, Sec. 10(b)(5).

⁹ Md. Code (1939) Art. 81, Sec. 13.

¹⁰ Md. Code (1939) Art. 81, Sec. 15.

local assessments at less than full value result in serious inequalities and discrimination.

Assume, for example, the not uncommon case of two competing stores of comparable size, one of which does business in corporate form and the other as a partnership. If they are situated in a locality which assesses property at 50% of value, the incorporated store will have to pay twice as much tax on its tangible personal property as the other. In businesses where inventory is a material factor, this discrimination can be fatal.

Similarly, an office or other building owned by a public utility in such a locality will have to bear twice the tax burden of an identical building owned by anyone else.

In the past, the discrimination against corporate ownership of personal property has been accentuated by the fact that incorporated businesses have been required to report their tangible personalty to the State Tax Commission in annual, sworn returns, whereas no similar requirement was generally enforced as to unincorporated businesses. An effort is now being made to require annual personal property returns from all businesses, but this must be administered locally and it is too early to know whether it will be fully effective.

5. *Underassessments are bad per se.* Last but not least among the evils of undervaluation is the fact that underassessments are usually bad assessments. It is hard enough to determine full cash value, but at least there are standards for doing so. Where no effort is made to meet these standards, valuation tends to become slipshod, inaccurate and inequitable to all concerned, even overlooking the part that favoritism or politics may play.

All authorities on the subject agree upon this, our own Judge Leser having expressed it as follows:¹¹

“With the rise of assessments to full value they will become more accurate, because comparisons become easier and mistakes are more readily disclosed. It is notorious that under-assessment is the cloak for favoritism and inefficiency. It also acts as a narcotic upon

¹¹ Oscar Leser, as a member of the State Tax Commission, in a separate report dated February, 1916, at page 26.

the taxpayer, lulling him into quiescence in the belief that he has been favored when he may in fact have been greatly discriminated against."

B. HISTORY OF EQUALIZATION IN MARYLAND

As already mentioned, in 1756 the first real estate tax in Maryland required the payment of a fixed amount per acre.¹² The amount levied did not depend upon value and the assessment problem with which this paper is concerned did not arise. Early taxes on personal property followed the same plan as to the more common forms of property (which in all probability were the only ones actually taxed) and thus wholly or partially avoided the difficult problem of determining individual values. For example, the law assigned a fixed value per ounce to silver plate and also specified the taxable value of slaves based upon fixed amounts per head, dependent upon age and sex.¹³

Under the 1776 Constitution property taxes were required to be based upon value and, after its adoption, provision was made for individual valuation and assessment of property, except as to items of personalty which had a reasonably uniform value.¹⁴ Once value became the test, however, it did not take the localities long to discover that by underassessing they could pass a greater share of the load on to the other fellow. Accordingly, we find the following modern-sounding preamble in the Act of 1785:¹⁵

"Whereas, the General Assembly, being fully satisfied of the great inequality that has hitherto taken place in the valuation of lands, between the several

¹² *Supra*, n. 2.

¹³ This practice was followed in various tax Acts from 1779 to 1812. Some leeway was left to the assessors, especially in the later Acts. For example, the Act of 1812, Ch. 191, Sec. 15, after valuing slaves at so much per head, in accordance with age and sex, provided that "if any slave shall not be perfect in his limbs or sight, or from want of health, or any visible infirmity, shall be rendered incapable to perform his usual and proper labour, the assessor shall make a reasonable and proper abatement for such case, and shall note the same in his return." The Act also provided that "said assessors shall be at liberty, and are hereby directed, to estimate male slaves who are tradesmen at such value as they may adjudge them to be worth, regarding their respective trades and their proficiency therein."

¹⁴ The Acts of February 1777, Chapter 21, was the first law for the valuation and assessment of property and was followed by other similar assessment Acts.

¹⁵ Acts of 1785, Ch. 53.

counties of this State, and impressed with the necessity of preventing the like injustice in future, have determined to ascertain by law the average value by the acre, of the lands in the several counties in this State."

An interesting plan was thereupon adopted by which the total contribution of each county was fixed by State law on the basis of average values per acre. The average values per acre were specified in the Act and varied from a low of 15 shillings, 6 pence for Caroline County to a high of 33 shillings, 9 pence for Kent.^{15a} The procedure under this Act was briefly as follows:

(a) Commissioners of the tax in each County were first to ascertain the number of acres of taxable land in their County. This, multiplied by the average value per acre fixed by the State law, established the assessable basis of land in the County.

(b) The parcels of land in the County were then to be individually valued so as to determine their proportionate share of the total.

This plan was incorporated into successive assessment acts and continued nominally in effect until 1841, although State property taxes were levied in only a few of the years during this period.

During the internal improvement boom and the race for advantageous routes to the West which developed after the War of 1812, the State of Maryland lent her credit to various waterway and railroad enterprises of a highly speculative nature. When the boom collapsed, the State Government found itself saddled with what was then an enormous debt and the necessity of onerous taxes to meet it, the Acts of 1841¹⁶ being the result. The taxes which

^{15a} Records of the times indicate that a shilling was equivalent to 22 cents. According to the Bureau of Labor Index of Wholesale Prices, the purchasing power of the dollar was approximately the same in 1800 (the first year shown in the index) as in 1942. For purposes of further comparison, it is interesting to note that Jamaica Rum, one of the most plentiful and stable commodities traded in during this period, then sold for approximately 90 cents a gallon.

¹⁶ Chapter 23 imposed a property tax of twenty cents per \$100 of assessed valuation and an additional fifty cents per \$100 was added by Chapter 328 of the Acts of 1841.

this Act imposed were so unpopular, however, that they were resisted in some of the counties and could not be collected for years.

After the collapse of the boom, there were many who wished to repudiate the State's guaranties altogether and it was a matter of great difficulty to enact the 1841 tax at all. Consequently, it probably would have been impossible to secure agreement as to any fixed method of allocating the tax among the counties. In any event, the apportionment plan of 1785 was dropped and no substitute provision was made for equalizing valuations as between either individuals or counties.

After 1841, attempts at equalization were for a long time limited to periodic reassessments, Acts for this purpose having been passed in 1852, 1866, 1876, 1896 and 1910.¹⁷ It may be doubted whether these Acts were effective in attaining equality of assessments as between the various sections of the State even temporarily. The contrary is implied from the comment of the Tax Revision Commission of 1912, that "When reassessment is made a legislative question, it inevitably becomes a political party question, with all its attendant evils."¹⁸ This Commission thoroughly canvassed the existing situation and embodied the following major recommendation in its report:

"The assessment of property is a business proposition and should be put upon a business basis. To accomplish this we must accept the most modern and effective method—*control of all matters relative to taxation to be vested in a State board.*

"Therefore, while realizing the necessity for other changes in our system, we most earnestly recommend that just consideration be given to the creation of such

¹⁷ Laws 1852, Ch. 337; Laws 1866, Ch. 157; Laws 1876, Ch. 178; Laws 1896, Ch. 120; Laws 1910, Ch. 300. A general assessment Act was also passed in 1874 (Ch. 514) but somewhere in the course of its adoption its language was so successfully tampered with that it provided for the exemption of "all property, real, personal and mixed, of all kinds and descriptions whatever in the State" except cemeteries, charitable institutions and the like. It was held inoperative by the Court of Appeals in *Maxwell v. State*, 40 Md. 273 (1874).

¹⁸ Report of the Tax Revision Commission appointed pursuant to Ch. 779 of the Acts of 1912, page 172.

a central body to supervise tax matters, with extensive powers as to assessment and equalization."¹⁹

This recommendation resulted in Chapter 841 of the Laws of 1914, creating the present State Tax Commission and providing for County Supervisors of Assessments under its control.

The 1914 Act establishing the State Tax Commission effected such sweeping reforms in corporate taxation that it is easy to overlook the fact, stated in *Leser v. Lowenstein*,²⁰ that:

"The main object of the creation of the commission was to secure the equalization of assessments."

This was not lost sight of by the State Tax Commission itself, however, and one of its first acts was to set in motion a program for the assessment of all property in the State in accordance with uniform and up-to-date assessment principles.²¹

The Act of 1914 made it a duty of the State Tax Commission "to require that all property be reviewed for assessment at least once in every five years" and it took immediate steps to bring about a general reassessment of all county real estate on a uniform basis. The City of Baltimore had previously adopted a continuous assessment plan, so that no reassessment was required there, but the last county reassessment had been in 1910.

Although a State-wide conference was held to get the program off to a good start and although Governor Harrington lent his support, the 1915 reassessment met with opposition from many of the counties and 12 out of the 23 failed

¹⁹ Report, page 9. The creation of a central State tax commission had been previously recommended by the Advisory Committee on Taxation and Revenue, submitted to the Mayor of Baltimore in 1908. That report also emphasized the great need for equalization of assessments and for proper administrative machinery to enforce it.

²⁰ 129 Md. 244, 260, 98 A. 712, 717 (1916). The work of the 1912 commission in this regard is referred to by its secretary, Allan C. Girdwood in the 1914 Proceedings of the Nat. Tax Assn., pp. 70-73, as follows: "The establishment of the State Tax Commission is the first successful effort to provide for state supervision over assessment [in Maryland] and has been accomplished after many years of agitation. . . . The Special Commission in Maryland was successful in having its recommendations enacted into law. . . . Of 15 proposed acts providing for changes in taxation laws, 12 were enacted."

²¹ See First and Second Biennial Reports of the State Tax Commission. See also *Leser v. Lowenstein*, 129 Md. 244, 98 A. 712 (1916).

or refused to appropriate sufficient funds to do their share of the work. In addition, the results of such reassessments as were made indicated that many of the inter-county inequalities were being continued. The situation was so discouraging that Judge Leser, one of the original members of the State Tax Commission, filed a separate report in February, 1916, in which he strongly recommended the establishment of a State Board of Equalization "whose duty it shall be to equalize the assessed bases of the several taxing districts of the State." Judge Leser's proposal, while outwardly modelled on the law of other states, particularly New York, adopted the theory of the Maryland Act of 1785, namely, to have the State tax apportioned to the counties and then leave it up to them to raise the money and pay it over to the State. The chief difference was that the 1785 Act itself established the basis on which the share of each county was to be determined, whereas Judge Leser's proposal would have required the apportionment to be worked out by a State board. Judge Leser, as a Republican, was the minority member of the State Tax Commission at the time, and his proposal was not adopted.

For the next twenty-five years progress towards equality of property assessments was chiefly the result of prodding by the State Tax Commission or by civic minded citizens. Some of the counties placed their assessments on a sound and equitable basis, notably Frederick County, which adopted a continuous assessment plan in 1937,²² and Harford, Montgomery and Prince George's Counties, which adopted it in 1941,²³ but in most cases the political temptation to underassess still prevailed. The counties were, furthermore, able to obtain laws postponing reassessments, notwithstanding the fact that the general State law specifically required that property be "reviewed for assessment at least once in every five years."

The next major reform was effected in 1943,²⁴ when the State law was amended to require the State Tax Commission:

²² Laws of 1937, Chapter 345.

²³ Laws 1941, Chapters 841, 757 and 661, respectively.

²⁴ Laws 1943, Chapter 717, Sec. 175 (8).

“To enforce and execute a continuing method of assessment so that all assessable property in every county and in Baltimore City shall be thoroughly reviewed at least once in every five years.”

It had been the intention of the 1912 Tax Revision Commission to institute this reform at the time the State Tax Commission was created,²⁵ and Chapter 841 of the Laws of 1914 provided, among other things, that the State Tax Commission should have power “to enforce and execute a continuing method of assessment”, but this power was not sufficiently implemented and the Counties were able to successfully oppose it.”

There is a very important difference between the continuous assessment plan and periodic reassessments. Both contemplate the revaluation of all property in the respective taxing districts at least once in every five years, but beyond this point the resemblance ceases.

A general reassessment of all property in the State, or even of all property in a particular county, requires the employment of a large group of special assessors on a temporary basis. The recruiting of such a force of itself presents a problem and opens the door to inexperience as well as political favoritism. In practice it is also excessively expensive.

The continuous assessment plan, on the other hand, employs a relatively small group of full-time assessors on a permanent basis, the object being to cover the area gradually rather than all at one time. This permits better selection and training of personnel and facilitates the accumulation of experience and technical skill, as well as uniformity of standards, to an extent impossible of attainment in connection with a general reassessment.

The continuous assessment plan was adopted pursuant to the recommendations of the Tax Revision Commission

²⁵ See Allan C. Girdwood, *Tax Litigation in Maryland*, II Bull. Nat. Tax Assn., 24. Mr. Girdwood, who was Secretary of the 1912 Tax Revision Commission and of the original State Tax Commission, states in this article that under the 1914 Act, “The Baltimore plan of continuous assessment was made a part of the plan of assessment of the state body . . .” Unhappily, this was in theory only. See also statement to the same effect in separate report of Oscar Leser, February, 1916.

of 1939, which also advocated increasing the central tax administration's control over the appointment and tenure of the local assessors. This latter reform became law in 1947,^{25a} and at the present time the State Tax Commission is in a strong position to coordinate and control the work of the local assessors.^{25b} Under the 1947 Act, the salaries of the local assessors are fixed by State law and one-half is paid by the State. The State Tax Commission is also given important practical controls over the assessment procedure.

C. PRESENT SITUATION

From an administrative standpoint the State is now in a better position than ever before to secure equality in property tax assessments. The assessors are being better trained and better supervised than in any prior period and the system of continuous assessment is proving effective in bringing valuations to a uniform standard.²⁶ It would be misleading, however, to convey the impression that this Utopia has arrived or is around the corner. Conditions are still bad, and great need remains for improvement, as may be judged from the following:

1. In handling appeals, the State Tax Commission has been forced to recognize the propriety of assessment ratios as low as 50% in some areas, in order not to disturb too greatly and too suddenly local assessment levels in those areas. For example, the State Tax Commission on Febru-

^{25a} Laws 1947, Chapter 706.

^{25b} For an important instance of the exercise of such control, see *Rogan v. Cook*, 52 A. (2d) 625 (1947), involving the removal by the Commission of a County Assessor who had become a candidate for public office.

²⁶ The Maryland Commission on the Distribution of Tax Revenues, in its report dated September 30, 1946, at page 126 described the situation as follows:

"The Commission believes that the Supervisors of Assessments and their assessors in the various counties have made and are making a conscientious effort to apply uniform standards of assessment throughout the State. With the help of the State Tax Commission, the Supervisors of Assessments and their assessors have formed a state-wide association, which has sponsored a highly successful program of in-training instruction, having as its purpose the teaching of the fundamentals of assessment practice. In addition, the records of the State Tax Commission clearly show that assessments are being increased, especially in the counties which have heretofore compared unfavorably with those jurisdictions in which assessed value equalled or approached actual value."

ary 16, 1948 upheld the action of the Washington County Board of Commissioners in assessing at half its cost, or \$90,000, a new plant in Hagerstown which had cost \$180,000 to construct.^{26a} This result was partly to avoid the inclusion of inflated values, but it illustrates the practical necessity in such matters of making haste slowly so as not to unduly upset existing local conditions. At the same time it emphasizes the fact that property assessments are still far from uniform throughout the State.

2. Tangible personal property of corporations is assessed by the State Tax Commission at levels above those at which property of other persons is ordinarily assessed locally. This is in part due to the fact that non-corporate personal property often escapes taxation entirely, but it is also due to the fact that the State Tax Commission seeks to assess corporate property on a uniform state-wide basis, regardless of the fact that comparable property owned by individuals in the same neighborhood may be assessed on a lower level. Similar discriminations exist with respect to buildings and other operating property of public utilities.

3. There is convincing evidence that some of the counties are still motivated by political considerations in establishing their assessment levels. For example, the County Commissioners of Wicomico County recently made such drastic reductions in the valuations proposed by its State-trained assessors that the State Tax Commission was required to intervene and force up the assessment level by the expedient of instigating over 400 appeals from the determinations of the County Commissioners.

As further evidence of the same tendency, several counties and municipalities have recently published statements in connection with bond issues in which they openly state that they underassess properties. In one County, the financial statement issued to prospective bond buyers in February, 1948 boldly states that the property of public utilities is assessed at 100% of actual value and that other property is assessed at 50%.

^{26a} Washington County Appeals Nos. 43 and 44 involving the 1948 assessment of the Brandt Cabinet Works.

D. NEEDS FOR THE FUTURE

It seems abundantly clear that sound administration is the answer, and the only answer, to the problem of bringing about equality in property tax assessments. No law or device for obtaining this end will be effective unless it has administrative strength behind it. The problem, therefore, is to strengthen the central tax administration of the State for the future.

In the past Maryland has relied all too often on the services of a few public spirited men to give it sound tax administration. It has not been disappointed and the State Tax Commission, for example, has set a high standard for character and ability. It would be foolhardy, however, for the State to base its plans for the future on the hope that other individuals of similar ability and public spirit will come forward when needed, regardless of the personal sacrifice involved. It may seriously be questioned, therefore, whether the present administrative organization of the State with respect to tax matters is adequate in the long run to attract and hold full-time administrators of the type needed to make the program work.

Money is an important element and the State has been far from generous in its remuneration for work done by assessors and other full-time employees of the State Tax Commission. But there are other things even more important than money. In fact, the worst element of the present situation is the hodge-podge arrangement of tax administration in Maryland which can only have the effect of diffusing responsibility and reducing efficiency.

This situation was referred to as follows in the Report of the Maryland Tax Revision Commission of 1939:^{26b}

“Tax administration in Maryland is characterized by wide diffusion of responsibility. For example, the Comptroller administers the net income tax and a tax on the gross receipts of one railroad; the Insurance Commissioner the tax on insurance premiums, which is a gross receipts tax; and the State Tax Commission all other gross receipts taxes, including a gross receipts

^{26b} On page 1 of its report dated January 28, 1941.

tax on one class of insurance companies. Thus overlapping gross and net income taxes are administered by three separate departments, one in Annapolis and two in Baltimore.

“ . . .
“The present system of piecemeal administration inevitably leads to inefficiency, loss of revenue and unnecessary hardships on both taxpayers and administrative officials. The evil lies chiefly in the lack of unified responsibility . . .”

The need for the reorganization of tax administration in Maryland is as great now as when it was urged by the Tax Revision Commission of 1939 as the keystone of its entire program.²⁷ Without such a reorganization it is difficult to see how men of ability can be attracted or held or how continued administrative efficiency and strength can be achieved. And without these, equality in assessments will be only a hope and never a reality.

²⁷ See Report dated January 28, 1941 of Tax Revision Commission of 1939, pages vii and 1-13.