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Nelson B. Seidman

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Property Tax Assessments — Invalid Discrimination Between Real And Personal Property Valuation

Sears, Roebuck & Co. v. State Tax Commission

The taxpayer, Sears, maintains a number of retail establishments throughout the State of Maryland. It appealed from an assessment of its tangible personal property, levied

by the State Tax Commission, for failure to deduct from the assessment an allowance for the impact of inflation on the value of its stock in trade, such allowance having been deducted in the assessment of real estate. The lower court affirmed the decision of the Commission. The Court of Appeals reversed and remanded, finding an intentional and arbitrary discrimination.

The taxpayer's chief contention was that the Maryland legislature had classified real and personal property alike, directing that all property be assessed at "full cash value"; therefore, the same standard of value or economic yardstick should be applied to both, i.e., since an allowance for inflationary factors was deducted from actual value in the assessment of real property to arrive at "full cash value", such an allowance should be permitted in the valuation of stock in trade.

The Commission, on the other hand, contended in the main that inherent differences between real property and stock in trade justified the use of different methods of assessment. Furthermore, the legislature had specifically
provided that stock in trade should be valued at "fair average value for the twelve months preceding the date of finality", thus constituting an exception to the mandate of "full cash value". Since the taxpayer had not shown that the valuation of its stock in trade resulted in an assessment at more than fair average value, the Commission concluded that its refusal to permit an allowance for inflation in the case of inventories was not clearly unlawful, unreasonable or against the weight of the evidence.

The Court of Appeals, in a landmark decision in the area of Maryland property taxation, ruled that while the Commission may use different methods of assessment in valuing different types of property, the statute requires that it apply the standard of "full cash value" to all types of property. The Court rejected the Commission's contention that "fair average value" constituted an exception to the general rule of "full cash value". Rather, the term "fair average" merely indicated the legislative intent that inventories, which fluctuate in both quantity and price during a given period, be valued on a representative basis, taking fluctuations into account.

The Court was also faced with a line of Maryland decisions holding that the remedy of a taxpayer complaining of a lower assessment to others on similar property was not to have his own assessment reduced, but to seek an increase in the assessments of the other taxpayers. The ade-

290 (1963); Household Finance v. Tax Comm., 212 Md. 80, 128 A. 2d 640 (1957); May Stores v. State Tax Comm., 213 Md. 570, 132 A. 2d 593 (1957). These cases, however, did not involve a discrimination problem similar to the one in the instant case.


In Steam Packet Co. v. Baltimore, 161 Md. 9, 155 A. 158 (1931), a corporate taxpayer contended that its property had been overassessed, since it had not been permitted an exemption allowed to its competitors. The Court of Appeals, in denying the exemption, stated at p. 22:

"Upon a full consideration of the contentions of the appellant, it would seem that its real complaint is that it is now taxed, while competitors are exempt, resulting in a pecuniary advantage to the competitors over it to the extent of the tax which it is required to pay. If this be true, its remedy lies, not in attempting to be relieved of the tax itself, but in restraining the proper taxing officials from allowing the exemption to its competitors. Every taxpayer has a financial interest in seeing that all property in the state, properly the subject of taxation, should be taxed, because, by increasing the taxable basis, the rate necessary for the production of the expenses of the state and local governments will be reduced, and the individual's tax correspondingly lowered."

quacy of such a remedy has been sternly criticized. Furthermore, the United States Supreme Court has held, under factually similar circumstances, that such a remedy is tantamount to no remedy at all, and violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

While not expressly overruling the procedural remedy adopted in the prior Maryland cases, the Court of Appeals rejected the contention that the taxpayer's sole remedy was to appeal under-assessed realty. Citing the leading Supreme Court cases in the area, the Court reversed the order below which had denied the allowance of a deduction for inflationary influences in the valuation of the taxpayer's personal property.

The problem of property assessment at less than actual value is not peculiar to Maryland. Similar practices by assessing officials have given rise to equally perplexing problems in other jurisdictions. As in the instant case, little or no reasonable justification can be offered in sup-

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8 Lewis, The Tax Articles of the Maryland Declaration of Rights, 13 Md. L. Rev. 83, 108, 109 (1953). The lack of monetary incentive in seeking a rise in his neighbor's assessment will render such a remedy largely ineffective. Furthermore, practical difficulties of timely investigation and proof will tend to make the remedy wholly unworkable.

9 In Sioux City Bridge v. Dakota County, 260 U. S. 441 (1923), a Nebraska corporation complained that its property had been assessed at one hundred per cent of its true value, while all other property in the taxing district had been valued at fifty-five per cent. The state court ruled that even if such discrimination were proven, the taxpayer had no remedy except to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. The Supreme Court replied:

"... such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district. This court holds that the right of a taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute" (446).

See also Hillsborough v. Cromwell, 326 U. S. 620, 623 (1946).

Following the Supreme Court decisions in the area, several state courts adopted the indicated approach, often overturning a prior contrary position. See, for example, Baldwin Construction Co. v. Essex County Bd. of Tax., 16 N. J. 329, 108 A. 2d 508 (1954); and State v. Alabama Power Co., 254 Ala. 327, 48 So. 2d 445 (1950). In spite of the non-committal language of the Court of Appeals in the instant case, it would seem that Maryland has now joined this group.

10 "The assessing of property at a fraction of its actual value undoubtedly is so widespread that most, if not all, of the municipalities in the state pursue the practice. This rule of assessment has been tolerated for so long a time that it has acquired the respectability of assumed legality."

E. Ingraham Company v. Town and City of Bristol, 144 Conn. 374, 132 A. 2d 503, 505 (1957).
port of fractional valuation, especially where a greater proportionate deduction is afforded one taxpayer or class of taxpayers, as compared to another.

Although such a practice almost invariably violates the state constitutional or statutory mandate to assess at "full", "true" or "actual" value, most of the courts which have been confronted with the problem condone fractional valuation so long as a uniform percentage is applied consistently to each assessment. Occasionally, however, even a long-established system of valuation at less than full value will be condemned, and the assessors' conduct deemed illegal.

The Maryland decision, in comparison, would seem to fit into the former category.

Where, on the other hand, unequal percentages of valuation are applied to differing classes of property or taxpayers, a court faces a serious dilemma. To deny an abatement to a complainant whose property has been assessed at a proportionately higher valuation than other similarly classified property is to permit an unjust discrimination to go unremedied. On the other hand, to grant a reduction in the petitioner's assessment is to commit a judicial violation of the express statutory command of actual value. The generally prevailing view, in both federal and state courts, adopts the latter approach, deeming the removal of the discrimination preferable to a non-remedial adherence to the statutory direction of actual value.

11 "The statute and the assessor's oath contemplate the assessor's valuation will be 100% of such theoretical sale price, but no taxpayer can be considered aggrieved by discrimination if the assessment is some fraction of such value, applied uniformly to all property." State v. City of Evansville, 261 Wis. 599, 53 N. W. 2d 795, 800 (1952). See also: Delaware Lackawanna and Western R.R. Co. v. Neeld, 23 N. J. 561, 130 A. 2d 6 (1957); Bemis Bros. Co. v. Claremont, 98 N. H. 446, 102 A. 2d 512 (1954); Anderson's Red & White Store v. Kootenai County, 70 Ida. 260, 215 P. 2d 815 (1950); Chastain's, Inc. v. State Tax Commission, 72 Ida. 344, 241 P. 2d 167 (1952).

12 E. Ingraham Company v. Town and City of Bristol, supra, n. 10. See also Switz v. Middletown Twp., 23 N. J. 580, 130 A. 2d 15 (1957), for a detailed study in New Jersey's property tax assessment problems, where the court indicated the pressing need for a state-wide revaluation.

13 "... the requirement that all property be assessed at its actual cash value is secondary to the [state] constitutional mandate of equality of taxation." Chastain's, Inc. v. State Tax Commission, supra, n. 11, 169. Bracketed material supplied.

14 "... where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." Sioux City Bridge v. Dakota County, supra, n. 9, 446. To the same effect, see Iowa-Des Moines Bank v. Bennett, 284 U. S. 239 (1931); Delaware
A few cases in other jurisdictions present factually similar circumstances to the real property-personal property discrimination problem which faced the Maryland Court of Appeals. In *Bemis Bros v Claremont*, the taxing authorities assessed stock in trade at one hundred per cent of current value, while other property was valued at various lesser percentages. The New Hampshire court found no legal basis for such a discrimination, and held the taxpayer entitled to an abatement of its stock in trade assessment. In *Anderson's Red & White Store v. Kootenai County*, stocks of merchandise were assessed at twenty per cent of actual value, while other property was valued at lesser percentages. In remanding for a recomputation to equalize the plaintiff's assessment of merchandise with the assessments of other property, the Idaho court said:

"But after having considered all of the relevant factors affecting the value of the different classes and items of property, and having arrived at the current value, if the result is not entered as the assessed value, and the assessor decides that the 'full cash value' contemplated by statute is less than the value so arrived at, he must assess all property at the same proportion of its market or other actual current value."

This doctrine was reaffirmed in *Chastain's Inc. v. State Tax Commission*. Substantially the same rationale was employed by The Wisconsin Court in *State v. City of Evansville*, and by The Maine Court in *Sears, Roebuck & Co. v.*

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*Supra*, n. 11.

The remedy indicated, however, was unusual. The Court rejected the complainant's contention that its stock in trade assessment should be diminished by a deduction proportionate to that permitted for other property. Rather, the Court determined the ratio of assessed to actual value of all property in the taxing district, and then permitted only so much of a reduction as would bring the ratio of assessed to actual value of all the taxpayer's property to a common level. The relief granted was thereby much reduced. The remedy is, perhaps, somewhat questionable. The amount of a reduction will vary in any given instance according to the relative proportions in which a taxpayer owns the separate types of property, as compared to the proportions in which the categories of property are owned in the taxing district as a whole. The complainant's burden may be reduced to the level of the tax burden of a hypothetical "average" taxpayer, but uniformity between the classes of property is not achieved.

*70 Ida. 200, 215 P. 2d 815 (1950).*


*Supra*, n. 11.

*Supra*, n. 11.
**Inhabitants of City.** However, in an uncommon deviation from the generally accepted approach, The Connecticut Court in *E. Ingraham Company v. Town and City of Bristol,*\(^2\) where assessors valued realty at fifty per cent of actual value and personalty at ninety per cent, held that the unambiguous language of the taxing statutes permitted the proper use of no value other than the actual value of the property; but, overruling a prior decision of long standing,\(^3\) the court refused to grant the complainant taxpayer a reduction in the assessment of its personalty since, to do so, would condone the assessor’s illegal violation of the statutory command of full value.\(^4\)

Most of the decisions in this area are based on a construction of state constitution uniformity provisions.\(^5\) Occasionally, as in the instant Maryland decision,\(^6\) a court will rest primarily upon a construction of the applicable statutes.\(^7\) A few cases purport to add, at least in *dicta,* that discriminatory assessments of similarly classified property violate the equal protection clause of the Fourteenth Amendment to the Federal Constitution.\(^8\) The opinion of

\(^1\) 150 Me. 181, 107 A. 2d 475, 480 (1954):

“'The law requires equality, and requires that each property owner pay his just proportion of taxes. The law requires that real estate and tangible personal property be valued on an equal basis ‘according to the just value thereof’. The law requires that there be no favoritism nor discrimination. The law requires that when a percentage of the true value is taken for taxation purposes, the percentage be uniform and equal on all real estate and tangible property.'”

\(^2\) 144 Conn. 374, 132 A. 2d 563 (1957).

\(^3\) Randum v. City of Bridgeport, 63 Conn. 321, 28 A. 523 (1883).

\(^4\) From a standpoint of statutory construction, there can be no doubt that the Connecticut court’s decision is correct and proper. But from the complaining taxpayer’s standpoint, the past discrimination to his detriment is left unabated by the refusal to grant a reduction in the protested assessments. *Query,* whether the court’s failure to provide an effective remedy violated the Fourteenth Amendment to the Federal Constitution? See discussion, n. 9, *supra.*


\(^6\) The uniformity provision of the Maryland Constitution — Article 15 of the Declaration of Rights — was but faintly urged by the taxpayer and was not even mentioned by the Court of Appeals in the instant case. The scant reliance upon Article 15 is probably due to the considerable confusion surrounding its present legal status. For a complete analysis of the problem, see 37 Op. Atty. Gen. 424 (1952), and Lewis, *The Tax Articles of the Maryland Declaration of Rights,* 13 Md. L. Rev. 83 (1953).

\(^7\) E. Ingraham Company v. Town and City of Bristol, 144 Conn. 374, 132 A. 2d 563 (1957).

\(^8\) “For want of uniformity in taxable values, the assessments made against the property of the plaintiff, the intervenors, and other similarly situated taxpayers are null and void; they are clearly violative of the
the Court of Appeals in the instant case alluded in an extremely vague manner to such a possibility, but sidestepped a clear holding on the federal question; the issue had not been vigorously pressed. The problem is one of no slight difficulty. The leading Supreme Court cases deal primarily with discrimination as to a particular taxpayer, and not with varying treatment of classes of property. However, in view of the fact that the Maryland Court of Appeals has now decided, as its interpretation of the statute, that real and personal property have been similarly classified by the Legislature, and must therefore receive equivalent treatment, there is a reasonable probability that the discriminatory assessments of the State Tax Commission constituted not only a violation of the Maryland taxing statutes, but an infringement of the equal protection clause of the Fourteenth Amendment as well.

The decision in the instant case will exert considerable impact upon the revenue and tax structure of the state. There is no simple solution to the equalization problem posed. A complete reappraisal by the legislature of the Maryland property tax assessment situation is indicated.

NELSON B. SEIDMAN

uniform — taxation clause of our Constitution and the equal-protection clauses of our present Constitution and the Federal Constitution,"
See also Delaware Lackawanna and Western R.R. Co. v. Neeld, supra, n. 25.

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by State officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."


Following the decision in the Ingraham case, supra, n. 27, a bill was introduced into the Connecticut legislature purporting to validate prior fractional valuations, preserve rights of appeal, and provide for uniform assessments. The Maryland Legislature, in turn, may soon be faced with a proposed enactment attempting to separately classify real and personal property, permitting valuation at different percentages of actual value. Such legislation may be constitutionally questionable. It is reasonably clear that the Fourteenth Amendment to the Federal Constitution will impose no insuperable bar. See Bell's Gap R'd. Co. v. Pennsylvania, 134 U. S. 292 (1890), and Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362 (1940). On the other hand, Article 15 of the Maryland Declaration of Rights may, short of constitutional amendment, present more serious obstacles. See 37 Op. Atty. Gen. 424 (1952), and Lewis, supra, n. 26.