TAX LIABILITY OF AN AIR RIGHTS CONVEYANCE

In *Macht v. Department of Assessments*,[1] the Court of Appeals of Maryland considered the tax liability of an air rights conveyance. In 1961, the Charles Street Development Corporation decided to construct a multi-storied office building on property immediately west of the property owned by plaintiffs. In order to insure an unimpeded access to light and air on the building's east face, the corporation acquired, by lease, exclusive rights to the airspace 124 feet over plaintiffs' property. Because of procedural delays, the air rights lease was not valued and placed on the assessment rolls until the tax year ending June 30, 1969. The assessment, designated as "Air Rights Only," was a separate assessment made in addition to one previously made on the property. Plaintiffs protested. In affirming the Maryland Tax Court, the Court of Appeals of Maryland held that airspace superadjacent to property may be subject to state and local property taxes and separately valued for assessment purposes.

Prior to considering the validity of the Department's action, the court examined the nature of the landowner's proprietary rights in the airspace superadjacent to his land. These rights derive from the ancient common law maxim *cujus est solum, ejus est usque ad coelum et ad inferos*,[2] extending ownership of the surface land indefinitely upward and downward. This maxim of "infinite ownership"[3] has, however, been necessarily modified by technological developments in air navigation and commerce.[4] One of the first major decisions limit-

1. 266 Md. 602, 296 A.2d 162 (1972).

2. "To whomsoever the soil belongs, he owns also to the sky and to the depths." BLACK'S LAW DICTIONARY 453 (4th ed. 1968). *See* Bouvé, *Private Ownership of Air Space*, 1 AIR L. REV. 232 (1930); Cooper, *Roman Law and the Maxim Cujus est Solum in International Law*, 1 MCGILL L.J. 23 (1952); Gorove, *On the Threshhold of Space: Toward a Cosmic Law*, 4 N.Y.L.F. 305, 311-13 (1958); Lardone, *Airspace Rights in Roman Law*, 2 AIR L. REV. 455, 461 (1931); Sweeney, *Adjusting the Conflicting Interests of Landowner and Aviator in Anglo-American Law*, 3 J. AIR L. 329, 347-73 (1932). *See also* cases collected in 73 C.J.S. *Property* § 13b(2)(a) (1951).

3. Comment, *The Interest of the Occupier of Land in Superjacent Space—The New York View*, 4 N.Y.L.F. 350, 352-54 (1958).

4. Justice Douglas in United States v. Causby, 328 U.S. 256, 261 (1946), concluded "that doctrine has no place in the modern world."

ing the extent of the doctrine was *Swetland v. Curtiss Airports Corp.*[5] The court there concluded that the surface owner had a dominant right of occupancy for purposes incidental to the use and enjoyment of the surface. As to the upper stratum, he has no right except to prevent its use by others resulting in an unreasonable interference with his complete enjoyment. The issue continued to be a source of repeated litigation[6] until the Supreme Court decision of *United States v. Causby.*[7] In *Causby,* the Court ruled that the landowner "owns at least as much of the space above the ground as he can occupy or use in connection with the land,"[8] the balance being regarded as open, publicly navigable airspace.

In addition to the case law, a significant number of states provide by statute[9] that "the ownership of the space above the lands and waters of the state is vested in the several owners of the surface subject to the rights of air flight."[10] Thus, whether based on case or statutory authority, virtually all jurisdictions regard the surface owner as owner of the superadjacent airspace to that reasonable height necessary for the full use and enjoyment of the land below, limited only by federal aviation, state property and local zoning regulations.

Although the concept of ownership may be well established, the validity of a conveyance of undeveloped airspace as a solid mass of

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5. 55 F.2d 201 (6th Cir. 1932).

6. Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292 (1944); Hinman v. Pacific Air Transport, 84 F.2d 755 (9th Cir. 1936); Cory v. Physical Culture Hotel, 14 F. Supp. 977 (W.D.N.Y. 1936); Delta Air Corp. v. Kersey, 193 Ga. 862, 20 S.E.2d 245 (1942); Thrasher v. City of Atlanta, 178 Ga. 514, 173 S.E. 817 (1934); Burnham v. Beverly Airways, 311 Mass. 628, 42 N.E.2d 575 (1942); Smith v. New England Aircraft Co., 270 Mass. 511, 170 N.E. 385 (1930); Rochester Gas & Elec. Corp. v. Dunlop, 148 Misc. 849, 266 N.Y.S. 469 (Monroe County Ct. 1933).

7. 328 U.S. 256 (1946).

8. *Id.* at 264. Furthermore, the Court continued that the landowner owns as much of the airspace as he can occupy, even though he does not occupy it in a physical sense. *Id.*

9. *See, e.g.,* MD. ANN. CODE art. 1(a), § 7 (1957).

10. At least 22 states have adopted similar provisions based on the Uniform State Law for Aeronautics § 3, 11 UNIF. LAWS ANN. 160 (1938) (withdrawn). *See* Hunter, *The Conflicting Interests of Airport Owner and Nearby Property Owner,* 11 LAW & CONTEMP. PROB. 539, 547 (1945).

real property[11] has not been specifically litigated.[12] The right to subdivide and convey has, however, been recognized by statute in several states.[13] As to the remainder, there seems to be little reason for not affirming such conveyances if challenged. First, virtually all commentators support the concept of horizontal subdivision and conveyance of airspace.[14] Second, policy considerations favor their recognition. Concepts of controlled vertical expansion and utilization of superadjacent airspace provide vast opportunities for the redevelopment of congested urban areas.[15] Finally, as a practical matter,

11. Air rights may be defined as the right to occupy the space above a specified plane over a designated tract of land. Only the airspace as described in three dimensions and not the gaseous air itself can be conveyed. Brennan, *Lots of Air—A Subdivision in the Sky,* 1955 ABA SECTION OF REAL PROPERTY PROBATE AND TRUST LAW PROCEEDINGS 24.

12. Some decisions have been interpreted as uniformly holding that conveyances of freehold estates non-contiguous to land are valid; *see* Cheeseborough v. Green, 10 Conn. 318, 26 Am. Dec. 396 (1834); City of Chicago v. Sexton, 408 Ill. 351, 97 N.E.2d 287 (1951); Madison v. Madison, 206 Ill. 534, 69 N.E. 625 (1903); Metropolitan W. Side Elevated R.R. v. Springer, 171 Ill. 170, 49 N.E. 416 (1897); McConnel v. Kibbe, 43 Ill. 12, 92 Am. Dec. 93 (1867); Loring v. Bacon, 4 Mass. 575 (1808); R.M. Cobban Realty Co. v. Donlan, 51 Mont. 58, 149 P. 484 (1915); Piper v. Taylor, 48 N.D. 967, 188 N.W. 171 (1922); Pearson v. Matheson, 102 S.C. 377, 86 S.E. 1063 (1915); Townes v. Cox, 162 Tenn. 624, 39 S.W.2d 749 (1931); Taft v. Washington Mut. Sav. Bank, 127 Wash. 503, 221 P. 604 (1923).

13. COLO. REV. STAT. ANN. § 118-12-1 (1963); ILL. REV. STAT. ch. 114, § 174a (1954); N.J. STAT. ANN. §§ 46:3-19 to 22 (1940); PA. STAT. ANN. tit. 68, §§ 801-05 (1965). The statutes provide that interests in airspace may be possessed, conveyed, devised, taxed, and in all respects treated as property.

14. Note, *Conveyance and Taxation of Air Rights,* 64 COLUM. L. REV. 338, 340-42 (1964). Horizontal subdivision and conveyance has been analogized to (1) reservation of a fee interest in property, (2) conveyances of fee interests in the upper stories of buildings, (3) the three-dimensional concept characterized by the condominium. *See also* Ball, *Division Into Horizontal Strata of the Landspace Above the Surface,* 39 YALE L.J. 616 (1930); Ball, *The Vertical Extent of Ownership in Land,* 76 U. PA. L. REV. 631 (1928); Barnhill, *The Creation of Estates in Airspace,* 25 ROCKY MT. L. REV. 354 (1953); Bell, *Air Rights: Prospects for the Future,* 23 ILL. L. REV. 250 (1928); Mace, *Ownership of Airspace,* 17 U. CIN. L. REV. 343 (1948); Richardson, *Private Property Rights in the Airspace at Common Law,* 31 CAN. B. REV. 117 (1953); Comment, *Property—Things Subject to Ownership—Statute Permitting Creation of Estates in Airspace,* 52 HARV. L. REV. 335 (1938); Comment, *The Interest of Occupier of Land in Superjacent Space—The New York View,* 4 N.Y.L.F. 350 (1958); Note, *Airspace: A New Dimension in Property Law,* 1960 U. ILL. L.F. 303; Comment, *Air Rights,* 6 WAKE FOREST INTRA. L. REV. 65 (1969).

15. Davis, *Air Rights Development: Legal Aspects and Effects on Land Use,* 2 LAND-USE CONTROLS 1 (1968); Mayer, *Air-Rights Development on Downtown Chicago's Lakefront,* 1 LAND-USE CONTROLS 1 (1967); Comment, *Leasing of Air Space Above Public Buildings—The Public Use Doctrine and Other Problems,* 28 U. PITT. L. REV. 661 (1967).

leases and sales, which first appeared in the larger cities decades ago, have continued to take place in increasing numbers without objection.[16] Based on the "prevailing authority," the Maryland court willingly recognized the validity of the air rights conveyance.[17]

The court next turned to the principal issue raised by plaintiffs. Plaintiffs argued that the separate assessment of "Air Rights Only" was unauthorized and illegal. Generally, the power to tax may be exercised by the state legislature subject only to those limitations imposed by the federal and state constitutions.[18] Included among the taxing powers is the power to provide for the separate classification and assessment of all taxable property within the state.[19] Although plenary in nature, certain aspects of the taxing process may be delegated to governmental departments and officers.[20] Any delegation of power, however, must be expressly and distinctly stated, and exercised in strict conformity with the grant.[21] In the absence of such express authorization, no delegation of power will be recognized or implied. Thus, if the state legislature has not expressly stated that the assessing authority shall have the power to classify property for assessment purposes, the authority is without power to do so. Although the General Assembly of Maryland can provide for the separate assessment of air rights apart from other rights and interests held by the landowner, it has chosen not to do so. Since the General Assembly had

16. F. Horack & V. Nolan, Land Use Controls 118-19 (1954).

17. 266 Md. at 613, 296 A.2d at 168, *citing* 52 Op. Att'y Gen. 425, 426 (1967).

18. People *ex rel.* Bailey v. Illinois Cent. R.R., 407 Ill. 426, 435-36, 95 N.E.2d 352, 357 (1950); Diana Shoe Stores Co. v. Department of Revenue, 5 Ill. 2d 112, 114, 125 N.E.2d 71, 72 (1955); State Tax Comm'n v. Gales, 222 Md. 543, 549, 161 A.2d 676, 679 (1960); Mayor of Baltimore v. Safe Deposit & Trust Co., 97 Md. 659, 662, 55 A. 316, 317 (1903); General Installation Co. v. University City, 379 S.W.2d 601, 603 (Mo. 1964); Giers Improvement Corp. v. Investment Serv., Inc., 361 Mo. 504, 510, 235 S.W.2d 355, 358 (1951).

19. Abrams v. City of San Francisco, 48 Cal. App. 2d 1, 119 P.2d 197 (Dist. Ct. App. 1941); State Tax Comm'n v. Gales, 222 Md. 543, 549, 161 A.2d 676, 679 (1960); Williams v. City of Madison, 15 Wis. 2d 430, 113 N.W.2d 395 (1962). As in all areas pertaining to the formulation of tax policy, legislatures have wide discretion in classifying property limited only by the requirements that such classification be reasonable and not arbitrary. *See* Madden v. Kentucky, 309 U.S. 83, 88 (1939); *see also* 84 C.J.S. *Taxation* § 36(a) (1954).

20. Sommers v. Patton, 399 Ill. 540, 544-45, 78 N.E.2d 313, 316 (1948); United States Steel Corp. v. Gerosa, 7 N.Y.2d 454, 459, 166 N.E.2d 489, 491, 199 N.Y.S.2d 475, 478 (1960); English v. Robinson Township School Dist., 358 Pa. 45, 49, 55 A.2d 803, 807 (1947).

21. Comptroller of Treasury v. M.E. Rockhill, Inc., 205 Md. 226, 232-33, 107 A.2d 93, 98 (1958).

not authorized the Department to make a separate valuation and assessment, plaintiffs maintained that the Department was not empowered to separately assess the conveyance. The issue before the court concerned the ability of the Department to levy a special assessment on property, supposedly taxed previously, in order to collect the total amount of taxes that should have been paid.

Included among those responsibilities generally delegated is the appraisal of all taxable property within the appropriate jurisdiction and its placement on the assessment rolls. Where the method of property valuation is prescribed by statute, the assessing authority must act accordingly.[22] One of the most common methods is the unitary plan whereby land and improvements are regarded and valued as a single assessment. In this case, a separate calculation of value on each is *procedural* only and does not mean that there has been an individual assessment and valuation of each. The value of the property, land and improvements together, is the only assessed value attached to the particular piece of real estate.[23] A second method is the component plan, whereby land and improvements are valued separately. Accordingly, the assessor determines the value of the land, determines the value of the improvements, then adds the two components together. This aggregate sum is the assessed value and is the only assessment made against the taxpayer's property.[24]

Occasionally, taxable property is omitted from assessment and escapes taxation. Provisions have been adopted, however, in many states by which such omitted property may be subsequently placed on the assessment roll and taxed.[25] The method prescribed in valuing and assessing property is critical in determining the tax liability of property not included in the original assessment.

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22. County of Sacramento v. Hickman, 66 Cal. 2d 841, 848, 428 P.2d 593, 596, 59 Cal. Rptr. 609, 611-12 (1967); Smith v. Davis, 426 S.W.2d 827, 834 (Tex. 1968). The assessor has, however, a reasonable degree of latitude in selecting the method used to calculate the value of each individual component of property. The only requirement is that the valuation reflect the fair cash market or full and true value. The three methods commonly used are (1) market data, (2) depreciation-replacement cost, (3) capitalization of earnings. The capitalization method used in valuing income-producing property was the method used in *Macht*. *See* Overstreet v. Brickell Lum Corp., 262 So. 2d 707 (Fla. Dist. Ct. App. 1972); Bornstein v. State Tax Comm'n, 222 Md. 331, 176 A.2d 859 (1962); Crossroads Center, Inc. v. Commissioner of Taxation, 286 Minn. 440, 176 N.W.2d 530 (1970); R. BABCOCK, THE VALUATION OF REAL ESTATE 167 (1932).

23. *E.g.*, FLA. STAT. ANN. §§ 192.001 (12)—.011 (1971).

24. *E.g.*, MD. ANN. CODE art. 81, § 19(a) (1957).

25. *E.g.*, MD. ANN. CODE art. 81, § 34 (1957).

For example, Oklahoma has adopted a unitary plan providing for the assessment of realty, not the separate assessment of land and improvements.[26] In *Roberts v. Fair*,[27] certain buildings were overlooked when the land on which they were located was assessed. The court held that once either the land or improvements were assessed, the whole property was valued. "Any attempt to add more taxes to those already assessed . . . is an attempt to . . . revalue and reassess real property that has been undervalued . . . ."[28]

In *Whited v. Louisiana Tax Commission*,[29] the taxing authorities attempted to make a supplemental assessment on certain buildings erected subsequent to the assessment of the land. Although the assessment sheet had separate columns for the valuation of improvements, the Louisiana statute[30] required taxation of realty as a whole. The court held that the buildings were to be taxed as part of the realty and were "not omitted because they were necessarily included, without mention of them, in the assessment of the lots on which they were built."[31]

In the Washington case of *Hammond Lumber Co. v. Cowlitz County*,[32] the assessor negligently omitted a logging railroad located on taxpayer's property. The Washington court held that the additional assessment placed on the railroad as omitted property was improper as it constituted double taxation. The court concluded: "[A]s it was then existent upon the land, it was plainly discernable to the assessing officer upon examining the land as a house, a tree, or fence would be."[33]

The Washington court reached the same conclusion in *Tradewell*

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26. OKLA. STAT. ANN. tit. 68 § 2419 (1966).

27. 174 Okla. 139, 50 P.2d 152 (1935).

28. *Id.* at 142, 50 P.2d at 155.

29. 178 La. 877, 152 So. 552 (1934).

30. LA. REV. STAT. ANN. § 47:1958 (1952).

31. 178 La. at 884, 152 So. at 554.

32. 84 Wash. 462, 147 P. 19 (1915).

33. *Id.* at 466, 147 P. at 20-21. *See also* Wolf v. Thomas, 1 Ind. App. 232,27 N.E. 578 (1891); Davidson v. Franklin Ave. Inv. Co., 129 Minn. 87, 151 N.W. 537 (1915)(building); Palmer v. Beadle Co., 70 S.D. 99, 15 N.W.2d 6 (1944); E.K. Wood Lumber Co. v. Whatcom County, 5 Wash. 2d 63, 104 P.2d 752 (1940)(standing timber). "Where a valid assessment has been made by an assessor cognizant of the facts, undervaluation is ordinarily not grounds for another assessment." Builders Components Supply Co. v. Cockayne, 22 Utah 2d 172, 173, 450 P.2d 97, 98 (1969).

Stores v. Snohomish County.[34] In *Tradewell,* the taxpayer acquired several single family residences, destroyed them and constructed a supermarket in their place. The improvement on the land, however, was still carried at the lower value of the residences. In denying the assessor's attempt to cure the error by a later assessment of the supermarket, the court stated that the assessment did not constitute a listing and valuation of omitted property, but rather a reassessment of omitted *value* of property already listed.

The nature of its omitted property statute[35] has come before the New Mexico courts. In *Vermejo Club v. French,*[36] the assessment failed to include timber standing on the land. To correct the error, the assessor levied a tax on the timber as omitted property. The court, recognizing that the timber was at all times a part of the realty, held that property once assessed could not be revalued. In *Taylor v. Shaw,*[37] however, the court observed by way of dictum that overlooked improvements may be added as omitted property: "The Assessor could, and should, if he finds the improvements to have been placed upon the property . . . and not theretofore valued, place them upon the tax rolls . . . that taxes might be collected thereupon."[38]

A holding similar to the *Taylor* dictum was announced in the Florida case of *Korash v. Mills.*[39] In Florida, the statute[40] requires a single assessment and generally does not permit land and improvements to be assessed separately. The Assessor, however, separately assessed a motel that had escaped previous assessment and taxation due to clerical error.[41] In upholding the separate assessment, the Florida court said the assessment constituted an initial assessment placed upon an improvement that had previously escaped taxation, not a new judgment by the assessor or revaluation of property previously valued and listed. The court concluded: "We agree that single assessments are the usual case and should be employed,"[42] but

34. 69 Wash. 2d 352, 418 P.2d 466 (1966).
35. N.M. STAT. ANN. §§ 72-2-42, 72-8-3 (1953).
36. 43 N.M. 45, 85 P.2d 90 (1938).
37. 48 N.M. 395, 151 P.2d 743 (1944).
38. *Id.* at 399, 151 P.2d at 745.
39. 263 So. 2d 579 (Fla. 1972).
40. FLA. STAT. ANN. §§ 192.001(12)—.011 (1971).
41. FLA. STAT. ANN. § 197.011 (1971) states that a separate assessment may be warranted only in the case of a clerical error. The class of clerical error that would permit a separate assessment is strictly limited and was not of the type that occurred in this case.
42. 263 So. 2d at 582.

the taxpayer cannot blithely assert refined definitions of single assessment.[43] The separate assessment is a case of *"de minimus non curat lex."*[44]

As previously stated, some states have adopted the component method of valuation. The use of the component plan results in a different treatment of omitted property. Illinois[45] and California[46] cases indicate that where individual assessments of land and improvements are authorized and either one has been taxed but undervalued, it cannot be reassessed as omitted property. If either has been entirely omitted from taxation, however, it can later be added to the assessment roll and taxed.

The foregoing discussion indicates that the prescribed method of assessment determines the tax liability of omitted property. If land and improvements are assessed as a single entity, the general rule is that unassessed improvements cannot be later assessed as omitted property. Land and improvements become one and an assessment of one constitutes an assessment of both. The *Korash* decision, however, suggests that exceptions to this general rule may be warranted in certain circumstances. Their suggestion is based upon an analysis of assessment and omitted property statutes similar to that of the "component" jurisdictions. If land and improvements are assessed separately as individual components, that component completely overlooked can still be assessed. In this case, the essential requirement is that there be a clear showing of a previous failure to tax.

The decision of the Maryland court was based primarily on a consideration of the above. In examining the Department's action, the court first turned to the Maryland constitution and code. The constitution provides that the power to separately classify and assess property remains exclusively that of the General Assembly.[47] Although the General Assembly has provided for the separate assessment of land and improvements,[48] it has not declared that air rights are to

43. *Id.*

44. *Id.* "Justice may be 'blind,' but it is not stupid." *Id.*

45. People *ex rel.* McDonough v. Birtman Elec. Co., 359 Ill. 143, 194 N.E. 282 (1934).

46. Jenson v. Byram, 229 Cal. App. 2d 651, 40 Cal. Rptr. 2d 540 (Dist. Ct. App. 1964); Stafford v. Riverside County, 155 Cal. App. 2d 474, 318 P.2d 474 (Dist. Ct. App. 1957).

47. MD. DECLARATION OF RIGHTS art. 15.

48. MD. ANN. CODE art. 81, § 19(a) (1966).

be assessed separately and apart from other interests in land. Plaintiffs maintained that the prior assessment of the land included all those rights incident to its ownership, including the rights in the superadjacent airspace; that the Department could not again make a separate assessment of "Air Rights Only." It was apparent to the court, however, that plaintiffs incorrectly characterized the Department's action.

The court explained that the fee simple owner of land holds all the elements of a single right, comparable to a "bundle of sticks." Included within this bundle is the right to utilize the superadjacent airspace. Furthermore, for the purpose of taxation, property includes not only the land and improvements thereon, but also those rights, privileges, powers and interests incident to ownership and upon which it is practical to place a money value.[49] For assessment purposes, a proper valuation must include "all interests in the property except when the legislature authorizes the assessment to separate interests."[50]

So long as plaintiffs "made no use of the airspace over their property, it was not, nor could it be made the subject of assessment."[51] It was a right upon which it was impractical to place a monetary value. Once plaintiffs, however, conveyed the airspace for a price, it became income-producing, acquiring value and becoming capable of assessment for tax purposes. Whether characterized as an easement, license or *profit à prendre*,[52] the practical effect of the lease was to enhance the value of plaintiffs' "servient" estate by the rent reserved. The enhanced value was a proper element to be considered in determining plaintiffs' tax liability.

The court concluded that there is "no reason why land, improvements and airspace could not be separately valued for assessment purposes."[53] It relied on its earlier decision of *Susquehanna Power Co. v. Tax Commission*,[54] which held that the separation of owner-

49. Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 268 (1932); Samet v. Farmers' & Merchants' Nat'l Bank, 247 F. 669, 671 (4th Cir. 1917). *See also* BLACK'S LAW DICTIONARY 1382 (4th ed. 1968).

50. Overstreet v. Brickell Lum Corp., 262 So. 2d 707, 709 (Fla. Dist. Ct. App. 1972), *citing* Homer v. Dadeland Shopping Center, Inc., 229 So. 2d 834, 837 (Fla. 1969).

51. 266 Md. at 613, 296 A.2d at 168.

52. *Id.* at 612, 296 A.2d at 168.

53. *Id.* at 610, 296 A.2d at 167.

54. 159 Md. 334, 151 A. 29 (1930), *aff'd*, 283 U.S. 291 (1931).

ship rights into component parts and their separate valuation was not unjust to the taxpayer so long as the value of the component parts did not exceed the value of the whole. "Whether the value of the airspace was separated out or included in the valuation of the fee . . . is indeed a distinction without a difference."[55]

The court's analysis of the Department's action is similar to that of other jurisdictions regarding omitted property. The court has emphasized the distinction between an unauthorized separate classification and assessment resulting in a mere reassessment of omitted value, and the authorized assessment of a new element of property not previously assessed. As the air rights conveyance had entirely escaped any previous assessment, the Department's later assessment was not prohibited by the Maryland constitution or code. The court has suggested that a failure to levy an assessment on an element of property unknown to the assessor at the time of the assessment, and its subsequent assessment, does not constitute an unauthorized reassessment. Neither does the valuation of an element of property constitute a separate classification.

State legislatures provide by statute the procedures by which all property within the state may be assessed and taxed. Precise interpretation and application, especially of those statutes regarding reassessment and omitted property, are often confusing. The *Macht* decision represents an attempt by the court to resolve this confusion in a manner consistent with the basic principles of taxation. The constitutional basis of the property tax is that the taxpayer must bear his proportionate share in the support of the state from which he has derived certain benefits and protection. The guiding principle is equality and uniformity in taxation.[56] In this way, the burden is distributed over all property, requiring the taxpayer to contribute only that amount proportionate to the actual value of his property.[57] Courts recognize that it would be inequitable and unjust to grant a

55. 266 Md. at 616, 296 A.2d at 170.

56. The established rule is that property is to be taxed according to its value, the rationale being that this prohibits arbitrary and capricious modes of taxation (offensive to the equal protection and due process clauses), and promotes equality and uniformity. *See* People *ex rel.* Tedrick v. Allied Oil Corp., 388 Ill. 219, 57 N.E.2d 859 (1944); People *ex rel.* Toman v. Chicago Union Station Co., 383 Ill. 153, 48 N.E.2d 524 (1943); Smith v. Davis, 426 S.W.2d 827 (Tex. 1968).

57. Mayor of Baltimore v. Minister of Starr Methodist Protestant Church, 106 Md. 281, 67 A. 261 (1907); State v. Sterling, 20 Md. 502 (1864).

"knowing" taxpayer a windfall at the expense of his fellow taxpayers. In a case of doubt regarding the interpretation of statutes levying taxes, they are construed most strongly against the government in favor of the citizen.[58] They are not, however, to be so construed as to permit a taxpayer to avoid a just and proper assessment.

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58. Gould v. Gould, 245 U.S. 151, 153 (1917).