

PROPERTY TAX RELIEF: A VIABLE ADJUNCT TO HOUSING POLICY?

DENNIS L. WITTMAN*

The object of this paper is to explore the desirability and practicality of a real property tax rebate system to aid low-income families. Borrowing heavily from a Wisconsin statute¹ providing such tax relief to the elderly, the influential Advisory Commission on Intergovernmental Relations (ACIR) has proposed "suggested legislation"² to reduce housing costs for low-income groups through a property tax rebate. This paper will attempt to evaluate the need for such a rebate scheme and whether the ACIR proposal meets that need. Some conclusions also will be drawn concerning the implications of implementing state legislation along the lines of the ACIR proposal.

INTRODUCTION

Amid the clamor that has arisen in the last decade for increasing and improving the nation's housing stock, property taxes have remained one housing-related cost that local and state officials have largely not considered when seeking to aid low-income families in obtaining better shelter. For a long time it has been recognized that the tax on real property places a heavy burden upon those groups living on a low or fixed income.³ Yet there has been a reluctance to consider

* B.A., Northwestern University, 1965; J.D., Washington University, 1971.

1. See WIS. STAT. ANN. § 71.09(7) (1969), *as amended*, (Supp. 1971). Minnesota has a similar rebate scheme. See MINN. STAT. ANN. §§ 290.0601-0617 (Supp. 1971). Vermont has a statute with a similar purpose, but because of a wholly different scheme of computation, is not considered here. See VT. STAT. ANN. tit. 32, §§ 5961-75 (1969). Since the Minnesota scheme is so similar to Wisconsin's, it will not be considered in detail in this paper.

2. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1970 CUMULATIVE ACIR STATE LEGISLATIVE PROGRAM § 15-62-48 (1969) [hereinafter cited as ACIR STATE LEGISLATIVE PROGRAM].

3. For a concise history of the property tax and its weaknesses as a source of revenue in the United States see G. BENSON, S. BENSON, H. MCGLELLAND, & P. THOMSON, *THE AMERICAN PROPERTY TAX: ITS HISTORY, ADMINISTRATION, AND ECONOMIC IMPACT 11-82* (1965) [hereinafter cited as *THE AMERICAN PROPERTY TAX*]. Useful bibliographies covering various aspects of the property tax may be found in TAX INSTITUTE OF AMERICA, *THE PROPERTY TAX: PROBLEMS AND PO-*

seriously methods that might ease that burden. There has been, of course, a wave of homestead exemption laws enacted since the 1930's.⁴ These statutes are responses by state legislatures to the popular demand for relief for those families, usually elderly couples, who have considerable assets in real property but little or no income from which to pay taxes.⁵ The homestead statutes, however, are uneven in their relief since they meet only the needs of property owners, ignoring the vast number of poor renters, and they usually must be available to all, regardless of income. They also erode the local tax base.⁶ As a result they cannot be widely expanded. Real property taxes, therefore, continue to impose a heavy burden on poor renters and owner-occupants. Furthermore, there has been a growing recognition that, viewed as a consumption tax, the real property tax has a debilitating effect on attempts to improve the overall housing stock.⁷

It would seem then that certain adjustments in property taxes might be an advantageous method not only of lifting some of the tax burden falling on the poor, but also of contributing toward improvement of housing in general. The chief argument for such property tax manipulation is that the tax is one of the few housing costs over which state and local governmental units may have some leverage. Land values, interest rates, labor costs, and other items all may be beyond the effective control of government, but real property taxes can be changed by legislation and thus are directly affected by public policy.⁸ The reason that there has been reluctance to touch the property tax is that the tax is a bulwark in the revenue structure of most local governments.⁹ Municipalities and counties must have it to remain financially free of the state and the federal governments.¹⁰

TENTIALS 461-85 (1967), and in Council of Planning Librarians, Exchange Bibliography No. 172 (Vance ed. 1971—available from P.O. Box 229, Monticello, Ill., 61856).

4. See Yung-Ping, *Present Status and Fiscal Significance of Property Tax Exemptions for the Aged*, 18 NAT. TAX J. 162 (1965).

5. *Id.* In other words, there are some low-income families who are "property rich but income poor." Quindry & Cook, *Humanization of the Property Tax for Low Income Households*, 22 NAT. TAX J. 357, 359 (1969).

6. See ACIR STATE LEGISLATIVE PROGRAM § 15-62-48.

7. See, e.g., D. NETZER, *IMPACT OF THE PROPERTY TAX: ITS ECONOMIC IMPLICATIONS FOR URBAN PROBLEMS*, JOINT COMM. PRINT, 90TH CONG., 2d Sess. 18-45 (National Comm'n on Urban Problems Report to Joint Economic Comm., 1968) [hereinafter cited as NETZER—DOUGLAS COMM'N RPT.].

8. W. MORTON, *HOUSING TAXATION* 37 (1955).

9. *Id.* at 4.

10. *Id.*

PROPERTY TAX RELIEF

Despite its harmful impact on the poor—and this is only one of many complaints against the tax¹¹—the real property tax still is a necessary source of revenue for local governments. How the ACIR proposal mentioned earlier might solve this problem will be considered below, but first it is necessary to evaluate the need for property tax relief by refining the nature of the harmful impact which the real property tax has upon housing consumption.

THE DESIRABILITY OF PROPERTY TAX RELIEF

Although the term “property tax” in one sense refers to a broad category of excises on all kinds of property—real, personal, tangible, and intangible—in the United States today the term seems to connote the tax on residential and commercial real property, and appurtenances thereto, levied on the basis of assessed valuation by local governmental units, especially municipalities or counties. It is with this latter connotation of the tax as a levy on real property that this paper is concerned.

The taxation of real property is still one of the greatest sources of revenue for local governmental units. During the first third of this century many economists predicted that general property taxation would permanently decline as a source of revenue because of problems of administration arising in the shift in wealth from land holding to ownership in intangibles and personalty.¹² The growth of sales and personal income taxes as well as pressure from real property taxpayers to ease their burden during the Great Depression reduced the reliance that state and local governments placed on the property tax.¹³ Since

11. For the problems of modern property tax administration see A. LYNN, JR., *THE PROPERTY TAX AND ITS ADMINISTRATION* (1969). Detailed criticisms also may be found in *TAX INSTITUTE OF AMERICA, THE PROPERTY TAX: PROBLEMS AND POTENTIALS* (1967) and in *THE AMERICAN PROPERTY TAX*.

12. *THE AMERICAN PROPERTY TAX* at 58-59, 72. The shift caused much tax fraud and subsequent loss of revenue, which eventually forced some states to forego altogether taxes on intangibles so that there is no such tax in 11 of the 23 states with the largest Standard Metropolitan Statistical Areas in the 1960 Census. Of the 47 states with SMSA's in the 1960 Census, 20 had no property tax on intangibles. NETZER—DOUGLAS COMM'N RPT. at 5.

13. *THE AMERICAN PROPERTY TAX* at 72. See also Groves, *Property Tax—Effects and Limitations*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 17-18 (1967), wherein it is stated:

The tax did not perform well during the Great Depression when it was embarrassed by tax delinquencies, rate limitations, and tax revolts of one sort or another. This was the time when taxpayers took legislators by the scruff of the neck figuratively and literally and told them to find something to tax besides real estate. This was the period of wholesale enactment of state sales

World War II, however, "the property tax has ceased its relative decline."¹⁴ By 1962 the property tax composed more than 11 per cent of total federal-state-local revenues and almost $3\frac{1}{2}$ per cent of the gross national product.¹⁵ Today, the property tax can be fairly described as

primarily a levy on real estate because . . . locally assessed real property made up 76.3% of total assessed valuation subject to taxation in 1961. And it is chiefly a local tax: locally assessed property of all types represented 92.2% of all assessed valuation in 1961.¹⁶

Perhaps more to the point, *the property tax today is to a large extent a tax on housing*. Dick Netzer, professor of public finance at the New York University Graduate School of Public Administration and a recognized authority on the property tax, has estimated that roughly one-half of all property tax revenue raised in 1962 in the 1960 U. S. Census's Standard Metropolitan Statistical Areas (SMSA) "was derived from taxes on housing . . ."¹⁷

and/or income taxes; many municipalities, particularly cities, similarly broadened the local tax base. Meanwhile the federal government had adopted its income tax and developed it into the backbone of a vastly expanded revenue system. Along with it went a satellite levy on payrolls to finance social security. The property tax which had supplied 55.5 per cent of overall tax revenues as late as 1932 sank to 13.2 per cent in 1955.

14. THE AMERICAN PROPERTY TAX at 72.

15. *Id.* "[S]ince World War II the tax . . . appears easily able to . . . [keep] pace with the growth of the gross national product . . ." *Id.* at 13. The revival of the property tax as a source of revenue has been explained this way:

Perhaps the outstanding feature of the recent behavior of the property tax is the way in which in the past decade its revenues have kept pace with increases in state-local expenditure and thus its decline in relative importance has been arrested. Although the evidence is inconclusive, it does appear that part of the reason for this behavior is that the economic base of the property tax—the market value of taxable types of property—has been extremely responsive to growth in national output in the postwar period, an apparent interruption to the long decline in capital-output ratios. In any event, property tax revenues have exhibited a responsiveness or "GNP elasticity" far higher than earlier expectation.

D. NETZER, *ECONOMICS OF THE PROPERTY TAX* 8-9 (1966) (footnotes omitted) [hereinafter cited as *ECONOMICS OF THE PROPERTY TAX*].

16. THE AMERICAN PROPERTY TAX at 72-73.

17. NETZER—DOUGLAS COMM'N RPT. at 12-14 (note especially tables 6, 7, & 8). See also *ECONOMICS OF THE PROPERTY TAX*, where it is noted:

Property classes which are especially urban in character—notably housing and commercial realty, such as stores and office buildings—appear to produce more revenue than their shares of assessed values would suggest. This is to be expected since property tax rates are higher in urban areas than in rural areas; the farm realty share of tax revenue is appreciably lower than its share of assessed values.

Id. at 19. The estimate of a 50 per cent share of total property tax revenue gen-

PROPERTY TAX RELIEF

Since housing composes such a large segment of the overall property tax base, it is obvious that the tax has serious consequences which must be evaluated in examining problems of housing policy. But gauging exactly what those consequences are has been very difficult for economists and taxation authorities. For instance, the traditional complaint has been that the property tax is highly regressive in its distribution—that its application imposes a proportionately heavier tax burden on those in lower-income brackets.¹⁸ Yet the late Harold M. Groves, a University of Wisconsin economist and authority on the property tax, said that “regressivity is hardly the most impressive charge that can be laid against the property tax.”¹⁹ Examining the tax from a long-range point of view, Groves said:

At any one time there are many people over-housed and under-housed, so to speak, because they have not yet adjusted their housing expense to their incomes, up or down. The new evidence poses the possibility that for income classes of lifetime income, differences in burden over most of the income scale may pretty well average out.²⁰

And Professor Netzer has observed that, “considered in the aggregate . . . the tax has positive advantages on distributional and efficiency

erated by housing was figured this way:

Since 1957, housing has increased substantially as a proportion of assessed values for general property taxation, while acreage and farm property have declined; so have state assessed property and locally assessed personalty. Meanwhile, both nominal and effective property tax rates have risen; quite evidently this rise has been largest in urban areas and therefore on urban-type properties. In all probability, therefore, very close to 50 per cent of total property tax revenues is now collected from nonfarm households, about 40 per cent from nonfarm businesses, and less than 8 per cent from agriculture.

Id. at 21-22 (footnotes omitted).

18. According to Professor Netzer, the traditional complaint followed this form: [T]he property tax worked out in practice to be quite regressive in incidence; that is, the tax as a percentage of the incomes of those who bear the ultimate burden declines as income rises. Other critics supported the regressivity argument with empirical evidence, and found that the incidence of the tax was not only regressive but also poorly related to the benefits received from public expenditure financed by the property tax. Yet another shortcoming was considered to be the tax's discouragement of investment in that social necessity, housing.

ECONOMICS OF THE PROPERTY TAX at 5 (footnotes omitted). Detailed discussion of some of the more technical reasons for property tax regressivity may be found in *id.* at 56-57.

19. Groves, *Property Tax—Effects and Limitations*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 17, 20 (1967).

20. *Id.* The “newer evidence” to which Professor Groves refers may be found in *ECONOMICS OF THE PROPERTY TAX* at 55-66.

grounds.”²¹ Netzer has explained that the tax contains “a large measure of ‘vertical equity’ [in that] . . . it redistributes income from the rich to the poor.”²² The “vertical equity” occurs

because the tax itself is more or less proportional in its incidence among income groups, but the expenditures it finances are heavily “pro-poor” in their incidence. The property tax in the aggregate also tends to increase the application of resources to high return human investment and may deter somewhat lower return investment in physical capital.²³

Groves and Netzer were, of course, talking in long-range, theoretical terms that, to the satisfaction of an economist’s model, do minimize the regressivity of the tax. But both Groves and Netzer have recognized the short-run regressivity that is particularly burdensome to the poor as well as detrimental to the immediate improvement of housing for low-income groups, especially renters.²⁴ Netzer has explained the

21. *ECONOMICS OF THE PROPERTY TAX* at 164.

22. *Id.*

23. *Id.* at 164-65. A more detailed discussion, placed in the context of incidence by income class, may be found in *ECONOMICS OF THE PROPERTY TAX* at 42. The shift to “high return human investment” is also given detailed consideration. *Id.* at 67-69.

24. For instance, Groves noted:

According to the 1960 census of housing there were 1,669,000 families living in substandard or deteriorating housing, although they devoted 35 per cent or more of their income to rent.

Groves, *Property Tax—Effects and Limitations*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 17, 21 (1967). Netzer made this comment on regressivity and renters:

Rather good evidence on incidence by income class of property taxes on owner-occupied houses strongly indicates that this component of the tax is even more regressive than the nonresidential component. Somewhat less direct evidence indicates that the tax on rented housing is still more regressive. However, because renters tend to be poorer and decidedly smaller consumers of housing (and hence pay less property tax, via rents) when the two series are combined, the picture is less clear.

ECONOMICS OF THE PROPERTY TAX at 40 (footnotes omitted). Since the publication of the above two comments, the following statistical data was reported:

The Law of Diminishing Returns has been overtaking private rental housing for years, even in the moderate income housing market.

In 1966, average rent per room per month ranged from \$22 in the South to \$49.50 in the West. . . . U.S.A. averages were \$46.50 for elevator apartments, \$26.50 for low rise buildings with 12-14 units, \$30.50 for low rise buildings with 25 or more units, and \$25.60 for garden type apartments. But only 43.1 per cent of gross possible income (GPI) for the large low rise apartments remained after expenses to cover debt service, depreciation, and return on investment. The corresponding figure for elevator buildings was 48.3 per cent and for garden type apartments, 49.5 per cent. (Debt service alone took, 58.7 per cent of the monthly housing expense of the FHA 203 new homeowners in 1966.)

Real estate taxes, up 9.2% since 1966, in 1966 took 15.7% of GPI from pri-

PROPERTY TAX RELIEF

burden and detriment by analogizing the property tax on housing to general sales and selective excise taxes like those on tobacco and alcohol, all of which are known as "consumption taxes."²⁵ "[V]iewed as an excise tax and leaving aside all benefit considerations, [the property tax on housing] is higher in rate than any other generally used American consumption tax, except taxes on liquor, tobacco, and gasoline," Netzer has remarked.²⁶ Like other consumption taxes, "the great bulk of the burden of the housing property tax appears to rest upon housing consumers, whether they are owner-occupants or tenants."²⁷ Netzer estimates that nationally "probably well over 90 per cent of all property taxes on housing are borne by housing occupants."²⁸ By 1960, 3.6 million households nationally were subject to property tax rates equivalent to 20 per cent of housing expenses, and 1.2 million "were subject to rates in excess of 33.3 per cent."²⁹ Netzer has calculated that, excluding liquor, tobacco, and gasoline, "all the indirect taxes which fall upon consumers—including shifted business taxes as well as ordinary sales and excise taxes—probably amount to less than 10 per cent of nonhousing consumer expenditures—less than half the level of housing taxation."³⁰ The 1968 Kaiser Report³¹ stated that property taxes account for a "large proportion of a family's monthly housing costs . . . [representing] 26% of monthly shelter costs in moderately priced single family housing, and 14% in elevator apartment units."³² The Kaiser Report observed that "[l]ocal real estate taxes are widely considered to have the effect of disturbing the operation of housing

vately owned rental elevator buildings, an average of 16.6% from low rise apartments, and 13.3% from garden type apartments. Also, as a percentage of gross possible income, payrolls range from 6.3% on the smaller low rise apartments to 8.4% on elevator buildings. Loss from vacancies and delinquent rents in the area of 4% to 5%. Maintenance and repairs account for 4.3% to 6.3% and management for 4.3% to 5.2%.

The long lag in rent rises and the sharp increase in real estate taxes are putting increasing pressure on rental rates.

E. EAVES, HOW THE MANY COSTS OF HOUSING FIT TOGETHER, NATIONAL COMM'N ON URBAN PROBLEMS RPT. NO. 16, 8 (1969) (emphasis added).

25. NETZER—DOUGLAS COMM'N RPT. at 16.

26. ECONOMICS OF THE PROPERTY TAX at 30.

27. NETZER—DOUGLAS COMM'N RPT. at 16. Professor Netzer notes as one "chief" exception that "owners of rental property cannot shift the burden of that portion of the tax which falls on the land underlying their buildings." *Id.*

28. *Id.*

29. *Id.* at 17.

30. *Id.* at 18.

31. PRESIDENT'S COMMITTEE ON URBAN HOUSING, A DECENT HOME (1968).

32. *Id.* at 99.

markets by discouraging consumption of housing."³³ Netzer underscored the problem more forcefully this way:

It is simply inconceivable that, if we were starting to develop a tax system from scratch, we would single out housing for extraordinarily high levels of consumption taxation. More likely, we would exempt housing entirely from taxation, just as many States exempt food from the sales tax.³⁴

This heavy taxation discourages "consumption of and investment in housing in general by the entire population."³⁵ But the discouragement is most likely to fall hardest on the central city as opposed to the suburbs, because, unlike the central city, "the property tax in many suburbs is analogous to a general charge for the use of public services."³⁶ Because central cities provide a wide variety of services

33. *Id.*

34. NETZER—DOUGLAS COMM'N RPT. at 16.

35. *Id.* at 19. A second discouraging effect is explained this way:

There is ample evidence that consumers will buy more and better housing if its price is lower, just as they do with regard to most other objects of consumption. It can be and has been argued persuasively that one of the most effective ways of helping the low-income population (with respect to housing) is to rapidly increase the total supply of housing in a particular city and metropolitan area; a decrease in prices (rents), while having no immediate effect on total housing supply, does create a larger effective housing market for those who now suddenly can afford more of the existing housing. The evidence from the 1950's strongly suggests that the housing conditions of the poor improved most radically in those areas in which the total supply of housing rose most rapidly. The process by which this occurs is related to the rate of turnover of housing

Id. at 19-20.

36. *Id.* at 21-22. This is explained by the fact that in "suburban communities, particularly bedroom suburbs, the public services that a family receives or has access to are very closely tied to the local taxes that same family pays." *Id.* at 21. Netzer describes this as similar to an income tax in its effect and concludes that it is "unlikely to be a deterrent to consumption of housing; that is, to the expenditure of consumer income for housing." *Id.* at 22. The deterrent effect of property taxes for suburbanites may be further weakened by other factors, as Netzer explains:

Perhaps the biggest single type of quality upgrading which occurs in the housing market is the shift from rented to owner-occupied housing. Since high property taxes on housing are far more apparent to present or prospective owner occupants than to renters, the short-term deterrent effects of increased property taxes should be particularly important in this regard. However, there has clearly been a vast amount of this type of upgrading in the past twenty years in the face of high and rising property taxes. One explanation of this apparent anomaly lies in the many offsetting factors at work in this same period: the liberalization of mortgage terms; the inflation hedge aspect of investment in housing (or in other real property); the advantageous income tax treatment of home ownership for better off families; and, for apartment housing and non-residential construction, the favorable deprecia-

PROPERTY TAX RELIEF

and tax a wider variety of property, "individuals cannot reasonably assume that the prices of housing confronting them include an identifiable tax component which is in effect a charge for a preferred package of public services."³⁷ This translates into discouraging those families financially able to choose their home location from selecting a central city site, thereby hastening the middle-class flight to the suburbs and more effectively isolating the poor.³⁸ It also dampens the

tion/capital gains treatment of real estate investment under the federal income tax, especially since 1954.

ECONOMICS OF THE PROPERTY TAX at 73-74. For a different look at the characterization of the property tax in the suburbs as a "benefit tax" see J. HEILBRUN, REAL ESTATE TAXES AND URBAN HOUSING 156-62 (1966).

37. NETZER—DOUGLAS COMM'N RPT. at 22. There is a trend toward giving more favorable tax treatment to property improvements in central cities in order to preserve housing in still healthy neighborhoods, preserve existing housing stock, and improve housing overall. *Id.* at 21. On the "wide variety of services" central cities provide, Netzer notes that:

For many years—in fact, ever since there have been suburban populations living beyond central city boundaries but economically tied to the city—central city governments have been faced with problems arising from the concentration of needs for public services within their jurisdictions. They have, throughout this period, provided a variety of services on behalf of their entire urbanized areas. The poor and the disadvantaged tend to cluster downtown, giving rise to high welfare, health, educational, and similar expenditures. Moreover, many specialized services have been provided only by central city governments simply because only the central city had the size necessary to support activities with markedly increasing returns to scale, many of them "natural monopolies," ranging from water supply to zoos.

ECONOMICS OF THE PROPERTY TAX at 116. Evidence that the central cities can no longer provide these "natural monopolies" without support from suburban taxpayers was provided in St. Louis recently. St. Louis County taxpayers were asked to approve a special tax district to support the St. Louis zoo, art museum, and museum of science and natural history. The tax district was approved, but just barely. *St. Louis Post-Dispatch*, Apr. 7, 1971, at 1, col. 1.

38. NETZER—DOUGLAS COMM'N RPT. at 22. Netzer points out that taxes might even be higher in the suburbs than in the central city, but the advantages the suburban taxpayers get may be more visible to them so that the taxes do not "seem" so expensive. *Id.* The ultimate solution of the central city tax problem probably is in moving away from relying on real property taxes, as one observer has suggested:

[T]he anomalies in the structure and operation of the property tax in an environment of governmental fragmentation are hardly more serious than those traceable to the whole process of urban decentralization and the resulting cleavage between the big city and its suburbs. The outlying communities gain the higher income families, while the poorer underprivileged remain behind in the core city, and the suburbs fall heir to the costly increments to the community's capital while the city's physical plant steadily deteriorates or falls victim to the wrecker's ball. Thus, forces at work to influence the income side of the public ledger to a marked degree are at odds with those impinging on the expenditure side. Here again the tax cost/tax resources relationship is exposed to heavy strain, and in this case the corrective seems

interest that many property owners might otherwise have in improving, modernizing, or rehabilitating their central city property, since, in many cities, such activities will lead to some increase in assessments.³⁹ For the poor, there is little that can be foregone in order to spend more on rent, so that whatever rehabilitated housing there might be is effectively beyond their reach.⁴⁰ Those few low-income families that own a home in the inner city often are forced to let their property become dilapidated.⁴¹

to clearly lie in the direction of increasing resort to nonproperty tax financing, for the prospect of merger as a remedy must be regarded as unlikely, at the least.

Stiles, *Some Possibilities for Meeting Property Tax Problems Arising from Multiplicity of Governmental Units*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 417, 425-26 (1967).

39. NETZER—DOUGLAS COMM'N RPT. at 21. This is assuming, of course, that the property owner could pay for or finance the improvements; that is a big assumption in view of the attitude of many banks toward loans for inner-city home improvements. *Id.* For some other interesting comments on the property tax and its effect on urban renewal see *ECONOMICS OF THE PROPERTY TAX* at 83-85. The Kaiser Report came out strongly for a policy on the part of the cities to remove the property tax as a deterrent to good maintenance and rehabilitation by assessing property on the basis of its earning ability as measured by annual gross rent. *PRESIDENT'S COMMITTEE ON URBAN HOUSING, A DECENT HOME 103-04* (1968).

40. NETZER—DOUGLAS COMM'N RPT. at 19. An interesting treatment of the subject of central city taxes and rehabilitation is J. HEILBRUN, *REAL ESTATE TAXES AND URBAN HOUSING* (1966).

41. NETZER—DOUGLAS COMM'N RPT. at 29. According to Netzer the property tax has the following effects on urban housing and development:

1. The tax amounts to a very high consumption tax on housing expenditure and thus tends to reduce consumer demand for housing. This in turn tends to limit growth in the stock of urban housing and to limit improvements in the quality of the existing housing stock.
2. These effects are not likely to be very evident in suburban communities, especially the better-off ones, for two reasons. First, the connection between property tax payments and local public services provided homeowners is a clear one in most suburbs. Second, the Federal income tax advantages of homeownership, for relatively well-off taxpayers, offset the property tax in large measure.
3. However, the deterrent effect of high taxes on consumption of, and investment in, housing in large central cities are serious. This is likely to be more true for tenants than for homeowners, and more so for lower income groups. For upper income groups, the outcome may be marginal encouragement to the observed trends toward suburban residential locations; for the poor the outcome will be less and poorer housing.

Id. An interesting theoretical observation along these lines may be found in Harriss, *Property Taxes: Outlook and Effects*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 28 (1967). Harriss points out that the property tax may lead to smaller room size in residential construction because it increases the cost of housing—"the higher the price, the smaller the quantity purchased." *Id.* at 35-36. Netzer has cited the following as "obvious and frequent criticisms" of the property tax that are crucial for housing consumers:

PROPERTY TAX RELIEF

From the foregoing, it is reasonable to conclude that, viewed as a consumer tax, the property tax adds a harmful cost to the price the poor must pay for housing. Not only does the property tax add to cost so as to make certain kinds of housing inaccessible to low-income groups, it also frequently leaves what housing is available in a deplorable state of repair. Furthermore, the poor may have to pay a greater percentage of their annual income for this deteriorated housing than higher-income groups pay for considerably better shelter; and, of the overall exorbitant price for housing which the poor pay, a considerable percentage is directly or indirectly attributable to property taxes. Obviously, this makes the property tax in the short run highly regressive for all low-income groups. This is so even though, as Netzer has noted, the property tax is as good an income distributor as some other forms of state taxation—*e.g.*, general sales, selective sales, and business taxes.⁴² And even though it is in the aggregate fairly proportional to income throughout the country, the property tax absorbs a high percentage of the income of the poor.⁴³

Statistically, these statements can be heavily documented, but some selective figures should suffice to make the desired point. For instance, in the Newark, New Jersey, area in 1960, property taxes on residential property amounted to from 1.8 to 5 per cent of total resident income.⁴⁴

The tax may redistribute income in a desired direction, but it does this with great unevenness, both among and within tax jurisdictions. It is, in many metropolitan areas, regressive as between high income and low income governmental units.

. . . [T]he tax . . . is defective from the standpoint of horizontal equity, "equal treatment of equals. . ." [This is so because] . . . gross inequalities in assessments relative to property value are the rule rather than the exception. . . [and] either because of tastes or circumstances, consumption patterns vary widely among individuals with similar incomes. This affects taxes on both housing and non-residential property. Within narrow income groups, housing consumption is quite variable; for example, in metropolitan areas in 1960, the coefficient of variation of house values for single-family homeowners with incomes of \$6,000-\$7,000 (the median range) was over .50. As a consequence of this, plus geographic differentials and assessment practices, real estate taxes as a proportion of income vary widely within income classes; in the 1960 Census of Housing, for homeowners in the \$3,000-\$5,000 range, 37 percent paid real estate taxes equal to less than 2 percent of income, 30 percent paid taxes equal to from 2 percent to 4 percent of income, and 33 percent paid taxes equal to more than 4 percent of income . . .

ECONOMICS OF THE PROPERTY TAX at 165-66 (footnotes omitted).

42. NETZER—DOUGLAS COMM'N RPT. at 31. The most progressive of all state taxes is, of course, the personal income tax. *Id.*

43. *Id.*

44. Pickard, *Evaluating Tax Concessions for Urban Renewal*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 295, 298 (1967).

In the inner city of Newark, the rate was 5 per cent, while in the wealthiest suburb, with a median family income of \$21,500, the figure was 3.5 per cent.⁴⁵ In one suburb with a 5 per cent rate, the family income median was twice that of Newark proper.⁴⁶ Furthermore, if income is suddenly reduced for any reason such as retirement, unemployment, sickness, or disability, the property tax may quickly become a great burden. For instance, in Wisconsin in the early 1960's it was discovered that 841 households headed by elderly retired persons paid an average of 55 per cent of their total money income in local property taxes.⁴⁷ Five thousand paid more than 20 per cent of their money income in property taxes.⁴⁸

The two reasons usually offered to justify this incidence of regressivity are (1) that the regressiveness of the property tax is offset by a progressive income tax policy at the federal level; and (2) that the poor are often the primary beneficiaries of the public expenditures which the property tax finances.⁴⁹ But Netzer has said that this reasoning is "surely nonsense"⁵⁰ since it puts the central cities "in the position of taxing the poor to provide services for the poor."⁵¹ One report has stated forcefully: "An affluent society is under obligation to so arrange its public finances that it is able to finance public services without forcing low income households through the property tax wringer."⁵² And it has been observed that the "offset" justification is sound only if

there is both a high degree of congruity between Federal, State, and local tax policies and between tax burden and expenditure outlay patterns. A close look at the real world clearly reveals that congruence is more apparent than real. The elderly lady living on a \$1,500 pension and paying a \$300 tax on her residence, most of which goes for public education, can hardly take comfort in

45. *Id.*

46. *Id.*

47. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM 124 (1967). See also Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 NAT. TAX J. 319 (1966).

48. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM 124 (1967).

49. *Id.* at 130.

50. NETZER—DOUGLAS COMM'N RPT. at 32.

51. *Id.*

52. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1 FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM 128 (1967).

PROPERTY TAX RELIEF

this form of tax-benefit logic—or in the fact that the rich are required to turn over a substantial percentage of their income to the Federal income tax collector.⁵³

Along these lines, noting that welfare and health services absorb about ten per cent of total property tax revenues (probably more in the central cities), Netzer argues that:

A good case can be made for relieving the property tax of the job of financing *all* public services linked to the existence of poverty. Since this burden if [sic] concentrated in central cities, it would alleviate the central city-suburban disparities and the property tax problems these create; it would also alleviate the regressivity problem in the sense of taxing the poor for services to the poor.⁵⁴

The apparent degree of regressivity and the comparatively high consumer tax that the property tax represents, as well as the ludicrousness of taxing the poor to provide them with public welfare services, all would seem to be solid evidence that the property tax is unduly burdensome to low-income groups. Therefore, to restore some degree of equity to real property taxes, which historically were assumed to be equitable,⁵⁵ relief of the extraordinary burden of property taxes would seem justifiable. This is not to suggest, as Netzer has, that the poor should not have to help carry any portion of the property tax load, but only that they should not have to absorb an "inordinate" portion.⁵⁶

But even if ideally justifiable, there remains the question of the appropriate form that property tax relief should take.⁵⁷ Certainly any

53. *Id.* at 130.

54. NETZER—DOUGLAS COMM'N RPT. at 37. See also Netzer, *Some Alternatives in Property Tax Reform*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 386 (1967).

55. See J. HEILBRUN, *REAL ESTATE TAXES AND URBAN HOUSING* 156-57 (1966).

56. Professor Groves has stressed the point that the poor should not be relieved of all tax burdens; he has noted that where there is hardship, the welfare department is available, but he does come out strongly for relieving the "extraordinary burden." See Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 *NAT. TAX J.* 319 (1966).

57. The argument for proceeding with caution in this field of reform is well-stated:

Much of the widespread concern with the property tax is perhaps generated by an increasing awareness of hardship cases on the part of citizens. Property owners with fixed or sharply reduced income flows offer the strongest argument for property tax relief. There has been a proliferation of proposals to grant property tax concessions to special groups, such as homeowners, farmers, and the elderly; and to special classes of property such as new industries, urban renewal, and open space property. Such exemptions and special treat-

relief of the extraordinary tax burden of the poor that merely shifts the burden to other income groups, thereby making their tax bills more oppressive, is not a sound social and economic goal. Additionally, it does not make much sense to adopt relief that greatly complicates the administration of the tax. But if the tax burden on low-income groups is so severe as to cause undue hardship—e.g., trapping families in rundown dwellings or forcing the elderly to choose between lifelong homes and near-starvation—then some adjustment of the property tax system certainly should be considered.

PRACTICALITY OF PROPERTY TAX RELIEF THROUGH REBATES

Now that the desirability of real property tax relief for low-income groups has been made somewhat apparent, the ACIR proposed legislation—essentially a model act—can be evaluated. The best approach is to explore the history, operation, and impact of the Wisconsin statute, mentioned earlier, which provides property tax rebates to the elderly.⁵⁸ The Wisconsin statute is a widely acclaimed⁵⁹ pioneering device, the beneficial impact of which has been sufficiently documented⁶⁰ so that it is obvious why the ACIR fashioned its relief proposal using the Wisconsin law as a model. The Wisconsin statute solves several problems that other kinds of property tax relief, especially homestead exemptions, have overlooked. It focuses on the segment of the elderly most in need of relief, because its computation formula effectively operates only for those households with income⁶¹

ment increase the tax burdens on the rest of the community and, if allowed to multiply, can make their burdens oppressive. In addition, they greatly complicate the administration of the tax. In view of both the fiscal and administrative effects of property tax exemptions, it is time to take a long hard look at this increasing trend.

The much discussed use of the property tax to achieve social and economic ends, such as to encourage development or to prevent urban sprawl, needs more analytical study than it has had to date.

Back, *The Property Tax Today*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 2-3 (1967).

58. See note 1 *supra* and accompanying text.

59. See, e.g., Stocker, *Property Tax Exemption for Farmers and the Aged*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 283 (1967).

60. See Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 NAT. TAX J. 319 (1966); Cook & Quindry, *Humanization of the Property Tax for Low Income Households*, 22 NAT. TAX J. 357 (1969) [hereinafter cited as *Humanization of the Property Tax*].

61. The statutory definition of income says:

1. "Income" means the sum of adjusted gross income . . . , net income from sources outside the state, alimony, support money, cash public assistance and relief (not including relief granted under this subsection), the gross amount

PROPERTY TAX RELIEF

less than \$3,500.⁶² It covers not only owner-occupants but also renters by permitting the latter to write off 25 per cent of the gross annual rent as "rent constituting property taxes accrued."⁶³ And it is designed not to erode the local tax base, because rebates are taken as credits against state income tax liability.⁶⁴ Where a claimant's rebate exceeds state income tax liability, a cash payment for the excess amount is paid from the state treasury.⁶⁵ Since the Wisconsin statute has been so successful⁶⁶ in easing the tax burden for a limited group, the elderly, without overlooking associated problems, it is natural to borrow from it, as the ACIR has, when proposing expanded property tax relief for all low-income groups, regardless of age,⁶⁷ and to go even beyond the ACIR proposal in granting rebates to qualifying public housing tenants.

How does the Wisconsin statute operate? To be eligible for prop-

of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act and veterans disability pensions), nontaxable interest received from the federal government or any of its instrumentalities, workmen's compensation and the gross amount of "loss of time" insurance. It does not include gifts from nongovernmental sources, or surplus food or other relief in kind supplied by a governmental agency.
WIS. STAT. ANN. § 71.09(7)(a)(1) (1969).

62. *Humanization of the Property Tax* at 358-59.

63. The applicable sections of the statute are WIS. STAT. ANN. § 71.09(7)(a)(6)-(7) (1969), which state:

6. "Rent constituting property taxes accrued" means 25% of the gross rent actually paid in cash or its equivalent in 1964 or any subsequent calendar year by a claimant and his household solely for the right of occupancy of their Wisconsin homestead in such calendar year, and which rent constitutes the basis, in the succeeding calendar year of a claim for relief under this section by such claimant.

7. "Gross rent" means rental paid at arms-length, solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether expressly set out in the rental agreement or not. In any case in which the landlord and tenant have not dealt with each other at arms-length and the department is satisfied that the gross rent charged was excessive, the department may adjust such gross rent to a reasonable amount for purposes of this subsection. "Gross rent" includes the space rental paid to a landlord for parking of a mobile home, exclusive of any charges for utilities, services, furniture and furnishings or personal appliances furnished by the landlord as a part of the space rental. Twenty-five per cent of such annual gross rental plus the monthly parking permit fees paid during the year shall be the annual "property taxes accrued."

64. WIS. STAT. ANN. § 71.09(7)(c) (1969).

65. *Id.*

66. *See Humanization of the Property Tax* at 360-61.

67. *See* 1970 ACIR STATE LEGISLATIVE PROGRAM § 15-62-48.

erty tax relief, the claimant must be more than 65 years old.⁶⁸ If he does not live alone, there can be only one claimant from his household.⁶⁹ But rather than tying the relief to the income of the individual claimant, all the income of those persons composing the household is included in "household income,"⁷⁰ which is the amount used to calculate the rebate. Essentially, then, the claimant is a household, whether composed of one individual, an elderly married couple, or two or more elderly persons sharing housing expenses by living in the same dwelling. To assure that the rebate does not become a windfall, the statute requires that all public assistance and other cash relief payments as well as other household money sources such as veterans disability or social security benefits be added to the individual's adjusted gross income.⁷¹ Thus, the household income is defined to include, for the purposes of rebate computation under the statute, all the available money a household is likely to receive in a given year. Since the figure that represents household income in making the rebate computation is likely to be an accurate gauge of what percentage of income the household will be able to pay in property taxes, the benefits of the rebate scheme decline as household income increases. (The greater the household income, the more likely the ability to pay property taxes or a portion of them.) It has been repeatedly stated by Wisconsin tax experts that the statute is aimed only at relieving "inordinately high property tax burdens in relation to . . . household incomes."⁷² Inordinately high property tax burdens are considered "extraordinary,"⁷³ thereby entitling the bearer of the burden to relief.

To determine what portion of a household's property tax is inordinate the statute uses

a system of income constraints. Property taxes become inordinate if they exceed a certain percentage of household income: These percentages are increased as household income increases. After

68. WIS. STAT. ANN. § 71.09(7)(a)(5) (1969):

5. "Claimant" means a person who has filed a claim under this subsection and was both domiciled in this state and 65 years of age or over during the entire calendar year preceding the year in which he files claim for relief under this subsection.

69. *Id.*

70. WIS. STAT. ANN. § 71.09(7)(a)(3) (1969).

71. *See* note 61 *supra* and accompanying text.

72. *See, e.g.,* Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 NAT. TAX J. 319, 324 (1966).

73. 1970 ACIR STATE LEGISLATIVE PROGRAM § 15-62-48.

PROPERTY TAX RELIEF

determining the amount of the tax which is excessive, a percentage of this excessive part is relieved.⁷⁴

The portion of the statute that sets forth the "income constraints" and outlines the percentage over which "property taxes become inordinate" states:

1. If the household income of the claimant's household was \$1,000 or less in the year to which the claim relates, the claim shall be limited to 75% of the amount by which the property tax accrued, or the rent constituting property taxes accrued, or both, in such year on the claimant's homestead is in excess of 3% of household income exceeding \$500 but not exceeding \$1,000.

2. If the household income of the claimant's household was more than \$1,000 . . . , the claim shall be limited to 60% of the amount of which the property taxes accrued, or rent constituting property taxes accrued, or both, . . . is in excess of 3% of household income exceeding \$500 but not exceeding \$1,000, 6% of household income exceeding \$1,000 but not exceeding \$1,500, 9% of household income exceeding \$1,500 but not exceeding \$2,000, 12% of household income exceeding \$2,000 but not exceeding \$2,500 and 15% of all household income over \$2,500.⁷⁵

The effect of this section is to divide eligible claimants into two groups—households with income of \$1,000 or less and those with more than \$1,000 income.⁷⁶ The former group is entitled to have 75 per cent of the portion of the property tax deemed inordinate relieved, the latter group, 60 per cent.⁷⁷ The relationship of household income to income constraints is best revealed by the following table:⁷⁸

<i>Household income</i>	<i>Income Constraint</i>
First \$500 of income	0
Second \$500	.03 (Y-\$500)
Third \$500	.06 (Y-\$1,000)
Fourth \$500	.09 (Y-\$1,500)
Fifth \$500	.12 (Y-\$2,000)
Beyond \$2,500	.15 (Y-\$2,500)

(Y=household income)

74. *Humanization of the Property Tax* at 358.

75. WIS. STAT. ANN. § 71.09(7)(g)(1)-(2) (1969).

76. *Humanization of the Property Tax* at 358.

77. *Id.*

78. *Id.* The table in the text has been modified from that in *Humanization of the Property Tax*.

The statute limits to \$330 the amount of property tax that can be used in computing relief.⁷⁹ Thus, if a household paid \$500 in real property taxes, only \$330 could be used for computation.⁸⁰ To illustrate the computation clause, assume a hypothetical owner-occupied household with \$1,700 in income and annual property taxes of \$150. The amount of relief would be:

$$[\$150 - [.00 (\$500) + .03 (\$500) + .06 (\$500) + .09 (\$200)]] .60$$

or

$$[\$150 - [\$0 + \$15 + \$30 + \$18]] .60 =$$

$$\$87 \times 60 \text{ per cent or } \$52.20$$

The amount of tax deemed inordinate is \$87 and 60 per cent or \$52.20 of this can be relieved. To illustrate the computation where there is less than \$1,000 of income, assume a household with \$850 of income and \$150 of taxes:

$$[\$150 - [.00 (\$500) + .03 (\$350)]] .75 \text{ or}$$

$$[\$150 - [\$0 + \$10.50]] .75 = \$139.50 \times 75 \text{ per cent or } \$103.62$$

The amount of tax deemed inordinate is \$139.50 and 75 per cent or \$103.62 of this can be relieved.⁸¹

Since, for those households with income over \$1,000, the percentage of constrained income increases for each additional \$500 of income, the result is to create a larger dollar amount to be subtracted from the total property tax due and thus a smaller amount against which 60 per cent is multiplied to determine inordinate tax burden. This is another safeguard against taxpayer windfalls.

Perhaps the most unique feature of the Wisconsin statute is that it reaches elderly renters of property. In the first hypothetical situation above, assume that the household consisted of an elderly couple with an annual gross rent of \$1,200 (\$100 per month). The couple could consider 25 per cent or \$300 of rent as "constituting property taxes accrued."⁸² In other words, since it is assumed that landlords pass property taxes on to tenants in the form of higher rents, Wisconsin has permitted elderly tenants to consider 25 per cent of their annual

79. WIS. STAT. ANN. § 71.09(7)(h) (1969), *as amended*, (Supp. 1971).

80. *Humanization of the Property Tax* at 358.

81. The sample computations were suggested by similar descriptions and computations in *Humanization of the Property Tax* at 358-59.

82. See note 63 *supra* and accompanying text.

PROPERTY TAX RELIEF

rent as the equivalent of property taxes paid for the landlord. For the hypothetical, if the household were renter-occupied rather than owner-occupied and income was \$1,700 with \$300 as the equivalent in property taxes paid, the relief would be:

$$[\$300 - [.00 (\$500) + .03 (\$500) + .06 (\$500) + .09 (\$200)]] .60 \text{ or}$$

$$[\$300 - [\$0 + \$15 + \$30 + \$18]] .60 =$$

$$\$237 \times 60 \text{ per cent or } \$142.20$$

The amount of tax deemed inordinate is \$237 and 60 per cent or \$142.20 can be relieved.

One study of the Wisconsin statute's effect after one year of operation revealed that the original provisions were so rigorous that they would have to be liberalized in order to achieve the purpose of the legislature.⁸³ The study showed that it was difficult to qualify as a claimant, that the computations discouraged many from filing a claim, and that the computation procedure was so structured that rebates were in negligible amounts.⁸⁴

Another problem with the statute, although not a problem determined in the study, is that the statute does not include public housing tenants among potential claimants under the rebate system, even though federally funded housing projects make a "payment of annual sums to local authorities in lieu of taxes."⁸⁵ This payment comes from rental receipts derived from the project and approximates "taxes which would be paid to the State and/or subdivision . . . upon such property if it were not exempt from taxation."⁸⁶ Since this payment, which amounts to ten per cent of the annual shelter costs charged in the project,⁸⁷ is derived from or based upon rental receipts, it is likely that the payment is shifted to some extent to the public housing tenants. It would seem reasonable, therefore, that the portion of the individual tenant's rent that constitutes his proportion of the shifted payment should be eligible for relief under the rebate scheme. The test would seem to be whether the percentage of the individual's rent for a public housing unit that goes to pay for the shifted payment in lieu of taxes amounts to an inordinate burden. If the whole payment

83. Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 NAT. TAX J. 319, 323-24 (1966).

84. *Id.*

85. 42 U.S.C.A. § 1546 (1969).

86. *Id.*

87. *Id.* § 1586(c)(5).

is shifted, then it would seem reasonable to allow for rebate treatment of that ten per cent passed onto the tenants, just as renters in the private market are allowed to treat 25 per cent of their annual gross rent as a basis for tax rebate. However, both the Wisconsin statute⁸⁸ and the proposed ACIR model act⁸⁹ exempt from coverage those eligible persons already receiving benefits under public housing and other specified programs.

Even though Wisconsin continued to exclude public housing tenants from those eligible for tax rebates, the statute was liberalized to some extent in 1966, and by 1968 approximately 70,000 low-income elderly households were receiving a total of \$6.5 million in property tax relief.⁹⁰ Besides accomplishing its original objectives, studies have shown that the Wisconsin statute has had the beneficial effect of reducing the overall regressivity of the property tax⁹¹ and itself has been equitable in impact, since the taxes of those qualifying for relief have been reduced by a larger percentage for those in lower income groups than for those in higher groups.⁹² In dollar terms, the \$1,000 to \$1,499 claimant class, for example, had an average household income of \$1,259 and paid an average of \$199 or 16 per cent of income in property taxes before relief.⁹³ After relief, they paid an average of \$98 in taxes for a percentage of relief of 51 per cent.⁹⁴ The after-relief tax burden still amounted to 8 per cent, but the overall conclusion is that the statute "has transformed the regressive property tax into a proportional tax."⁹⁵

A study led by the late Professor Groves, one of the architects of the Wisconsin statute,⁹⁶ described the rebate as "negative taxation."⁹⁷

88. See WIS. STAT. ANN. § 71.09(7)(p) (1969) in which it is stated that no claim for relief can be allowed to anyone who is a recipient under state provisions pertaining to aid to the blind, county old age assistance, and aid to totally and permanently disabled persons. See also ACIR STATE LEGISLATIVE PROGRAM § 15-62-48.

89. ACIR STATE LEGISLATIVE PROGRAM § 15-62-48. Section 16 of the model act states that "no claim for relief under this act shall be allowed to any person who is a recipient of public funds for the payment of taxes or rent during the period for which the claim is filed." *Id.*

90. *Humanization of the Property Tax* at 358-59.

91. *Id.* at 360-64.

92. *Id.*

93. *Id.* at 361.

94. *Id.*

95. *Id.*

96. *Id.* at 359 & n.7.

97. Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 NAT. TAX J. 318, 320 (1966).

PROPERTY TAX RELIEF

Since the income of the household rather than the individual is the ultimate determinant of the rebate and since nearly all household receipts are aggregated, Groves described the Wisconsin scheme—with respect to its income aspects—as “welfare rather than tax legislation.”⁹⁸

In the only court test of the validity of the Wisconsin statute, the state supreme court in *State ex rel. Harvey v. Morgan*⁹⁹ adopted the Groves characterization of the statute. In upholding the constitutionality of the statute in 1966, the court in *Harvey* held that the statute was a “relief law in its purpose and in its operation and as such is not subject to the rule of uniform taxation.”¹⁰⁰ Whether other state courts would adopt precisely that point of view is open to doubt, but there is, nevertheless, useful language in *Harvey* for suggesting that expansion of property tax relief to all low-income families along the lines of the ACIR proposal would have a good chance of being upheld, at least in Wisconsin.

For a statute pertaining to taxation to be held constitutional under most state constitutions, it must meet certain requirements of uniformity and equality.¹⁰¹ These requirements vary from state to state, depending on the exact wording of the particular constitution and the manner in which it has been interpreted, but the general object is to assure that similar kinds of property or subjects of taxation are treated alike in terms of taxability or nontaxability and in terms of the amount of liability incurred, if taxable.¹⁰²

Harvey was a suit by a Wisconsin citizen and taxpayer, challenging the validity of the Wisconsin statute on the following grounds: (1) it denied equal protection of laws as required by the fourteenth amendment; (2) it did not comply with the state constitutional rule of uniformity of taxation.¹⁰³ The equal protection argument focused on the age criterion, which was portrayed as an arbitrary classification “not germane to the ostensible purpose of the law.”¹⁰⁴ The plaintiff contended that the statute discriminated between persons similarly sit-

98. *Id.* at 322.

99. 30 Wis. 2d 1, 139 N.W.2d 585 (1966).

100. *Id.* at 10, 139 N.W.2d at 589.

101. See generally J. HELLERSTEIN, *STATE AND LOCAL TAXATION: CASES AND MATERIALS* 36-65 (3d ed. 1969).

102. *Id.*

103. 30 Wis. 2d at 4, 139 N.W.2d at 585-86.

104. *Id.* at 4, 139 N.W.2d at 586.

uated and was not uniform because it granted a partial exemption of property taxes to some persons and not to others.¹⁰⁵

In rejecting Harvey's arguments and upholding the validity of the statute, the Wisconsin Supreme Court concluded:

Basically and in fact this is a relief measure, enacted under the police power of the state. The act takes shelter, a major cost-of-living item, as a factor upon which relief is predicated. Important components of shelter cost are alternatively rent or property taxes. Additionally, assistance is available only to those elderly persons on the very verge of poverty

This is in no way a property tax law, for if the claimant does not in fact pay taxes, but instead pays rent, he is still entitled to relief. His landlord, however, pays taxes on the property occupied without abatement, since the relief is keyed to the individual and not to the property. If he does owe property taxes, he is obliged to pay them in full, and his property tax liability and the amount collected by the municipality is in no way reduced by this legislation. In the event relief is granted to the claimant, the payment is made either as a credit against income taxes, or from an appropriation of the state's general fund, whose connection with any property tax is remote. Property tax receipts and disbursements are unaffected. The relief granted is to the aged needy and is not property tax relief.

The administration of this law is in no way related to the collection of property taxes; rather, the granting of relief is tied in with the mechanics of the income tax administration. A tax return must be filed to prove eligibility, but the claimant need not be an income taxpayer to receive relief from the general fund. The fact he may receive a rebate of his income taxes is merely a convenient method of the state meeting its relief obligation under the act.¹⁰⁶

If the property tax relief provided by the Wisconsin statute to the elderly can be justified as a general relief enactment for a disadvantaged segment of the population, expansion of property tax relief to all low-income groups, regardless of age, would seem equally justifiable on the same grounds. Certainly, to a considerable extent, the elderly may be better able to live on a fixed low income than a young family.¹⁰⁷ Young families' expenditures for food, clothing, recreation, and education may be considerably more than those of the elderly.¹⁰⁸

105. *Id.*

106. *Id.* at 13-14, 139 N.W.2d at 591.

107. *Humanization of the Property Tax* at 365.

108. *Id.*

PROPERTY TAX RELIEF

Additionally, there is a need to save money for retirement and future education of children on the part of young families.¹⁰⁹ Therefore, expansion of this kind of property tax relief would seem to be justifiable along the same constitutional arguments as were developed in *Harvey*.

CONCLUSION

In summary, the approach to property tax relief suggested by the Wisconsin statute has several important advantages that make it deserving of careful consideration. The advantages that have been cited are:

- (1) gives relief only to those in need whether homeowners or renters;
- (2) does not involve the local assessment policy in any way;
- (3) does not require any local government to increase its locally determined level of property taxation to compensate for the revenue that would be lost under an exemption agreement;
- (4) provides state appropriations for the relief which are subject to review and rejustification periodically just as other state expenditures are;
- (5) recognizes that state and local taxes are all part of one tax system; and
- (6) does not violate the tax uniformity provisions usually found in state constitutions.¹¹⁰

In the abstract, a careful consideration of these advantages suggests that this kind of property rebate statute is an attractive way of relieving the extraordinary portion of the low-income taxpayer's burden. Certainly extending relief to renters and structuring the rebate so that it provides the most money to the poorest families is laudable. Additionally, by allowing the rebate to serve as a credit against the state income tax, the state can provide for central administration and considerable control over the program. Since the rebate is a form of indirect housing subsidy, this central administration provides opportunities to evaluate the system at each step—an advantage not usually expected in an indirect subsidy program.¹¹¹ Also operation of the rebate scheme does nothing to damage the local property tax base, since the rebate comes from a central fund, the state treasury.

But questions remain. Does the rebate return enough money to claimants to make it a really effective housing subsidy? Won't land-

109. *Id.*

110. Myers, *General Appraisal of the Effect of Exemptions on the Tax Base*, in *THE PROPERTY TAX: PROBLEMS AND POTENTIALS* 267, 276 (1967).

111. For a discussion of the advantages of indirect versus direct subsidies see Sengstock & Sengstock, *Homeownership: A Goal for All Americans*, 46 J. URBAN L. 317, 503-06 (1967).

lords simply raise rents again when they know that the tenants are getting a rebate geared to rent paid for property taxes? What about the relationship of the rebate to other housing subsidies, including public housing programs? Unfortunately, the literature leaves a lot of these questions unanswered, but some tentative conclusions may be drawn.

Certainly, if the Wisconsin experience is any indicator, unless the computations are greatly liberalized in terms of what is includable in income and what percentages are used, the rebate is not likely to be more than a token subsidy.¹¹² Unless this liberalization occurs as it did in Wisconsin, the average rebate for those in the lower-income brackets probably will remain well below \$100.¹¹³ But if the subsidy could be raised on an average to about \$150-\$200, it would help. A \$200 rebate would enable a low-income family to purchase an average of \$17 more per month in terms of housing. This could mean the difference in, for example, renting a four-room apartment rather than a three-room dwelling.¹¹⁴ For an elderly couple, it could mean a savings on housing costs averaging \$17 a month. Such an amount of money is not likely to be of much help to a totally destitute family, but for a family with a stable breadwinner who makes a steady albeit low income, a \$200 rebate could be a real stimulus. Of course, that amount may not be the deciding factor as to whether a family makes the "major shift" that Netzer sees as occurring when a family goes from rental to owner-occupied housing.¹¹⁵

As for landlords' further shifting taxes onto renters once a rebate system is in operation, the outlook is mixed, but there is reason to believe that this would not happen. The literature on forward shifting of taxes from property owners to tenants is complicated, and as one observer notes, the conventional theory that such a shift occurs has been accepted without a great deal of empirical research on its validity.¹¹⁶ A study of 31 communities in the Boston area suggests that

112. *Id.* See also Cook, Quindry, & Groves, *Old Aged Homestead Relief—The Wisconsin Experience*, 19 NAT. TAX J. 319, 322 (1966).

113. *Id.*

114. NETZER—DOUGLAS COMM'N RPT. at 19.

115. ECONOMICS OF THE PROPERTY TAX at 73-74.

116. OIR, *The Incidence of Differential Property Taxes on Urban Housing*, 21 NAT. TAX J. 253, 254 (1968).

the conventional theory does not always operate, although a recent re-examination questions some of the premises of the Boston study.¹¹⁷

More dangerous than tax shifting is the inflationary effect on the housing market that the rebate could have if not accompanied by an increase in housing units available. Without the availability of additional housing units in the central city, the poor who receive rebates simply would have more money to spend on the same housing. Such a situation would be a windfall for landlords who could raise rents and, if tenants vacated, be assured that there would be a better tenant market than there would have been without the rebate.

Another economic effect that the rebate might have is in the area of capitalization of taxes into the value of land. According to economists, the tax capitalization theory holds that taxes imposed on income-producing properties are offset by a compensatory reduction in the price for which these properties are exchanged.¹¹⁸ Therefore, if taxes for homeowners are eased by means of the rebate, the drop in taxes would seem to call for a rise in property prices. But, as in the case of forward shifting of taxes to tenants, empirical evidence on this theory is scarce, and the proof lies more in theoretical reasoning.¹¹⁹ But even if the theory is valid, the final determination of the impact of tax capitalization would depend on the demand and supply of housing at the time a rebate statute is implemented.

Finally, the rebate scheme under consideration raises serious questions concerning its relationship with public housing. To allow public housing tenants to become eligible for the rebate no doubt amounts to a double subsidy for them, since they are already receiving the benefit of living in subsidized housing. And, as discussed earlier, such a double subsidy would seem to be contrary to the intent of the Wisconsin statute as it now stands¹²⁰ as well as the proposed ACIR model act.¹²¹ Yet, if the rebate is not going to be available to those already

117. *Id.* Orr's thesis was recently challenged in Heinberg & Oates, *The Incidence of Differential Property Taxes on Urban Housing: A Comment and Some Further Evidence*, 23 NAT. TAX J. 92 (1970). Orr replied to the challenge in Orr, *The Incidence of Differential Property Taxes: A Response*, 23 NAT. TAX J. 99 (1970).

118. See Woodard & Brady, *Inductive Evidence of Tax Capitalization*, 18 NAT. TAX J. 193 (1965).

119. *Id.*

120. See note 88 *supra* and accompanying text.

121. See note 89 *supra* and accompanying text.

receiving some other form of direct housing subsidy, it is likely to miss a large number of otherwise needy persons upon whom the real property tax burden or its equivalent¹²² may be equally great. The result of avoiding double subsidies may be to so limit the number of beneficiaries that the added costs of administration, no matter how efficiently centralized, may not be justified. Of course, as in any other form of public assistance, the difficulty with the rebate scheme is where to draw the line, but if the line is drawn too tightly, the overall object of the program may be vitiated.

Obviously, then, all of the problems implicit in a property tax rebate scheme have not been worked out. Perhaps more study of the Wisconsin experience, especially with respect to tax shifting, capitalization, and double subsidies, will reveal ways to solve the problems raised here. As it now stands the rebate idea seems to be a good one if the actual amount of money credited or returned to the taxpayer is sufficiently large to be an effective indirect subsidy and if the number of potential recipients is not arbitrarily or unthinkingly limited.

122. See notes 85-87 *supra* and accompanying text.

CASE COMMENTS

