

Restructuring State and Local Tax Remedies

The Problem: As a property owner's biggest operating expense line item, underwriting property tax liabilities as part of pre-acquisition investment due diligence or operational budget forecasting and control exercises is challenging, as evidenced by the magnitude of the consulting industry.

Complicating matters since 2010, 69 municipalities across the US have filed for Chapter 9 bankruptcy, and not all states permit this.¹ In 2016, Congress passed a law² allowing Puerto Rico to go through bankruptcy. In fact, most state and local governments are experiencing fiscal pressures attributable to:

1. Unfunded pension and healthcare benefits promised to a rapidly retiring workforce;³
2. Unionized workforces that can't be fired but are earning unsustainable above private-sector compensation levels;⁴
3. Jurisdictions with high public sector employment relative to private sector employment underperform economically;⁵ and
4. Changing demographics that present differing challenges.⁶

Because of these pressures and the fact that property tax is the primary funding vehicle for local government, assessors are becoming increasingly aggressive. Recent papers promoting new valuation concepts and definitions, authored by assessors and their attorneys, are confusing the public, the courts, and are undermining trust in the appraisal profession at-large. And, assessors use tax revenues to lobby and advocate against their constituents' interests.

Undermining fairness, property tax is administratively adjudicated locally, and the dispute venue is *de facto* controlled by the taxing authorities.

This public-private sector fiscal tension creates investment disincentives for taxable real estate, putting downward pressure on development and transaction activity.⁷ Unlike federal tax issues, most C-suite executives are unaware of the magnitude of their company's property tax liabilities because they are not addressed in SEC filings.

Prior to enactment of the new federal tax law, this issue was masked in some states. The true cost of state and local government is only now being realized by some taxpayers, due to the \$10,000 deduction limitation.

State and local governments that do not minimize taxation will continue to suffer taxpayer disintermediation from both residents and private-sector job producing entities; the "golden goose" will get up and leave. Elevating awareness of these challenges will educate for the betterment of communities across America.

Solution: Quasi-judicial property tax disputes should be administered by the judiciary; but continue to be funded by the local taxing authorities.

Governmental Efficiencies:

1. Restructuring will decrease government's property tax dispute administrative costs.
2. Consolidate all quasi-judicial boards (boards) under appellate court jurisdictional geographies.
3. House boards in courthouses or buildings not controlled by local government entities.
4. Board clerks should take an oath and be appointed by the appellate court clerks annually.
5. Boards should get technical oversight from the Department of Revenue (DOR).

¹ <https://www.governing.com/gov-data/municipal-cities-counties-bankruptcies-and-defaults.html>

² <https://www.congress.gov/bill/114th-congress/house-bill/5278>

³ <https://knowledge.wharton.upenn.edu/article/the-time-bomb-inside-public-pension-plans/>

⁴ https://en.wikipedia.org/wiki/Public-sector_trade_unions_in_the_United_States

⁵ <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15887/Floridas-Top-Ten-Largest-Public-Employers-by-County>

⁶ <https://www.housingwire.com/articles/47816-report-americans-keep-relocating-heres-where>

⁷ <https://www.governing.com/gov-data/municipal-cities-counties-bankruptcies-and-defaults.html>

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6. Board process complaints should go to the DOR before circuit/superior court.
7. Board clerks would retain experienced, independent full-time counsel who would take an oath.
8. Boards shall be composed of a state licensed attorney, certified public accountant, and a certified general appraiser.
9. Board clerks would retain full-time, professionally licensed, competent value magistrates.
 - a. All magistrates must take oath, annual DOR training, and pass an annual DOR exam on current law.
 - b. Valuation magistrates must be licensed state-certified general, professionally designated appraisers, with a minimum of five years' relevant professional experience.
 - c. Attorney magistrates must be practicing lawyers with at least five years' relevant experience.
 - d. Magistrate's conclusions:
 - i. Must be final administrative rulings;
 - ii. With *de novo* review by circuit/superior courts.
10. DOR must track and publish each board and magistrate rulings statistics to maintain public confidence.

Cost Savings: Elimination of Duplicative Spending & Inefficiencies: (FL Example)

1. Five full-time board clerks replace 67 part time clerks.
2. Five more qualified, better-educated, full-time specialist board attorneys replace 67 part-time amateur attorneys.
3. Fewer, more qualified, better-educated specialist magistrates replace amateurs.
4. Reduced need for recording and copying equipment.
5. Reduced need for hearing rooms will lower operation costs.
6. Reduced legislative distraction.

Funding: Boards Continue to be Proportionately Funded from County Commissions & School Boards

1. Funding based on number of petitions filed from each county.
2. Annual financial cost/benefit reporting data must be posted on government websites.

Local Government Conflicts of Interest:

1. The current system is unfair and presents moral hazard; structurally, boards have no judicial independence.
2. Currently, magistrates (hearing officers) work part-time and are appointed by the taxing authorities.
3. Implement penalties for misfeasance, malfeasance, or inappropriately influencing board function.
4. Year-round operations in neutral locations will help ensure judicial independence.

Simplified Oversight for DOR Audit Function:

1. Reduced cost and increased efficiency to state and local government.
2. Uniform processes and training of magistrates will enhance and streamline administration.
3. Uniform fair treatment of taxpayers will increase public confidence.
4. Provide for electronic hearings in accordance with ADA:
 - a. A common practice in county, state, and federal courts today.
 - b. Permit remote internet-facilitated appearance to eliminate hardships.
 - c. County clerk of court can provide electronic hearing room(s) for taxpayers.
 - d. Assessors'/property appraisers' offices already have the technology.

Political Considerations:

1. Property tax is the most "hated" tax because it's based on a hypothetical value.
2. Boards lack judicial independence (i.e. "the fox is guarding the henhouse").
3. Investors, taxpayers, and the legislature know that the system is broken; an impediment to development.
4. Restructuring boards would reduce government spending by millions every year.
5. Restructuring boards will not reduce local government tax revenues.
6. Making the board redress process FAIR would be a huge win with constituents & investors:
 - a. Implication: Incentivizing real estate investment = more jobs, spending, and a bigger tax base.
7. Restructuring boards will require rewriting portions of state law:
 - a. A balanced taskforce is suggested (i.e. government and private sector experts).