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### The Downsides of Property Tax Caps

They have created fiscal stress for states and municipalities, and exacerbated inequality. A new report offers a simple solution to alleviate those issues.

Property tax caps are hampering municipalities' ability to fund basic services and are exacerbating inequality, according to a report released by the Center for Budget and Policy Priorities (CBPP) last week.

The tax caps, which first became popular during the 1970s tax revolt and have since spread to 44 states plus the District of Columbia, have created fiscal stress for the states that adopted the limits. As a result, states have cut aid to cities and counties, and municipalities have become more reliant on sales taxes and fees that disproportionately hurt the poor and people of color.

Prior to the first state cap in 1977, property taxes accounted for an average of 50 percent of local revenue across the country, according to the report. In 2015, property taxes accounted for 39 percent of local revenue.

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Property tax revenue is shared by states and their localities. The study focused on the impact of caps in Michigan, Massachusetts, Oregon and New York. When adjusted for inflation, Massachusetts cut its unrestricted aid to municipalities by 44 percent from 2001 to 2015. In New York, more than three-quarters of cities and half of the counties reported significant fiscal stress due to the state's adoption of its tax cap in 2011 and subsequent cuts in state aid. And in Michigan, state aid declined in every city outside of Detroit from 2008 to 2014, dropping 17 percent across the state.

Because of property tax caps, "states are pushing too many costs down to the lower level," said Ron Deutsch, executive director of the Fiscal Policy Institute, during a press call about the report.

Property tax caps, according to the analysis, also contribute to inequality. For one, the caps strangle funding for public education, which the researchers see as a pathway for minority and low-income children to move up the socioeconomic ladder.

"I think in particular with schools we have a great imbalance between our high-needs school districts and our well-off school districts in terms of per pupil spending. The tax cap is institutionalizing these inequities," Deutsch said.

Secondly, white homeowners reap the largest benefits from the cap because they have historically owned homes at a greater rate than people of color and on average own more valuable homes.

And because the caps have led municipalities to turn to fees and sales taxes to make up the difference, those costs fall disproportionately on poor residents and people of color since they account for a larger portion of their income. Across the country, the share of local revenues derived from fees went from 16 percent in 1977 to 23 percent in 2015.

"Property tax caps lock in those inequities," says Iris Lav, former deputy director of the Center for Budget Policy and Priorities.

The study points to a report from the U.S. Department of Justice that examined the use of fees in Ferguson, Mo., and warned of "the illegal enforcement of fines and fees in certain jurisdictions around the country -- often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions." The DOJ report went on to explain that people facing these fines and fees "may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape."

#### A Proposed Solution

The report has a recommendation to alleviate some of these issues: Flip the current property tax cap formula.

Right now, most states limit the annual increase in property taxes to 1.5 or 2.5 percent or the rate of inflation -- whichever number is lower. Setting the limit instead at whichever number is higher, the researchers say, would provide more cash for governments and make revenues more predictable.

"We never thought the tax cap was the right solution," said Deutsch. "Property tax caps should be eliminated. If they aren't eliminated, at the very least, they should be amended."

To control runaway costs for homeowners living on more modest incomes, states could adopt "circuit breakers," which caps property taxes for people who make below a certain amount.

The report is being released in a year when federal tax reform is being opened. President Trump signed a tax package in December that caps the mortgage interest deduction and the state and local tax deduction. New York is one of four states suing the federal government over both.

The states claim the mortgage interest deduction cap violates the 10th Amendment, which protects states' rights. Furthermore, they contest the tax reform was intended to undermine their ability to raise taxes and point to Treasury Secretary Steven Mnuchin's statement this year that the cap was intended to "send a message" to high-tax states.

"The capping of SALT deductions has made it harder for states to raise the revenue they need to rely on," says Michael Leachman, CBPP's senior director of state fiscal research. "We are seeing it play out that people are not willing to pay higher property taxes."

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## TEXAS - Not All Bricks are Created Equal: How Functional Obsolescence Affects Property Taxes

Appraisal districts across Texas often use the cost approach to determine market value for property tax purposes. When valuing certain commercial properties via the cost approach, county appraisers frequently use cost-estimating services. These services enable appraisers to estimate the cost of the subject property's improvements as if they were new, as well as determine the depreciation to apply to the subject.

Cost estimators can be a great resource and valuation tool, but the appraiser is likely to reach an incorrect value conclusion using estimates from one of these services without also incorporating proper analysis of functional obsolescence.

Functional obsolescence is one of the three types of depreciation that measures a building's function and utility against current market standards. Given this, placing all weight on a service's depreciation estimates could lead to incorrect assessments that ignore functional obsolescence within the property's total depreciation.

### The trouble with tables

Cost-estimating services typically provide depreciation tables that contain data for multiple commercial property types. County appraisers often cite these tables as their main source of depreciation support when using the cost approach.

It is important to know that these tables typically assume that all components of the improvements for the various property types depreciate equally across time. So for example, a brick used in a multifamily or office development will depreciate at the same rate as a brick used in a fast-food restaurant or movie theater.

Often-overlooked warnings from these services point out that certain real estate product types are subject to functional obsolescence that occurs rapidly and can significantly reduce the economic lifespan conclusion for the applicable property type. Given this information, a determination of total depreciation for the subject property must include an appropriate functional obsolescence analysis.

Evaluating functional obsolescence involves an analysis of the utility of the improvements, and how that degree of usefulness affects total depreciation. As an example, consider the fast food industry, which has evolved drastically over the past few decades.

As fast-food real estate models from the '80s and '90s continue to become obsolete, new models have appeared to attract and retain the millennial and Generation Z customer base. Because of this, it is common practice for fast-food companies to refresh their store models every five to 10 years, with a complete rebuild taking place every 20 to 25 years.

This refresh-and-rebuilding cycle is necessary to fit ever-changing consumer tastes and demands for this real estate product type. While the store refresh may include new flooring, additional exterior decoration and color schemes, a complete rebuild is necessary when the utility of the building no longer fits the current design standards demanded by the market. An economic life of 20 to 25 years may be appropriate to capture the potential functional obsolescence associated with this industry.

### Theaters undergo sea change

Movie theaters are another competitive product type that may be subject to functional obsolescence outside standard physical depreciation. Theaters built in the 1990s and 2000s may struggle to compete with the eat-drink-play models that continue to increase in popularity. Across Texas, select stand-alone theaters that lack dining, bar and event options continue to see revenues decline.

Theaters without these features often lack the capacity to add a commercial kitchen, bar service or bowling alley into their existing structure, which limits the utility of the property based on market tastes and preferences. These older theaters may also contain large projection rooms that were previously used to house large equipment and film reels. Given the arrival of digital cinema, most projection rooms now require less space to house and project content into the auditorium.

Auditorium spaces are also evolving, based on the capacity to house premium luxury sections or reclining seats with independent power modules. These popular seating features have resulted in auditoriums having less seating capacity, given the additional space required for each seat. Clearly, it is important to analyze and recognize any applicable functional obsolescence that could affect this property type.

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Real estate product types continue to evolve along with consumer standards and tastes; it will be important to consider the impact these requirements have on a building's utility over time.

Cost-estimating services are a great tool that is used frequently for valuation, but it is important to know what is – and what is not – reflected in their information. Once assessors realize this distinction, they can apply proper analysis of total depreciation in their cost-approach determination of a property's market value.

## **Wisconsin Supreme Court rules in favor of homeowners who barred assessor from entering**

The Wisconsin Supreme Court on Friday sided with two homeowners from the Town of Dover who argued their constitutional right to challenge their tax assessment was violated after they refused to let the town assessor inside their home.

The court ruled 5-2, with five justices agreeing with the conclusion to allow the homeowners to challenge their assessment in court, but for three different sets of reasons.

Homeowners Vincent Milewski and Morganne MacDonald argued the state assessment laws as applied by the Town of Dover put them in a constitutional bind. If they denied a municipal assessor entry to their home, a violation of their Fourth Amendment right against unlawful search, they forfeited their 14th Amendment right to due process in challenging the assessor's valuation and resulting taxation.

Previously in Wisconsin, if a homeowner denied an assessor entry to their home for a valuation, they were not guaranteed the right to challenge that assessment in court, no matter the amount of the assessment.

Two lower courts had sided with the Town of Dover in Racine County, saying Milewski and MacDonald, who are husband and wife, gave up their right to challenge their home's valuation when they didn't let the assessor inside.

But in the lead opinion, Justice Daniel Kelly concluded an assessor's entrance into a home to inspect the interior amounts to a search, and forcing that search would be a violation of the homeowner's Fourth Amendment right.

"A tax assessor's inspection of a home's interior is a search within the meaning of the Fourth Amendment, and so it is presumptively unreasonable — and therefore unconstitutional — in the absence of a warrant," Kelly wrote in the 53-page opinion.

"The Milewskis suffered an abridgement of their Fourteenth Amendment rights solely because they exercised their Fourth Amendment rights, which is a real and immediate constitutional injury," he concluded.

Justice Rebecca Bradley joined the lead opinion, while the three other concurring justices did so in two separate opinions.

MacDonald said she and her husband were relieved by the court's decision.

"It's exactly what we were arguing and what we were hoping for," she said. "And, hopefully, it'll help other people that are in our situation."

"Obviously, we're very pleased with the decision. It's a reaffirmation of the sanctity of the home when it comes to protections provided by the Fourth Amendment," said Rick Esenberg of the Wisconsin Institute for Law and Liberty, who argued the case on behalf of Milewski and MacDonald.

Attorney Jason Gehring, who argued on behalf of the Town of Dover and the other defendants, did not return a call for comment.

In a dissenting opinion, Justice Shirley Abrahamson, joined by Justice Ann Walsh Bradley (no relation to Rebecca Bradley), wrote Milewski and MacDonald had been able to exercise their 14th Amendment rights to due process by virtue of the fact that three separate courts in the state of Wisconsin had heard the case.

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Abrahamson also wrote that fair assessments in Wisconsin depend on the homeowner and assessor having equal access to information. This decision could limit the ability of governments to establish just and equitable assessments, she concluded.

The case began in 2013 when Milewski and MacDonald denied the town assessor entry to their home during a valuation period. The pair live in a subdivision of 43 similar homes, and when the new assessments were released, four of the 43 properties had increased assessments while the values of the other homes decreased.

The four properties with increased assessments were also the only four with owners who blocked assessors from entering their houses. Two of the four valuations later went down once the owners relented and gave the assessors access.

Milewski and MacDonald argued the increased assessments were punitive, but the Circuit Court and state Court of Appeals had ruled in favor of the Town of Dover and its assessor.

The Supreme Court's decision could have broad implications for how assessors value property in Wisconsin, said Mark Hanson, the City of Madison assessor and president of the Wisconsin Association of Assessing Officers.

"It would appear to make the job of assessors more difficult, because if we can't view the interior property, it kind of throws a big monkey wrench in the process for sure," Hanson said.

Hanson said not being able to see the interior of a home could lead to less equity in the property tax system.

"What I see happening is that we're going to come up with a value that is less accurate than it should be," he said.

In a concurring opinion, Justice Annette Ziegler stated she agreed with the mandate of the majority but urged more restraint by the court. Justice Michael Gableman joined Ziegler's opinion.

"Judicial restraint dictates that we decide this case narrowly, especially given the numerous constitutional considerations involved," Ziegler wrote. "For instance, the lead opinion is not content to reject the argument that home intrusions of the type involved under the specific facts at issue are minor; it instead concludes that no governmental entry into a home under any hypothetical set of circumstances can ever be minor."

In a departure from the four other justices in the majority, Chief Justice Patience Roggensack concurred but wrote the case hinged on whether state law actually required assessors to enter a home for a valuation.

"Moreover, interpreting 'view such property' under Wis. Stat. § 70.47(7)(aa) to be satisfied by an exterior view of the property avoids the possibility that the statutory scheme would operate to infringe the due process rights of a taxpayer by denying the taxpayer the opportunity to be heard," Roggensack wrote.

State Sen. David Craig (R-Town of Vernon), who has proposed legislation that would guarantee the right of property owners to challenge assessments whether or not they let an assessor inside their home, said he was happy with the court's decision but concerned about the lack of clarity in the opinions.

He said he still plans to continue to push his legislation.

"Given the lack of cohesion in that opinion, I would feel much better as a policy-maker if we sealed it up," Craig said.

## **OREGON - Report knocks Oregon property tax system**

A new report from the Center for Budget and Policy Priorities is critical of Oregon's property tax limits, which could be a target of reform in 2019.

The new report, released Wednesday, examined Oregon and three other states — Michigan, Massachusetts and New York — with limits on property taxes.

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The limits have driven cities and counties to squeeze revenue out of fees and charges that disproportionately affect low-income people, the authors of the report from the Washington, D.C. think tank argue.

Oregon's unusual, and complex, system was enacted through a series of ballot measures in the 1990s.

Supporters say the limits protect taxpayers from sharp annual increases in property taxes and require local governments to be thrifty.

But detractors say the system, which among other caps and restrictions, typically taxes owners on the assessed value of a property — rather than its real market value — creates significant disparities in property taxes, even between similar properties in the same area.

In May, Oregon Gov. Kate Brown expressed interest in working with state lawmakers to make changes to the system next year, when the legislature convenes for a roughly five-month-long budget writing session.

Lawmakers have proposed tweaks to the scheme in previous sessions. Any changes to the state constitution, as a property tax overhaul would require, need a referral to voters for their approval.

Localities can ask voters for levies to fund services, but advocates argue that the system has adversely affected school funding, to the detriment of students.

"Oregon schools have never recovered from the damage wrought by the property tax limits enacted in the 1990s," Daniel Hauser, a policy analyst with the Oregon Center for Public Policy, said in a statement released in conjunction with the report. "The Oregon legislature failed to fully make up for the loss of property tax revenue, and a whole generation of Oregonians have paid the price."

To support services such as schools and police, localities have increasingly relied on new fees and service charges, which can be more burdensome for low-income residents, the Center for Budget and Policy Priorities study finds.

"For example, a \$50 fee to participate in the school band is harder to pay for a parent working at minimum wage than for a millionaire," the authors write.

In 1977, local governments in Oregon got about 16.7 percent of their revenues from fees and charges. By 2015, that share had leapt to 26.6 percent.

The study recommends states with property tax limits reexamine their systems.

"Every state with a property tax limit would do well to examine the consequences of its limit and consider relaxing or repealing it," the study's authors write. "States can employ more targeted alternatives, such as circuit breakers (which provide refunds to households whose property taxes are deemed too high) and homestead exemptions (which exempt a flat amount of home value from the tax), to relieve property taxes for seniors and others who might have difficulty affording them."

Wendy Johnson, a lobbyist for the League of Oregon Cities, says her group is surveying its members and considering whether property tax reform will again be among its legislative priorities for the long 2019 session.

## Ohio Supreme Court Sides with Property Owner

A property's sales price in an arm's length transaction is not necessarily the value of the property for tax assessment purposes, according to a recent ruling by the Ohio Supreme Court.

### The Case

Bronx Park South III Lancaster, LLC et al. v. Fairfield County Board of Revision, et al involves the real-property valuation of a Walgreens drugstore in Lancaster, Ohio. The facts and procedural history of this case largely mirror those of *Terraza 8, L.L.C. v. Franklin County Board of Revision*.

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As in Terraza, a school board sought to have real property valued according to a recent arm's-length sales price. The property owners, relying on appraisal evidence, contended that a lease encumbrance precludes use of the sales price to value the property.

The Fairfield County auditor assessed the property at \$1,084,660 for tax year 2014. The Lancaster City School District Board of Education complained that the property should have been valued at \$5,641,100, because that is what Bronx Park paid for it in July 2014. The Board of Review agreed and increased the property's valuation to \$5,641,100.

#### Leased Fee versus Fee Simple

Bronx Park appealed the Board of Review ruling and introduced testimony and appraisal of Sara H. Coers, a member of the Appraisal Institute. She concluded that the sales price represented the value of the leased fee, not the unencumbered fee-simple real estate.

Coers stated that since Walgreens is a high-quality tenant, the lease provides for a rental rate that is more than double the market rent. Also, the lease term exceeds what is generally available in the market. She noted that "the real property would not command this price if it were vacant, leased at market levels after exposure of the market, or occupied by a less creditworthy tenant, or a tenant with a shorter remaining lease term."

Using the cost, income, and sales-comparison approaches, Coers appraised the value of the fee-simple interest as if unencumbered at \$1,660,000 as of January 1, 2014. The Board of Tax Appeals refused to address the merits of the appraisal so Bronx Park appealed to the state Supreme Court.

In the high court's ruling, justices reiterated that taxing authorities must consider more than just the sales price to correctly value business real property.

## OHIO - Columbiana looking into property tax exemptions

The city is looking into a state program that provides property tax exemptions to property owners for new construction or renovations.

City Manager Lance Willard told council last week that while researching the tax cap idea proposed by Mayor Bryan Blakeman he came across the Community Reinvestment Area (CRA) program.

After hearing about the program, council members agreed it would be more beneficial to city residents as opposed to a tax cap.

Blakeman had suggested a cap as a way to attract more people to the city and promote economic development.

Willard said county Economic Development Director Tad Herold told him about the CRA program, and that it promotes the construction and renovation of new homes in residential areas and business in commercial and industrial areas.

"It may work very well for the Lakefront property. It seems very similar to an enterprise zone but includes commercial and residential construction and renovations of residential homes," Willard explained.

It also would include those in the city that are within Mahoning County whereas the enterprise zone did not, he noted.

While the majority of Columbiana falls within Columbiana County, a portion of the city lies within Mahoning County.

Willard provided council with information about East Palestine's CRA program, which has been in place since 2003. East Palestine is one of many municipalities throughout the state that participate in the CRA program.

Under East Palestine's program, a new home construction certified by the village manager would receive 100 percent property tax abatement over a five-year term.

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A residential remodel can receive 100 percent abatement on the increase in market value over a 10-year term as long as there are no more than two dwelling units inside a structure.

For commercial and industrial construction, property owners receive a percent of exemption that is negotiated with the village and school district and set into an agreement, with the school district having a say in any abatement over 50 percent.

The program is overseen locally by members of the Tax Incentive Review Council, which are three representatives appointed by the county commissioners, two appointed by the city manager, one county auditor designee and one school board representative.

Columbiana Council members were favorable to the CRA and approved a motion to have an ordinance prepared for a formal vote at a later date to enact a CRA for the city.

"I think this is a little bit more fair than the tax cap that was being considered for Columbiana. That is a lot more attainable for the citizens of this community," council member Crystal Siembida-Boggs said in reference to the CRA.

Councilman Rick Noel, who made the motion, said he thinks the CRA could be a good asset for Columbiana and its growth.

"I think it would be beneficial to the community," Councilman Dick McBane said.

Mayor Blakeman also felt the CRA would be a good economic development tool.

## **NEW YORK - Scarsdale Forum Committee Releases Report on 2014 and 2016 Property Tax Revaluations**

Following years of controversy in Scarsdale about two property tax revaluations in 2014 and 2016, a committee of the Scarsdale Forum studied both revaluations, examined the deficiencies of each one and drew some conclusions about lessons learned for future revaluations.

The report notes that Scarsdale residents may have given the revaluations more scrutiny than homeowners in other municipalities. The Village's highly educated group of data analysts, financiers and real estate professionals were able to critique the input data, processes and the mathematical models used for both revaluations and found many flaws in the inexact practice of assessing approximately 5,900 diverse properties.

The report notes, "It may well be the case that Scarsdale standards and expectations with respect to property revaluations are higher than ordinary industry standards. After all, Scarsdale standards for schools, police and other services are also higher than ordinary. In the context of revaluations, it may well be that the standards set forth here are higher than any potential vendors would want to bid on and commit to. Therefore, although this report articulates the necessary high standards, it does acknowledge that in practice it may be necessary to compromise for something less."

The 60-page report will serve to document what happened and suggest improvements if, and when, Scarsdale embarks on its next revaluation.

Here are comments from Robert Berg and Steve Pass who co-chaired the Assessment revaluation Committee of the Scarsdale Forum:

**Bob Berg:** This is a very important report that aims to teach people best practices in conducting a town wide revaluation in Scarsdale and how to avoid certain pitfalls encountered in both the Tyler and Ryan revaluations. Michael Levine was the primary author of this extraordinary report and he has done a brilliant job of crafting a highly readable report about an arcane and technical subject. This report is mandatory reading for everyone in Scarsdale Village government who has or will have anything to do with property valuation and assessment as well as any vendor or consultant who may seek work for the Village going forward. We are delighted that so many Committee members participated in this project and signed the report.

**Steve Pass:** After several months of work, our committee is proud to present a report with recommendations that the vast majority of members agree will improve and help set a vendor's expectations for any future revaluation. While the report only addresses deficiencies of the two vendors' work in Scarsdale, based on my own research looking at revaluations elsewhere,

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many of these deficiencies are not unique to Scarsdale or the two vendors we used. Thus, this report and its recommendations should be useful to any municipality considering a revaluation.

Here is a press release from the Forum about the report:

Scarsdale Forum Examines Technical Aspects of Recent Scarsdale Revaluations and Makes Recommendations to Avoid Future Problems

The Scarsdale Forum Assessment Revaluation Committee has released a report on the 2014 and 2016 revaluations.

The report recognizes that there were too many instances in both revaluations where the results were not adequately explained and, worse, where the processes and the results could credibly and logically be considered unfair. However, the premise and focus of the report is that, with the benefit of hindsight, Scarsdale can learn from these revaluations to prevent a repeat of the problems. The goal is to put future Scarsdale leadership in a better position to supervise/manage a revaluation and to stand behind it in an informed and convincing way.

The committee recognizes that learning these lessons and applying them requires an understanding of the technical and sometimes arcane details of revaluations and of assessment processes generally. Therefore, the report is designed to explain this material to residents regardless of their expertise in these areas. It uses these explanations to demonstrate how specific aspects of both revaluations had actual unfair impacts and created additional perceptions of unfairness. The report makes recommendations to prevent, or at least minimize, these deficiencies in the future.

The report specifically addresses six topical areas that comprise the revaluation process and makes recommendations with respect to each.

Inventory Data

Valuation Modeling and Methodology

Land Valuation

Documentation

Validation

Sales Data

The report includes many appendices that support the committee's observations and add to the report's value as a reference source. These include assessment industry literature, useful New York State materials, documentation from both revaluations, and some technical papers and spreadsheets. There is also an appendix that restates all the recommendations.

The committee believes the report will be a valuable educational resource, should any revaluations be considered in the near-to mid-future. While not every member of the public may wish to study it, the report has been developed in the belief that there will be those who do want to learn from it and use it as a guide. The Scarsdale Forum strongly encourages all leaders of the Scarsdale community to be familiar with its content and recommendations.

The committee members recognize that they are not experts in this field and are not declaring that any future revaluation must conform in all respects to this report. Rather, the committee believes that this report establishes expectations in terms of depth and detail of analysis. In any future revaluation, the assessor and any vendor should be expected to engage the public and address public concerns at this level.

This report takes no position on the current (July 2018) state of the Scarsdale assessment or on the timing of future revaluations. This is not to say that these are unimportant topics. Rather, these are potentially controversial topics and they are likely to require more analysis.

A copy of the report is available [here](#).

## **NEW YORK - De Blasio commission will weigh property tax reform again**

The Mayor's new Advisory Commission on Property Tax Reform met for the first time last week to discuss ways to inject fairness into the system.

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Led by two veterans of city government, Marc V. Shaw and Vicki Breen, the first meeting held in Midtown was a get-to-know-you-and-the-system session filled with talk of the myriad of challenges and was not a time to offer up solutions.

Member Carol O’Cleireacain, a former city finance commissioner and budget director whose office oversaw a previous commission in 1993 in which I took part, recognizes things have changed, but not the property tax system. “It’s been over 30 years and the city is a different place today than it was back then,” she said.

Along with the growth in population, there are new land use and urban planning trends, an increased value of air rights as well as more cooperative and condominium ownership.

Co-chair Shaw said the commission’s task as defined by Mayor de Blasio will include evaluating all aspects of the current property tax system in New York City and recommending reforms to make it fairer, simpler and more transparent, while ensuring that there is no reduction in revenue used to fund city services.

Issues involving the four tax classes, methods for determining property values, relief for low-income and senior citizens, methods of calculating the tax rate, city and state legislation and a review of different options in other jurisdictions will be discussed before making recommendations.

Ten public hearings will be scheduled in all the boroughs with some reserved for expert opinions and others for the public to weigh in as to why their property taxes are too high, even though some are dramatically lower than in adjoining Nassau and Westchester counties.

A previous Tax Study Commission issued a report in December 1989 on all taxes. The Citizens Budget Commission provided “When the Freeze Thaws: Options for Property Tax Reform” in November 1991, referring to Mayor Dinkins’ “freeze” on the average property tax rates, which is still in effect today, albeit somewhat higher.

Another report on just the property tax was issued on the last day of the Dinkins administration in December 1993 and tossed by Mayor Giuliani, who later did oversee the implementation of the co-op condo tax abatement.

Former Finance Commissioner Martha Stark wrote “Taking Control of the Property Tax Levy: A Challenge to the New York City Council” in November 1998. Stark was involved in suing the city this year over the disparity in taxes for rental properties, which results in low-income and minorities paying more through their rents than single-family homeowners do.

Saying it’s not the court’s job to legislate property taxes, Rita Dumain of New York City’s law department said at the commission’s meeting that a decision on the city’s motion to dismiss could be coming soon.

Stark had hoped to prompt real property tax reform with the lawsuit, but it is yet to be seen if the city can make changes that won’t make things worse, or simply have the commission issue a report but do nothing and continue to ignore the current disparities.

“Unfortunately, commissions in this city are the place where good ideas go to die,” Stark added.

Commission member James Parrott director of Economic and Fiscal Policies at the New School, who attended via phone from his vacation, quipped, “I am looking forward to undertaking mission impossible.

## **ILLINOIS - Berrios’ staff used Zillow, Trulia to set property tax assessments**

An assessor testified that more than a fifth of values were hand-adjusted from those produced by a computer model

Staffers under outgoing Cook County Assessor Joe Berrios hand-edited more than a fifth of property tax assessments that had been produced by the office’s computer model, according to one assessor.

Following a lawsuit by the Chicago Tribune, the office’s director of residential valuations testified that Berrios’s team often used apartment-finding websites like Zillow and Trulia to guess how much property owners should cough up each year, the newspaper reported Friday.

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The staffer added his team sometimes smoothed out assessments to remove outliers and keep property tax consistent across entire neighborhoods, often without guidance from any explicit policy.

Berrios came under heavy scrutiny last year after a multi-part Tribune investigation found evidence that his office deflated the assessed values of properties in wealthy areas while asking poorer households to pay more than their fair share. The longtime county official lost his bid for reelection in this year's Democratic primary to asset manager Fritz Kaegi, leading some large property owners to brace for higher assessments starting next year.

This year's re-assessment of Chicago properties jacked up the tax burden on many homes in the city's wealthier North Side, raising some value assessments by as much as 76 percent over the city's last round of evaluations in 2015.

## **CALIFORNIA - Who Tops the California Property Tax Roll?**

Disneyland is still the highest property tax bill in California, but the Tesla Factory is giving the property a run for its money.

The Tesla Fremont Factory is joining the list of properties with the highest property taxes in the State of California, according to a new report from Yardi. The Tesla Factory has the second-highest property tax bill in the state, following Disneyland Resort, which has the highest property tax bill in the state. Nationally, Disneyland Resort still has a big lead, it is ranked 22th nationally and second outside of New York, while Tesla is ranked 67th nationally and 13th outside of New York.

"2017 was the first year since Tesla took ownership of the Fremont facility in 2010 that property taxes came into play," Adel Dobriban of Yardi, tells GlobeSt.com. "If Tesla resumes its tax abatement regimen, its tax contributions will likely not impact revenue as much as expected but should impact growth in other ways, mainly in terms of job creation and value-added contributions. Per Tesla's recently published economic contributions report, it supplied the state and government with a total of \$328 million in taxes this past year. Of course, property taxes only make up a small portion of the total, but it remains to be seen how the numbers will change in the coming years."

In general, hotel and entertainment venues rule the top of the property tax list, but this year, there was a decrease in the presence of these properties. "Though we can't be entirely certain as to why a decrease in property taxes was showcased only by hospitality and entertainment properties, it is likely that the variation was linked to lower market values and a more restrained momentum in terms of investment compared to previous years, especially with off-shore investment declining in 2017," explains Dobriban.

Aside from this change and Tesla's appearance on the list, there were only nominal changes from 2016 to 2017. "Overall property assessment and valuation has experienced some marginal changes in 2017, mostly as a reflection of market value fluctuations and construction activity," says Dobriban. "Variations in property values and therefore taxes are expected to occur year-over-year, especially since they are influenced by several dynamic factors. In California Proposition 13 is still in the forefront of the property tax debate even with statewide tax revenue on the rise per assessor records."

While the changes in 2017 were limited, next year Dobriban expects to see significant differences as a result of the new tax plan. While taxes have already been submitted, he says that we won't know the true effects until next year. "The 2017 tax bill is expected to significantly impact all areas of the real estate industry, some more than others," he explains. "The precise effects of the tax overhaul and the quantifiable changes both in revenue and tax burden will become apparent in 2018, and they will in all likelihood make waves in next year's top 100."

## **California's property tax laws may have worsened housing crisis**

Voter-approved initiatives encouraged potential homeowners to hold out, but change may be on the way

The slew of laws California voters have approved over the years to help homeowners save money on taxes also reward them for keeping their homes off the market. The effects of those measures could have helped create the housing crisis that is now engulfing the state, according to Bloomberg.

But an initiative on November's ballot could help change that.

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Proposition 5 would attempt to alleviate the problem by building on two prior initiatives passed in the 1980s. Those measures allowed buyers 55 and older to transfer their lower assessment from a home they sold to their new home, as long as the new property was of equal or lower value. The California Association of Realtors developed the initiative.

Among the culprits may be Proposition 13, which was passed in 1975. That limited property taxes to 1 percent of purchase price and capped hikes to 2 percent a year. Many older homeowners, particularly empty-nesters who may have otherwise downsized, thought twice about selling a home with a low property tax for a newer home with a much higher tax, according to Bloomberg.

Two others, Prop 58 and Prop 193 — approved in 1986 and 1996, respectively — may have also contributed. Those allow parents and grandparents to give their homes to children and grandchildren without an increase in assessed value, regardless of how much the home is appraised.

A 2016 study by the Journal of Housing Research looked at sales in San Diego County by neighborhood. It found that neighborhood turnover was lower when homes there had a lower assessment as a percentage of appraised value, according to Bloomberg.

Prop 5, the measure on November's ballot, would allow remove that limit on pricing, and would allow buyers to transfer their assessment anywhere in the state without approval. Instead, the new assessment would equal the old one plus the difference in price.

## **MICHIGAN - 'Dark store war'**

Escanaba continues its costly legal battle against Menards

To the city of Escanaba, its four-year legal battle with Menards over property taxes is more than a simple dispute over a piece of property between one municipality and one company. It could have statewide ramifications.

The city is seeking \$200,000 in funding from other Michigan municipalities to "set a precedent" in the Michigan Tax Tribunal and "end the dark store war once and for all," a June 29 letter from Escanaba City Manager Patrick Jordan to other Michigan municipal leaders states.

The city estimates it will need to raise the additional funding from sources outside its borders "to ensure that the city and its local cost-sharing units can cover litigation through the conclusion of the hearing," the letter states.

Both national retailers and municipalities are awaiting the outcome of the Menards remand hearing, due to the long-term implications on the "dark store" property tax assessment method, which reduces the taxable values of open and operational "big box" stores to that of closed and vacant buildings, Jordan said.

In 2016, the Michigan Court of Appeals ruled that the Michigan Tax Tribunal had "committed an error of law" when it reassessed the value of Menards' Escanaba store and reduced the city's tax assessment on that property more than 56 percent for three years.

Menards appealed the decision to the Michigan Supreme Court, which refused to hear the case "because we are not persuaded that the questions presented should be reviewed by this Court," as stated in an Oct. 20 order.

The case has been at issue since 2014 when Menards won an appeal through the tax tribunal, resulting in a three-year adjustment to Menards' property value for its 166,196-square-foot building on 18 acres. The 2012 value dropped from \$48.43 to \$20 per square-foot; the 2013 value from \$49.54 to \$21; and the 2014 value from \$50.88 to \$22, according to a May 14 Escanaba Daily Press article.

As part of the 2016 appellate court ruling, the tax tribunal has been ordered to hear more evidence on deed restrictions — which limit what buyers can use vacant stores for — and hear more evidence regarding the cost-less-depreciation-approach, which is one method used to determine property value.

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That is where the need for funding comes in, Jordan said, as demand for information far exceeds what would normally be required in a typical tax tribunal case.

“Escanaba is aware that it cannot simply “show up” for this critical hearing,” he said. It must provide what the tribunal and the court of appeals is looking for: a comprehensive study of the dark store theory. Jordan said the issue is “a fight for all local units, not Escanaba’s fight alone, as no single unit can afford the challenge alone.”

He said the Michigan Township Association, the Michigan Municipal League and the Michigan Association of Counties have expressed support for Escanaba in the matter and are “actively engaged in seeking support, answering questions, working with the state and assisting with the unique legal issues that this important case presents.”

Jordan said Escanaba officials are mindful of the implication that accepting a settlement agreement from Menards may have if it were offered.

“Other local units would then be forced to litigate the meaning of the Menards decision without the benefit of precedent in the tribunal that the forthcoming remand hearing could have established.” the letter states. “Because of the impact of a settlement on other local units the city will refund all contributions if it settles this case.”

## FLORIDA - Disney to be refunded \$1.2M in Orange property tax dispute

Disney wins lawsuit against Orange County over Yacht and Beach Club Resort value

Walt Disney World has won a lawsuit against the Orange County Property Appraiser’s Office.

Disney sued the county office in 2016 over a dispute regarding the value of its Yacht and Beach Club Resort. Disney officials said the property was only valued at more than \$188 million, but the OCPA valued the property at more than \$336 million.

A judge sided with Disney, meaning Orange County must refund the company \$1.2 million in overpaid property taxes.

“We are pleased with the judge’s ruling, which confirms the property appraiser’s methodology was inappropriate and unconstitutional, and led to an unlawful 118 percent increase in the assessed value of Disney’s property,” a Disney representative said.

“With all due respect to the judiciary, the court’s decision was grossly flawed and full of inaccuracies, and we will immediately file a motion for re-hearing this case,” Orange County Appraiser Rick Singh said, adding that the money went toward Orange County Public Schools. “We firmly stand by our methodology and the accuracy of our assessment and are prepared to vigorously defend this case on behalf of the taxpayers of Orange County.”

## MINNESOTA - Fairness won the day in Supreme Court online sales tax decision

*The high court ruled that internet retailers can be required to collect sales taxes in states where they have no physical presence.*

Minnesotans value fairness in tax policy. That should be reason enough for this state’s taxpayers to concur with the U.S. Supreme Court that all online retailers, not just those with a presence in the state where a purchase is made, must [collect sales taxes](#) from consumers at the time of purchase.

A certain amount of grumbling is also to be expected. The cost of some online purchases just went up, courtesy of five justices on the nation’s highest court. The new ruling, [South Dakota vs. Wayfair Inc.](#), overturns a 1992 decision that allowed online sellers without a physical presence in the purchaser’s state to skip adding sales taxes when tallying a purchase’s cost.

But those inclined to complain should know that the ruling does not impose a new tax. State and local sales taxes have been required for all purchases all along. Until last week, however, the obligation to remit the tax to state and local governments

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rested in some cases not on retailers, but on consumers themselves. And consumers have been very good at dodging their “sales and use tax” duty, knowing that the requirement is nearly impossible for state and local governments to enforce.

Thanks to the court’s latest word, the gig is up for scofflaws, and the 45 states that collect sales taxes are in for a windfall — between \$132 million and \$206 million per year in Minnesota, according to a 2017 federal estimate. That amount is enough to fire ideas about either tax cuts or spending increases. But it’s down considerably from the \$400 million-per-year estimates of a decade ago of the gain Minnesota’s public purse would see from a uniform requirement for online sales tax collection.

That’s because a number of online sellers — Amazon chief among them — gave up the fight some years ago against what legislators were then calling the “Amazon tax.” The online retailing giant began collecting sales taxes on purchases in Minnesota in 2014. Soon thereafter, Amazon opened a distribution center in Shakopee, thereby meeting the old physical presence test.

The end of that outdated distinction is long overdue. A 2016 survey found that eight in 10 U.S. consumers are now at least occasional online shoppers, up from 22 percent in 2000. Giving what amounted to a price advantage to the sellers who do not pay property taxes or contribute to their communities in the many ways that brick-and-mortar stores do had become unjustifiable policy. The Minnesota Legislature acknowledged as much in 2017. It enacted a measure that would have require all sellers to collect the tax beginning in mid-2019. That measure likely would have triggered its own lawsuit had the South Dakota vs. Wayfair case not been ahead of it in line.

It’s a sorry comment on American governance that it took action by the courts, not Congress, to set this policy right. But the Supreme Court has left the implementation details to the various state and, potentially, federal legislative and executive branches of government. That means that more attempts to dodge tax collection responsibilities could ensue. Minnesota revenue officials say they will issue guidelines for complying with the decision by mid-July.

Online retailers and their customers should know this: Lawmakers in the state that is home to Target and Best Buy had already had their fill of unfair sales tax policies before the Supreme Court acted. Now that the high court has spoken, this state should be a stickler for sales tax fairness going forward.

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