

## Major Property Tax Developments in 2013

by Catherine Collins and Adam Langley



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In this article, Collins and Langley examine some of the state property tax changes and developments in 2013 and the implications for action in 2014. These examples have been taken from documents and reports compiled for the annual updating of "Significant Features of the Property Tax," a joint project of the GWIPP and the Lincoln Institute. They demonstrate the range of concerns states face when dealing with a critical revenue source, especially for local governments.

Building on actions taken in 2013, governors and state legislators are again focused on property taxes. Idaho Gov. Butch Otter (R) proposed expanding the exemption adopted in 2013 for personal property tax.<sup>1</sup> Early in its 2014 session, the Nebraska Unicameral Legislature passed an expansion of the state's homestead exemption, as suggested in the 2013 Tax Modernization Committee report.<sup>2</sup> After identifying it as the most onerous tax in his State of the State address, New York Gov. Andrew Cuomo (D) proposed a property tax freeze based on the recommendation of the Tax Relief Commission he commissioned in 2013.<sup>3</sup> States such as Kansas will again take up school aid in their 2014 legislative sessions, in light of constitutional considerations set out in court decisions.<sup>4</sup>

This article highlights property tax actions of 2013 — such as school finance, property revaluation, reducing the tax burden for homeowners and businesses, and states' property tax studies. We reviewed over 350 pieces of state legislation and court decisions, collected from state websites, legislative summaries, and *State Tax Notes*, as well as other published reports of recently enacted legislation. What is reported here is not a full catalog of these actions, but rather a sample that reflects the major property tax issues state and local governments faced in 2013.

### State Property Tax Studies

Task forces and commissions in several states, either through gubernatorial or legislative action, reviewed the property tax or some aspect of it. Also, state courts considered what constitutes sufficient public, not-for-profit, or charitable purposes to be deemed eligible for tax exemption status.

### Tax Exemption for Nonprofit Organizations

Under the auspices of legislation, the Vermont Property Tax Exemption Study Committee undertook an examination of the "public, pious, and charitable" property tax exemption.<sup>5</sup> The final report, released in January 2014, called for legislative action that continued the tax exemption status to charitable or public use properties for the statewide education property taxes.<sup>6</sup> The suggested legislation leaves it up to each town to choose to exempt those properties for local purposes. However, for colleges and universities, the furtherance of the local exemption would be predicated on a payment to the town for municipal services in lieu of initiating local property taxes.

Further, the legislation would provide a process for certifying the tax-exempt status of properties using a three-pronged standard articulated in an earlier Vermont Supreme Court decision.<sup>7</sup> The decision brings together the common thread of prior decisions in clarifying "public use" as distinct

<sup>1</sup>Otter, "State of the State and Budget Address," Jan. 6, 2014.

<sup>2</sup>LB 986 was signed April 2, 2014.

<sup>3</sup>Cuomo, "State of the State Address," Jan. 8, 2014.

<sup>4</sup>*Gannon v. State of Kansas*, No. 109,335 (Kan. 2014).

<sup>5</sup>2013 Vt. Acts and Resolves No. 73.

<sup>6</sup>Vermont Property Tax Exemption Study Committee, "Report of the Property Tax Exemption Study Committee," (Jan. 15, 2014.).

<sup>7</sup>*American Museum of Fly Fishing Inc. v. Town of Manchester*, 557 A.2d 900 (Vt. 1989).

from “mandated municipal services” or “essential governmental functions.” To qualify for public use tax-exempt status, the property must be dedicated unconditionally to public use, and the public served must be some “indefinite class of persons who are part of the public.” In addition to the property serving the public, there must be a benefit to not only those who use it — but to the community at large. The third test is that the property is owned and operated as a not-for-profit.<sup>8</sup>

As part of the budget adopted in 2013, Maine created a task force under the Department of Administrative and Financial Services “to evaluate the feasibility and desirability of identifying parameters and process for imposing a temporary assessment on certain nonprofit organizations.”<sup>9</sup> To identify the target revenue of \$100 million, the task force was directed to consider which nonprofits would be assessed, how to calculate the assessment, and the interface of this assessment with any existing payment in lieu of taxes. In its final report issued in January 2014, the task force concluded that taxing those entities “is neither a feasible nor desirable recommendation.” Although it is not clear that the state consideration was directed at the property tax, clearly its second recommendation was so focused. The task force suggested that any further discussions of taxing nonprofits should focus on “locally applied service charges.”<sup>10</sup>

While legislatures have been trying to find a balance between tax exemptions and local revenue needs, state courts have wrestled with the notion of when a tax exemption should be granted. In Massachusetts a conservation group that owns forest property adjacent to a state forest preserve was seeking a town property tax exemption because the land is used for a public purpose.<sup>11</sup> The town’s Board of Assessors found that although “many activities and services are . . . laudable and socially useful, they do not necessarily come within the definition of ‘charitable’ for purposes of the [property tax] exemption.” This decision is now on appeal to the Massachusetts Supreme Judicial Court.

In grappling with tax exemptions for properties of charitable organizations, the New York State Supreme Court Appellate Division upheld the property tax exemption for parking garages owned by a tax-exempt organization and used for tax-exempt purposes in *In the Matter of Greater Jamaica Development Corporation v. New York City Tax Commission*. The decision relied in part on the tax-exempt status conferred by the federal government. According to the court, a property owner “whose tax-exempt status has been recognized by the Internal Revenue Service and whose property is used solely for [charitable] purposes has made a

presumptive showing of entitlement to exemption.”<sup>12</sup> Based on the criteria, the parking garages owned by the Development Corp. and used to further the corporation’s development objectives were granted tax exemptions.

### General Property Tax Studies

The North Dakota Task Force on Property Tax Reform has been charged by Gov. Jack Dalrymple (R), in his December 2013 Executive Order, with examining the state’s system of assessing and collecting property taxes.<sup>13</sup> The task force is to analyze all levies authorized other than by school districts, focusing primarily on the mechanics of the property tax system. The report to the legislature is expected in time for the 2015 legislative session. In addition to the governor’s task force, the legislature — through its Legislative Management meeting between sessions — was mandated to study the effectiveness and benefits of property tax exemptions and other economic development incentives granted by cities and counties. The committee’s recommendations and any proposed legislation are also to be prepared for the next legislative session.<sup>14</sup>

In setting the statewide education property tax rates on nonresidential and homestead property for fiscal 2014 in H 265, Vermont included a requirement that the House Ways and Means Committee examine the current education funding system to continue the state’s efforts regarding education property taxes, including the financing, oversight, and educational outcomes of the current system. The committee is to report to the General Assembly by March 15, 2014, with any statutory changes for the 2015-2016 school year.

### State Tax Studies That Include Property Tax

The Nebraska Tax Modernization Committee, a special legislative panel, was charged by the Legislature to review and evaluate the state’s tax structure.<sup>15</sup> In its report to the Legislature, “Balancing the Scales: A Comprehensive Review of Nebraska’s State-Local Revenue System,” the committee addressed many state property tax issues, namely:

- increasing state aid for education to offset local property taxes;
- protecting agricultural property through lower property taxes; and
- reducing the property tax burden of low-income households or those with higher tax burdens by providing relief to households and considering circuit-breaker programs for renters.

<sup>8</sup>*Id.* at 904.

<sup>9</sup> Preliminary Report of the Nonprofit Tax Review Task Force (P.L. 2013, c. 368, at AA) (Dec. 12, 2013).

<sup>10</sup> *Id.*

<sup>11</sup> *New England Forestry Foundation Inc. v. Board of Assessors of the Town of Hawley, Massachusetts*, No. F306063 App. Bd. (2014).

<sup>12</sup> *In the Matter of Greater Jamaica Development Corp. v. New York City Tax Commission*, 111 A.D.3d 937 (2013).

<sup>13</sup> Executive Order 2013-25937.

<sup>14</sup> North Dakota SB 2314 (2013).

<sup>15</sup> Nebraska LR 155 (2013).

Further study and analysis of the residential valuation classification were also recommended.<sup>16</sup>

Cuomo appointed two commissions to look at New York's tax structure. In its final report issued in November 2013, the New York State Tax Reform and Fairness Commission suggested that there be efforts to move toward uniformity in assessments, including the use of a uniform percentage of value and conducting reassessments at regular intervals.<sup>17</sup> The governor created a second panel, the Tax Relief Commission, in October. In its report this commission proposed a two-year freeze on residential property taxes. In the first year, that freeze would be available for homeowners only in jurisdictions abiding by the existing 2 percent property tax cap. In the second year, the rebate would be available only to those homeowners who live in jurisdictions that "take meaningful concrete steps toward finding permanent structural savings by sharing services with other jurisdictions or consolidating governments in their entirety."<sup>18</sup> The freeze was part of the governor's fiscal 2015 budget and has been adopted.

The District of Columbia Council established the D.C. Tax Revision Commission that was charged with preparing comprehensive recommendations for revisions to the district's taxes for the mayor and council. Late in 2013, the commission submitted its report, which included a recommendation that dealt with imposing a local service fee on all employers. This proposal targeted two conditions the district faces: a large tax-exempt component of the property tax base that includes large universities and hospitals, as well as government installations, and a congressional prohibition on taxing commuter income. By imposing a flat, per-employee local service fee on all employers, the nonprofit segment would contribute to providing municipal services without negotiations for annual payment in lieu of taxes agreements with each tax-exempt entity — an option that has been pursued elsewhere.<sup>19</sup>

## Assessment Overhauls

### Coping With Infrequent Revaluations

After decades of economic and fiscal hardship, Detroit filed for municipal bankruptcy in July 2013. The bank-

ruptcy documents illustrate the deterioration of the property tax base. The large number of abandoned and blighted structures — over 78,000, with nearly half considered dangerous — reflects the loss of a quarter of the city's population just since 2000. Property tax revenues have decreased by almost 20 percent since 2008 despite high tax rates, in large measure because of declining assessed values and high delinquency rates. Historically, however, properties have been significantly overassessed because of sporadic and infrequent reassessments. Further, nearly half — 47 percent — of property owners are delinquent on their 2011 property tax bill.<sup>20</sup>

Acknowledging these conditions, newly elected Detroit Mayor Mike Duggan announced a program for citywide property reassessment reform with property-by-property reassessment to take place over the next several years. For the current year, residential assessments will be reduced citywide, depending on neighborhood, by as much as 20 percent. These immediate reductions are based on the sales between 2011 and 2013. The result could reduce property tax revenues by as much as \$10 million to \$15 million, but Duggan believes more individuals will pay their tax bills in their entirety when they see the drastic reduction. Reassessments will take place over the next three years; however, those assessments will be subject to the assessment limit, Proposition A, that caps assessment increases to the rate of inflation or 5 percent, whichever is lower. While the lower assessments and tax bills may result in greater compliance, the city must continue to cope with delinquent and abandoned properties. It has been offering some 10,000 to 15,000 properties each year at tax auction.<sup>21</sup> However, in spite of these sales, Detroit now owns and manages more than a quarter of the city's area, which raises many policy questions.<sup>22</sup>

Philadelphia overhauled its property tax system after revaluation under the Actual Value Initiative program. After a two-year process, the city's taxable base increased from \$38 billion to \$97 billion.<sup>23</sup> Although overall property tax revenues for 2014 did not increase, there were significant shifts in tax burdens, especially for longtime homeowners. The state authorized and the city adopted LOOP (Longtime Owner Occupants Program) to provide targeted relief.<sup>24</sup> The program is designed to stabilize property taxes for residents who have lived in their homes for at least 10 years and have had their property values more than triple because

<sup>16</sup>A review of John Anderson's testimony before the Nebraska Tax Modernization Committee, is available at <http://news.legislature.ne.gov/tmc/files/2013/08/Property-Taxes-in-Nebraska1.pdf>. See "Report to the Legislature: LR155 — Nebraska's Tax Modernization Committee (2013)" (Dec. 13, 2013).

<sup>17</sup>See "2013 New York State Tax Reform and Fairness Commission Final Report" (Nov. 11, 2013).

<sup>18</sup>See "New York State Tax Relief Commission Final Report," Dec. 10, 2013, p. 3.

<sup>19</sup>For a discussion of treatment of not-for-profit organizations and the local adoption of payment in lieu of taxes payments, see Daphne Kenyon and Adam Langlely, *Payments in Lieu of Taxes (Policy Focus Report): Balancing Municipal and Nonprofit Interests* (2010).

<sup>20</sup>See "City of Detroit Proposal for Creditors" (June 14, 2013).

<sup>21</sup>See "Mayor Duggan Announces Major Citywide Reduction in Property Tax Press Conference" (Jan. 27, 2014).

<sup>22</sup>See Mark Skidmore, *Land Lines* (2014), at 2.

<sup>23</sup>See "Mayor Nutter Announces Approximate Aggregate Value for All Property in Philadelphia" (Dec. 21, 2012).

<sup>24</sup>2013 Pa. Act 94, H 390.



of the reassessment.<sup>25</sup> Under this program, the 2014 tax bill will be based on three times the 2013 value at the current tax rate of 1.34 percent.

### Revising Assessment Limits

Arizona enacted a major revision to the limits of property tax assessments in 2013.<sup>26</sup> The legislation conforms to Proposition 117, which voters passed by a 55.5 percent margin in the 2012 election.<sup>27</sup> Beginning in 2015, the amendment limits the increase on residential property to 5 percent of the prior year's value. Previously the limit was 10 percent or an amount equal to the prior year's value plus a quarter of the difference between the current value and prior value. Also, full cash value will be the only value used to determine residential assessments. Until then local governments will continue to have two separate values for property taxes, primary and secondary. The primary or limited value is used to calculate the taxes supporting operation and maintenance of local governments, including school districts and community colleges. The secondary value, which after 2015 will no longer be used, is the full cash or market value of the property. This value is used for voter-approved taxes such as for bonded indebtedness, budget overrides, and special taxing districts.

In addition to new business incentives, Iowa enacted legislation that reduced the allowable growth of taxable value for residential and agricultural properties.<sup>28</sup> The limit on an annual increase because of revaluation was reduced from 4 percent to 3 percent. The new law also modifies the method used to determine the taxable value for commercial, industrial, and railroad properties. For these properties the value is "rolled back" beginning with assessment year 2013 to 95 percent of market value and further reduced to 90 percent for subsequent years. The state will provide a replacement payment to local governments for this new rollback. The funding through 2017 will be the actual cost that the Legislative Service Agency estimates to be \$154 million. After 2017 the appropriation cannot exceed the actual 2017 level. The legislation also established a new classification for apartment buildings and other multi-residential commercial properties. Beginning with assessment year 2015, these properties will be taxed at 86.25 percent of value — with the percentage declining each year by 3.75 percentage points through 2021. Beginning in 2022, the rollback rate assigned to multi-residential properties will be equal to the residential rate.<sup>29</sup>

<sup>25</sup>Additional qualification includes an income ceiling; for a two-person household the income ceiling is \$95,050. See application for full income limitations.

<sup>26</sup>2013 Ariz. Session Laws. c.66, S1169.

<sup>27</sup>See [www.Ballotpedia.org](http://www.Ballotpedia.org), Arizona Ballot Measures 2012.

<sup>28</sup>Iowa SF 295 (2013).

<sup>29</sup>See Legislative Service Agency, "Fiscal Service Division Fiscal Note SF 295" (May 22, 2013).

### School Finance

The property tax remains the workhorse of school funding. Over the last decade, local property taxes have accounted for roughly a third of all elementary and secondary school revenues.<sup>30</sup> Because financing public elementary and secondary education has historically been reliant on the property tax, most states have faced constitutional challenges since California's *Serrano v. Priest* decision in 1971.<sup>31</sup> Courts have generally directed states to provide adequate or more equitable funding for public education. The results have been changes to state funding schemes, which continued in 2013 with some programs increasing state funding linked specifically to reducing the reliance on local property taxes. Legal challenges also continued in 2013. Two suits challenged tax limitations imposed on school districts that restrict district spending, while the Colorado Supreme Court overturned a district court decision in a suit that was filed in 2005.

### Legal Challenges

The New York State United Teachers and other plaintiffs filed suit in 2013, challenging the constitutionality of the state's 2 percent property tax cap that became effective in 2012. The teachers union argued that the cap limits local school districts and, in conjunction with the freeze in state aid in 2011, has left school districts short of funding. The cap prevents districts from raising local taxes to replace at least in part the shortfall in state funding. The suit contends that the limit exacerbates the funding gap between resource-rich and resource-poor districts. The complaint alleges that this measure "has the effect of perpetuating and widening the existing gross education funding inequities between school districts."<sup>32</sup> Oral arguments were heard in December.<sup>33</sup>

Tax limits were also challenged in Kansas. In *Petrella v. Brownback*, the plaintiffs challenged the spending cap on how much districts can tax themselves to spend on education — contending it was unconstitutional. Their challenge was based on the U.S. Constitution, arguing that the state cap violated fundamental rights — specifically, for parents to direct their children's education, the right to spend their money for education, and the right under the First Amendment to assemble and petition for education through popular vote to increase property taxes. The Tenth Circuit Court remanded the case to the district court in 2012. In ruling on several motions in 2013, the U.S. District Court judge

<sup>30</sup>National Center for Education Statistics, *Public School Revenue Sources, Chapter 3 Condition of Education 2013* (2013).

<sup>31</sup>*Serrano v. Priest*, 5 Cal. 3d 584 (1971).

<sup>32</sup>*New York State United Teachers v. The State of New York*, New York State Supreme Court Albany County, 33 Misc. 3d 989 (2011).

<sup>33</sup>In February another major lawsuit was filed charging that the state is neglecting its duty to ensure sufficient education funding. *New Yorkers for Students' Educational Rights (NYSER) v. The State of New York*, New York State Supreme Court County of New York (2014).

found that there were no “fundamental rights” as the plaintiffs claimed, and further, citing *San Antonio v. Rodriguez*,<sup>34</sup> there is no fundamental right for education under the U.S. Constitution.<sup>35</sup>

Another case, *Gannon v. State of Kansas*, challenged the adequacy of both the structure and implementation of state funding for elementary and secondary education. The district court’s 2013 decision found the reductions in state aid since 2009 were unconstitutional. The case is on appeal to the Kansas Supreme Court.<sup>36</sup>

The Colorado Supreme Court overturned the lower court’s ruling in *Lobato v. Colorado*, finding that the state’s existing education funding system was “thorough and uniform.” The plaintiffs had argued that the schools were chronically underfunded and that the state’s funding system was not rationally related to the thorough and uniform standard because the funding formulas were not based on actual costs. In a majority opinion, the supreme court held that the single statutory framework for determining each district’s total program was uniform and “funds a public education system that is of a quality marked by completeness, is comprehensive, and is consistent across the state.”<sup>37</sup> Although the court recognized that there are wealth disparities between districts, this does not “strike down the entire school finance system.” The majority concluded that while the current public school financing system “might not be ideal policy,” the court’s task is not to determine whether a better financing system could be devised. The court leaves it up to the legislature to reform the state’s education policy.<sup>38</sup>

### Increased State Funding

As part of the governor’s fiscal 2014 budget, and in related legislation, California made fundamental changes to its support for elementary and secondary education.<sup>39</sup> A substantial portion of state funding is now provided by the local control funding formula, with additional per-pupil funding for concentrations of English learners and low-income students. This new arrangement replaces earlier funding streams that included revenue limits and most of the categorical grants for elementary and secondary education. The state will also phase in payments of the minimum guarantee that were deferred during the recent fiscal crisis, as well as reimbursement to school districts for state-mandated

activities that had been deferred between fiscal 2004 and fiscal 2010.<sup>40</sup> Underlying these changes is the complex history of the interplay of several voter-approved propositions. Proposition 13 (approved in 1978) imposes limits on the growth of local property taxes, while Proposition 98 (passed in 1988) established a minimum funding requirement for education, taking into account both local property taxes and state funding. More recently, the approval of propositions 30 and 39 in November 2012 provided state revenue increases — with substantial portions allocated to education.<sup>41</sup>

Wisconsin’s fiscal 2014-2015 biennial budget included additional education funding. However, as the state’s revenue cap — which limits the sum of state general aid and local revenues — was only allowed to grow annually by \$75 per pupil, much of the additional aid will result in lower property taxes because most districts are at their capped level. Districts that have available capacity or whose voters approve revenue cap overrides will be able to increase spending.<sup>42</sup>

Under HB 1013, North Dakota in 2013 made substantial changes to both state funding and local taxation for education. The new formula is based on the premise that the state will determine the base level of support necessary to support education to state standards — with support provided by state and local taxes. The increased funding provides for state payment of up to 50 mills of school district property tax levies. At the same time, the levy limits were amended to ensure local property tax reductions. General fund levy is limited to 112 percent of the baseline amount, up to a levy of 82 mills on the taxable valuation. In 2014 the levy is limited to 70 mills.

Arkansas revised the state funding of its foundation plan as a result of a 2012 supreme court decision.<sup>43</sup> In *Kimbrell v. McCleskey*, the court ruled that school districts with “excess” property tax revenues may keep the revenues that exceed the state’s per-student amount from the uniform rate of tax that had been in place for about a decade under the *Lake View* case.<sup>44</sup> This decision overturned the equitable funding provision of state law designed to address the state constitution’s requirement to provide a “general, suitable, and efficient system of public education.”

<sup>34</sup>*San Antonio v. Rodriguez*, 422 U.S. 1 (1973).

<sup>35</sup>“Anti-Equity School Funding Lawsuit Will Continue in Federal Court,” *Education Justice* (Nov. 4, 2013).

<sup>36</sup>On March 7, the Kansas Supreme Court found that the state had failed to provide an equitable education as required by the Kansas Constitution, remanding the case back to the district court. *Gannon*, No. 109,335.

<sup>37</sup>*Lobato v. State of Colorado*, 2013 CO 30. No. 12SA25 (2013) at para. 30.

<sup>38</sup>*Id.* at paras. 44-45.

<sup>39</sup>2013 Cal. Stat. ch. 20 (Budget Act AB 10); ch. 48 AB 86 (Education omnibus trailer bill) ch. 47 AB 97 (LCFF).

<sup>40</sup>California Legislative Analyst, “The 2014-15 Budget: Proposition 98 Education Analysis” (Feb. 14, 2014).

<sup>41</sup>California Legislative Analyst, “Proposition 30: Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding. Initiative Constitutional Amendment” (July 18, 2012).

<sup>42</sup>Department of Public Instruction Policy and Budget Team, “Wisconsin Department of Public Instruction Summary of 2013 Wisconsin Act 20 Final 2013-15 Budget with Vetoes.”

<sup>43</sup>2013 Ark. ch. 557 SB 425.

<sup>44</sup>*Kimbrell v. McCleskey*, No. 11-1289 (Ark. 2012).

### Dealing With the Housing Market Collapse

The run-up of housing prices and their sudden collapse have had a profound effect on local property values and taxes. In spite of property taxes holding up better than income and sales taxes, there is concern that the full impact of the collapse on property tax revenues has not yet materialized. An immediate fallout, however, has been that homeowners have faced financial challenges regarding their homes, whether in keeping up mortgage payments, repairs, or taxes. This has given rise to increased delinquencies, vacancies, and foreclosures, resulting in an increase in tax lien sales.

### Dealing With Tax Lien Sales

Several states have given taxpayers additional time to pay taxes before starting procedures for tax sales. In Illinois, SB 1404 extended the delinquency period from two to three years before tax sales could be initiated. Similarly, New York A 1324 extended the period from 24 months to 36 months for property owners to make installment payments for delinquent taxes, an extension available for agreements entered into before the end of 2015.

Meanwhile, Louisiana is proposing a shorter redemption period. The Legislature has put on the ballot a constitutional amendment to reduce the period in which a homeowner can redeem the tax sale and remove the threat of loss of the property. The redemption period would be shortened from three years to 18 months for all blighted, hazardous, uninhabitable, or abandoned property sold for property taxes.<sup>45</sup> The current law applies the shortened period only to New Orleans, while the period for non-blighted properties sold at tax sale is three years.

In the District of Columbia, newspaper accounts drew attention to homeowners losing their properties after tax sales for modest amounts of delinquent taxes.<sup>46</sup> As a result, the D.C. Council enacted emergency measures.<sup>47</sup> As enacted, the new legislation voided any of the July 2013 sales of residential property owned by a senior citizen, veteran, or disabled individual. The legislation went further to limit future tax lien sales to only those properties with at least \$2,000 in delinquent taxes. Moreover, any proceeds from the sale that are in excess of the amount of taxes due will be paid to the owner. Because this was enacted under emergency conditions, more permanent legislation will have to be enacted to extend these provisions.

In related emergency legislation, the D.C. Office of the Chief Financial Officer was directed to review all residential sales over the past decade when less than \$2,500 in back taxes were owed.<sup>48</sup> The review was to consider if any resi-

dential property acquired in a tax sale — especially if owned by a senior citizen, veteran, or disabled individual — was eventually foreclosed. The review — to be presented to the council this year — was to determine if there were circumstances surrounding the delinquency, such as excusable neglect, that warranted relief.

### Reducing the Property Tax Burden

States are exploring ways to reduce the property tax burden in programs covering a wide range of recipients and purposes. In 2013 many actions were taken to implement voter referendums, while others were to expand existing incentive programs to spur economic development. In this regard, several states that continue to tax personal property, particularly for businesses, enacted new or expanded relief programs. While most relief has been targeted, North Dakota enacted a two-year tax relief credit for all taxpayers.<sup>49</sup> The credit, equal to 12 percent of the property taxes levied, is to reduce the property tax burden. All taxpayers will receive the credit through their tax bill with the state replacing the local revenues.

### Changes to Homestead Exemptions

Rhode Island revamped its homestead exemption options for local governments in 2013.<sup>50</sup> Instead of providing a homestead exemption, local governments, after completing a revaluation, may now adopt within their classified system two separate residential property classes, owner-occupied and non-owner-occupied, with separate tax rates. For example, the City of Providence adopted the two-tier residential rates for 2014 with \$19.25 per \$1,000 for owner-occupied and \$33.75 for non-owner-occupied. This replaces the single rate of \$31.89 with 50 percent exemption for owner-occupied and 15 percent for non-owner-occupied. Because 2014 was also a year that new assessments were available, the change has repercussions with residential owners because the effective tax rates increased regardless of occupancy.

The Minnesota Legislature in 2013 reversed the actions taken in 2011 and restored a state-financed homestead credit as part of the state's omnibus tax act.<sup>51</sup> The homestead credit, in effect from 2002 to 2011, was replaced in 2011 with a homestead exemption. The reinstated credit differs from the previous credit in that the state provides the refund directly to the homeowner or renter. Previously, the credit was applied against the local property tax liability, and the state provided funds to replace the local revenue attributed to providing the credit. Otherwise the program is structured similarly — with refunds greatest for lower-income households with high property taxes — and is limited to households with income below \$105,500.

<sup>45</sup>2013 La. HB 256.

<sup>46</sup>Michael Sallah, Debbie Cenziper, and Steven Rich, "Homes for the Taking," *The Washington Post*, Sept. 8, 2013.

<sup>47</sup>2013 DC A20-0179.

<sup>48</sup>2013 DC A20-0176.

<sup>49</sup>2013 N.D. S2036.

<sup>50</sup>2013 R.I. Laws ch. 080 S 0826 Substitute A.

<sup>51</sup>2013 Minn. Laws c.143, HF 677.

## Property Taxes After the Housing Collapse

The impact of the collapse in housing values on property tax revenues is still playing out, but data through the end of 2013 show that revenues have held up fairly well given the unprecedented crash. The story is consistent, with evidence showing that the relationship between property taxes and housing prices operates with a significant lag and is less responsive than the relationship between other tax sources and their tax bases.

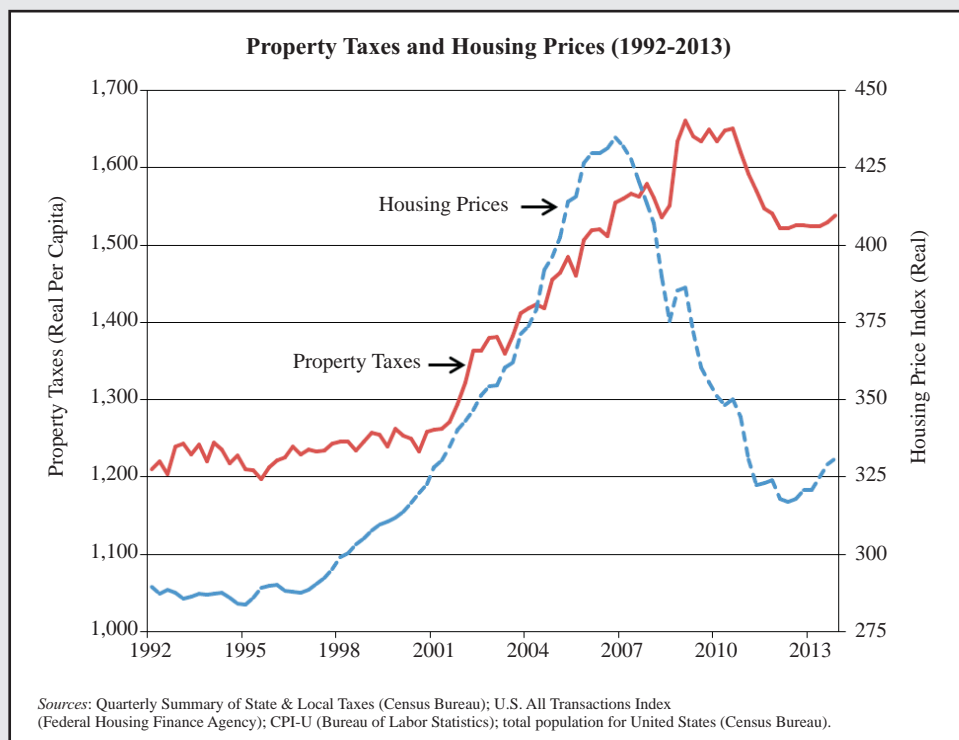
The figure shows the direct relationship between housing prices and property taxes. It also shows the significant lag between the two as the housing crisis developed. Inflation-adjusted housing prices began growing in late 1997, grew nearly 50 percent to their peak in the fourth quarter of 2006, and then fell 27 percent to their low point in the second quarter of 2012. Real per capita property taxes followed a similar path, but two to three years later, they began growing in early 2001, grew about 32 percent to their peak in the first quarter of 2009, and then fell 8.4 percent by the first quarter of 2012. One notable exception to the lagged relationship shown in the figure is that housing prices and property taxes both bottomed out in early 2012. That means that while it took five and a half years for the housing bubble to deflate, property taxes fell for only three years, with most of the drop occurring rapidly in the span of only a year and a half.

The lag between changes in property values and property tax revenue occurs because property tax bills are based on assessments from prior years. In addition, the reassessment cycle is several years long in some places, and assessment limits and phase-ins of higher assessments dilute the impact of changes in values on property tax bills. Because of differences in these administrative practices, the lag varies significantly across jurisdictions. Prior research suggests that three years is an average lag length.\*

The stability of the property tax is one of its key strengths as a revenue tool. This stability has continued, with income and sales tax revenue for state and local governments falling more than twice as much as property taxes during the Great Recession, despite the fact that housing prices fell much more than the bases for those two taxes.

The lag between housing prices and property values means that real per capita property taxes could decline a bit more in the near future despite their stability over the past year and a half. A three-year lag between changes in housing prices and property taxes would imply that the low point in property taxes might not occur until the end of fiscal 2015, given that housing prices bottomed out in the second quarter of 2012. However, data for 2013 suggest that property tax declines following the housing bust may not continue for as long as might be expected based on prior research.

The relative stability of property taxes and their lagged response to declines in property values helped many local governments avoid severe service cuts during and immediately after the Great Recession when other revenue sources were declining. However, the lagged response to changes in property values also means that it will take many localities, including those with recent increases in home prices, a long time to fully recover from the fiscal crisis.



\*Byron F. Lutz, "The Connection Between House Price Appreciation and Property Tax Revenues," 61 *Nat. Tax J.* 555 (2008); Howard Chernick, Adam Langley, and Andrew Reschovsky, "Predicting the Impact of the U.S. Housing Crisis and 'Great Recession' on Central City Revenues," 42 *Publius: The Journal of Federalism* 467 (2012).



In addition to the Homestead Credit Refund, Minnesota also enacted a special property tax refund for homeowners whose property taxes increased by more than 12 percent between 2013 and 2014. There is no income limit for this refund, and the maximum refund is \$1,000.

### Taxation of Personal Property

Utah continues to include all personal property in the tax base. While it accounts for over 5 percent of statewide taxable property,<sup>52</sup> the state has increasingly been expanding its personal property exemption. The 2013 legislation, HB 67, extended the 45 percent primary residential exemption<sup>53</sup> to include household furnishings and equipment owned by landlords of residential rental properties. For business personal property, a partial exemption has been in place since the constitutional amendment was adopted, effective in 2007. The initial \$3,500 exemption had been indexed beginning in 2008, rising to \$4,000 in 2013. With the 2013 legislation, the value increased to \$10,000 for 2014 and will continue to be indexed in subsequent years, using the consumer price index.

Idaho greatly expanded its business personal property exemption in 2013.<sup>54</sup> Under the new law, each business enterprise is permitted to exempt the first \$100,000 of business personal property in each county. The exemption was expanded to include operating personal property of utilities, such as those owned by railroads and pipeline companies. The exemption also allows recently purchased items costing less than \$3,000 to be excluded. The relief is widespread, eliminating the tax for nearly all businesses in Idaho.<sup>55</sup> The previous exemption would be available only if state general fund revenues had increased at least 5 percent over their 2008 level. The law will reduce property taxes by an estimated \$20 million a year, which the state will replace using general funds via the sales tax distribution formula.<sup>56</sup>

Colorado HB 1206 extended the ability of local jurisdictions to offer incentives for personal property tax relief to taxpayers whose business facilities are at risk of relocating outside Colorado. Before this extension, incentive agreements could be offered only to those businesses that were establishing new or expanding existing businesses. The new incentive expands the authority that allows local taxing jurisdictions to enter into business incentive agreements with taxpayers to reduce their personal property tax liability if the local jurisdiction determines that the business facility is at risk of relocating outside Colorado.

<sup>52</sup>“2013 Property Tax-Related Legislation” (Apr. 8, 2013).

<sup>53</sup>Utah exempts 45 percent of owner-occupied and rental residential real property, and until this legislation the personal property of owner-occupied residential properties.

<sup>54</sup>2013 Idaho Ch. 243 H 315.

<sup>55</sup>National Federation of Independent Business, “2013 Legislative Wrap-Up Report” (Apr. 29, 2013).

<sup>56</sup>Idaho Legislature Fiscal Note HB 315.

In enacting SB 96 in 2013, Montana increased the exemption to the first \$100,000 of business property, commonly known as class 8 property. Property value in excess of the exemption is taxed in two tiers. The 1.5 percent rate is applied to the first \$6 million of property in excess of the exemption, an increase from the previous structure that taxed the first \$3 million at the lower rate. For property over \$6 million, the rate is 3 percent. The state estimates that class 8 properties will now be about 14 percent of statewide total value of all property. The state will continue to reimburse local jurisdictions for the reduction in taxes attributed to the exemption.<sup>57</sup>

### Business Incentives

Iowa, as part of the 2013 overall tax reform legislative package, created a new business property tax credit and a graduated exemption for telecommunication properties.<sup>58</sup> The credit will be divided among all commercial, industrial, and railroad properties. The credit for one unit of property depends in part on the total value of all property units that apply for the credit and the average consolidated rates in each unit. The credit calculation is designed to spend 98 percent of the amount appropriated by the Legislature, with \$50 million in the first year. The Legislative Services Agency estimates that the maximum first-year credit for a unit will be about \$523.<sup>59</sup>

For telecommunications companies, a partial exemption was established. The exemption, beginning in 2013, is graduated, with four brackets based on the size of the company. The exemption for companies with property value of \$20 million or less is 20 percent of value for 2013. The exemption doubles to 40 percent in subsequent years. For properties in excess of \$20 million but less than \$55 million, the incremental exemption is 17.5 percent and, for values in excess of \$55 million but not over \$500 million, the exemption is 12.5 percent and 10 percent for property values in excess of \$500 million. The percentages double in subsequent years.<sup>60</sup>

Mississippi expanded the type of companies that can participate in programs under the state’s Economic Impact Act. In 2013 the Legislature enacted HB 1 to allow local authorities to provide various tax incentives — including property tax relief — to automotive parts manufacturing companies that begin construction before June 30, 2014. The law, which took effect April 28, 2013, allows local governments to exempt property taxes for the enterprise for up to 30 years and mandates that the fee in lieu of property taxes negotiated with the plant project cannot be less than the amount of debt service on the bonds issued by the

<sup>57</sup>Governor’s Office of Budget and Program Planning, “Fiscal Note 2015 Biennium” on SB 96.

<sup>58</sup>2013 Iowa Acts ch.123 SF 295.

<sup>59</sup>*Supra* note 30.

<sup>60</sup>Iowa General Assembly Legislative Service Agency, “2013 Summary of Legislation Regular Session,” at 187-190.



county for the project. In September, the governor, Yokohama Tire Corp. executives, and local elected officials broke ground in Clay County for the new tire factory that will receive benefits under this incentive.<sup>61</sup>

### Homestead Relief for Public Safety Personnel

One near-universal expansion of property tax relief is for public service personnel. Several states in 2013 broadened exclusions, often at local option, to permit more generous benefits by making them available to surviving spouses or for those military called up to active duty.

California enacted legislation extending the existing no-interest deferral of taxes to any active duty military reservists and National Guard members.<sup>62</sup> The deferral was already in place for military service personnel called to active duty as part of the Iraq and Afghanistan conflicts.

Connecticut expanded the local option to extend the property tax abatement to surviving spouses of emergency technicians, joining the abatements previously provided to firefighters and police officers who died while performing their duties.<sup>63</sup> The state also extended authority to local governments to increase the exemption for totally disabled veterans.<sup>64</sup>

The Texas Legislature earlier passed two bills to amend the state constitution, which required voter approval. Proposition 1, adopted with 87 percent approval<sup>65</sup> in November 2013, exempts a surviving spouse of a veteran killed in action if the spouse does not remarry. Further, the exemption can be applied to a new residence. Proposition 4, approved by 85 percent of voters, expanded the exemption to partially disabled veterans if their residence was donated by a charitable organization. The exemption previously applied only to totally disabled veterans.

### Restricting Property Tax Relief

Ohio reinstated the income eligibility test for its Senior Homestead Exemption in 2013.<sup>66</sup> The previous qualifying means test was dropped in 2007. The reinstated test applies to those residents who turn 65 in 2014 and are first eligible. Seniors who are already receiving the exemption are unaffected. The income limits have not yet been announced.

Maine repealed its residents' property tax and rent refund circuit-breaker program in 2013 and replaced it with the Property Tax Fairness Credit.<sup>67</sup> This new credit is a refundable credit against the state's income tax. The credit, equal to 40 percent of the property taxes that are in excess of 10 percent of income and capped at \$300, is available to renters

if rent is greater than 40 percent of their income and to Maine residents with income less than \$40,000. Because the credit is refundable, the law also directs the Department of Health and Human Services to identify individuals eligible for the credit but who do not file income tax returns and to develop a process to assist in applying for the credit.

Unlike other states considering how to manage relief or exemptions for nonprofits, Oregon has addressed the tax-exempt status of a small segment of these organizations. The new legislation, HB 2060, requires that these organizations spend at least 30 percent of their functional expenses on program services to maintain their special tax treatment. While the bill is primarily targeted at allowing income tax deductions for individuals who contribute to those organizations, it also allows the attorney general to revoke property tax exemptions for organizations that do not meet this spending level. It is estimated that fewer than 100 mostly out-of-state charities will be affected.<sup>68</sup>

### Preferential Treatment of Farmland

All states have some special treatment for assessing and taxing agriculture or farmland, providing relief to make farming more financially viable. The rationale is often two-pronged: To prevent more intensive development such as residential subdivisions from spreading into rural areas and to bring food awareness, and potentially production, closer to population centers.

### Preserving Farmland

California enacted legislation to encourage urban agriculture. AB 551, which some call groundbreaking, established the Urban Agriculture Incentive Zones. The act allows local governments to create zones where vacant, unimproved, or otherwise blighted lots can be used for small-scale production farms. Owners would commit to maintaining the land, which can be as little as 0.1 acres but no more than 3 acres, to agricultural use for a minimum of five years. In exchange, the land would be valued based on its agricultural use, not the market value. This is similar to the incentives that states provide to large-scale agricultural operations. But because this is targeted at very small operations, it is viewed as attractive for built-up cities.

New York amended its law concerning the assessing of agricultural land.<sup>69</sup> The new legislation strengthened the cap by reducing the maximum increase in assessed value of agricultural land. The assessed value of agricultural land previously could increase by as much as 10 percent, but the new cap limits increases to 2 percent. Because in most cases the value of agricultural land is based on the land's productive value, this provides an advantage for working farms to

<sup>61</sup>Mississippi Gov. Phil Bryant (R), "Yokohama Tire Corporation Breaks Ground on Manufacturing Facility in West Point, Miss." (Sept. 23, 2013).

<sup>62</sup>2013 Calif. Stat. ch. 220, SB 720.

<sup>63</sup>2013 Conn. PA No. 13-204 HB 6565.

<sup>64</sup>2013 Conn. PA No 13-224 SB 383.

<sup>65</sup>Ballotpedia.

<sup>66</sup>2013 Ohio HB 311.

<sup>67</sup>2013 Me. LD 1509 PL 2013 c. 368 Pt. L sections 1&4.

<sup>68</sup>Oregon Justice Department, "DOJ's Charity Legislation Passed, Eliminates Tax Deduction for Donors to Rogue Charities" (June 11, 2013).

<sup>69</sup>2013 N.Y. ch. 385 S 1952.

moderate their taxable value. Similar limits on assessment growth are not imposed on other types of properties or land use in New York.

In addition to considering the value of land based on use as farmland, Utah enacted a new provision for assessing all properties. HB 112 requires the assessor to take into account the presence of threatened or endangered species when valuing all properties. The impact of those animals or plants could affect the use and functionality of the property and hence its market value.

New Jersey tightened its requirements for lands qualifying as agricultural land by assessing based on farmland value rather than current market value. The new law increased the minimum gross sales generated from farming activities from \$500 to \$1,000 a year. This level of sales is in line with the U.S. Department of Agriculture's definition of farm. The law also calls for the minimum to be reviewed and potentially raised every three years.<sup>70</sup>

### **Conflict With Drilling (Fracking) on Agricultural Land**

States are increasingly struggling with the oversight of fracking operations that raise property tax issues, especially when the exploration and extraction occur on agricultural land. States often permit farmland to be valued based on its use rather than its market value in part to prevent further development. What happens when there is mineral extraction? While these operations also raise regulatory, environmental, or taxing issues,<sup>71</sup> states are considering the property tax consequences with the transition from farming to fracking.

<sup>70</sup>2013 N.J. ch. 43 S 589.

<sup>71</sup>See Jacquelyn Pless, "States Take the Lead on Regulating Hydraulic Fracturing: Overview of 2012 State Legislation," National Conference of State Legislatures (Mar. 2013); Cassarah Brown, "State Revenues and the Natural Gas Boom: An Assessment of State Oil and Gas Production Taxes," NCSL (June 2013).

Under new provisions to Utah's Farm Assessment Act, mineral extraction by a mineral rights owner who has only a minority interest in the agricultural land does not trigger the rollback tax penalty usually imposed when the farmland is no longer ineligible for preferential assessments. The agricultural assessment can also be implemented in the year farming operations recommence, rather than having the eligibility clock restart.<sup>72</sup>

### **Conclusion**

In 2013 state legislatures dealt with a wide range of property tax issues. While many actions addressed local issues, there were some overarching concerns that multiple states grappled with, such as removing barriers to economic growth, reducing the tax burden on businesses and homeowners, and funding elementary and secondary education. Overall most property tax developments centered on addressing these broader, long-standing issues. Actions taken in 2013 were only incremental in some cases. Already in 2014 there have been new challenges to school funding and the announcement of new voter initiatives on property tax limits. State legislatures have also enacted new property tax laws. ☆

<sup>72</sup>Under UT Code section 59-2-503, to qualify for agricultural use assessment the land had to be in agricultural use for at least the preceding two years.