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REAL PROPERTY TAX RELIEF FOR THE ELDERLY

The unique difficulties faced by many elderly citizens are well known to most Americans. Sickness, immobility, unemployment, poverty, and isolation all challenge the elderly's happiness and survival. They must spread their fixed and often inadequate resources among unpredictable and frequently major medical expenses, consumer goods, and the ever more burdensome cost of keeping their homes. This last challenge is especially great, for an elderly homeowner may not be able to persuade the mortgagee that he should not foreclose or the tax collector that he should not confiscate the property for unpaid ad valorem taxes. When the elderly homeowner fails to meet this challenge, he may literally lose the roof over his head. Since elderly citizens constitute a significant portion of the American population, these problems are especially pressing.

This article focuses on the elderly person's problem of coping with real property taxation. Although property taxes vary in intensity from place to place, the elderly bear a particularly heavy burden. The property tax generally does not reflect a taxpayer's ability to pay, since it is usually levied in proportion to the value of real property rather than in relation to a homeowner's income. Thus people with low incomes...


2 Note, supra note 1, at 917.

3 Id. at 923-25.

4 Id. at 927-28.

5 Id. at 923-25.

6 Id. at 925-27.

7 Id.

8 Id. at 917. More than twenty million people in the United States are sixty-five years old or older; they comprise roughly 10 percent of the population. One-quarter of this group falls below the poverty line. The elderly constitute one-fifth of all the poor.

9 The taxation of real property in the United States is a durable and much used device; about 85 percent of all local government receipts come from this source. Hearings on S. 1255 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 93d Cong., 1st Sess. 2 (1973) [hereinafter cited as Hearings].

10 Id. at 477-79, 518. For example, in New Hampshire property taxes constituted 62.3 percent of total state and local taxes in 1970, compared to only 15.2 percent in Alabama. The overall national figure was 39.2 percent. Id.

11 Id. at 518-19. Over six million aged homeowners pay an average of 8.1 percent of their household income as real property tax; over one million with incomes under $2,000 per year pay an average of 15.8 percent of their income as real property tax. In comparison, nearly two million homeowners with yearly incomes of $25,000 or more pay roughly 2.9 percent of their incomes as real property tax, and the average percentage figure for all nonelderly is only 4.1 percent.

12 See Note, supra note 1, at 926.

13 See notes 18-22 and accompanying text infra.
may have to pay a greater percentage of their incomes as real property tax than people with higher incomes. The real property tax can be a formidable problem for an elderly person sentimentally attached to his home, but lacking the money to keep the tax collector at bay and simultaneously to provide for the necessities of life.

This article examines governmental efforts to solve this problem, assuming that the elderly should be insulated from crippling real property taxation and that government action is desirable to accomplish this goal.\textsuperscript{14} The various options before the federal government for providing relief will be discussed\textsuperscript{15} against the background of recent state action.\textsuperscript{16} The proposals are confined to those providing substantive relief specifically for the elderly.\textsuperscript{17}

\section*{I. The Major State Relief Schemes}

State and local governments realize the vast majority of their receipts from the taxation of real property.\textsuperscript{18} Generally, the property tax system is administered by local governments under state legislative authorization, with varying degrees of power vested in the local governmental subdivisions to establish the exact terms of taxation. The tax is usually collected locally and then distributed according to a legislatively established system of allocation to bodies such as the local school district, the township, the county, the regional transportation authority, and the state treasury. The overall effect of revenue collection and distribution is usually the same no matter which governmental unit imposes a particular tax.\textsuperscript{19}

The operation of real property tax systems on individuals follows a general pattern as well.\textsuperscript{20} When a state or local government taxes a piece of real property, it generally requires the owner periodically to pay a sum equal to a certain percentage of the assessed value of the property.\textsuperscript{21} The assessed value is usually only one-third to one-half of the fair market value of the property. The application of the local tax rate to the assessed value yields the property tax due.\textsuperscript{22}

\textsuperscript{14} Other housing and property taxation problems of the elderly present additional political, economic, and philosophical questions, and many state legislatures have taken decisive action regarding them. For a general discussion see M. Greenfield, \textit{Property Tax Exemptions for Senior Citizens} (1966).

\textsuperscript{15} See Part II \textit{infra}.

\textsuperscript{16} See M. Greenfield, supra note 14, at 86-87. Developments in this area have been rapid and recent. In 1965 only thirteen states had real property tax provisions for relief to elderly people, and twelve states had other non-age-related provisions. Today, almost all states afford some type of relief. See also Part I \textit{infra}.

\textsuperscript{17} This article does not discuss similar aid to other people, and it generally avoids consideration of procedural reforms, such as more efficient and accurate taxation.

\textsuperscript{18} See note 9 supra.


\textsuperscript{20} See sources listed supra note 19.

\textsuperscript{21} This tax is commonly referred to as an \textit{ad valorem} tax.

\textsuperscript{22} See note 19 supra.
A. Prototype Relief Mechanisms

The programs actually enacted by the states follow two major prototypes. One model provides relief from payment of all or part of the property tax. The most common variant of this model is the exemption from taxation of part or all of the assessed value of the property. This type of relief operates much like an income tax deduction. Many states have established fixed dollar exemptions on assessed value, but some use more complicated formulas to arrive at the exemption. A few states leave to their political subdivisions the determination of the amount exempted.


Many of these and other statutes are or once were called "homestead exemptions," because they applied only to tracts which taxpayers owned and used as residences. The term, though still used in some statutes, is not a very helpful description of any relief scheme and will be avoided in this article.

24 For example, if the assessed value of a piece of real property were $10,000 and the statutory exemption on assessed value were $6,000, the applicable tax rate would be applied to $4,000 of the assessed value. See INT. REV. CODE OF 1954, §§ 161 et seq., 211 et seq.

25 See, e.g., ALA. CODE tit. 51, § 15 (Cum. Supp. 1971) ($5,000); FLA. STAT. ANN. § 196.031 (1972) ($10,000 with regard to local school taxes); GA. CONST. art. VII, § I ($4,000, but a total exemption from school-related taxation); IND. CODE § 6-1-4-1 (1971) ($1,000); KY. REV. STAT. § 132.810 (Cum. Supp. 1972) ($6,500); N.C. GEN. STAT. § 105-277.1(b)(1) (1972) (rewritten as ch. 448, [1973] N.C. LAWS) ($5,000); N.D. CENT. CODE § 57-02-08.1(1) (Supp. 1973) ($1,000); S.D. COMPIL. LAWS ANN. § 10-4-24.2 (Supp. 1973) ($1,000); TEX. CONST. art. VIII, § 1-b ($3,000); WYO. STAT. ANN. § 39-7 (Cum. Supp. 1973) ($1,000); S.C. CODE ANN. § 65-1522.1 (CCH STATE TAX REP., S.C. ¶ 95-575h (1973)) (exempts the first $10,000 of the fair market value of a dwelling from assessment for real property taxes); ch. 752, [1972] Tenn. Laws 1162 (CCH STATE TAX REP., TENN. ¶¶ 98-984 to 98-986 (1973)) ($5,000, effectively, in the form of a rebate on property tax paid on the first $5,000 of the market value of the property).

26 See, e.g., HAWAII REV. STAT. § 246-26 (Supp. 1971) (a $16,000 exemption for homeowners aged sixty to sixty-nine and a $20,000 exemption for those aged seventy or more); NEB. REV. STAT. § 77-202.13 (Cum. Supp. 1972) (in 1973, 90 percent of the first $7,500 actual value is exempted; in 1974, 90 percent of the first $15,000 actual value is exempted).

27 See, e.g., Md. ANN. CODE art. 81, §§ 12D, 12F (Cum. Supp. 1972) (option for local exemptions in addition to an exemption equal to the lesser of 50 percent of the assessed value or $4,000, multiplied by the local property tax rate); N.H. REV. STAT.
The other common variant of this model is to allow a deduction from the property tax due; the deduction operates like an income tax credit. Under this program, a certain amount is deducted not from the assessed value, but from the actual tax levied on the property. Most states that use this device set a maximum deduction amount, which may not exceed the actual tax due. A few states follow more complicated formulas within this general framework, and some provide no deduction from the assessed tax, but refund some of the property tax paid. The effect

ANN. § 72:39 (Supp. 1972) (equalized valuation reduced by $5,000, multiplied by the local assessment ratio); R.I. GEN. LAWS ANN. §§ 44-3-13, -16 (Supp. 1972) (a maximum exemption of $1,000, but varies according to local option); ch. 425, [1970] Del. LAWS (CCH STATE TAX REP., DEL. ¶¶ 91-658 to 91-660 (1972)), amending DEL. CODE ANN. tit. 22, §§ 1001-1007 (1973) (gives localities the option of adding a $5,000 exemption in addition to that required by Del. Code Ann. tit. 9, §§ 8131-8140 (Supp. 1968)); N.Y. REAL PROP. TAX LAW § 467-a (3 CCH STATE TAX REP., N.Y. ¶ 90-942(f) (1972)) (may exempt 50 percent of assessed valuation).


For example, if the assessed value of a piece of taxable real property were $10,000 and that value, multiplied by a local tax rate of ten mills ($0.01), yielded a tax due of $100, the state might excuse the owner from paying all or part of that amount; a credit of $75 would make the tax due $25.

See, e.g., IOWA CODE § 63-117 (1969) ($75 maximum); IOWA CODE ANN. §§ 425.1-1.25 (1973) ($125 or actual tax liability, whichever is less); N.J. STAT. ANN. §§ 54:4-8.41 (1973) ($160 reduction or the amount of the tax, whichever is less); UTAH CODE ANN. § 59-7-2 (Supp. 1973) (a reduction equal to $100 or half of the real property tax due, whichever is less).

See, e.g., OHIO REV. CODE ANN. § 323.152 (Page Supp. 1972) (The statute provides for reduced real property tax to an extent depending upon the taxpayer's income and the value of his home.); WASH. REV. CODE § 84.36.370 (Supp. 1971) (The scheme is an excess levies formula under which all of the tax is abated if income is below $4,000, and half of the tax is abated if income is between $4,000 and $6,000; minimum relief is $50); OR. REV. STAT. §§ 310.640, .689 (2 CCH STATE TAX REP., OR. ¶¶ 92-973b, 92-978d (1973)) (The amount of tax levied and the taxpayer's income determine the reduction in the tax bill.).

See also N.Y. REAL PROP. TAX LAW § 467-b (3 CCH STATE TAX REP., N.Y. ¶ 90-942h (1973)) (allows localities to reduce rent ceilings in rent-controlled dwellings by the amounts by which maximum rent exceeds one-third of the renter's income).

on the tax bill is the same with all of these schemes.  

The second property tax relief prototype reduces the taxpayer's income tax liability rather than his property tax liability. Under such a program, if a real property taxpayer has a low enough income, he can deduct from the income tax due an amount equal to all or part of the amount he paid as real property tax in the same year. Alternatively, he may receive a like amount, calculated on the same basis, in rebate or refund from the income tax he paid. If the deductible or rebatable amount is greater than the income tax actually due or paid, the taxpayer may receive the difference from the state as an outright grant. Many states impose an

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33 Three states have somewhat anomalous schemes. For example, Massachusetts has mutually exclusive programs. The first, for widows and people aged seventy or more, gives an exemption from taxation of $2,000 assessed value or a maximum $175 tax abatement, whichever yields the greater relief. A similar program for people aged seventy or more grants a $4,000 exemption or a $350 abatement, whichever yields the greater relief. Mass. Gen. Laws Ann. ch. 59, §§ 5(17), (41) (Cum. Supp. 1972).


36 See, e.g., Ind. Code 6-3-1-1 et seq. (1971) (in addition to the income tax credit mechanism); Ariz. Rev. Stat. Ann. § 43-128.01 (2 CCH State Tax Rep., Ariz. ¶¶
absolute ceiling on the income tax deduction, rebate, or grant available, irrespective of the property tax paid.\textsuperscript{37}

\textbf{B. Criteria for Relief}

One cannot fully understand the prototypes outlined above\textsuperscript{38} without first considering the requirements that states have established in order to qualify for relief. The basic criteria are age, residence, resources, and property interest.

Most states require a minimum age of sixty-five years for claimants to be entitled to relief, but the requirement is far from universal.\textsuperscript{39} Hawaii, for example, provides one level of relief for claimants aged sixty to sixty-nine and another amount for claimants aged seventy or more.\textsuperscript{40} Maryland


\textsuperscript{38} A few states do not follow these prototypes. See, e.g., La. Const. art. X, § 4(9) (a non-age-related exemption of $2,000 of the assessed valuation of homesteads); \textit{Mass. Gen. Laws Ann.} ch. 59, § 5(18) (Cum. Supp. 1972) (exempts from real property taxation "[a]ny portion of the estates" owned by people "who by reason of age, infirmity and poverty are in the judgment of the assessors unable to contribute fully toward the public charges"); Miss. Code Ann. § 9714 (Supp. 1970) (an exemption of $5,000 of the assessed value of homesteads); Mo. Const. art X, § 6(a) (clears the way for various types of relief to homeowners and renters); \textit{Okla. Stat. Ann. tit. 68, § 2407 (1966) (non-age related exemption of $1,000 of the assessed value of homesteads); Ore. Rev. Stat. §§ 311.668-778 (1972) (deferred by an individual aged sixty-five or more of ad valorem taxes on his homestead); R.I. Gen. Laws Ann. § 44-3-16 (Supp. 1972) (permits localities to freeze tax rates and assessed valuations imposed upon real property owned by the elderly); \textit{Utah Code Ann.} § 59-7-2.5 (Supp. 1973): (a) permits county boards of equalization to defer the tax levied upon real property owned by indigents, including those aged sixty-five or more; ch. 1406, [1972] Cal. Laws 1472 (3 CCH State Tax Rep., Cal. §§ 93-348c, 93-985b (1973)) (exempts $1,750 of the assessed value without regard to age); ch. 386, [1965] Conn. Laws (expired 1973) (provided for a real property tax freeze).


\textsuperscript{40} \textit{Hawaii Rev. Stat.} § 246-26 (Supp. 1971).
allows its political subdivisions to establish local age requirements.\(^{41}\) Other states vary the age requirement according to the claimant’s sex.\(^{42}\) In Kansas, female claimants must be aged fifty or more and males must be at least sixty-five to receive relief.\(^{43}\) Some states dispense with age requirements for the indigent\(^ {44}\) or the disabled.\(^ {45}\)

All states that provide relief require the claimant to reside on the taxed property. Many of them require the claimant to have resided there for a certain length of time,\(^ {46}\) while others call for ownership of the taxable property for a minimum duration.\(^ {47}\) South Dakota, for example, requires either five years’ residence in the state or current residence on the property plus three years of ownership in fee.\(^ {48}\) Two states insist upon occupancy of the residence for certain percentages of the year.\(^ {49}\)

Most states also link a claimant’s eligibility for relief to his resources. Income is the most commonly used criterion. The relevant income figure is often computed in a manner similar to the method of calculating the taxable income figure under state personal income tax programs.\(^ {50}\) To be


\(^{44}\) Utah Code Ann. §§ 59-7-2, 59-7-2.5 (Supp. 1973) (aid to indigents, including those with extreme hardship who are not yet aged sixty-five).


For the constitutional implications of the requirements discussed in the subsection see notes 86-92 and accompanying text infra.

\(^{47}\) See, e.g., Idaho Code § 63-117 (1969) (requires claimants to have been real property taxpayers for ten years); Ind. Code § 6-1-4-1 (1971) (requires ownership for one year prior to the claim year); Mass. Gen. Laws Ann. ch. 59, § 5(17) (Cum. Supp. 1972) (if not a widow or a minor whose father is deceased, then must have owned and resided in the domicile for ten years); Mass. Gen. Laws Ann. ch. 59, § 5(41) (Cum. Supp. 1972) (if not a surviving spouse, must have owned the property for five years or must have been domiciled in Massachusetts for ten years); Wash. Rev. Code § 84.36.370 (Supp. 1971) (requires three years’ residence in the state or two consecutive years of residence on the property immediately prior to filing a claim); Act 63, [1973] Ark. Supp. Sess. Laws (CCH State Tax Rep., Ark. ¶¶ 95-152 to 95-178 (1973)) (two years’ residence in the state; or one year of ownership in fee or residence at the homestead); Conn. Gen. Stat. Ann. §§ 12-129j to -129m (CCH State Tax Rep., Conn. ¶¶ 90-910j to 910m (1973)) (five years’ residence, including six months in the household to which the claim pertains); ch. 620, [1973] Conn. Laws (CCH State Tax Rep., Conn. ¶ 90-910o (1973)) (three years’ residence in the municipality); N.Y. Real Prop. Tax Law § 467 (3 CCH State Tax Rep., N.Y. ¶ 90-942c (1972)) (five years of ownership).


eligible for a given level of relief, a claimant must not have an individual or household income in excess of a certain amount.\(^{51}\) Some income ceilings are absolute,\(^{52}\) while others vary for singles and married couples.\(^{53}\) In Montana, for example, the relevant maximums are $4,000 for singles and $5,200 for couples.\(^{54}\) A few states vary the ceiling in other ways.\(^{55}\)

In determining eligibility for relief, other states consider the value of some or all of the claimant’s assets. Florida is typical of a group of states


\(^{55}\) Cal. Rev. & Tax. Code §§ 19501-19540 (1970) (farm income $30,000; non-farm income $20,000); Ga. Const. art. VII, § I (general exemption limit of $4,000; educational tax exemption limit of $6,000); Ind. Code § 6-1-4-1 (1971) ($6,000); Ind. Code § 6-3-1-1 et seq. (1971) ($5,000); Md. Ann. Code art. 81, §§ 12D, 12F (Cum. Supp. 1972) ($7,000 or $5,000, depending upon the locality); Neb. Rev. Stat. § 77-202.12(4) (Cum. Supp. 1972) ($2,800 for singles; $3,550 with a spouse and one of the couple aged sixty-five; $4,300 with both of the couple aged sixty-five); R.I. Gen. Laws Ann. §§ 44-3-13, -16 (Supp. 1972) (local variations of $4,000 and $5,000); N.Y. Real Prop. Tax Law §§ 467, 467-a (3 CCH State Tax Rep., N.Y. ¶ 90-942i (1972)) (local options of $3,000 to $6,000); N.Y. Real Prop. Tax Laws § 467-b (3 CCH State Tax Rep., N.Y. ¶ 90-942i (1973)) (for renters, local options of $3,000 to $5,000).
Relief is denied to a claimant whose house and adjacent real property have a combined assessed value in excess of $10,000. Some states consider all real property owned by the claimant. In Idaho, the taxpayer is entitled to relief unless the actual value of his real property exceeds $15,000. Other states consider a claimant's total assets—all the real and personal property he owns. Maine has set an actual asset value ceiling of $20,000. A small group of states considers still other resources in determining eligibility for relief. California, for example, bars any relief to claimants who receive public assistance grants that include specific property tax allowances. Connecticut provides that the total relief a claimant realizes under any combination of its real property tax relief programs may not exceed 75 percent of the total real property tax which would have been imposed but for those programs.

A final requisite to relief is a certain minimum interest in any real property involved. A person who owns and occupies his home as a residence has an adequate interest in the taxed real property to meet the property interest criterion of the program. Some states have limited or restricted definitions of "interest." For example, Florida has a ceiling of $10,000 for assessed value maximum for dwelling and surrounding real property, Indiana has a ceiling of $6,500 assessed value maximum for dwelling, Montana has a ceiling of $17,500 actual value maximum for dwelling. Idaho has a ceiling of $15,000 actual value. Several states consider all real property owned by the claimant. In Maine, the taxpayer is entitled to relief unless the actual value of his real property exceeds $15,000. Washington, for example, bars any relief to claimants who receive public assistance grants that include specific property tax allowances. Connecticut provides that the total relief a claimant realizes under any combination of its real property tax relief programs may not exceed 75 percent of the total real property tax which would have been imposed but for those programs. Some states have limited or restricted definitions of "interest." For example, Florida has a ceiling of $10,000 for assessed value maximum for dwelling and surrounding real property, Indiana has a ceiling of $6,500 assessed value maximum for dwelling, Montana has a ceiling of $17,500 actual value maximum for dwelling. Idaho has a ceiling of $15,000 actual value.

See, e.g., FLA. STAT. ANN. § 196.031 (1972) ($10,000 assessed value maximum for dwelling and surrounding real property); IND. CODE § 6-1-4-1 (1971) ($6,500 assessed value maximum for dwelling); MONT. REV. CODES ANN. § 84-301 (Cum. Supp. 1973) ($17,500 actual value maximum for dwelling).


extended this basic principle by statute\textsuperscript{66} or by judicial decision.\textsuperscript{67} For example, most state statutes allow some sort of proration of the claim over the portion of the property in which the claimant holds the required interest.\textsuperscript{68} In Massachusetts, the supreme court expanded the proratability concept by applying the statutory exemption to an entire parcel of property, though the claimant-taxpayer occupied only one-third of it.\textsuperscript{69} A few states even allow mobile home owners to file claims for relief.\textsuperscript{70} Finally, for renters, many state statutes consider a certain percentage of gross rent paid, usually excluding utility or furniture charges, as equivalent to real property tax paid and grant relief accordingly.\textsuperscript{71}


\textsuperscript{68} In Florida, owners of condominiums and cooperative apartments won a declaratory judgment that they could get the full ad valorem tax exemption. Ammerman v. Markham, 222 So. 2d 423 (Fla. 1969).


\textsuperscript{71} Board of Assessors v. Formosi, 349 Mass. 727, 730, 212 N.E.2d 210, 212 (1965).


C. Summary of State Relief Legislation

The states have responded to the real property tax problems of the elderly with prolific legislation. The foregoing discussion shows that nearly every state has some sort of relief program. Much of this activity is very recent and its effects will be difficult to gauge for some time. The per capita cost of these programs has generally been moderate, but costs rise as states periodically revise benefits or extend coverage under their programs, reflecting both a response to inflation and the increasing political support for such programs.

The current programs still have considerable shortcomings. The relatively meager exemptions of some states can not effectively reduce many people's tax liability; if someone on a fixed annual income of $3,000 pays 20 percent of the $3,000 in real property taxes, an exemption effecting a reduction to 15 percent is of little help. Programs that fail to include renters or mobile home dwellers seem to deny relief benefits to a significant portion of elderly taxpayers or rent-as-tax payers. Programs that establish arbitrary cutoffs for aid or stepwise resource-aid correlations, rather than a continuous function system, seem to discriminate against taxpayers falling near the lines of demarcation. Finally, some state programs may be more efficient than others: the criteria for relief may reflect need more or less accurately; and the exact relief


See also N.Y. Real Prop. Tax Law § 467-b (3 CCH State Tax Rep., N.Y. ¶¶ 90-942g to 90-942n (1973)) (general renters' relief provisions).

72 See parts I A and I B supra.
73 Id.
74 Hearings, supra note 9, at 520-24. Though program changes have rendered most of the estimated cost data obsolete, it is fair to say that most age-related state programs carry a per capita cost of between $1.00 and $5.00. Two states which impose no age criteria have much larger per capita costs (Michigan's is $27.53, and Vermont's is $23.38.). Id.
76 See, e.g., N.D. Cent. Code § 57-02-08.1 (Supp. 1973) (only $1,000 of the assessed value).
77 See notes 65-71 and accompanying text supra.
78 Id.
79 See notes 23-71 and accompanying text supra.
80 A continuous function system would match every level of need with a corresponding level of relief, so that the difference between the amounts of relief received by any two claimants would never be disproportionate to the difference in need between those two claimants.
81 For example, someone with a house worth $6,001 may, if the nearest step-wise cutoffs are $6,000 and $9,000, be at a disproportionate disadvantage to another taxpayer with a $6,000 house or an extreme advantage over someone with an $8,500 house.
82 See generally part I B supra.
mechanism may or may not mesh with tax administration in a given state.  

The ultimate course for state legislation is less certain. The states must face many difficult political and economic pressures. A program passed today by a state with an understanding that it is to be an experiment of limited duration might never win permanent adoption, and, even if it does, benefits under it might not be revised to keep pace with inflation. While the trend has been one of dramatically expanding relief programs, the cost of these programs may become a deterrent to their retention or adoption, especially as groups other than the elderly press for tax relief. Such political and economic constraints may be perfectly consistent with the majority opinion in a state, but that opinion is based upon the economic realities prompted by federal inaction. It is in this context that the options for federal tax relief for the elderly must be considered.

II. POSSIBILITIES FOR FEDERAL ACTION

Prior to any consideration of specific alternatives for federal action, constitutional questions concerning the interrelationship of state and federal government must be examined. Congress probably could not pro-

83 See note 19 supra.
84 See note 16 supra.
85 See notes 74-75 and accompanying text supra.
86 Other constitutional issues are related, but not very significant at this point. For example, the United States Constitution probably does not prevent the federal government from assisting in efforts to relieve the elderly from their real property tax burden. The “general welfare” considerations of art. 1, § 8, cl. 1 and the “necessary and proper” clause, art. 1, § 8, cl. 18, would appear to empower Congress to grant funds in order to ease a citizen’s tax burden. See McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 419 (1819) (Broad powers are granted to Congress by the “necessary and proper” clause.). Furthermore, a selective program of relief would probably not run afoul of the due process clauses of either the fifth or the fourteenth amendment because of the reasonable classification doctrine found in cases such as Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911). While the equal protection clause of the fourteenth amendment applies to state, not federal, action, the due process clause of the fifth amendment prohibits arbitrary federal legislative classifications which are grossly discriminatory and which amount to confiscation. P. KAUPER, CONSTITUTIONAL LAW 690 (4th ed. 1972). Moreover, Congress cannot authorize states to violate the fourteenth amendment. Reynolds v. Sims, 377 U.S. 533, 582 (1964) (“Congressional approval, however, well-considered, could hardly validate an unconstitutional state legislative apportionment . . . ”). But such distinctions as would be included in a selective relief program are common parts of many taxing schemes. See Sholley, Equal Protection in Tax Legislation, 24 VA. L. REV. 229, 338 (1938).

Another underlying issue is the residency requirement of a program. See notes 46-49 and accompanying text supra. In Shapiro v. Thompson, 394 U.S. 618 (1969), a one-year residence requirement for aid under a state welfare program was held invalid as an invidious distinction violative of the equal protection clause of the fourteenth amendment. id. at 627. The court said that the fiscal integrity of the state was not a sufficiently compelling interest to warrant the chilling effect that such a requirement would have upon the constitutional right of interstate travel. id. at 629. Similar requirements under tax relief programs, on the other hand, would foster the reasonable purpose of limiting the programs to relief from the taxation of a claimant's residence. Therefore, residence requirements may be upheld in the face of Shapiro v. Thompson.
hibit the states from taxing the real property of elderly persons. First, nothing in Article I of the Constitution seems to grant Congress this power; rather, the tenth amendment\(^87\) seems to reserve these matters to the states. Furthermore, as cases such as *McCulloch v. Maryland*\(^88\) have indicated, Congress can exercise only the enumerated powers granted to it by the Constitution.\(^89\) This limitation does not preclude Congress from conditioning its aid upon state conformity to specific federal standards. Since the Social Security Act\(^90\) was upheld in *Steward Machine Co. v. Davis*,\(^91\) it has been firmly established that such standards do not contravene the tenth amendment or the idea of federalism, nor does induced compliance require the states to abdicate their sovereignty.\(^92\) For practical reasons, however, Congress might wish to minimize any substantial conflicts between its standards and state constitutions; the delay of relief occasioned by a need for lengthy state amendatory procedures could impose unwarranted short-term hardships on claimants. From state and federal constitutional standpoints, then, any federal program will have to respect the state taxing function and the existing state constitutional framework.

The states have unique taxation problems\(^93\) which have spawned a wide variety of relief measures.\(^94\) These programs have developed and are still developing at a rapid rate,\(^95\) free of federal restraints or incentives. Most of the state legislature activity is proceeding at such a pace that Congress cannot keep up with it,\(^96\) perhaps explaining federal inaction until now. To the elderly's benefit, federal quiescence has permitted the state to experiment with a wide variety of schemes,\(^97\) and, in doing so, to perform their traditional laboratory function.\(^98\) But current property tax relief programs for the aged may grind to a halt without federal funds assuring state fiscal flexibility. Perhaps Congress is beginning to realize that in spite of the problem of duplication of effort by state and federal governments and the difficulty of tailoring a federal scheme to a variety of preexisting state programs, it must act to assure

\(^{87}\) U.S. Const. amend. 10:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

\(^{88}\) 17 U.S. (4 Wheat.) 316 (1819).

\(^{89}\) 17 U.S. (4 Wheat.) at 405.

\(^{90}\) 49 Stat. 620 (1935).

\(^{91}\) 301 U.S. 548, 583 (1937).

\(^{92}\) Id. at 585, 593.

\(^{93}\) See note 10 supra.

\(^{94}\) See part I supra.

\(^{95}\) See note 16 supra.

\(^{96}\) *Hearings*, supra note 9, at 520-24. These data, up-to-date in May, 1973, are now at least 25 percent out-of-date.

\(^{97}\) See part I supra.

\(^{98}\) It is well established in constitutional law that the sovereign powers of the state governments did not change with the adoption of the Constitution except with respect to the enumerated powers given to the federal government. Each level of government may act independently within its own sphere. *See Collector v. Day*, 78 U.S. (11 Wall.) 113, 124 (1871).
elderly citizens continued relief from the burden of real property taxes. Several alternative approaches are possible.

A. Federal Aid to Individuals

An obvious approach would be for the federal government to apply a deduction or credit to the federal income tax based on the real property tax that an elderly taxpayer pays. Two proposals for such action have been placed before Congress, but neither seems to have a significant chance of passage. The first option, a flat grant, credit, or refund up to a certain maximum for real property taxes actually paid, might effectively decrease the burden of such taxes. But a state could tax away this advantage simply by increasing the ad valorem burden. Thus, claimants could become mere conduits for federal aid to the states without ever realizing the benefits of federal relief. The same problem exists under the second option—a grant, credit, or refund in the amount of property tax due which exceeds a given percentage of a taxpayer's household income. Claimants could fail to realize federal relief because these proposals also contain fixed relief ceilings. Such proposals can guarantee only superficial and temporary benefits since they do not encourage the states to alter their patterns of real property taxation in any way. In fact, as these federal programs were expanded, the states might be encouraged to tax real property more heavily. In any event, the states would ultimately determine the real beneficiaries.

B. Federal Aid to States

Alternatively, federal aid could be granted to the states by giving the states money to cover all or part of the revenues lost and administrative cost incurred by any state relief program. This grant could be outright or with carefully defined conditions imposed. Unrestricted aid might lead to broader, fairer, more generous, or more efficient programs by cutting state costs and making the programs more politically attractive. Furthermore, the aid might allow existing programs, which were becoming a politically or economically objectionable burden on the taxpayers, to survive intact. Without restrictive conditions, however, the aid might not effect relief to the elderly at all, for the federal support might merely free state revenues

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90 INT. REV. CODE of 1954, §§ 161 et seq., 211 et seq.
91 Id. § 31 et seq.
92 Such a program, of course, would complement the already existing deduction under the federal income tax system for local real property taxes paid, which applies to all residents, regardless of age. INT. REV. CODE of 1954, § 164(a).
94 See generally Hearings, supra note 9.
95 S. 759, 93d Cong., 1st Sess. (1973) (a non-age-related program).
96 Id.
97 Id.
for other programs, including tax relief to other groups. The real benefici-
ciaries of the program would be determined by the states, not the federal
government. This result might be desirable if the states continue to exer-
cise their laboratory function in favor of the elderly. However, substan-
tial evidence exists that politicians and other interest groups expect many
states to do otherwise. Therefore, an unrestricted federal program
would probably be neither politically feasible nor necessarily beneficial
to the elderly.

If the federal government were to attach certain conditions to its aid,
these problems would be much less pronounced. Such conditions could
be designed to ensure that federal money would go toward a reduction of
the real property tax liability of the elderly who need relief. For instance,
Congress could condition aid to state programs which had acceptable lev-
els of relief, broad enough coverage, fair and rational eligibility criteria,
and a reasonably efficient and honest system of granting relief. Even gen-
eral standards could become acceptably specific through an administrator's
state-by-state application of them.

Such a proposal is embodied in the Property Tax Relief and Reform
Act of 1973. While this proposal is unenacted and provides for much
more than relief to the elderly, it illustrates the possibility of develop-
ing a good federal aid program. Under the bill, an Office of Property Tax
Relief and Reform would be created to pay to states operating qualified
real property tax relief programs an amount equal to half of the nonad-
ministrative costs of the programs. A state would apply to the Office
to have its program qualified, both substantively and procedurally. A
state program would have to extend relief to homeowners and renters
of residential property. This relief would be computed along min-
um standards which reflect a claimant's tax burden and income.
The bill illustrates the problems and possibilities involved in drafting adequate federal legislation. It would force participating states to extend relief to renters and to compute 15 to 30 percent of gross rent as property tax paid, to formulate a standardized definition of income, and to establish a uniform maximum income criterion. Furthermore, it would eliminate age requirements, with somewhat drastic per capita cost consequences. The bill would, however, leave the states free to provide little or no real relief, although by doing so federal participation would be correspondingly diminished.

Many unresolved issues are raised by the bill. It is not clear whether 50 percent federal participation would be enough of an inducement to states to reform their procedures of real property taxation or to meet the minimum federal substantive requirements, let alone increase the amount of relief in dollars, half of which would still have to come from other state revenues. Furthermore, the benefit of covering half of the revenue loss occasioned by a state's meager exemptions could be questioned. The bill has merit, though, because it could help states that are serious about effecting relief and reform. Furthermore, it would give aid without undue

$7,000 and less than $10,000; and 6 percent if such income is more than $10,000 but less than $14,000. The bill, as presently drafted, inadvertently omits relief for taxpayers with incomes of exactly $7,000 or $10,000.

115 See note 71 and accompanying text supra. States which have no statutory aid for renters include Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.


See also CONN. GEN. STAT. ANN. §§ 12-129j to 12-129m (CCH STATE TAX REP., CONN. §§ 90-910j to 90-910m (1973)) (Utilities could no longer be included as gross rent paid.).


119 See note 74 supra.


121 Id. § 301. See note 110 and accompanying text supra.

122 However, there is evidently some feeling about the probable state response. See Hearings, supra note 9, at 262 (maximum federal relief under the bill should total $1.2 billion; estimated actual federal cost estimated in May, 1973, is $643 million).
restraint upon state innovation or experimentation. The proposed program would allow for much of the regional variation in the intensity of real property taxation by providing for ranges of acceptable state coverage and relief. Finally, the bill does not significantly inhibit the exercise of the state laboratory function, because it does not discriminate in favor of any single state relief mechanism or insist upon any rigid set of substantive relief rules.

III. CONCLUSION

The most desirable federal support of state programs to relieve the deserving elderly of their real property tax burden would be that which permits the states to continue their diverse efforts, while insisting upon minimum standards of bona fide efforts at relief. If the Property Tax Relief and Reform Act were not tied to procedural reforms or extended to cover people of all ages, it would be a simple, direct way to give substantive tax relief to the elderly. Nevertheless, if the bill is an indication of federal legislation to come, the elderly of this nation can begin to share in the realistic hope of a fair system of taxation.

—Edsell M. Eady, Jr.

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123 The federal standards, of course, should not preclude the states from providing greater relief, though such relief would be federally subsidized only to the maximum extent provided by legislation.

See S. 1255, 93d Cong., 1st Sess. § 305 (1973). Under the bill the issue of procedural compliance may well be set aside at this point, at least temporarily. The states could benefit under the program for three years without proceeding with Title IV and V procedural reforms. See note 109 supra. If in the fourth year the state were still inactive, half of the non-administrative aid would be cut. Only in the fifth year would substantive relief be eliminated for failure to comply with the bill's procedural requirements. See S. 1255, 93d Cong., 1st Sess. § 305 (1973).

124 See Hearings, supra note 9.

125 See, e.g., S. 1255, 93d Cong., 1st Sess. §§ 302(b)-(d) (1973).

126 Id. §§ 302(b), (c). See also part I A supra.

127 See note 120 supra.

128 Id.