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AFTER HOUSE BILL 920: AN ANALYSIS OF NEEDED REAL PROPERTY TAX REFORM

I. INTRODUCTION

PROPERTY TAX RELIEF HAS BEEN THE CONCERN OF LEGISLATURES everywhere since property taxes were first enacted, and the Ohio legislature has been no exception. In 1976, after duly noting the need for real property tax reform, the General Assembly enacted Amended Substitute House Bill 920 (hereinafter referred to as H.B. 920).¹ The thrust of H.B. 920 was to eliminate "windfall" tax increases to local governments resulting from property reassessments and reappraisals.² However, as became apparent subsequently, the elimination of windfall tax revenue increases for local governments did not translate into real property tax relief for all classes of Ohio property owners.

The principle of H.B. 920 is simple. The dollar amounts collected from a community pursuant to certain voted levies must remain constant. Therefore, if a reappraisal or reassessment increases the total tax value of a community's real property, then H.B. 920 provides the entire community with a dollar for dollar credit to offset any increase in the total taxes due from the community. While these principles are sound in theory, the practical aspects of H.B. 920 have made it a nightmare for some property owners.

A case in point is a certain residential property located in Cuyahoga County. In 1978, the tax value of the property was \$11,020,³ based on the County Auditor's 1976 reappraisal. In 1979 the County Auditor updated the tax value to \$15,890,⁴ an increase of 44.2%. The corresponding tax increase for the parcel was \$134.08, a 25.8% increase.⁵

In stark contrast, if not contradiction, to the previous example stands a commercial parcel⁶ located in the same city, on the same street as the residential property just reviewed. In 1979 the Cuyahoga County Audi-

¹ Am. Sub. H.B. 920, 111th General Assembly (1976), 1976 OHIO LAWS 3182 [hereinafter cited as H.B. 920]. Though this law dealt with more than tax relief, its primary impact has been on real property taxation law; for example, H.B. 920 created the Department of Tax Equalization and amended 99 sections of the Ohio Revised Code, enacted two new sections and repealed two sections. *Id.*

² 1976 OHIO LAWS 3194.

³ 1978 Tax Duplicate, Cuyahoga County, Ohio, parcel number 644-11-031, located at 25530 Lakeshore Boulevard.

⁴ 1979 Tax Duplicate, Cuyahoga County, Ohio, parcel number 644-11-031, located at 25530 Lakeshore Boulevard.

⁵ Part of the increase was undoubtedly due to an increase in the tax rate from 62.00 mills to 66.80 mills.

⁶ 1978 and 1979 Tax Duplicate, Cuyahoga County, Ohio parcel number 644-02-004, located at 22701 Lakeshore Boulevard.

tor updated the tax value of the property from \$802,770 to \$882,770, an \$80,000 (or 9.97%) increase.⁷ Despite the increase in value, the taxes due actually decreased \$493.80 (or 1.3%), from \$37,829.50 in the tax year 1978 to \$37,335.70 in tax year 1979.⁸

Equally disturbing is the fact that the examples above are the rule and not the exception. Cuyahoga County Auditor Vincent C. Campanella reported that, in 1977, 60% to 70% of all businesses received actual tax decreases on their 1976 taxes⁹ despite valuation increases, while almost 80% of residential property owners received both tax and valuation increases.¹⁰ County-wide figures¹¹ indicate that in tax year 1979 residential property values increased 38.4% over 1978, from \$4,518,452,880 to \$6,254,572,470, excluding any increases from new properties. Because of that value increase, residential property taxpayers paid an estimated \$31.5 million more in property taxes¹² over the 1978 tax year. At the same time, county-wide figures¹³ for commercial and industrial properties reported the 1979 valuation increasing 14.1% over 1978 valuations from \$2,169,042,500 to \$2,475,267,170, excluding any increases from new properties. Despite that increase in value, commercial and industrial taxpayers as a group paid an estimated \$5.2 million less in taxes for the 1979 tax year than they did in the previous tax year.¹⁴

The result has been a continuing shift in the burden of taxation to the residential property taxpayer, which has moved the Cuyahoga County homeowner's share of real property taxes from 63% of the 1975 taxes to 68% of the 1976 taxes, and to 72% of the 1979 taxes.¹⁵ These homeowners, with the sympathetic prompting of local elected officials, turned to the state's lawmakers for a remedy to what they felt was unfair treatment in their property taxes.¹⁶

Effective tax relief may require further legislation, but before this task can begin, a reinterpretation of the current property tax statutes in light of Article XII, § 2 of the Ohio Constitution is necessary.

This Note will analyze the current state of real property tax law in Ohio and its relationship to H.B. 920. The tax reform provision of H.B.

⁷ *Id.*

⁸ *Id.*

⁹ Taxes for 1976 were billed in December of 1976, payable in two installments, by January and July of 1977.

¹⁰ The Clev. Press, March 9, 1978, at A13, col. 1.

¹¹ Abstract of Real Property, DTE Form 93 (Rev. March 1977), 1978, 1979.

¹² Interview with Vincent C. Campanella, Cuyahoga County Auditor, Cleveland, Ohio, July 30, 1980 [hereinafter cited as Campanella interview].

¹³ Abstract of Real Property, DTE Form 93 (Rev. March 1977), 1978, 1979.

¹⁴ Campanella interview, *supra* note 12.

¹⁵ The Clev. Press, Aug. 28, 1979, at A7, col. 4.

¹⁶ Clev. Plain Dealer, Sept. 5, 1979, at A-1, col. 4. Perhaps the most comprehensive coverage of the technical and political issues involved can be found in Kuznik, *Taxation Without Representation*, CLEV. MAGAZINE, April, 1980, at 76.

920 will be separately analyzed from both the historical perspective surrounding its passage and the technical perspective of its mathematical calculations. These perspectives will explain the seeming contradictions in the above examples. A further analysis of the relationship between taxation by uniform rule under Article XII, § 2 of the Ohio Constitution will be undertaken. The conclusion will focus on a constitutionally valid solution to the problem of property tax reform while, at the same time, noting several essential and unusual questions.

II. THE OHIO REAL PROPERTY TAX BILL AND AMENDED HOUSE BILL 920

A. *The Property Tax Bill in Ohio*

Although some parts of Ohio's real property tax bill¹⁷ are unique to the state, for the purpose of initiating analysis the tax bill can still be reduced to the elements it has in common with property tax bills of other states. It should be noted here that this note will deal solely with the *real property* tax bill. Real property is defined by Ohio law to include land, all crops, trees, buildings, structures, improvements and fixtures added thereto.¹⁸ This is distinguished from *personal property*, which generally consists of movable items not permanently affixed to or part of the real estate,¹⁹ and which is taxed under its own statutes.²⁰

The two most fundamental elements of any real property tax bill are property value and tax rate.²¹ The tax bill in its most basic form determines the tax liability by multiplying the taxable value of the property by the established tax rate.²² This article will first analyze value as it relates to the Ohio real property tax bill and then look at the tax rate as established by Ohio law.

The process of determining the tax bill for each property is triggered by the estimation of value for each parcel of property.²³ Under Ohio law the county auditor is the public official charged with the estimation of the value of all real property in his specific county for purposes of taxa-

¹⁷ "Tax bill" as used herein refers to the amount of tax due from an individual. This is not to be confused with House Bill 920, which is a taxing statute.

¹⁸ OHIO REV. CODE ANN. § 5701.02 (Page 1980).

¹⁹ INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS PROPERTY ASSESSMENT VALUATION 12 (1977) [hereinafter cited as IAAO]. For the detailed statutory definitions of personal property, see OHIO REV. CODE ANN. § 5711.01 (Page 1980), and § 5709.01 and § 5709.02 as cited therein.

²⁰ OHIO REV. CODE ANN. § 5711 (Page 1980) governs the taxation of personal property.

²¹ O. OLDMAN & F. SCHOETTLE, STATE AND LOCAL TAXES AND FINANCE 137 (1974) [hereinafter cited as OLDMAN & SCHOETTLE].

²² IAAO, *supra* note 19, at 5. See also OLDMAN & SCHOETTLE, *supra* note 21, at 244.

²³ OLDMAN & SCHOETTLE, *supra* note 21, at 243.

tion.²⁴ In establishing the value of any piece of real property the county auditor is subject to statutory provisions²⁵ as well as rules of the Commissioner of Tax Equalization.²⁶ His first duty under statutory law is to appraise the property, that is, to establish its "true value in money."²⁷ The administrative rule of the Department of Tax Equalization has provided assistance by further defining the meaning of "true value in money" as: 1) the price for which the property could be sold in an arm's length sale between a willing seller and willing buyer within a reasonable length of time either before or after the tax lien date, presuming no loss in value due to some casualty subsequent to the sale;²⁸ or 2) the price at which the property should sell in an arm's length sale between a willing buyer and willing seller, both under no compulsion to buy or sell and both understanding all the relevant facts.²⁹ As an elemental first step, the county auditor appraises the property in his county at the value for which it has recently sold or would sell in an arm's length transaction.

After the appraised or "market" value of the real property has been established, the county auditor must then establish the taxable value of the property. This process is known as "assessing" value. The assessed value may equal 100% or less of the established market value.³⁰ Ohio law and the rules of the Department of Tax Equalization currently provide that the assessed value of all real property shall be equal to 35% of its true value.³¹ This assessed value then forms the base upon which the property taxes will be levied.

²⁴ OHIO REV. CODE ANN. § 5713.01 (Page 1980).

²⁵ *Id.* §§ 5713, 5715.

²⁶ *Id.* H.B. 920 of the 111th General Assembly created the Department of Tax Equalization with an appointed commissioner as administrator. It is his duty to direct and supervise the assessment of all real property for taxation. 1976 OHIO LAWS 3182.

²⁷ OHIO REV. CODE ANN. § 5713.01 (Page 1981).

²⁸ OHIO AD. CODE 5705-3-01 (Nov. 1, 1977); OHIO REV. CODE ANN. § 5713.03 (Page 1980).

²⁹ OHIO AD. CODE 5705-3-01 (Nov. 1, 1977). The rules essentially reflect the Supreme Court's ruling in *State, ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412, 195 N.E.2d 908, 910 (1964).

³⁰ IAAO, *supra* note 19, at 4. Oldman and Schoettle state that throughout the United States the practice, sometimes sanctioned by statute or constitution, has been to use only a percentage of the fair market value of a property as its assessed value. OLDMAN & SCHOETTLE, *supra* note 21, at 244.

The word "assessment" is sometimes used to describe the process of appraisal even though the words are not synonymous. A possible explanation may be found in the fact that in some states the assessed value equals the appraised or market value, hence providing no dollar difference in the two values. Technically, however, the distinction between appraisal and assessment should be maintained.

³¹ OHIO REV. CODE ANN. § 5713.03 (Page 1980); OHIO AD. CODE 5705-3-02 (Nov. 1, 1977).

The second essential element of the Ohio property tax bill is the tax rate. The tax rate for property tax bills is generally expressed in one of three ways: as millage (*e.g.*, 50 mills), as dollars per \$100 of assessed value (*e.g.*, \$5.00 per \$100), or as dollars per \$1,000 of assessed value (*e.g.*, \$50.00 per \$1,000 of assessed value).³² In Ohio, the tax rate is generally expressed in mills (thousandths of a dollar) and dollars per \$100 of assessed value.³³ The tax rate used to determine the property tax due on the Ohio real property tax bill is generally referred to in mills rounded to the nearest tenth³⁴ and is an aggregate of all the individual tax rates levied on a particular property by the authorized governmental units, such as the county, city, township, school or library.³⁵

In order to understand the complexities of the Ohio real property tax bill and the effect that the tax reform measure H.B. 920 has had on this tax bill, it is essential to analyze the distinction which Ohio law has currently established in regard to the specific categories of property tax millage. Ohio law provides that tax levies³⁶ be divided into five categories.³⁷ The five categories may be grouped as to levies "within the ten-mill limitation" or "in excess of the ten-mill limitation."³⁸

The levies within the ten-mill limitation refer to those levies authorized by Article XII, § 2 of the Ohio Constitution which states in pertinent part:

No property taxed according to value, shall be so taxed in excess of one percent of its true value³⁹ in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.⁴⁰

The millage levied within the ten-mill limitation is commonly referred to as "inside millage" since it is levied "inside of" or "within the authority of" the Constitutional ten-mill limitation. It is also sometimes described as "unvoted" millage, since it is levied without specific voter approval.

³² IAAO, *supra* note 19, at 6.

³³ OHIO REV. CODE ANN. §§ 5705.02, 5705.25 (Page 1980).

³⁴ OHIO REV. CODE ANN. § 319.33 (Page 1953).

³⁵ OHIO REV. CODE ANN. §§ 5705.01, 5705.03 (Page 1980).

³⁶ "Levy," as used in this context, refers to the total sum to be raised by a specific tax for a specific purpose. See BLACK'S LAW DICTIONARY 1630 (4th ed. 1972). The word is also generally used to represent the total sum to be raised from all charges for whatever purpose. It therefore may be used to describe both the whole tax collection and the various parts of the collection.

³⁷ OHIO REV. CODE ANN. § 5705.04 (Page 1980).

³⁸ *Id.*

³⁹ "One percent of true value" equals ten mills of true value.

Ohio statutory law has further clarified and modified this constitutionally authorized millage by providing that: 1) the ten-mill limit is an aggregate amount which may be levied by all governmental units properly empowered to levy a tax on any taxable parcel of property; and 2) it is to be levied on the "taxable value," not "true value."⁴¹

The levies "in excess of the ten-mill limitation" refer to those levies which have been authorized for a specific purpose by a vote of the electorate in accordance with and under the authority of the applicable statutes.⁴² It is common to refer to these levies as "voted levies" or "outside millage" in distinction to the "unvoted levies" or "inside" millage discussed above. Over the last few decades, this voter-approved millage was and still is the primary subject of various property tax relief statutes.⁴³ A large part, if not the majority, of the millage levied on the average parcel of property in Cuyahoga County is within this category of voted millage.⁴⁴ Consequently, it would seem to be a logical target for tax relief legislation.

There remains a third and final class of millage which must be reviewed separately from the previous two categories of "inside" and "outside" millage. This group consists of those levies authorized by the charter of a municipal corporation and commonly referred to as "charter millage." Charter millage is a hybrid, that is, it possesses characteristics similar to both "inside" and "outside" millage.

Because charter millage may be levied with only legislative (city council) approval, it is similar to the "inside" millage discussed above. Yet, it is also akin to "outside" millage because it must have been approved by the voters as part of the municipal charter. Once approved, it becomes permanent until altered by further charter amendment. Charter millage has its origin in the Ohio Constitution which has granted to all municipalities the "authority to exercise all powers of local self-

⁴¹ OHIO REV. CODE ANN. § 5705.02 (Page 1980). For example, the constitutionally authorized ten mills may be allocated: 1.50 mills to the county; 4.10 mills to the school district; and 4.40 mills to the city. OHIO REV. CODE ANN. § 5705.31(D) (Page 1980), guarantees a minimum levy within the ten-mill limitation to each governmental unit which qualifies under its provisions.

⁴² General authorization for levies in excess of the ten-mill limitation is found in OHIO REV. CODE ANN. § 5705.07 (Page 1980). Enumeration of the various specific tax levies can be found in OHIO REV. CODE ANN. § 5705.19 through § 5705.261 (Page 1980).

⁴³ See note 99 *infra* and accompanying text; OHIO REV. CODE ANN. § 5713.11 (Page 1980); OHIO REV. CODE ANN. § 319.301 (Page Supp. 1977). H.B. 920 enacted § 319.301, while repealing § 5713.11. See note 2 *supra*.

⁴⁴ DTE Form No. 27, Tax Rates for Cuyahoga County for the Tax Year 1979, distinguishes each tax levy according to its groups. A simple average indicates that 68.6 mills are levied on the average parcel of real property. Of this, an average 51.3 mills, or 74.8%, are voted levies.

government”⁴⁵ and the right to “frame and adopt or amend a charter for its self-government.”⁴⁶ Standing alone, these constitutional provisions do not give a municipality *without a charter* the authority to levy outside millage as “charter” millage or to levy as “charter” millage additional millage which would be violative of the general law.⁴⁷ Nor do these constitutional provisions permit a city which has adopted a charter without explicit provisions for a property tax levy to be free from the limitations of the general law in levying taxes⁴⁸ in the name of “charter” millage. Rather, “charter” millage must be seen as that millage explicitly contained in, authorized and limited by a duly adopted municipal charter.⁴⁹ To illustrate, a charter city is exempted from the general tax limitations⁵⁰ *only* if a limitation of taxes for all purposes or for current operating expenses is explicitly provided for in the charter.⁵¹ Therefore, in addition to the five categories of property tax millage set out in Ohio law,⁵² which have been grouped into “inside” (unvoted) and “outside” (voted) millage, “charter” millage, as distinguished above, must also be considered as a separate type of millage. This distinction will become more important as the problem of tax relief and H.B. 920 is further analyzed.

In Ohio, the taxable value multiplied by the aggregate gross tax rate⁵³ is the beginning of the process of calculating the tax bill.⁵⁴ The result of this mathematical process is the “gross tax,” which currently is significantly larger than the final property tax liability.⁵⁵

⁴⁵ OHIO CONST. art. XVIII, § 3.

⁴⁶ OHIO CONST. art. XVIII, § 7.

⁴⁷ Section seven of Article XVIII, while providing for the adoption of a municipal charter, makes the charter subject to Section three of the same article, which provides that the exercise of the powers of local self-government may not be in conflict with the general law. Additionally, § 13 of Art. XVIII, whose submission and passage was synchronous with the above two provisions, explicitly provides that laws may be passed to limit the power of municipalities to levy taxes. *See also* State, *ex rel.* Toledo v. Cooper, 97 Ohio St. 86, 119 N.E. 253 (1917).

⁴⁸ OHIO CONST. art. XVIII, §§ 3, 7.

⁴⁹ For the method of adopting a municipal charter, see OHIO REV. CODE ANN. § 705 (Page 1976).

⁵⁰ *See* OHIO REV. CODE ANN. § 5705.18 (Page 1980), which is consistent with OHIO CONST. art. XVIII, § 13.

⁵¹ State, *ex rel.* Thomas v. Heuck, 49 Ohio App. 436, 197 N.E. 376 (1934). As will be seen, charter millage also enjoys an exemption from the tax relief provisions of H.B. 920.

⁵² OHIO REV. CODE ANN. § 5705.04 (Page 1980).

⁵³ The aggregate gross tax rate refers to the sum total of all tax levies charged by any governmental agency which has authority to levy a tax on a piece of property, which sum total is taken prior to the effect of any credits which may reduce the tax bill.

⁵⁴ For a step-by-step outline of calculation of a tax bill, see Appendix A.

⁵⁵ *Id.*

Once gross tax is determined, the law provides for the deduction of certain credits to yield the net current property tax⁵⁶ or tax owed by the property owner. These credits may be enumerated as follows: 1) the H.B. 920 credit;⁵⁷ 2) the ten percent rollback credit;⁵⁸ 3) the two and a half percent residential rollback credit;⁵⁹ and 4) the homestead exemption credit.⁶⁰

The H.B. 920 credit is the first reduction applied to the gross current tax.⁶¹ To defer an in-depth analysis of the credit and its calculation at this point, it is enough to say that the H.B. 920 credit comprises a reduction of the gross tax, the amount of which is calculated as a percentage of the gross tax. The percentage of the H.B. 920 credit is previously determined and certified to the county auditor by the Commissioner of Tax Equalization.⁶²

The second reduction is a ten percent reduction to be calculated on the adjusted gross tax due after the application of the H.B. 920 credit, but prior to the reduction from any further tax credits.⁶³ The reduction is commonly referred to as the "ten percent rollback" and is applied to every Ohio real property tax bill. It should be noted, however, that the amount credited against the tax bill under this provision is not lost revenue to the governmental units, but is refunded to the local governments from the state's general fund.⁶⁴

The third credit, a two and one-half percent rollback, is applied only to owner-occupied residential property.⁶⁵ Like the ten percent rollback, the amount of reduction is refunded to the local governments upon the county auditor's certification of the rollback credit's amount to the state auditor.⁶⁶ While referred to as a two and one-half percent reduction, the amount deducted from the bill will equal two and one-half percent of the adjusted gross tax due after the H.B. 920 reduction or, as the statute ac-

⁵⁶ This article will omit comment on the addition of delinquent taxes and special assessments (charges for a specific municipal service placed only on those properties which benefit from the service) to the tax bill since they are added *after* the current tax liability has been calculated.

⁵⁷ See notes 61-62 *infra*.

⁵⁸ See notes 63-64 *infra*.

⁵⁹ See note 65 *infra*.

⁶⁰ See note 70 *infra*.

⁶¹ 1976 OHIO LAWS 3194 (1976). The H.B. 920 credit was the major tax relief portion of the bill. See Appendix A for an example of this reduction.

⁶² OHIO REV. CODE ANN. § 319.301(A)(1), (2) (Page Supp. 1977).

⁶³ *Id.* § 319.301(B) (Page Supp. 1977).

⁶⁴ *Id.* § 321.24(F).

⁶⁵ OHIO REV. CODE ANN. § 323.152(B) (Page Supp. 1979).

⁶⁶ *Id.* § 323.153(B) (Page Supp. 1977). This provision makes it similar to the "Homestead Exemption," which will be discussed next, and explains the reason for the 2 1/2% reduction being incorporated as part of the same statutory section as the "Homestead Reduction."

tually states, "one-fourth of the amount by which the taxes charged and payable on the homestead are reduced" under the ten percent rollback.⁶⁷ Unlike the two previous tax credits, both of which are automatically extended to every real property tax bill, the two and one-half percent tax reduction is extended only to those homesteads for which the owner receives a certificate of reduction from the county auditor.⁶⁸

The last credit on the real property tax bill is the Homestead Exemption. Article XII, § 2 of the Ohio Constitution was amended to provide that laws may be passed to reduce taxes by providing for a reduction in value of the homesteads of permanently and totally disabled residents and residents sixty-five years of age and older, and providing for income and other qualifications to obtain such reduction.⁶⁹ By November, 1975, laws had been passed to enact the homestead exemption for those qualifying residents, although the exemption did not appear on the tax bill until December of 1976.⁷⁰ The law provided that the amount of the tax exemption would be computed "by multiplying the tax rate for the tax year for which the certificate [of eligibility] is issued by the reduction in taxable value."⁷¹ The amount of taxable value used to compute the reduction was to be determined by a statutory table which paralleled various income levels with the amount of the value reduction to be allowed.⁷² After the reduction in tax dollars has been calculated, it is deducted from the tax bill, with the amount remaining representing the net current general taxes due from the taxpayer. This reduction, as with the two previous rollbacks, is also refunded to the local governments by the state.⁷³

⁶⁷ *Id.* § 323.152(B) (Page Supp. 1979). David Swetland, of the Park Investment Company, challenged the constitutionality of this credit in *State, ex rel. Swetland v. Kinney*, No. 79-1402 (Sup. Ct., Ohio, April 2, 1980). His principal argument was that such a rollback violated Section two of Article XII of the Ohio Constitution. However, on April 2, 1980, the Supreme Court, in a four to three decision, ruled that the 2 1/2% credit for homesteads was constitutional. The effect of what may now be termed *Park Investment V* will be examined later in this article.

⁶⁸ OHIO REV. CODE ANN. § 323.152(B) (Page Supp. 1979). This credit was the compromise result of a battle in the Ohio Senate over more substantial tax reform proposals. See *The Plain Dealer*, Sept. 28, 1979 at 6-A, col. 3-4. In the opinion of the editorial staff of Ohio's largest paper, however, it was not only "too little, too late," but also the creator of a great deal of additional administrative paperwork for the county auditor. *The Plain Dealer*, Sept. 25, 1979 at 12-A, col. 1-2.

⁶⁹ 1975 OHIO LAWS 50.

⁷⁰ *Id.* S.B. 24, which enacted § 323.151 through § 323.157 of the Ohio Revised Code, became effective November 7, 1975. For the details of the qualifications and filing requirements, see OHIO REV. CODE ANN. §§ 323.151-157 (Page Supp. 1979).

⁷¹ OHIO REV. CODE ANN. § 323.152 (Page Supp. 1979).

⁷² *Id.* The income limitations were increased in 1979 effective for the 1980 tax collection. See 1979 OHIO LAWS 5-55.

⁷³ OHIO REV. CODE ANN. § 323.156 (Page Supp. 1979).

The above analysis has outlined all the steps used to compute the taxpayer's net current general tax liability. While there may be some further miscellaneous charges on the tax bill, these are beyond the scope of this article.⁷⁴ All possible charges are, however, included on the sample tax bill in Appendix A. The subsequent analysis of H.B. 920 and property tax reform will presume a clear understanding of the above, especially the distinction in property tax levies.

B. House Bill 920

1. A Response to *Park Investment*

This Note will now proceed with an in-depth analysis of H.B. 920 as a property tax reform measure. At the outset, a review of the historical and political setting that led to the passage of H.B. 920 is necessary. The tax relief aspects of the bill will then be analyzed and the conclusion will demonstrate the effects of H.B. 920 from both a hypothetical example and from the actual situation in Cuyahoga County.

If H.B. 920 is to be understood and appreciated as a tax reform measure, it must be viewed both historically and politically as the proximate result of a continuing series of real property taxation cases which primarily involved the Park Investment Company.⁷⁵ While the decisions of the Ohio Supreme Court in the *Park Investment* cases centered around the twin principles of mandatory market valuation and uniform percentage assessment,⁷⁶ the economic impact of these decisions would be acutely measured through increased taxes upon both agricultural and residential property owners.⁷⁷ In reviewing the *Park Investment* cases the immediate focus will be the "grass roots" effect of the judicial decisions on the agricultural and residential taxpayers rather than the lofty legal and constitutional principles also established by the cases. These latter effects will be subject to their own analysis later as a part of this Note's constitutional critique of H.B. 920.

⁷⁴ See note 56 *supra* and accompanying text.

⁷⁵ State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 175 Ohio St. 410, 195 N.E.2d 908 (1964); State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 16 Ohio St. 2d 85, 242 N.E.2d 887 (1968); State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 26 Ohio St. 2d 161, 270 N.E.2d 342 (1971); State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 32 Ohio St. 2d 28, 289 N.E.2d 579 (1972). See also State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 1 Ohio St. 2d 171, 205 N.E.2d 578 (1974), in which plaintiff requested the B.T.A. to show cause why it should not be held in contempt of the court's original decision. This case may be considered part of *Park Investment I*.

⁷⁶ Finnarn, *Property Taxes and Farmers in Ohio: The Park Investment Story*, 7 TOL. L. REV. 1125, 1127 n.14 (1976) [hereinafter cited as Finnarn].

⁷⁷ Since the two essential variables of the tax bill are value and rate, any increase in value will produce a corresponding increase in taxes unless there is some form of tax relief, such as H.B. 920.

In 1964, the Park Investment Company of Cleveland brought a mandamus action against the Board of Tax Appeals (B.T.A.)⁷⁸ in the Ohio Supreme Court.⁷⁹ The Park Investment Company sought an order to direct the B.T.A. to make a determination "that the real property in Cuyahoga County has not been and is not being assessed by an equal and uniform rule according to true value in money,"⁸⁰ and to also direct the B.T.A. "to issue orders to the Auditor of Cuyahoga County to decrease the aggregate assessed value of 'commercial' real property in Cuyahoga County."⁸¹ The Park Investment Company argued from statistical records of real estate transactions that the assessed valuation of commercial property in Cuyahoga County was a greater percentage of its sales price than real estate in other classifications.⁸² The B.T.A. contended that sales price was not the only factor determinative of real estate value and that, standing alone, it was inconclusive of true value.⁸³ While the court did treat the question of true value quite extensively in its majority opinion,⁸⁴ it held that the percentage of full value which is the basis of taxation "must be relatively uniform not only throughout the state, but also to the various classes of real property."⁸⁵ In other words, all property, regardless of class, must now be assessed on the basis of the same uniform percentage of actual value.⁸⁶ Consequently, the court ordered the B.T.A. to review the tax assessments in Cuyahoga County, and where "it finds that discrepancies exist in the tax assessments, as a whole or among the various classes of property, to . . . equalize such assessments."⁸⁷

⁷⁸ The Board of Tax Appeals (B.T.A.), a division of the Department of Taxation, had, at the time of the action, both quasi-judicial and administrative duties. OHIO REV. CODE ANN. §§ 5703.02-.13 (Page 1973). Certain administrative duties of the B.T.A. were later assumed by the Department of Tax Equalization upon its creation by H.B. 920. See notes 2, 27 *supra*.

⁷⁹ State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 197 Ohio St. 410, 195 N.E.2d 908 (1964). This case is commonly known as *Park Investment I*.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 411, 195 N.E.2d at 909. Real estate valuations are currently reported to the Department of Tax Equalization on DTE Form No. 93 (Rev. March 1977), under the following classes: Residential, Commercial, Industrial, Agricultural and Mineral Rights. Public Utility real estate valuations are reported separately from the above.

⁸³ *Id.*

⁸⁴ *Id.* at 412, 195 N.E.2d at 910.

⁸⁵ *Id.* at 413, 195 N.E.2d at 911.

⁸⁶ *Id.*

⁸⁷ *Id.* at 414, 195 N.E.2d at 911. In allowing the writ of mandamus, the court did not rule that discrepancies in tax assessments existed, but merely ordered the B.T.A. to conduct a review to determine the facts. If discrepancies existed, then the board was to order the county auditor to equalize them. In a related

Such a ruling, at least initially and superficially, should hardly have been a matter of concern for the farmer and homeowner, who at this time were generally assessed at a lower percentage of true value than their commercial counterparts.⁸⁸ Park Investment Company was merely demanding a decrease in its own assessed valuation which, if granted, would lower the taxes for the company. However, the other side of the "tax equalization" coin, while not specifically requested as a remedy was, nevertheless, possible. Equalization in assessment could be achieved by increasing the assessed values of those classes allegedly lower than the commercial class of which Park Investment Company seemed representative, or by both decreasing the assessment level of commercial property and increasing the assessment level of residential and agricultural property to a common level somewhere between the two levels. While either of these alternatives would have the effect of increasing the property taxes of the farmer and homeowner, there was no significant reaction from either group following the court's decision.

In 1968, the Park Investment Company was again before the Ohio Supreme Court with a mandamus action to require B.T.A. to assess all real property uniformly on a statewide basis.⁸⁹ It alleged that the B.T.A. failed to perform its duty under the Ohio statutes and under the Constitutions of the state of Ohio and the United States.⁹⁰ It based its claim of discriminatory assessment on a 1962 sales ratio study⁹¹ that indicated a statewide average sales ratio of 38.78%, while a similar 1965 study for Cuyahoga County produced a sales ratio of 48.65% for commercial property.⁹² The realtor was thus attempting to secure a further tax reduction based primarily on the lower statewide common level of assessment. Up to this point, the B.T.A. had not addressed the question of statewide uniformity. The court held in a unanimous *per curiam* opinion that it is the duty of the B.T.A. to see that all real property within the

case the next year, the court dismissed a motion on the part of Park Investment Company to show cause why the board should not be held in contempt of the high court's first order. Park Investment alleged that the board failed to obey the order when it ordered the Cuyahoga County Auditor to reduce the assessed value of all commercial and industrial property by 15%. It was the relator's contention that the valuation according to uniform rule is applicable to the individual parcel of property as well as to the aggregate. *State, ex rel. Park Inv. Co. v. Bd. of Tax Appeals*, 1 Ohio St. 2d at 173, 205 N.E.2d at 580 (1965).

⁸⁸ Finnarn, *supra* note 76, at 1131.

⁸⁹ *State, ex rel. Park Inv. Co. v. Bd. of Tax Appeals*, 16 Ohio St. 2d 85, 242 N.E.2d 887 (1968). This case is commonly known as *Park Investment II*.

⁹⁰ *Id.*

⁹¹ The sales ratio is the ratio of the taxable value to a recent sale value, taken as indicative of true value.

⁹² 16 Ohio St. 2d 85, 242 N.E.2d 887 (1968). In reality, Park Investment Company's own property at that time was being assessed at 42.9%, which was near the 1963 prevailing common level of assessment for all real property in Cuyahoga County. See *Kobling v. Bd. of Revision*, 5 Ohio St. 2d 214, 215 N.E. 2d 384 (1966).

State of Ohio is assessed at a uniform percentage of its true value in money.⁹³ The opinion, however, gave the B.T.A. no practical guidance on how it was to implement the order for statewide uniformity.

Finally, in March of 1969, the B.T.A. proposed Rule 100,⁹⁴ which would fix the assessment level of all property in the state between 38% and 42% after a public hearing. It was at this juncture that Ohio's farmers took notice of the issue; it was one thing to lower the assessment of commercial property, but quite another to adjust all classes to a statewide common level of assessment. Most farmers would be subject to considerable tax increases if their assessed values were increased.⁹⁵ This would generally be the case because agricultural property had, for the most part, been assessed previously below the 40% figure contained in the B.T.A.'s proposed rule.⁹⁶ Likewise, residential property owners and groups concerned about the loss of tax revenue from commercial and industrial properties addressed themselves to the issue.⁹⁷ This should not have been surprising because Ohioans, especially rural property owners, were used to voting on tax increases,⁹⁸ and would oppose the unvoted tax increases which the *Park Investment* decisions would effect. This opposition existed in spite of some limited tax relief which had been available through millage reductions in certain situations when valuations or assessments were increased.⁹⁹

⁹³ 16 Ohio St. 2d at 87, 242 N.E.2d at 889. For further comment on the quality and legal analysis in the high court's opinion, see Finnarn, *supra* note 76, at 1159-64.

⁹⁴ See Note, *Real Property Assessments in Ohio*, 30 OHIO ST. L.J. 840, 846-47 (1969).

⁹⁵ Summarizing the formula for taxes in an example:

Assessed Value	×	Tax Rates	=	Tax Due
\$10,000		\$50/\$1000		\$500
\$12,000		\$50/\$1000		\$600

⁹⁶ Finnarn, *supra* note 76, at 1165.

⁹⁷ *Id.* at 1168.

⁹⁸ *Id.* at 1167.

⁹⁹ OHIO REV. CODE ANN. § 5713.11, *as amended*, OHIO REV. CODE ANN. § 5713.11 (Page Supp. 1975). Finnarn summarizes this tax relief as follows:

This law provided for a reduction in "voted" tax millage in the same proportion in which the total valuation of property in a taxing district was increased by "certain" reassessments or reappraisals over the total valuation of the year preceding the reassessment or reappraisal. In most cases, the reduction would not apply to that part of an increase stemming from actual noninflationary improvements added to the tax duplicate. The key feature of the law. . . [is] that it only applies to "voted" or "outside" tax millage (there were other exemptions at one time or another) and thus it will not work to reduce the levy of "unvoted" or "inside" millage which is limited by the Ohio Constitution to 1% (10 mills) of a property's true value in money. Ohio Constitution, Article XII, Section 2.

The application of the millage reduction law is demonstrated in the

The legislative response to the growing controversy and grass roots opposition came in the form of Senate Bill 199 (S.B. 199),¹⁰⁰ enacted as an emergency measure to take effect May 14, 1969,¹⁰¹ by legislators who were beginning to hear from their various constituents.¹⁰² Senate Bill 199 amended sections 5715.01 and 5715.24 of the Revised Code, to delay until 1972 and thereafter the power of the B.T.A. to issue rules concerning the taxable value of real property and the percentage to be applied in such determination and to determine whether the real property and various classes thereof have been assessed by an equal and uniform rule.¹⁰³ In essence, the legislature had effectively removed the statutory foundation of the *Park Investment II* decision and had delayed any tax increases.

This legislative tactic immediately triggered *Park Investment III*, in which the company filed a motion¹⁰⁴ for the Supreme Court to order the B.T.A. to show cause why it should not be held in contempt of its statutory and Constitutional duties required by *Park Investment II*. Stripped of the legal arguments, the court, in a unanimous opinion, held that insofar as S.B. 199 purported to delay the B.T.A. from carrying out its duties as reported in *Park Investment II*, it was in conflict with Article XII,

following example. A farm valued for tax purposes at \$21,000 is reassessed (for a certain reason) at \$28,000. The tax millage applicable to the farm before the change in tax value was 20 mills, made up of 10 unvoted and 10 voted mills. Assuming that the reassessment is one that qualifies under the section, the "outside" millage will be rolled back in proportion to the increase in tax attributable to it. In other words, since the total tax on the farm before reassessment was $\$21,000 \times .020 = \420 (\$210 attributable to the inside millage, \$210 attributable to the outside millage), the total tax on the farm after reassessment will be $\$28,000 \times .0175$ (the reduced millage) = \$490 (\$280 attributable to the inside millage, the same \$210 attributable to the outside millage).

The initial purpose of the law was to allow for reductions in voted millage in proportion to the inflationary increases of taxpayers' property as measured in a county's sexennial reappraisal. With the advent of the *Park Investment* case, however, the millage rollback mechanism soon became a battleground in regard to what type of readjustment in taxable value (whether stemming from a B.T.A. uniform assessment order or from an actual change in the true value of property) should trigger the reduction. As amended in 1975, the section was made applicable to increases "for any reason other than the addition of improvements to the tax list." Ohio Revised Code Ann. Section 5713.11, Page Supp. 1975.

Finnarn, *supra* note 76, at 1166-67 n.265.

¹⁰⁰ 1969 OHIO LAWS 648.

¹⁰¹ 1969 OHIO LAWS 648, 651.

¹⁰² Finnarn, *supra* note 76, at 1168.

¹⁰³ 1969 OHIO LAWS 649, 651.

¹⁰⁴ *State, ex rel. Park Inv. Co. v. Bd. of Tax Appeals*, 26 Ohio St. 2d at 162, 270 N.E.2d at 342 (1971) (Commonly known as *Park Investment III*).

§ 2 of the Ohio Constitution and was therefore invalid.¹⁰⁵ However, the court also held that the B.T.A., believing in good faith that S.B. 199 had rendered it powerless to act, was not in contempt of court.¹⁰⁶

In response to *Park Investment III*, the B.T.A. adopted and promulgated new rules in December, 1971, calling for all real property in Ohio to be placed on the 1972 tax duplicate at the rate of 35% of its current market value.¹⁰⁷ This presented a two-tiered tax increase for most agricultural and residential property owners, for not only would the taxable value of their property have to be increased to bring them to an assessment level of 35% of market value, but also their property was to be reappraised to its current market value.¹⁰⁸ Farmers and friends, including many County Auditors,¹⁰⁹ turned to the General Assembly for relief. The General Assembly responded sympathetically with the passage of Amended Substitute Senate Bill 455 (S.B. 455),¹¹⁰ which provided for the staggered implementation of the statewide uniform assessment to occur whenever the county underwent its sexennial reappraisal between 1972 and 1977.¹¹¹ It also provided that the B.T.A. rules for determining the true value of real property take into account the property's "current use without regard to neighborhood land use of a more intensive nature."¹¹² The legislature's continued willingness to attempt to prevent any major shift in the tax burden which would surely have occurred had the 1975 B.T.A. rules been implemented is striking.

Park Investment IV was to arise directly from the B.T.A.'s acceptance of the mandates of S.B. 455.¹¹³ The Park Investment Company filed

¹⁰⁵ *Id.* at 166, 270 N.E.2d at 345. Although hearings were held in the summer of 1969, no decision was reached until June, 1971, with the B.T.A. holding all action in abeyance.

¹⁰⁶ *Id.* at 168, 270 N.E.2d at 347.

¹⁰⁷ The substance of the rules can be found in State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 32 Ohio St. 2d 28, 29, 289 N.E.2d 579, 580 (1972).

¹⁰⁸ Prior to this, the Board of Tax Appeals had proposed that the market value concept emanating from *Park Investment I* and *II* be applied only in a county's year of sexennial reappraisal. See Note, *Real Property Assessments in Ohio*, 30 OHIO ST. L.J. 840, 846 n.28 (1969).

¹⁰⁹ Finnarn, *supra* note 76, at 1173. Since many county auditors had recently completed sexennial reappraisals for their county based on the B.T.A. rules as modified after *Park Investment I*, they were not anxious to undergo another rather costly reappraisal and reassessment in 1972.

¹¹⁰ 1972 OHIO LAWS 859.

¹¹¹ 1972 OHIO LAWS 867-68.

¹¹² *Id.* at 868. This language was amended in OHIO REV. CODE ANN. § 5715.01 (Page 1973).

¹¹³ On July 3, 1972, the board had applied to the Ohio Supreme Court for further instructions on its duties in light of the conflicts presented in S.B. 455, namely, the staggered implementation of statewide uniform assessment and the consideration of "current use" in determining true value. The request was denied, as

a motion requiring the B.T.A. to show cause why it should not be held in contempt of the high court's mandamus in *Park Investment II*. The court denied the show cause order and upheld the staggered implementation of statewide uniform assessment as the "fairest and most equitable procedure."¹¹⁴ The court did, however, strike down the "current use" method of valuation as being inconsistent with the determinations in *Park Investment I* and in conflict with the Ohio Constitution.¹¹⁵ While *Park Investment IV* did not overturn the basic principles of *Park Investment I*, it can be seen as the first "retrenchment" by the Ohio high court. The legislature was finally able to secure the court's *imprimatur* on its attempt to determine the precise procedure for implementing the substantive principles of prior *Park Investment* cases. For the rural property owners around the state who still feared large tax increases, it provided much needed additional time to work on further legislative changes.

With Ohio farmers generally having the most significant exposure to property tax increases under the *Park Investment* mandates,¹¹⁶ it was not surprising that further change came first in the form of a proposed constitutional amendment on farm land valuation adopted June 13, 1973.¹¹⁷ The proposed amendment provided that agricultural land be valued at its use for farming, which the farmers understood to be its income producing ability.¹¹⁸ The amendment was approved by more than a three to one margin in November of 1973, amending Article II, § 36 of the Ohio Constitution.¹¹⁹ However, the legislation which was subsequently passed¹²⁰ to implement the agricultural use valuation proved severely restrictive, if not useless, to the majority of the state's farmers.¹²¹ Con-

cited in *Park Investment IV*, State, *ex rel.* Park Inv. Co. v. Bd. of Tax Appeals, 32 Ohio St. 2d 28, 30, 289 N.E.2d 579, 580-81 (1972).

¹¹⁴ *Id.* at 32, 289 N.E.2d at 582.

¹¹⁵ *Id.* at 33, 289 N.E.2d at 582.

¹¹⁶ Agricultural property was generally assessed at a percentage below even residential property. See, e.g., State, *ex rel.* Park Invest. Co. v. Bd. v. Tax Appeals, 32 Ohio St. 2d at 30, 289 N.E.2d at 580-81. Likewise, farmlands were proving to be an excellent investment, thus attracting much speculation buying. See Finnarn, *supra* note 76, at 1181 n.356. See also Finnarn, *supra* note 76, at 1179 n.345 (estimated tax increases to farmers).

¹¹⁷ 1973 OHIO LAWS 2043.

¹¹⁸ Finnarn, *supra* note 76, at 1181.

¹¹⁹ Vote: "Yes"—1,796,426; "No"—565,950. OHIO REV. CODE ANN., OHIO CONST. art. II, § 36 (Page Supp. 1977).

¹²⁰ 1974 OHIO LAWS 135, part 2, at 341.

¹²¹ Finnarn offers these comments:

Ohio's agricultural use valuation law . . . [was] limited in its operation to providing tax relief primarily to property owners situated on the urban fringes of the state's rapidly growing cities, where farmland had traditionally been gobbled up and converted to nonagricultural uses. Farmers

sequently, in 1975, a large number of rural counties undergoing reappraisal along with those counties under annual redetermination¹²² experienced unusually large tax increases¹²³ when the tax bills were received in late 1975 and early 1976. At this time, residential taxpayers as well were becoming disgruntled¹²⁴ and readily joined what was becoming the "tax revolt of 1976."¹²⁵

The legislation that was to emerge as the response to angry taxpayers trying to lessen the impact of *Park Investment* and stop "unvoted" tax increases was H.B. 920.¹²⁶ The essence of H.B. 920, as introduced,¹²⁷ was to restore property taxes on a statewide basis to their pre-*Park Investment* sexennial reappraisal level by means of a tax credit on the tax bills received in 1977. Thereafter, the credit mechanism would work to keep taxes fairly constant even though market values continued to increase.¹²⁸ The bill, in its original form, met significant resistance from business since it repealed the existent millage rollback provision of Ohio law¹²⁹ which benefitted businesses considerably by reducing taxes on their personal property. The business interests, however, were able to obtain as part of the final version of

in strictly rural areas of the state, on the other hand, were unable to utilize the new law that they had actively supported.

Finnarn, *supra* note 76, at 1185.

¹²² The Board of Tax Appeals (B.T.A.) originally instituted annual redeterminations in December, 1971, under B.T.A. R. 5-01(B), later to be found in B.T.A. R. 5-02 (December, 1973). Finnarn, *supra* note 76, at 1166 n.264. The Department of Tax Equalization, which assumed the B.T.A.'s administrative functions under H.B. 920, replaced this annual redetermination with a triennial update in D.T.E. R. 5705-3-02 in November, 1977; H.B. 920 gave the Commissioner of Tax Equalization authority to order a reassessment only in the third calendar year following the year in which a sexennial reappraisal was complete. OHIO REV. CODE ANN. § 5715.33 (Page 1980).

¹²³ Finnarn, *supra* note 76, at 1186-87 n.387.

¹²⁴ In Cuyahoga County, the effect of the Park Investment reappraisal was estimated at a \$30 million tax burden shift from industry to homeowners. Finnarn, *supra* note 76, at 1189.

¹²⁵ For a more detailed description of the events surrounding the "tax revolt," see Finnarn, *supra* note 76, at 1186-94.

¹²⁶ After a proposal by Ohio Governor James Rhodes in December, 1975, the B.T.A. voted to freeze values at their January 1, 1975 levels, on January 28, 1976. H.B. 920 then emerged as the tax reform measure to confront the problem of increased taxes caused by Park Investment. Finnarn, *supra* note 76, at 1189-90.

¹²⁷ 1976 OHIO LAWS 3182. It is interesting to note that its sponsor was State Representative John Johnson, Chairman of the House Agriculture and Natural Resources Committee. Finnarn, *supra* note 76, at 1190.

¹²⁸ Finnarn, *supra* note 76, at 1190-91. The initial provision, later repealed by amendment, to make "inside millage" subject to the credit mechanism, was essential to keep taxes uniformly constant. "Inside millage" was also previously excluded from the millage rollback provisions of § 5713.11. See note 97 *supra*.

¹²⁹ See note 99 *supra* and accompanying text.

H.B. 920 a reduction in the assessment level of their personal property from the 45-50% level to a uniform 35%.¹³⁰

By the time H.B. 920 was enacted in June 1976, it had been changed substantially from its original version.¹³¹ Most significantly, it failed to provide for the restoration of the pre-*Park Investment* tax balance.¹³² More incredibly, it provided a mechanism, albeit unknowingly, to continue the shift in the tax burden which *Park Investment* initiated.

2. The Mechanics of the H.B. 920 Tax Credit

The mechanism which the legislature chose to implement property tax relief in H.B. 920 was a "tax credit" expressed as a percentage by which tax liability would be reduced.¹³³ The Commissioner of Tax Equalization, whose department and position were newly created by H.B. 920,¹³⁴ was mandated to annually determine

by what percent the sums levied by such tax against real property would have to be reduced for the tax to levy the same number of dollars in the current year, exclusive of sums levied against improvements added to the tax list since the preceding tax year, as were charged against all real property in the district by such tax in the preceeding year. . . .¹³⁵

Once the percentage was determined, the commissioner was mandated to certify such percentage to the county auditor who, in turn, was required to "reduce the sum to be levied by such tax against each parcel of real property in the district by the percent so certified."¹³⁶

In fulfilling his statutorily mandated duty to compute the reduction factor, the Commissioner of Tax Equalization, in a memo dated August 4, 1976 to all county auditors, authorized provisional Form A¹³⁷ as the form on which valuation data was to be submitted and from which the

¹³⁰ 1976 OHIO LAWS 3182. See also Finnarn, *supra* note 76, at 1192.

¹³¹ State Representative John Johnson, the original sponsor of H.B. 920, was quoted as saying: "The basic guts of 920 were spewed all over the capital and nothing is left of it." Finnarn, *supra* note 76, at 1192 n.418.

¹³² *Id.* at 1192.

¹³³ OHIO REV. CODE ANN. § 319.301 (A)(1) (Page Supp. 1977).

¹³⁴ OHIO REV. CODE ANN. § 5713.01 (Page 1981).

¹³⁵ OHIO REV. CODE ANN. § 319.301(A)(1) (Page Supp. 1977). Any hint of concern for the residential and agricultural taxpayer's plight after *Park Investment* seems absent from the language of the statute. Rather, the intention of the statute seems directed toward preventing additional dollars from accruing to local governments. Perhaps the legislature mistakenly thought that the latter was synonymous with tax relief and protection from unvoted tax increases for the farmer and homeowner.

¹³⁶ *Id.* § 319.301(A)(2).

¹³⁷ In 1977 the form was permanently identified as DTE Form 115 (A) or (B).

tax reduction factors would be computed.¹³⁸ The form assembled the data necessary to calculate a reduction factor for each "taxing authority or district," i.e. each governmental district or subdivision authorized to levy taxes.¹³⁹ The calculation of the tax reduction factor can easily be demonstrated by the following example using the figures from Appendix B—"Bethlehem Taxing Authority."

1976 Total Taxable less N.I.*	\$14,631,841
1975 Total Taxable Real	<u>8,433,768</u>
Increase in value	\$ 6,198,073
Increase in value ÷ 1976 Total Taxable less N.I. = Tax Reduction Factor	
\$6,198,073 ÷	\$14,631,841 = .423602

* New Improvements

A simple example will demonstrate that the application of the tax reduction factor will insure that the millage levied against real property would levy the same number of dollars in the current year, exclusive of sums levied against new improvements,¹⁴⁰ as were charged against real property in the district in the preceding year. For the example, a levy of 50 voted mills will be assumed. The proof is then given:

	\$8,433,768	\$14,631,841
	× 50 mills(\$50/\$1,000)	× 50 mills(\$50/\$1,000)
Gross tax	\$ 421,688	\$ 731,592
H.B. 920 credit	<u>-0-</u>	<u>- 309,904</u> (\$731,529 × .423602)
NET TAX	\$ 421,688	\$ 421,688

The preceding example demonstrates that the use of a tax reduction factor will prevent unvoted tax increases when valuation is increased due

¹³⁸ Memo to all County Auditors from Robert P. Kinney, Supervisor Real Estate Equalization Section, regarding § 319.301 (R.C., Tax Reduction Factor, Aug. 4, 1976). The use of valuations to calculate the reduction factors, rather than the "sums levied" as stated in the statute, was primarily a time-saving procedure; it was a mathematically valid short cut since the percent by which the tax dollars from a constant levy increase is the same percent as the value increase. For example:

	Value	×	Rate	=	Tax
Year A	\$10,000		5 mills	=	\$50
Year B	\$15,000		5 mills	=	\$75
Percentage Reduction by Statutory Language: (\$75-\$50) ÷ \$75 = 33%					
Percentage Reduction under DTE Value Method: (\$15,000-\$10,000) ÷ \$15,000 = 33%					

¹³⁹ Since the tax credit was to apply to the "sums levied" by a specific tax levy, note 35 *supra*, it follows that the "taxing authority or district" must be understood to be a "taxing unit" as defined in OHIO REV. CODE ANN. § 5701.01(H) (Page 1980).

¹⁴⁰ New improvements refer to structures such as houses or buildings which were built after the last tax year and are to be taxed in the ensuing year for the first time.

to reappraisal or reassessment. The assumption was made, for sake of this example, that all of Bethlehem's fifty mills were subject to the tax credit provision of H.B. 920. In reality this would never be the case because virtually every taxing unit would levy some millage which was not subject to the tax credit.¹⁴¹ In the final version of H.B. 920, the legislature exempted four kinds of millage from the tax credit mechanism. The levies were: 1) a tax levied at whatever rate is required to produce a specified amount of tax money;¹⁴² 2) an amount to pay debt charges; 3) taxes levied inside the ten-mill limitation; and 4) taxes authorized by the charter of a municipal corporation.¹⁴³ As a consequence, any increase in value would produce a corresponding increase in taxes for the above tax levies unless there was a reduction in the rate of millage.¹⁴⁴

Because the individual property tax bill would include taxes from both levies subject to the tax credit and levies exempt from the tax credit, the Commissioner of Tax Equalization, in an unnumbered entry,¹⁴⁵ outlined the steps necessary to calculate a single factor termed "composite tax reduction factor"¹⁴⁶ by which the individual tax liability must be reduced to account for the different tax credits and their respective levies.¹⁴⁷ Further analysis of the composite reduction factor will not be pursued herein since it does not directly affect the scope of this analysis.

3. The Effect of H.B. 920 on the Various Classes of Taxpayers

Despite what may have initially seemed to be an attempt to freeze property taxes for the homeowner and farmer, the effect of H.B. 920 falls

¹⁴¹ See note 128 *supra* and accompanying text. A special district, such as a port authority or community college district, may levy only voted millage, but each city and school which would tax the same property would levy some "inside millage" on each tax bill.

¹⁴² *E.g.*, A levy under OHIO REV. CODE ANN. § 5705.194 (Page 1980). This exemption and the exemption of debt charge levies would not contribute significantly to tax increases since the amount of money needed tended to remain constant, and any upward adjustments to value usually would produce a corresponding decrease in tax rate to maintain the same tax revenue.

¹⁴³ OHIO REV. CODE ANN. § 319.301(A) (Page Supp. 1977).

¹⁴⁴ See, *e.g.*, note 95 *supra*. The only situation in which the individual tax bill would not reflect an increase would be when the amount of credit from H.B. 920 would be as large or larger than tax increase from levies exempt from the credit.

¹⁴⁵ Entry dated November 24, 1976, before the Department of Tax Equalization, State of Ohio, in the matter of the use and application of the tax reduction percentage or factor required by OHIO REV. CODE ANN. § 319.301(A) (Page Supp. 1977).

¹⁴⁶ *Id.*

¹⁴⁷ Appendix C contains the form used by the Cuyahoga County Auditor to compute this "Composite Reduction Factor."

far short of that mark. The initial and most evident limitation of H.B. 920 was the exemption of certain levies from the tax credit. A more serious and less evident limitation of H.B. 920 was born, paradoxically enough, by the very mechanism that was to provide tax relief, namely the tax credit. The method of computation and application of the tax credit was such that the tax credit itself would "shift the burden of taxation" to those classes of property which were experiencing the severest inflation.¹⁴⁸

At this juncture, a detailed example with further explanation would serve to clearly identify the problem. A cursory review of the form which the Department of Tax Equalization utilizes as the basis for calculating the tax credit¹⁴⁹ demonstrates that the aggregate property values reported for both the current year and the prior year are not distinguished by class, for example, residential, commercial, industrial or agricultural.¹⁵⁰ Rather, they are combined for purposes of the tax credit computation. Consequently, the tax credit really represents an "average tax credit" based on the average value increase over all classes of property. It then becomes a relatively simple matter to understand that when different classes experience widely varying rates of value inflation, the "average tax credit" is less representative of the actual credit which the specific class needs to maintain its parity in taxes with the previous year.¹⁵¹ The class of property with maximum value inflation would not receive a credit of sufficient amount to prevent tax increases, while the class of property with minimal value inflation would receive a credit of a larger amount, having the effect that its taxes would actually decrease.

The following example exemplifies this: A hypothetical residential and commercial property are appraised at \$50,000 as of 1978, the taxable value of each being \$17,500.¹⁵² The voted tax rate in 1978 on both properties is 50 mills. The 1978 property taxes would be calculated at:

	Taxable Value	Tax Rate	Taxes Due
Residential:	\$17,500	× 50 Mills or (\$50/\$1,000) =	\$875
Commercial:	\$17,500	× 50 Mills or (\$50/\$1,000) =	\$875
TOTAL TAXES COLLECTED			\$1,750

In 1979, the residential property increases 38% to a market value of

¹⁴⁸ The Plain Dealer, April 27, 1977 at B-3, col. 3. Cuyahoga County Auditor Vincent C. Campanella was the first public official to point out this problem with the law.

¹⁴⁹ See Appendix B.

¹⁵⁰ See note 82 *supra* and accompanying text.

¹⁵¹ For a graphic example of this on a county-wide level, see Appendix D.

¹⁵² Tax value equals 35% of market value. See note 31 *supra* and accompanying text.

\$69,000 and the commercial property increases 15% to a market value of \$57,500,¹⁵³ with the respective taxable values being \$24,150 and \$20,125.¹⁵⁴ The calculation of the H.B. 920 credit would be:¹⁵⁵

- 1) Current year total value (Residential and Commercial) \$44,275
 less prior year's total value 35,000
 Value increase from Reappraisal \$ 9,275
- 2) Value increase ÷ Current year's value = H.B. 920 Credit
 \$9,275 ÷ \$44,275 = .209486 (20.9486%)

The 1979 total property taxes would be calculated as follows:

	<u>Residential</u>	<u>Commercial</u>	<u>Total Taxes</u>
Taxable Value	\$24,150	\$20,125	
	50 mills	50 mills	
<u>× Tax Rate</u>	<u>(\$50/\$1,000)</u>	<u>(\$50/\$1,000)</u>	
Gross Tax	\$ 1,208	\$ 1,006	
<u>Less "920" Credit (.209486)</u>	<u>(\$ 253)</u>	<u>(\$ 211)</u>	
Net Tax Due	\$ 955	\$ 795	\$1,750
Tax increase or decrease (dollars)	\$80	(\$80)	-0-
Tax increase or decrease (percent)	9.1%	(9.1%)	-0-

From the above example a comparison of 1979 property taxes with 1978 property taxes shows the residential property tax increasing \$80 and the commercial property tax decreasing \$80, while the total taxes collected from both properties remains unchanged at \$1,750. The result is that the residential taxpayer's increase is *directly subsidizing* the commercial taxpayer's decrease with the local governmental units enjoying no tax benefit.

Cuyahoga County Auditor Vincent C. Campanella estimated that the 1976 property taxes (collected in late 1976 and 1977) for the commercial and industrial properties in his county decreased \$11.6 million while homeowners were paying \$27.6 million more, due at least partially to the tax credit "averaging" under H.B. 920.¹⁵⁶ Following the county's 1979 valuation update¹⁵⁷ the county auditor estimated that of the \$32.5 million

¹⁵³ Hypothetical value increases are representative of actual class increases in Cuyahoga County for tax year 1979. See notes 11, 13 *supra* and accompanying text.

¹⁵⁴ See note 152 *supra* and accompanying text.

¹⁵⁵ See notes 139-40 *supra* and accompanying text.

¹⁵⁶ The Clev. Press, March 9, 1978 at A13, col. 1.

¹⁵⁷ Each county must be reappraised once every six years under Ohio law and by order of the Commissioner of Tax Equalization. The commissioner may likewise order a reassessment or update in the third calendar year following the year in which the sexennial reappraisal is completed, if he deems such real property to be underassessed; such has been the practice to date. OHIO REV. CODE

increase in his county's residential property taxes, \$8.6 million was due directly from the application of the H.B. 920 credit.¹⁵⁸ Furthermore, commercial and industrial properties received an estimated \$9.1 million decrease¹⁵⁹ from the application of the H.B. 920 credit in the same year.

The impact of H.B. 920 on both the homeowner and the businessman is clear. The last point that must be made regarding the effect of this "tax reform" legislation is that its benefits or penalties will continue to accrue each year in which the law continues to operate. Because of this cumulative effect, an immediate reconsideration of the law on both the legislative and judicial level seems not only equitable, but critical.

III. H.B. 920 AND CONSTITUTIONAL UNIFORMITY IN TAXATION

Article XII, § 2 of the Ohio Constitution provides in part that "land and improvements thereon shall be taxed by uniform rule according to value."¹⁶⁰ While this general language has been the subject of much litigation,¹⁶¹ the interpretive Supreme Court decisions in the *Park Investment* cases have proved to be the landmarks against which many other cases involving the taxation of real property by uniform rule have been measured.¹⁶² When the seemingly inequitable effects of the H.B. 920 tax credit are measured against decisions of *Park Investment I* through *V*, a violation of taxation by uniform rule under Article XII, § 2 of the Ohio Constitution must be seriously considered, if not admitted. The salient questions, then, which a legal analysis of *Park Investment* and related cases will speak to, are: 1) What is the uniformity demanded under Article XII, § 2; 2) In what cases had it been violated; and 3) Whether H.B. 920 is similarly violative of this uniformity.

¹⁵⁸ Campanella interview, *supra* note 12.

¹⁵⁹ *Id.* Businesses estimated net decrease of \$5.2 million in total 1979 property tax resulted from \$3.9 million of tax increases on the millage exempt from the H.B. 920 credit being netted out against the \$9.1 million decrease on millage subject to the H.B. 920 credit. The decrease to commercial and industrial properties attributed to H.B. 920 does not equal the increase to residential property taxes because of changes in the tax rates subject to H.B. 920 from 1978 to 1979.

¹⁶⁰ OHIO CONST. art. XIII, § 2.

¹⁶¹ See, e.g., *Zangerle v. Republic Steel Corp.*, 144 Ohio St. 529, 60 N.E.2d 82 (1945); *State, ex rel. Struble v. Davis*, 132 Ohio St. 555, 9 N.E.2d 684 (1937); *State, ex rel. Lampson v. Cook*, 44 Ohio App. 501, 185 N.E. 212 (1932).

¹⁶² See, e.g., *State, ex rel. Bd. of Tax Appeals v. Smith*, 45 Ohio St. 2d 233, 344 N.E.2d 125 (1976); *Grabler Mfg. Co. v. Kosydar*, 43 Ohio St. 2d 75, 330 N.E.2d 924 (1975); *Bd. of Educ. v. Fulton Cty. Bdgt. Comm.*, 41 Ohio St. 2d 147, 324 N.E.2d 566 (1975); *State, ex rel. Bd. of Tax Appeals v. Smith*, 39 Ohio St. 2d 155, 314 N.E.2d 165 (1974); *Pennsylvania Ry. v. Porterfield*, 16 Ohio St. 2d 136, 243 N.E.2d 87 (1968); *Phelps Realty Co. v. Bd. of Revision*, 16 Ohio St. 2d 83, 243 N.E.2d 97 (1968); *Bd. of Revision v. One Euclid Co.*, 16 Ohio St. 2d 43, 242 N.E.2d 582 (1968); *Bd. of Revision v. Federal Reserve Bank*, 16 Ohio St. 2d 42, 242 N.E.2d 571 (1968); *Frederick Bldg. Co. v. Bd. of Revision*, 13 Ohio St. 2d 59, 233 N.E.2d 594 (1968); *Frederick Bldg. Co. v. Bd. of Revision*, 7 Ohio St. 2d 139, 218 N.E.2d

In *Park Investment I*, the issue of uniformity in taxation was addressed in answer to the second of two questions raised in the majority opinion. That question was put thusly: "[W]here it is apparent that real property in the various classes and counties are being assessed on different percentages of value, is there a duty on the Board of Tax Appeals to order such county auditors to equalize such assessments?"¹⁶³ The court acknowledged that the practice in the state of Ohio was to assess property for taxation at only a percentage of its actual value, and it simultaneously affirmed that it is precisely here that the question of uniformity surfaces.¹⁶⁴ It stated that, because property is not assessed on the basis of full value, the percentage of such value which is the basis of taxation must be relatively uniform not only throughout the state but also to the various classes of real property.¹⁶⁵ The court very pointedly reasoned:

[I]f the ratio between sales price and assessed value in general differs to any appreciable extent, either throughout the state as a whole or as to various classes of property in particular, then property is not being taxed by uniform rule as required by Section 2, Article XII of the Ohio Constitution.¹⁶⁶

It would seem that *Park Investment I* did attempt to define the Constitutional concept of taxation by uniform rule by agreeing that discrimination in the level of assessment of any class was a violation of taxation by uniform rule. While acknowledging that there was no provision in the Ohio Constitution for a classification of real property according to use,¹⁶⁷ the pertinent issue the court seemed to be raising was not whether there was *de facto* classification of real property and whether such classification was a *per se* violation of uniformity, but rather whether such classifications were the basis for unequal assessment. The court seemed to explicitly admit the value of property classification in determining the question of uniform taxation when it accepted the comparison of the commercial class of property to the other classifications

723 (1966); *Continental Can Co. v. Donahue*, 5 Ohio St. 2d 224, 215 N.E.2d 400 (1966); *Frederick Bldg. Co. v. Bd. of Revision*, 5 Ohio St. 2d 220, 215 N.E.2d 388 (1966); *Summers v. Bd. of Revision*, 5 Ohio St. 2d 219, 215 N.E.2d 198 (1966); *Koblentz v. Bd. of Revision*, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966); see also *Lunkenheimer Co. v. Bd. of Revision*, 40 Ohio App. 2d 27, 322 N.E.2d 133 (1974); *Selig v. Bd. of Revision*, 21 Ohio App. 2d 157, 231 N.E.2d 479 (1967); *Women's Fed. Sav. & Loan Ass'n v. Bd. of Revision*, 12 Ohio Misc. 79, 212 N.E.2d 828 (C.P. Cuyahoga County 1965).

¹⁶³ *State ex rel. Park Inv. Co. v. Bd. of Tax Appeals*, 197 Ohio St. 410, 411, 195 N.E.2d 908, 909 (1964).

¹⁶⁴ *Id.* at 413, 195 N.E.2d at 911.

¹⁶⁵ *Id.* (Emphasis added).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 412, 195 N.E.2d at 910.

and to the whole as a demonstration of the lack of uniformity.¹⁶⁸ This was further supported by the fact that even Justice Gibson, while not in agreement with the syllabus, still acknowledged the classifications of property set up by the B.T.A. in its rules¹⁶⁹ as not *per se* unreasonable or unlawful.¹⁷⁰

After *Park Investment I* it was clear that uniformity of taxation demanded the assessment of all real property at the same percentage of true value. It was also clear that property classification *per se* was not violative of uniformity and could, in fact, be used to assure that same uniformity. In *Women's Federal Savings and Loan Association v. Board of Revision*,¹⁷¹ the Cuyahoga County Court of Common Pleas, in hearing the appeal of Women's Federal from the Board of Revision on its assessed valuation,¹⁷² echoed the above *Park Investment* principles when it stated that the county-wide and state-wide equalization of taxable valuations *among the various classes of property*¹⁷³ was a viable goal.

Park Investment II extended the issue of uniformity in assessments to "statewide" versus "countywide" uniformity of assessment.¹⁷⁴ In upholding certain statutory provisions¹⁷⁵ which mandated the B.T.A. "annually to an equal and uniform rule for assessing real property in the state of Ohio,"¹⁷⁶ and by issuing the writ of mandamus to require the B.T.A. to perform its statutory duties, the court accepted the allegations of the Park Investment Company that the commercial class of real property in Cuyahoga County has been discriminatorily assessed as a class on a basis approximately 35% in excess of the common level of all real property in the state of Ohio and in Cuyahoga County.¹⁷⁷ The court

¹⁶⁸ *Id.* at 413, 195 N.E.2d at 911.

¹⁶⁹ The classes enumerated are residential, industrial, commercial, agricultural and vacant lots and tracts. *Id.* at 418, 195 N.E.2d at 914.

¹⁷⁰ See *Carney v. Bd. of Tax Appeals*, 169 Ohio St. at 445, 160 N.E.2d at 475 (1959). The Supreme Court found such rules to be neither unreasonable nor unlawful. *Id.*

¹⁷¹ *Women's Fed. Sav. & Loan Ass'n v. Bd. of Revision*, 12 Ohio Misc. 79, 212 N.E.2d 828 (C.P. Cuyahoga County 1965).

¹⁷² Women's Federal requested a reduction on its assessed value (926,530), which it claimed was 10% above its fair market value (840,000). *Id.*

¹⁷³ *Id.*

¹⁷⁴ 16 Ohio St. 2d at 88, 242 N.E.2d at 889.

¹⁷⁵ OHIO REV. CODE ANN. §§ 5715.01, 5715.24 (eff. November 5, 1965), as cited in 16 Ohio St. 2d at 88, 242 N.E.2d at 889.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 86, 242 N.E.2d at 888. The allegation that commercial property was assessed at a level 30% in excess of the common level in the state is apparently incorrect as the relator cited the 1962 statewide sales ratio percentage at 38.78%, which would have put the assessment level of the commercial class at 68.78% (38.78% + 30%); in fact, the relator asserted that the 1965 sales ratio for commercial property in Cuyahoga County was 48.65%. *Id.* at 85, N.E. 2d at 888.

This inconsistency, however, was mainly one of degree, not of fact.

further ruled that it was the duty of B.T.A. to rectify this so that every class of real property is listed and valued for taxation by an equal and uniform rule.¹⁷⁸

The importance of *Park Investment II*, in relation to the uniformity issue and H.B. 920, rested in its reiteration that a violation of constitutional uniformity with respect to assessment can occur to an individual class, and this can be demonstrated by sales ratio studies which compare classes to each other and to the statewide average. It also stated that the B.T.A. has a duty to make adjustments by class to assure uniformity in assessments.¹⁷⁹

Park Investment III, filed as motion to show cause why the B.T.A. should not be held in contempt of court for failing to perform its duties under *Park Investment II*,¹⁸⁰ offered little new analysis with respect to the uniformity issue. In denying the motion on the basis of the reasoned good faith of the B.T.A.'s delay,¹⁸¹ the court did quote extensively from *Park Investment I and II* and other related cases¹⁸² emphasizing that each parcel regardless of class must be assessed at the same percentage of true value.¹⁸³

Park Investment IV, filed as a motion to show cause why the B.T.A. should not be held in contempt of court for failing to perform its constitutional duties as mandated in *Park Investment II*, also did not contribute any significant developments with respect to the constitutional issue of uniformity and assessment, other than recognizing that the correction of past inequities cannot be done immediately due to fiscal constraints, especially in the smaller counties.¹⁸⁵ The court noted that it is within the scope of the General Assembly's power to schedule this correction over a period of time while maintaining the principles of *Park Investment I and II*.¹⁸⁶

While *Park Investment I* through *IV* focused on the valuation side of the tax bill,¹⁸⁷ in what may be viewed as *Park Investment V*,¹⁸⁸ the Ohio

¹⁷⁸ *Id.* at 86, 242 N.E.2d at 888.

¹⁷⁹ For a critique of the legal deficiencies of the *per curiam* opinion, see Finarn, *supra* note 76, at 1159-64.

¹⁸⁰ 26 Ohio St. 2d at 162, 270 N.E.2d at 342 (1971).

¹⁸¹ See notes 104, 105 *supra* and accompanying text.

¹⁸² *E.g.*, Frederick Bldg. Co. v. Bd. of Revision, 13 Ohio St. 2d 59, 233 N.E.2d 594 (1968); Koblenz v. Bd. of Revision, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966); Goldberg v. Bd. of Revision, 7 Ohio St. 2d 139, 218 N.E.2d 723 (1966).

¹⁸³ 26 Ohio St. 2d at 164, 270 N.E.2d at 345 (1971).

¹⁸⁴ 32 Ohio St. 2d 28, 289 N.E.2d 579 (1972). See also notes 113-15 *supra* and accompanying text.

¹⁸⁵ *Id.* at 32, 289 N.E.2d at 582.

¹⁸⁶ *Id.* A procedure had been set out in Amended Senate Bill No. 455 which was upheld except for the provision establishing current use of real property as the basis for valuation pursuant to uniform tax assessment.

¹⁸⁷ The applicable formula is: Value \times Rate = Taxes Due.

¹⁸⁸ *State v. Columbus Bd. of Revision*, 11 No. 79-1402 (Sup. Ct., Ohio, Apr. 2, 1980). 26

Supreme Court significantly extended the question of uniformity in both its majority and dissenting opinions. In an original action, David Swetland sought a writ of mandamus to prevent the Commissioner of Tax Equalization and the Auditor of Cuyahoga County from applying an additional 2-1/2% reduction to all homesteads which were qualified.¹⁸⁹ The court, in its four to three decision, held that the 2-1/2% reduction¹⁹⁰ was a valid exercise of the General Assembly's power to tax real property and to exempt certain classifications of real property as provided by Article XII, § 2 of the Ohio Constitution.¹⁹¹ The majority was quick to point out that in previous cases¹⁹² the constitutional requirement of uniformity was interpreted to mandate uniformity in the valuation of the real property and uniformity in the percentage of value which would constitute the property tax base.

The central issue of *Park Investment V*, on the other hand, was the constitutional authority of the General Assembly to provide for a lower tax for certain types of real estate by way of exemption or, as in this instance, partial exemption of real estate taxes.¹⁹³ The court cited the case of *Denison University v. Board of Tax Appeals*,¹⁹⁴ in which the court held that the General Assembly, by reason of amendment of Article XII, § 2 of the Ohio Constitution, had the power to determine exemptions from taxation, limited only by the provisions of Article I of the Ohio Constitution. Applying the principles of the *Denison University* case, the court ruled in the instant case that the General Assembly had acted within its power in granting the 2-1/2% reduction, and that no distinction can be made between the General Assembly's use of the word "reduction" as opposed to "exemption" when trying to demonstrate a violation of the Ohio Constitution, Article XII, § 2.¹⁹⁵

The court further stated that the "uniform rule" requirement of Article XII, § 2 beyond assuring uniformity in valuation and assessment, operated to require that taxpayers shall be afforded equal protection of the laws under the Constitution in the taxation of real property. The

¹⁸⁹ In addition to the 10% reduction granted to all real property pursuant to OHIO REV. CODE ANN. § 319.301(B) (Page Supp. 1977), see note 63 *supra* and accompanying text.

¹⁹⁰ 1979 OHIO LAWS at 5-195, in OHIO REV. CODE ANN. § 323.152(B) (Page Supp. 1977).

¹⁹¹ State, *ex rel.* Swetland v. Kinney, No. 79-1402 (Sup. Ct., Ohio, Apr. 2, 1980).

¹⁹² See in chronological order, State, *ex rel.* Park Invest. Co. v. Bd. of Tax Appeals, 175 Ohio St. 410, 195 N.E.2d 908 (1964); Koblenz v. Bd. of Revision, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966); Goldberg v. Bd. of Revision, 7 Ohio St. 2d 139, 218 N.E.2d 723 (1966); Frederick Bldg. Co. v. Bd. of Revision, 13 Ohio St. 2d 59, 233 N.E.2d 594 (1968); State, *ex rel.* Park Invest. Co. v. Bd. of Tax Appeals, 16 Ohio St. 85, 242 N.E.2d 887 (1968); State, *ex rel.* Park Invest. Co. v. Bd. of Tax Appeals, 26 Ohio St. 2d 161, 270 N.E.2d 342 (1971).

¹⁹³ State, *ex rel.* Swetland v. Kinney, No. 79-1402 (Sup. Ct., Ohio, Apr. 2, 1980).

¹⁹⁴ Denison Univ. v. Bd. of Tax Appeals, 2 Ohio St. 2d 17, 205 N.E.2d 896 (1965).

¹⁹⁵ State, *ex rel.* Swetland v. Kinney, No. 79-1402 (Sup. Ct., Ohio Apr. 2, 1980).

court stated that "[s]uch equal protection would require first, that if there be established classifications of real estate taxpayers, any such classifications must have a rational basis. Second, the equal protection provision would dictate that any legislatively established classes be taxed at a uniform rate."¹⁹⁶

The court responded to the realtor's argument that the two and one-half percent reduction creates an unconstitutional classification of real estate taxpayers based on "current use" of the real estate by citing *Park Investment IV*, noting that classification by way of "current use" may not be utilized in establishing the basis for valuation.¹⁹⁷ Relative to the constitutionality of classifications *per se*, the court stated that "[a] classification must not be arbitrary, artificial, or evasive, but there must be a real and substantial distinction in the nature of the class or classes upon which the law operates."¹⁹⁸ From this language the court clarified a question presumed answered in *Park Investment I*, that is, whether property classification by current use is *per se* unconstitutional. The court's negative response to this question will be important when considering legal alternatives to H.B. 920.

The dissenting opinion by Justice Brown¹⁹⁹ in *Park Investment V* presented an additional concept yet to be considered by the Ohio courts. In what Justice Brown termed "the bottom line," he noted:

Taxation of real property by uniform rule requires three sub-rules: (1) uniformity in valuation, (2) uniformity in percentage of value constituting the basis of the tax, and (3) uniformity in tax rate applied to that base. The holdings and language of the *Park Investment* cases concerned exclusively sub-rules (1) and (2) simply because the situations presented therein did not warrant broader holdings or more embracing language. Thus, their lack of specific reference to uniformity in tax rate, i.e., sub-rule (3), is

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* (Emphasis added).

¹⁹⁸ *Id.*, quoting *Zenia v. Schmidt*, 101 Ohio St. 437, 130 N.E. 24 (1920).

¹⁹⁹ Justice Brown's contention was that since a partial tax exemption was a euphemism for reducing the percentage of value constituting the base of the real property tax, the *Denison University* and *Park Investment* cases are inconsistent as applied to homesteads. *State, ex rel. Swetland v. Kinney*, No. 79-1402 (Sup. Ct., Ohio, Apr. 2, 1980). It would seem, however, that the parts of the tax bill (i.e., value, rate, credits) while mathematically related in the tax billing process, are nonetheless still essentially distinct. This essential distinction is implicitly acknowledged by the fact that the Department of Tax Equalization continues to approve the value abstracts from the various counties at 35% of market value, despite the fact that the net taxes charged after all the credits, when divided by the gross millage, would produce a tax base far below the 35% of true value required by Ohio law. Additionally, the process of determining an assessed valuation can be done quite independently of any tax rate or tax dollar charged, demonstrating further the essential distinction between value, rate and tax.

demonstrative of judicial self-restraint and not evidence of this court's earlier desire to fashion a Section 2, Article XII distinction between the property tax rate, i.e., sub-rule (3), and the property tax base, i.e. sub-rules (1) and (2). The constitutional mandate is that real property be "taxed by uniform rule according to value." Plainly, by its terms and as interpreted in the *Park Investment* cases, this mandate focuses on the bottom line and not the above implementing sub-rules.²⁰⁰

In light of the court's analysis of the *Park Investment* cases, the constitutionality of the current calculation and application of the H.B. 920 credit seems highly suspect. *Park Investment I* through *IV* demonstrated that the uniformity in taxation guaranteed under Article XII, § 2 of the Ohio Constitution was violated where classes of property were assessed for taxation at different percentages.²⁰¹ The current application of the H.B. 920 credit, while limiting the total dollars collected on voted levies to the amount collected on properties existing in the preceding year, would cause the collection of substantially more dollars from the residential and agricultural classes in the year following a reappraisal than was collected from those classes in the preceding year on the same voted levies.²⁰² Conversely, the H.B. 920 credit would cause the collection of substantially fewer dollars from the commercial and industrial classes in the year following a reappraisal than was collected from those classes in the preceding year on the same voted levies.²⁰³ H.B. 920, thus, shifts the tax burden to the residential-agricultural class in a discriminatory manner. The majority opinion in *Park Investment V* stated that the "uniform rule" requirement of Art. XII, § 2 operated "to require that in the taxation of real property the taxpayers shall be afforded equal protection of the laws under the Constitution."²⁰⁴ The dissenting opinion of *Park Investment V* asserts that the constitutional mandate of taxation by uniform rule according to value focuses on the bottom line.²⁰⁵ The bottom line of the residential-agricultural tax liability has been increasing to the benefit of the commercial-industrial tax liability. The equal protection afforded taxpayers under Article XII, § 2 of

²⁰⁰ *Id.*

²⁰¹ See note 166 *supra* and accompanying text.

²⁰² Cuyahoga County Auditor Vincent C. Campanella estimated that residential taxpayers in tax year 1979 paid 181.6 million dollars for the 1978 tax year. See Campanella interview, *supra* note 12. For a hypothetical example of the same, see notes 152-55 *supra* and accompanying text.

²⁰³ Auditor Campanella estimated that commercial-industrial taxpayers in tax year 1979 paid \$73.9 million on voted levies compared to \$83.0 million in the 1978 tax year. See Campanella interview, *supra* note 12. For a hypothetical example of the same, see notes 152-55 *supra*.

²⁰⁴ State, *ex rel.* Swetland v. Kinney, No. 79-1402 (Sup. Ct., Ohio, Apr. 2, 1980).

²⁰⁵ *Id.*

the Ohio Constitution would demand a change in the computation and application of the H.B. 920 tax credit.

IV. A REMEDY FOR AMENDED HOUSE BILL 920

A. *Credit by Class*

The problem from which both residential and agricultural properties suffer under the current computation and application of the tax credit can be remedied by the use of a tax credit which is computed according to class of property. This solution was proposed as early as April, 1977, by Cuyahoga County Auditor Vincent C. Campanella²⁰⁶ who, in mid-1978, teamed up with County Treasurer Francis E. Gaul,²⁰⁷ to promote a plan for tax reform around this central concept.

The credit by class concept would adopt the principle of the tax credit from H.B. 920, but would compute and apply the credit by class of property. The initial classifications were residential, commercial, industrial and agricultural.²⁰⁸ A demonstration of this proposal can be given, using the data of the hypothetical example cited above.²⁰⁹

1978 TAX YEAR

	Market Value	\$50,000 (Taxable Value-\$17,500) ²¹⁰
Residential	\$17,500 × 50 mills	\$ 875
Commercial	\$17,500 × 50 mills	\$ 875
TOTAL TAXES		\$ 1,750

1979 TAX YEAR

Residential Market Value - \$69,000 (+ 38%) Taxable Value - \$24,150
 Commercial Market Value - \$57,500 (+ 15%) Taxable Value - \$20,125

Residential Tax Credit (Value increase ÷ Current Year Value)
 (\$24,150 - \$17,500) ÷ \$24,150 = .275362

²⁰⁶ The Plain Dealer, Apr. 21, 1977, at B-3, col. 2.

²⁰⁷ The Clev. Press, June 23, 1978, at A4, col. 4-5. In June, 1976, Francis Gaul, Cuyahoga County Treasurer, had started an initiative petition drive to place a constitutional proposition on the November 1976 or June 1977 ballot to reverse the effects of the *Park Investment* decisions. Finnarn, *supra* note 76, at 1193-94.

²⁰⁸ The Plain Dealer, Apr. 21, 1977, at B-3, col. 3-6. Apparently realizing that the four classes were not all-inclusive, the constitutional amendment which Campanella and Gaul were circulating as an initiative petition contained the aforementioned classed together with public utility real estate and mineral property. Initiative Petition, titled Property Tax Reform amending Article XII, § 2 of the Ohio Constitution, Petition #14930, obtained during Campanella interview, *supra* note 12 (on file with author).

²⁰⁹ See notes 152-55 *supra* and accompanying text.

²¹⁰ See note 152 *supra*.

Commercial Tax Credit (Value increase ÷ Current Year Value)
 $(\$20,125 - \$17,500) \div \$20,125 = .130435$

<u>1979 Taxes</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Assessed Value	\$24,150	\$20,125	
× Tax Rate	50 mills	50 mills	
Gross Tax	\$ 1,208	\$ 1,006	
Less "Class" Credit	(\$ 333)	(\$ 131)	
Net Tax Due	\$ 875	\$ 875	\$1,750

The above example demonstrates that with the application of the "class credit" the voted taxes for both the residential and the commercial property maintain a level constant with the prior year despite respective value increases of 38% and 15%. Under the current H.B. 920 computation and application of the credit, the residential taxes had increased \$80 while the commercial taxes decreased \$80.²¹¹ In light of the above example, the equity and uniformity in taxation demanded under Article XII, § 2 seem to clearly demand the implementation of the credit by class concept.

B. *Implementation of Credit by Class*

The implementation of a tax credit by class could have been fashioned through various legislative mechanisms ranging from a procedural amendment issued by the Commissioner of Tax Equalization to a constitutional amendment. This note will briefly review these mechanisms, attempting to highlight any advantages and disadvantages of each.

The most informal method for implementing the credit by class concept consisted of a redetermination by the Commissioner of Tax Equalization that the data²¹² collected to calculate the H.B. 920 credit be submitted by class.²¹³ The determination of a reduction factor would then be done by class of property, and the class reduction factors would be certified to the county auditors. This method, however, would have had a tenuous legal defense at best, for while the statute authorizing the reduction factor²¹⁴ did not expressly prohibit the calculation by class, it authorized only a percentage by which the sums were to be reduced as opposed to percentages. Calculation of reduction factor by class would have to rest on the defense that the former method of calculating was in violation of taxation by uniform rule as guaranteed under Article XII, § 2 of the Ohio Constitution. By granting this, however, the proper remedy would seem to have been merely a revision of unconstitutional statutes by the General Assembly. Likewise, a designation of classes for which

²¹¹ See note 155 *supra* and accompanying text.

²¹² See notes 137-38 *supra* and accompanying text.

²¹³ Taxable values must be reported by class to the Department of the Tax Equalization for approval. See note 82 *supra* and accompanying text.

²¹⁴ OHIO REV. CODE ANN. § 819.301(A)(1) (Page Supp. 1977).

separate tax credits would be calculated would have to have been determined by the Commissioner of Tax Equalization, whose legal authority to determine such classes could have been challenged.²¹⁵

The General Assembly could also have provided for the implementation of credit by class. An amendment of the statute which created the H.B. 920 credit²¹⁶ could have been enacted, designating various classes of property which would receive their own tax credit. Such a statute would have been subject solely to a constitutional challenge, and would have appeared defensible based on the arguments, decisions and opinions of *Park Investment I* through *IV* as analyzed above.

In order to avoid relatively certain litigation on constitutional grounds,²¹⁷ the General Assembly decided to propose to the voters of Ohio a constitutional amendment, amending Article XII, § 2 and establishing certain classes of property for use in the tax reduction process.²¹⁸ This was surely the most conservative approach, subject only to challenge under the equal protection clause of the Ohio Constitution²¹⁹ and the fourteenth amendment to the United States Constitution.

C. Credit by Class in Current Legislation

With the concurrence of the Ohio House in the conference committee report on July 21, 1980, the Ohio General Assembly finalized the language of a constitutional amendment authorizing a credit by class.²²⁰ The Ohio electorate was to vote on the amendment in the November 1980 general election. The tax reform amendment, House Joint Resolution 39,²²¹ proposed classifying property into two categories, residential-agricultural and commercial-industrial,²²² to allow for property tax relief through a tax credit by class. The proposed amendment, however, seemed to contain a major stumbling block to Republican lawmakers; they

²¹⁵ The Commissioner of Tax Equalization is given authority under Ohio law to prescribe such general and uniform rules and issue such orders and instructions, not inconsistent with law, as he deems necessary, as to the exercise of powers and the discharge of the duties of all officers which relate to the assessment of property and the levy and collection of taxes. OHIO REV. CODE ANN. § 5715.29 (Page 1980). He also prescribes the forms necessary for the collection of the data. OHIO REV. CODE ANN. § 5715.30 (Page 1980).

²¹⁶ OHIO REV. CODE ANN. § 319.301(A)(1) (Page Supp. 1977).

²¹⁷ *Park Investment IV* was immediately filed in part to challenge the General Assembly's provision for "current use" in the appraisal and assessment process in S.B. 455.

²¹⁸ Cuyahoga County Auditor Vincent C. Campanella called the amendment a partial adoption of the Gaul-Campanella Initiative Petition. The Plain Dealer, Sept. 22, 1980, at A-23, col. 2.

²¹⁹ OHIO CONST. art. I, § 2.

²²⁰ 394 Ohio Report (Gongwer News Service, Inc.), July 21, 1980, at 1.

²²¹ *Id.* It was enumerated as Issue One on the November 1980 ballot.

²²² Legislative Digest and Review, July 11, 1980, at 1.

argued that the proposal should use the year 1975²²³ as the base year from which property tax values should be rolled back to provide the tax relief.²²⁴ They insisted that the amendment would not provide any tax relief²²⁵ if the 1975 base year was not used. Two local Cuyahoga County officials²²⁶ agreed with the Republican lawmakers, citing that the tax relief bill would not save the homeowners in their county any tax dollars until 1982, and at this point it would mean only \$9 million less of an *increase*.²²⁷ They insisted that their proposal, which included the use of the 1975 base year upon which to calculate the class credit, would provide initial immediate relief to the homeowner or farmer in the amount of \$28 million on a countrywide basis.²²⁸ Even with passage of the constitutional amendment, however, the final version of the tax relief package was to remain hazy, since full implementation of the constitutional mandates would require additional statutory reworking.²²⁹

On November 4, 1980, the electorate of the state of Ohio passed State Issue I by an estimated majority of 53% to 47%.²³⁰ In anticipation of such passage both the Senate and the House of Representatives had introduced legislation which would implement the provisions of the new constitutional amendment.²³¹ The two pieces of legislation differed only in their approach to the initial year's tax credit calculation. The Senate version of the implementing legislation, Senate Bill 443 (S.B. 433), provided

²²³ The year prior to the passage of H.B. 920.

²²⁴ 393 Ohio Report (Gongwer News Service, Inc.), July 18, 1980, at 1. The description of "property tax values rolled back" was a slight misnomer, as the legislature's argument seemed to more logically mean using 1975 as a base year to calculate tax credit percentages by class, so that the inequitable effect of H.B. 920 could be eliminated.

²²⁵ Representative Matthew Hatchadorian described the amendment as a "half baked" proposal that "offers the promise of tax relief but doesn't deliver." He further insisted that by accepting the committee report, the House would be bailing out the Senate where the measure had been left pending for almost a year. See note 16 *supra* for the background to the issue; 394 Ohio Report (Gongwer News Service, Inc.), July 21, 1980, at 1. Senator Thomas Van Meter also contended that elimination of the 1975 base year would lock the H.B. 920 shifts in place permanently. 393 Ohio Report (Gongwer News Service, Inc.), July 18, 1980, at 1.

²²⁶ Cuyahoga County Auditor Vincent C. Campanella and Cuyahoga County Treasurer Francis E. Gaul.

²²⁷ The Plain Dealer, July 22, 1980, at A-9, col. 3.

²²⁸ The Clev. Press, July 25, 1980, at B4, col. 2.

²²⁹ 394 Ohio Report (Gongwer News Service, Inc.), July 21, 1980, at 1.

²³⁰ 42 Legislative Digest and Review, Nov. 7, 1980 at 2. Unofficial results indicate that the vote was 1,962,875 in favor to 1,774,123 against. The Plain Dealer, Nov. 6, 1980, at A-32, col. 1.

²³¹ Senate Bill 443 was introduced September 18, 1980. 436 Ohio Report (Gongwer News Service, Inc.), September 18, 1980, at 5. House Bill 1238 was introduced September 9, 1980. 429 Ohio Report (Gongwer News Service, Inc.), September 9, 1980, at 5. For Cuyahoga County, this would take calculations back to tax year 1975.

that the initial calculation of the tax credits by class should correct the shift in the tax burden which had occurred since the inception of H.B. 920 in 1976.²³² The House version, House Bill 1238, provided that the initial calculation should refer only to preventing future years' tax shifts.²³³ Any inequities which had occurred prior to the passage of Issue I were not to be rectified. The difference between the two approaches can be more easily understood with the continued use of hypothetical property:²³⁴

	<u>H.B. 920</u>		
<u>Tax Year 1975</u>	<u>Residential Parcel</u>	<u>Commercial Parcel</u>	<u>Collection Total</u>
Taxable Value	\$17,500	\$17,500	
Tax Rate = Mills (voted)	<u>50 mills</u>	<u>50 mills</u>	
1975 TOTAL TAX	<u>\$ 875</u>	<u>\$ 875</u>	<u>\$1,750</u>
<u>Tax Year 1976</u>	<u>Residential Parcel</u>	<u>Commercial Parcel</u>	<u>Collection Total</u>
Taxable Value	\$24,150 (+ 38%)	\$20,125 (+ 15%)	
X Tax Rate	<u>50 mills</u>	<u>50 mills</u>	
Gross Tax	\$ 1,208	\$ 1,006	
Less "920" Credit (.209486)	<u>(\$ 253)</u>	<u>(\$ 211)</u>	
Net Tax Due	<u>\$ 955</u>	<u>\$ 795</u>	<u>\$1,750</u>
<u>Tax year 1979</u>			
Taxable Value	\$33,327 (+ 38%)	\$23,144 (+ 15%)	
X Tax Rate	<u>50 mills</u>	<u>50 mills</u>	
Gross Tax	\$ 1,666	\$ 1,157	
Less "920" Credit (.380213)	<u>(\$ 633)</u>	<u>(\$ 440)</u>	
Net Tax Due	<u>\$ 1,033</u>	<u>\$ 717</u>	<u>\$1,750</u>

²³² S.B. No. 443, 113th General Assembly. This key element, the correction of the 1976 to 1979 shifts in tax burden, had been a source of argument in the initial draft of the constitutional amendment. See notes 225-28 *supra* and accompanying text.

²³³ H.B. No. 1238, 113th General Assembly.

²³⁴ See notes 152-55 *supra* and accompanying text.

H.B. 1238

<u>Tax Year 1980</u>	<u>Residential Parcel</u>	<u>Commercial Parcel</u>	<u>Collection Total</u>
Taxable Value	\$33,327 (+ 0%)	\$23,144 (+ 0%)	
X Tax Rate	<u>50 mills</u>	<u>50 mills</u>	
Gross Tax	\$ 1,666	\$ 1,157	
Less "920" Credit by Class (Res. .380213) (Comm. .380213)	(\$ <u>633</u>)	(\$ <u>440</u>)	
Net Tax Due	\$ <u>1,033</u> (1979 Level)	\$ <u>717</u>	<u>\$1,750</u>

<u>Tax Year 1982</u>			
Taxable Value	\$45,991 (+ 38%)	\$26,616 (+ 15%)	
X Tax Rate	<u>50 mills</u>	<u>50 mills</u>	
Gross Tax	\$ 2,300	\$ 1,331	
Less "920" Credit by Class (Res. .550876) (Comm. .461063)	(\$ <u>1,267</u>)	(\$ <u>614</u>)	
Net Tax Due	<u>\$ 1,033</u> (Maintain 1979 Level)	\$ <u>717</u>	<u>\$1,750</u>

S.B. 443

<u>Tax Year 1980</u>	<u>Residential Parcel</u>	<u>Commercial Parcel</u>	<u>Collection Total</u>
Taxable Value	\$33,327 (+ 0%)	\$23,144 (+ 0%)	
X Tax Rate	<u>50 mills</u>	<u>50 mills</u>	
Gross Tax	\$ 1,666	\$ 1,157	
Less "920" Credit by Class (Res. .474900) (Comm. .243865)	(\$ <u>791</u>)	(\$ <u>282</u>)	
Net Tax Due	\$ <u>875</u> (1975 Level)	\$ <u>875</u>	<u>\$1,750</u>

<u>Tax Year 1982</u>			
Taxable Value	\$45,991 (+ 38%)	\$26,616 (+ 15%)	
X Tax Rate	<u>50 mills</u>	<u>50 mills</u>	
Gross Tax	\$ 2,300	\$ 1,331	
Less "920" Credit by Class (Res. .619490) (Comm. .342501)	(\$ <u>1,425</u>)	(\$ <u>456</u>)	
Net Tax Due	\$ <u>875</u>	\$ <u>875</u>	<u>\$1,750</u>

On November 13th, the House of Representatives passed H.B. 1238 almost unanimously²³⁵ and sent it to the Senate for passage. The Senate amended the bill, adding the essence of S.B. 433, or the calculation of a new class credit retroactive to the year prior to the implementation of H.B. 920.²³⁶ After the House refused to concur in the Senate amendment,²³⁷ the bill was sent to a conference committee, where the amendment was removed upon assurances from the Chairman of the House Ways and Means Committee that proposals for "rolling back valuations"²³⁸ to some base year would be considered in detail in the coming year.²³⁹ With the approval of both the House and Senate,²⁴⁰ a property tax credit by class was to finally become a reality for the 1981 tax collection.

The implementation of "credit by class" in H.B. 1238 must be viewed in the narrow perspective of the immediate administrative tool for State Issue I. It does not address the rectification of the constitutional uniformity question under H.B. 920; this is specifically evidenced in the above hypothetical. The tax increase of \$158²⁴¹ to the residential taxpayer between 1975 and 1979 still remains in 1980 under H.B. 1238. Similarly, the tax reduction of \$158 to the commercial taxpayer, a direct result of the residential taxpayer's increase, continues to accrue annually to the commercial property. State Issue I did not revoke the constitutional requirement for uniformity; rather, it promoted it by mandating credit by class. Yet, H.B. 1238 provided the legislative guarantee of only future uniformity. In the face of these enactments, any inaction on the correction of the tax shift during the "920 years" must appear as an inexplicable, legal anomaly.

V. CONCLUSION

More than fifteen years ago, the Park Investment Company sought a judicial remedy to what it deemed was inequitable taxation of real prop-

²³⁵ The final vote was eighty-six to one. 474 Ohio Report (Gonger News Service, Inc.), Nov. 13, 1980, at 3.

²³⁶ The vote was twenty to twelve, with six Cleveland area Democrats joining Republican Senate members who had tried in vain during earlier debates to establish retroactivity for calculation. 482 Ohio Report (Gongwer News Service, Inc.), Nov. 25, 1980, at 2.

²³⁷ *Id.* at 7.

²³⁸ This was a technical misstatement. The actual intention was to rollback the valuation ratios, for example, the ratio of residential-agricultural to all other properties to some base year.

²³⁹ 483 Ohio Report (Gongwer News Service, Inc.), Nov. 26, 1980, at 1.

²⁴⁰ The final vote was twenty-two to seven in the Senate and sixty-nine to eleven in the House. *Id.* at 3.

²⁴¹ Residential—1979 Net Tax	\$1,033
Residential—1975 Net Tax	875
INCREASE	\$ 158

erty. The aftermath of that decisive event is still being felt, and even with the recently approved constitutional amendment,²⁴² is very likely to continue if the preceptions of local politicians are in any way accurate.²⁴³ With more than half the local government revenue generated in the United States originating with the property tax,²⁴⁴ willing abandonment of this revenue source by local governments must be discounted as unrealistic. Alternatively, with the Ohio Supreme Court's recent acknowledgement of the depressing economic effect which inflation, increased costs of governmental functions and high taxes have had on the average homeowner,²⁴⁵ continued pursuit of effective tax relief in an equitable tax system would seem to be the political order of the day, if not the decade.²⁴⁶ The pursuit of effective tax relief will, of necessity, continue to raise some essential questions. Undoubtedly, a most obvious question remains as to which method of tax relief is most effective. Still to be addressed is the broader philosophical and political question of unvoted tax increases.²⁴⁷ In whatever manner these questions are addressed, the constitutional guarantee of uniformity in taxation must always remain inviolate, assuring judicial equity, not necessarily mathematical duplication.

Some of these issues may be resolved due to the Ohio Legislatures recent activities. On Wednesday, July 1, 1981, with the Ohio House of Representatives' reconsideration and concurrence, Amended Substitute

²⁴² See notes 220-22 *supra* and accompanying text.

²⁴³ See notes 225-28 *supra* and accompanying text.

²⁴⁴ IAAO, *supra* note 19, at 5.

²⁴⁵ The majority opinion in *Park Investment V* stated:

Our nation and our state are experiencing disturbing, if not distressing, times in our economy. Our citizens are confronted with one of the greatest inflationary trends in recent U.S. history, authoritatively reported to have been at the level of nearly 14 percent increase in 1979. All are hard pressed to meet private and individual needs as well as to meet those obligations mandated upon all of us by the seemingly evergrowing cost of governmental functions. Taxes, while necessary, are becoming a burdensome problem for our citizens—most particularly the homeowner who has been experiencing marked cost increases in every facet of home ownership.

State, *ex. rel. Swetland v. Kinney*, No. 79-1402 (Sup. Ct., Ohio, Apr. 2, 1980).

²⁴⁶ Cuyahoga County Auditor Vincent C. Campanella and Treasurer Francis E. Gaul announced at a July 21, 1980 news conference that they were continuing to pursue their own initiative petition drive for a constitutional amendment. This announcement was made in reaction to the legislature's approval of the ballot form of the constitutional amendment on property tax reform. Official statement by Frank Gaul and Vince Campanella, July 21, 1980, at 3.

²⁴⁷ The initiative petition constitutional amendment of Campanella-Gaul has a provision which allows the reduction of taxes previously exempt under H.B. 920. Initiative petition, entitled Property Tax Reform Amending Article XII, Section 2 of the Ohio Constitution, Petition #14930.

House Bill 50,²⁴⁸ the legislation necessary to rectify the tax shift during the "920 years," finally became reality.²⁴⁹ The law requires that the "920 class credit for tax year 1981 be adjusted to reflect the proportion in which property tax burdens were distributed to each class in the year immediately preceding the first reappraisal or triennial update in which taxes were reduced" pursuant to Amended Substitute House Bill 920 of the 111th General Assembly, or in the case of a tax levy voted after the passage of House Bill 920, in the year prior to the enactment of the tax levy.²⁵⁰

Cuyahoga County Auditor Matthew J. Hatchadorian, however, indicated that the question of corrective tax relief still may not have been finally settled as business interests may challenge the law in the courts.²⁵¹ Perhaps the *Park Investment* saga and its accompanying tax reform legislation have yet to have their final day in court.

ROBERT P. RINK

²⁴⁸ 124 Ohio Report (Gongwer News Service, Inc.), July 1, 1981, at 2. *See also* The Plain Dealer, July 2, 1981, at A-1, col. 1.

²⁴⁹ Governor James A. Rhodes signed the legislation into law on July 11, 1981, in Cuyahoga County. The Plain Dealer, July 12, 1981, at A-34, col. 1. Tax relief to the residential taxpayers of Cuyahoga County alone was estimated to be in the area of 8% to 15% by County Treasurer Francis E. Gaul and County Auditor Matthew J. Hatchadorian. The Plain Dealer, July 2, 1981, at A-1, col. 6.

²⁵⁰ Amended Substitute House Bill 50 (advance sheets).

²⁵¹ The Plain Dealer, July 2, 1981, at A-1, col. 6. Hatchadorian, in the same statement, indicated he believed such challenge would not be successful.

APPENDIX A

HOW TO COMPUTE YOUR TAX BILL

PROPERTY TAX COMPUTATION		EXAMPLE	
		EUCLID - \$50,000 HOME	
MARKET VALUE X 35%	= ASSESSED VALUE	\$50,000 X .35	= \$17,500.00
ASSESSED VALUE X MILLAGE	= GROSS TAX PER YEAR	17,500 X .0668 (66.80 MILLS)	= \$ 1,169.00
GROSS TAX X H.B. 920 PERCENTAGE CREDIT	= H.B. 920 CREDIT	1,169.00 X .296510	= \$ 346.62
GROSS TAX - H.B. 920 CREDIT	= NET TAX	1,169.00 - 346.62	= \$ 822.38
NET TAX - 10% ROLLBACK	= NET TAX	822.38 - 82.24	= \$ 740.14
NET TAX - 2 1/2% ROLLBACK	= TAX DUE	740.14 - 20.56	= \$ 719.58
TAX DUE ÷ 2	= HALF YEAR TAX	719.58 ÷ 2	= \$ 359.79
HALF YEAR TAX + SPECIAL ASSESSMENTS, PENALTIES, DELINQUENCIES	= TAX BILL	359.79 + 5.65 + 0 + 0	= \$ 365.44

APPENDIX B

Provisional Form A

County Name Buckeye County No. 00

CERTIFICATION BY COUNTY AUDITOR OF INFORMATION NEEDED BY COMMISSIONER OF TAX EQUALIZATION
TO DETERMINE THE VOTED MILLAGE REVENUE REDUCTION FACTOR REQUIRED BY SECTION 319.301A
FOR THE TAX YEAR 1976

Page 1 of 4

COUNTY AUDITOR'S CERTIFICATE

I certify that the taxable real property values, including the real property owned by public utilities, of each taxing authority or district included in this report of 4 pages are correct, to the best of my knowledge as of this date. I further certify that the values reported for joint taxing districts include the value both within my county and adjoining counties with the following exceptions:

Marion L.S.D. Polk _____

COUNTY AUDITOR'S SIGNATURE _____ DATE 8/10/76

Taxing Authority Or District	If Joint Districts List Counties Involved	1974 Taxable Real Property Value			1974 Taxable Real Property Value			
		Real Other Than Public Utility	Public Utility Real	Total Taxable Real	Real Other Than Public Utility	Public Utility Real	Value of New Imp. Inc.F.U.	Total Assessed Less New Improvements
<u>Buckeye</u> COUNTY		956,815,140	47,840,757	1,004,655,897	1,409,495,070	704,747,353	12,670,770	7,101,571,853
<u>Bethlehem</u>		8,032,160	401,608	8,433,768	14,068,030	703,401	139,390	14,631,841
<u>Jackson-Out. Mun.</u>		104,334,320	5,216,716	109,551,036	145,810,440	7,290,522	3,873,430	149,227,532
<u>Jackson-Incl. Mun.</u>		106,989,580	5,349,499	112,339,059	149,310,650	7,465,532	3,896,180	152,890,902
<u>Lake-Out. Mun.</u>		38,264,640	1,528,230	40,492,872	67,737,430	3,386,871	983,170	70,341,131
<u>Lake-Incl. Mun.</u>		44,712,580	2,235,629	46,948,209	76,804,080	3,840,204	1,063,730	79,580,554
<u>Lake-Spec. Dis.</u>		15,471,310	783,618	16,455,988	27,870,730	1,391,036	476,040	28,735,726
<u>Lawrence-Out. Mun.</u>		15,286,590	764,329	16,050,919	25,417,840	1,270,892	380,190	26,308,542
<u>Lawrence-Mun.</u>		21,715,490	1,085,774	22,801,264	35,895,230	1,794,761	558,770	37,131,221
<u>Lexington</u>		13,792,160	689,608	14,481,768	21,989,220	1,099,461	145,130	22,943,551
<u>Marion L.S.D.</u>	<u>Polk</u>	8,924,150	446,707	9,370,857	15,660,440	783,022	107,170	16,336,242

