

## NOTES

### REASSESSING THE ALTERNATIVES: THE ELIMINATION OF PENNSYLVANIA PROPERTY TAXES, THE CONSEQUENCES, AND HOW PROPERTY ASSESSMENT LAWS COULD HELP

Josh Davis

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# NOTES

## REASSESSING THE ALTERNATIVES: THE ELIMINATION OF PENNSYLVANIA PROPERTY TAXES, THE CONSEQUENCES, AND HOW PROPERTY ASSESSMENT LAWS COULD HELP

Josh Davis\*

### INTRODUCTION

When Pennsylvania voters arrived at the ballots in November 2017, they were asked whether local taxing authorities should be able to exempt residents from paying 100% of their property taxes under the Homestead Exclusion Amendment, and 53.98% of those voters said yes.<sup>1</sup> Property taxes have long been a source of discontent throughout the Commonwealth, partly because property assessment laws have led to “growing inequities” across taxing jurisdictions.<sup>2</sup> To address the disparity, many state officials, as well as grassroots organizations, are vying for the

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\* Candidate for J.D., 2019, University of Pittsburgh School of Law; B.A., 2015, *magna cum laude*, University of Pittsburgh.

<sup>1</sup> Melissa Romero, *Pennsylvania voted yes for property tax Exemption. What comes next?*, CURBED (Nov. 8, 2017), <https://philly.curbed.com/2017/11/8/16622814/pa-property-tax-amendment-results>.

<sup>2</sup> John J. Murphy III, *Why Pennsylvania's flawed property tax assessment system should be a legislative priority*, PHILA. BUS. J. (Aug. 3, 2017), <https://www.bizjournals.com/philadelphia/news/2017/08/03/why-pennsylvanias-flawed-property-tax-assessment.html>.

elimination of property taxes.<sup>3</sup> This problem must be addressed, but the elimination of property taxes would be “a sweeping approach to a limited problem.”<sup>4</sup>

Although property taxes—which account for approximately 30% of state revenue<sup>5</sup>—contribute to financial disparity throughout Pennsylvania, the revenue derived from them continues to be a vital source of funding for many government-backed programs such as first responders, libraries, child protection services, and public schools.<sup>6</sup> Before local governments could move forward without these funds, taxing authorities would have to find other sources of revenue to replace what would be lost from the elimination of property taxes.<sup>7</sup> Unfortunately, alternative legislation currently being proposed does not adequately address the inequities across the various taxing jurisdictions.<sup>8</sup> In fact, they may very well accelerate the growth of these disparities.<sup>9</sup> Many still believe these issues could be addressed by revising tax assessment laws.<sup>10</sup> Although these laws helped to create some of the problems, their revision might be the solution and a path to tax uniformity.<sup>11</sup> However, property assessments may be on their last leg, if the Pennsylvania courts have anything more to say about it.

Following the Pennsylvania Supreme Court’s 2017 decision in *Valley Forge Towers Apartments v. Upper Merion Area School District*, taxing bodies, such as school districts, are no longer permitted to use their statutory authority to selectively

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<sup>3</sup> Kevin McCorry, *Push to eliminate Pa. property taxes would have major implications for schools, prioritizing homeowners*, KEYSTONE CROSSROADS (June 7, 2017), <https://why.org/articles/push-to-eliminate-pa-property-taxes-would-have-major-implications-for-schools-prioritizing-homeowners/>; see Laura McCrystal, *Wish you didn’t have to pay taxes on your home? Pa. ballot question could lead to change*, THE PHILA. INQUIRER (Sept. 29, 2017), <http://www.philly.com/philly/news/politics/state/pennsylvania-property-tax-reform-ballot-question-referendum-20170929.html>.

<sup>4</sup> MICHAEL WOOD & SHARON WARD, PA. BUDGET & POLICY CTR., REFORM, NOT REPEAL: PENNSYLVANIA CAN PROVIDE PROPERTY TAX RELIEF AND PROTECT PUBLIC SCHOOLS 1 (2014).

<sup>5</sup> Romero, *supra* note 1.

<sup>6</sup> Murphy, *supra* note 2; WOOD & WARD, *supra* note 4, at 1.

<sup>7</sup> Romero, *supra* note 1.

<sup>8</sup> See Stephanie Hacke, *What would no property taxes in Pa. mean for school districts, taxpayers?*, PUBLICSOURCE (Apr. 6, 2017), <http://publicsource.org/what-would-no-property-taxes-in-pa-mean-for-school-districts-taxpayers/>.

<sup>9</sup> *Id.*

<sup>10</sup> Murphy, *supra* note 2; WOOD & WARD, *supra* note 4, at 1–2, 20–21.

<sup>11</sup> See Murphy, *supra* note 2.

reassess property values for a sub-classification of property (e.g., commercial properties, residential properties, industrial properties, etc.).<sup>12</sup> The court rightfully ruled against local entities' ability to discriminatorily reassess properties under the Pennsylvania Constitution's uniformity clause.<sup>13</sup> Yet, the court's rationale may carry more weight than intended, opening up the door for limiting, if not the complete elimination of, local entities' ability to have properties reassessed.<sup>14</sup>

Shortly after the court published its interpretation of the uniformity clause, commercial property owners in Pennsylvania began filing suit to challenge tax assessments on the basis that their reassessments were arbitrary or discriminatory, and thus in violation of the state constitution.<sup>15</sup> In addition to this heightened constitutional standard, the provision may now be left open to yet another constitutional attack for allowing taxing entities to engage in spot assessments.<sup>16</sup> With these two potential challenges arising out of the *Valley Forge* decision, it is likely that tax assessment appeals as they currently exist will be significantly limited, if not completely defeated. By limiting this resource, the state government may be inclined to expedite the elimination of property taxes instead of revising the law to combat the growing tax disparities across Pennsylvania.

This Note explores the current state of property taxes in Pennsylvania, and how Pennsylvania courts, the state legislature, and voters are laying the groundwork for the elimination of property taxes. Moreover, it will focus on why the elimination of property taxes is not as beneficial as it would initially seem, given the proposed alternatives. Ultimately, this Note will conclude that revising the property assessment laws would be a more effective measure against the financial disparity arising out of the current property tax system.

Part I of this Note provides a brief overview of the current state of Pennsylvania's property tax system, how the Homestead Exclusion Amendment came to be, and why local taxing entities may not immediately be in support of this tax exemption. Part II discusses the current property reassessment system in Pennsylvania and the problematic methods local taxing entities employ when

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<sup>12</sup> *Valley Forge Towers Apts. v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 978 (Pa. 2017).

<sup>13</sup> See generally PA. CONST. art. VIII, § 1 (requiring all taxes upon the same class of subjects to be uniform).

<sup>14</sup> See Jeffrey Wilhelm, *Valley Forge v. Upper Merion Is A Solid Win For Taxpayers*, LAW 360 (July 27, 2017), <https://www.law360.com/articles/948631/valley-forge-v-upper-merion-is-a-solid-win-for-taxpayers>.

<sup>15</sup> Murphy, *supra* note 2.

<sup>16</sup> Wilhelm, *supra* note 14.

reassessing property, reviews the implications of the Pennsylvania Supreme Court's ruling in *Valley Forge*, and explores what it could mean for local entities' ability to have property values reassessed. Part III focuses on how the *Valley Forge* decision may drive local entities to concede to whatever alternative funding schemes the state government provides to replace the revenue lost from the elimination of property taxes. Part IV explores an alternative being proposed in the state government and why that alternative would likely cause more hardship related to school funding. Finally, Part V proposes a revision to Pennsylvania's property assessment laws that would be a more effective, long-term solution than the elimination of property taxes.

## I. PROPERTY TAXES

Pennsylvania is unique because it is one of the few states that authorizes local governments and school districts to set the property tax rates with little guidance from the state government.<sup>17</sup> While many other states set parameters for how property taxes are determined to ensure a fairer and more equitable system of taxation,<sup>18</sup> Pennsylvania allows significant variation between taxing jurisdictions, creating an "anything-goes" policy for local taxing entities.<sup>19</sup> Recent studies have indicated the tax rates vary so significantly "from district to district" there is no logical relationship to either "residents' ability to pay or a community's ability to raise revenue."<sup>20</sup> For instance, a homeowner in Allegheny County with an assessed value of \$250,000 on their home would pay \$5,380 in taxes on that property, while a homeowner with the same value in the neighboring Westmoreland County would pay \$3,623 in property taxes.<sup>21</sup> Moreover, the poorest taxpayers "are paying a higher proportion of their income and property value to pay their tax bills."<sup>22</sup> This includes elderly homeowners who are retired and living on fixed incomes, many of whom are

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<sup>17</sup> Dale Mezzacappa, *Study: Pa. is 'Wild West' of property taxes*, PHILA. PUB. SCH. NOTEBOOK (Mar. 2, 2017), <http://thenotebook.org/articles/2017/03/02/study-pa-is-wild-west-of-property-taxes>; Romero, *supra* note 1.

<sup>18</sup> EDBUILD, BUILDING EQUITY: FAIRNESS IN PROPERTY TAX EFFORT FOR EDUCATION 10–13 (2017).

<sup>19</sup> *Id.* at 53.

<sup>20</sup> Mezzacappa, *supra* note 17.

<sup>21</sup> *Pennsylvania Property Tax Calculator*, SMARTASSET, <https://smartasset.com/taxes/pennsylvania-property-tax-calculator#MidvaHZHYE> (last visited Aug. 22, 2018) (follow hyperlink and enter relevant county under "Enter Your Location").

<sup>22</sup> Mezzacappa, *supra* note 17.

now outliving their savings and cannot keep up with their property taxes.<sup>23</sup> Government officials from both major parties, including the governor, have taken note of these problems and are open to eliminating property taxes altogether.<sup>24</sup> The push for this type of sweeping legislation comes predominantly from concerned citizens and grassroots organizations speaking out across the Commonwealth.<sup>25</sup>

To address these same concerns in 1997, Pennsylvania voters approved a constitutional amendment permitting a homestead exemption (*i.e.*, a reduction in property taxes on a taxpayer's primary residence)<sup>26</sup> to be extended throughout the Commonwealth.<sup>27</sup> This 1997 referendum empowered the state government to amend the state's constitution and pass legislation in 1998 that gave local taxing entities the option to exempt property taxes for up to 50% of the assessed value of the primary residences within their taxing jurisdictions.<sup>28</sup> These exemptions do not apply to commercial or industrial properties.<sup>29</sup> However, the amendment has had little success, as local entities rarely extend these exemptions to their taxpayers due to a lack of alternative funding.<sup>30</sup> Twenty years later, these problems persist, and the voters have been asked to voice their opinions on property taxes yet again.<sup>31</sup>

The 2017 referendum is the latest result of grassroots organizations putting pressure on the state legislature to reform the state's tax structure, with their sights set on eliminating property taxes in Pennsylvania.<sup>32</sup> This most recent amendment would provide local taxing entities with the option to exempt property taxes for up

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<sup>23</sup> McCorry, *supra* note 3.

<sup>24</sup> McCrystal, *supra* note 3.

<sup>25</sup> See McCorry, *supra* note 3.

<sup>26</sup> *Homestead Tax Exemption*, PA. DEP'T OF CMTY. & ECON. DEV., <https://dced.pa.gov/local-government/property-tax-relief-homestead-exclusion/> (last visited Aug. 22, 2018).

<sup>27</sup> Timothy W. Kelsey, *Understanding the Homestead and Farmstead Exclusions*, PENNSTATE EXTENSION (Sept. 12, 2017), <https://extension.psu.edu/understanding-the-homestead-and-farmstead-exclusions>.

<sup>28</sup> *Id.*

<sup>29</sup> Bob Bauder, *Pennsylvania's property tax referendum has a long way to go if it passes*, TRIBLIVE (Oct. 30, 2017), <http://triblive.com/politics/politicalheadlines/12893573-74/pennsylvanias-property-tax-referendum-has-a-long-way-to-go-if-it>.

<sup>30</sup> See *id.*

<sup>31</sup> McCorry, *supra* note 3; Romero, *supra* note 1.

<sup>32</sup> *Id.*

to 100% of the assessed value for primary residences.<sup>33</sup> Like its predecessor, if the local taxing entities implemented the exemption, the policy would not apply to commercial or industrial properties.<sup>34</sup> However, there are some state officials who would like to see the scope of the exemption extend to *all* properties within the Commonwealth.<sup>35</sup> Some officials would also like the exemption to be mandated so taxing entities would not have the option whether to exempt their properties.<sup>36</sup> As the proposed legislation exists now, local taxing entities would still be in control of whether the exemption would apply in their jurisdictions,<sup>37</sup> and some are holding back any support for the exemption until a “sound revenue replacement is found.”<sup>38</sup> At this stage, state legislators are working on several alternatives to replace that revenue before passing legislation on the matter.<sup>39</sup>

Under the existing law, local taxing entities already have the power to exempt homeowners from 50% of their property taxes.<sup>40</sup> If these entities have not elected to exempt homeowners from 50% of their property taxes, then expecting them to offer a 100% exemption would seem illogical.<sup>41</sup> That being said, the Pennsylvania Supreme Court’s ruling in *Valley Forge Towers Apartments v. Upper Merion Area School District* will have serious implications for local entities’ ability to reassess property, suggesting the law that grants them this authority will be limited, if not completely eliminated.<sup>42</sup> Without this resource, local taxing entities may have no choice but to support whatever alternatives the state legislature provides.

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<sup>33</sup> Laura McCrystal, *Pa. property taxes; What’s Next After Ballot Question Passed*, THE PHILA. INQUIRER (Nov. 9, 2017), <https://www.philly.com/philly/news/politics/state/pa-property-tax-amendment-election-results-2017-20171109.html>.

<sup>34</sup> McCrystal, *supra* note 3.

<sup>35</sup> Laura McCrystal, *Pa. could eliminate property taxes this year, senators say*, THE PHILA. INQUIRER (Jan. 22, 2018), <http://www.philly.com/philly/news/pennsylvania/pennsylvania-school-property-tax-eliminate-plan-argall-20180122.html>.

<sup>36</sup> *Id.*

<sup>37</sup> McCrystal, *supra* note 33.

<sup>38</sup> McCrystal, *supra* note 3.

<sup>39</sup> McCrystal, *supra* note 35.

<sup>40</sup> Bauder, *supra* note 29.

<sup>41</sup> *See id.*

<sup>42</sup> Wilhelm, *supra* note 14.

## II. PROPERTY ASSESSMENTS

Every year, Pennsylvania property owners pay their property taxes to three taxing authorities: the county, the township or borough, and their local school district.<sup>43</sup> To ensure property owners are paying their fair share, each county assesses a value for the properties within their districts, but this value is separate and distinct from the properties' fair market value.<sup>44</sup> The difference between the two valuations stems from the practice of basing the assessed value on what is known as the "common-level ratio."<sup>45</sup> The common-level ratio is an "unweighted average of the assessment ratios for all arms-length real estate sales occurring in a particular calendar year."<sup>46</sup> The calendar year that is selected is known as the "base year."<sup>47</sup> For example, "a county using a 1998 base year is required to assess a new property constructed in 2017 based upon 1998 property valuations."<sup>48</sup> A county using a 1998 base year would have a common-level ratio based on the data from this year, and this average would be multiplied by a property's assessed value to calculate the value at which a property will be taxed.<sup>49</sup> Only during the base year would the assessed value of a property accurately reflect the fair market value of that property.<sup>50</sup>

If the property is being taxed at a rate below the assessed value of the property, the taxing entity has statutory authorization under 53 Pa. Cons. Stat. § 8855 ("the statute") to take action and file a tax assessment appeal in an attempt to increase the assessed value of the property.<sup>51</sup> When the initial appeal has been filed and the property owner has been given notice, the property owner can challenge that appeal to either maintain the current assessed value of their property or have it reassessed at

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<sup>43</sup> *Understanding Assessment Values and Millage Rates*, MCCLELLAN LEGAL, [http://mcclellanlegal.com/lawyer/Understanding-Assessment-Values-and-Millage-Rates\\_cp7073.htm](http://mcclellanlegal.com/lawyer/Understanding-Assessment-Values-and-Millage-Rates_cp7073.htm) (last visited Aug. 22, 2018).

<sup>44</sup> 53 PA. CONS. STAT. § 8842(a) (2018).

<sup>45</sup> MCCLELLAN LEGAL, *supra* note 43.

<sup>46</sup> *Valley Forge Towers Apts. v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 966 n.2 (Pa. 2017).

<sup>47</sup> *Murphy*, *supra* note 2.

<sup>48</sup> *Id.*

<sup>49</sup> MCCLELLAN LEGAL, *supra* note 43 ("[T]he base year in Chester County is 1996 and the common-level ratio . . . is 1.86 . . . Property XYZ is located in Chester County and has an assessed value of \$320,000 that is taxed at a current fair market value of \$595,200 (\$320,000 x 1.86).").

<sup>50</sup> *Id.*

<sup>51</sup> 53 PA. CONS. STAT. § 8855 (2018).



a lower valuation.<sup>52</sup> If the appeal and higher valuation are accepted by the judiciary, the local taxing entity can set a higher tax rate based on this reassessed value to generate more revenue, without having to raise taxes across the board in their taxing jurisdiction.<sup>53</sup>

By basing property reassessments solely on market conditions from a base year, local taxing bodies have disregarded changes to market value over time.<sup>54</sup> Changes in market conditions result in some properties being under-assessed for taxation, while others are taxed at values beyond their current fair market value.<sup>55</sup> However, the local government continues to tax in response to constraints on their budget, which motivates them to seek out ways to generate higher levels of revenue.<sup>56</sup>

Unable to compensate for minimal state funding, Pennsylvania school districts have been forced to significantly reduce personnel, cut services to their students, raise taxes on their local taxpayers, and reassess their properties.<sup>57</sup> To ensure public resources are adequately funded from year to year, local entities rely heavily on their authority to have property values reassessed.<sup>58</sup> To combat the budgetary constraints of the last decade, it has even become common practice for Pennsylvania school districts to selectively appeal commercial properties.<sup>59</sup> Such a policy serves a dual purpose: 1) it generates more tax revenue off higher value properties; and 2) it avoids

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<sup>52</sup> See *id.* § 8854.

<sup>53</sup> See Kathy Boccella, *Pa. high court's tax ruling could affect school budgets*, THE PHILA. INQUIRER (July 5, 2017), <http://www.philly.com/philly/education/pa-high-court-tax-ruling-could-affect-school-budgets-20170705.html> (quoting Wendy Rothstein, the attorney for Upper Merion Area School District in *Valley Forge*).

<sup>54</sup> Murphy, *supra* note 2.

<sup>55</sup> See *id.*

<sup>56</sup> See Wilhelm, *supra* note 14.

<sup>57</sup> PA. ASS'N OF SCH. ADM'RS & PA. ASS'N OF SCH. BUS. OFFICIALS, CONTINUED CUTS: THE FOURTH ANNUAL PASA-PASBO REPORT ON SCHOOL DISTRICT BUDGETS 1–2 (2014), <http://archive.pasbo.org/2014%20PASA%20PASBO%20Report%20on%20School%20District%20Budgets.pdf> (“In 2011 and 2012 alone, more than 23,000 Pennsylvania school employees lost their jobs . . . over a third of responding districts expect to cut, reduce, or charge a fee for at least 220 extra-curricular and athletic programs . . . [and] [a]pproximately three-fourths of school district officials expect[ed] to increase local property taxes in 2014–15.”).

<sup>58</sup> Boccella, *supra* note 53 (“School boards maintain that assessment appeals are . . . a source of funding for districts at a time when other funding sources have been shriveled up or been eliminated.”).

<sup>59</sup> *Id.*

greater levels of political accountability at the hands of voters, who are primarily single-family residential property owners.<sup>60</sup>

A. Valley Forge Towers Apartments v. Upper Merion Area School District

In *Valley Forge*, the Upper Merion Area School District's taxing jurisdiction consisted of commercial, industrial, and single-family residential properties.<sup>61</sup> Of the residential properties in the district, 80% had assessment ratios below that of the common level ratio, making them the obvious candidates for reassessment.<sup>62</sup> Instead, the school district selectively targeted commercial properties, including apartment complexes, for property reassessments.<sup>63</sup> The school district filed a tax appeal for the under-assessed properties of Valley Forge Towers Apartments, the management company for several apartment complexes throughout the district.<sup>64</sup> Following the appeal, the property owners filed a claim that the school district had violated the Pennsylvania Constitution's uniformity clause.<sup>65</sup> Ultimately, the Pennsylvania Supreme Court agreed with the property owner, finding that the school district's policy to selectively reassess commercial properties violated the Pennsylvania Constitution, reaffirming that "all property must be taxed uniformly . . . throughout the taxing jurisdiction."<sup>66</sup>

Under the uniformity clause, the court reasoned that taxing entities' objectives should not be limited solely to generating necessary revenues; they must also ensure that taxes are imposed equitably.<sup>67</sup> As a matter of policy, the court suggested that for the government to retain the public's confidence, each taxpayer should only have to contribute their fair share of the cost of government.<sup>68</sup> With that principle in mind, the court held that "all realty is a single class entitled to uniform treatment," and that

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<sup>60</sup> Valley Forge Towers Apts. v. Upper Merion Area Sch. Dist., 163 A.3d 962, 966 (Pa. 2017).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 977, 980 (citing Clifton v. Allegheny Cty., 969 A.2d 1197, 1224 (Pa. 2009)).

<sup>67</sup> *Id.* at 979.

<sup>68</sup> *Id.*

the uniformity clause does not allow taxing entities to treat different property sub-classifications in a disparate manner.<sup>69</sup>

*B. The Consequences of Valley Forge*

The Pennsylvania Supreme Court's ruling has already impacted commercial property tax appeals throughout the state.<sup>70</sup> Within a few days of the court's decision, "a number of commercial property owners filed petitions" against their local taxing authority "contending that they [had] been unfairly singled out for appeals" in violation of the uniformity clause.<sup>71</sup> Taxing entities, such as local school districts, will now have to demonstrate that there is a rationale for the appeal beyond their statutory authority to do so.<sup>72</sup> If property owners can prove that a taxing entity's appeal is arbitrary or discriminatory, they have the court's authority on their side.<sup>73</sup>

The court left the taxing entities with room to pursue other alternatives, such as establishing a monetary threshold.<sup>74</sup> Under such a method, a taxing authority could reassess properties at and above a predetermined valuation, and therefore would have a less arbitrary standard for filing appeals.<sup>75</sup> However, if a property owner could demonstrate that the monetary threshold disproportionately affects a single sub-classification of property, this could raise concerns that the policy is in violation of the uniformity clause.<sup>76</sup> Such a threshold could also mean a significant portion of under-assessed properties are being excluded, which would be equally as suspicious under the law.<sup>77</sup> Thus, even though the court left taxing entities with alternative policies, these policies may not survive the holding of *Valley Forge*.

Moreover, the court also left room for the statute to be found facially unconstitutional for allowing taxing authorities to engage in spot assessments.<sup>78</sup> The

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<sup>69</sup> *Id.* at 973–75.

<sup>70</sup> Murphy, *supra* note 2.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Wilhelm, *supra* note 14.

<sup>74</sup> *Valley Forge*, 163 A.3d at 979.

<sup>75</sup> *Id.*

<sup>76</sup> Wilhelm, *supra* note 14.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

principal case on spot assessments is *Allegheny Pittsburgh Coal Co. v. County Commission of West Virginia*.<sup>79</sup> In *Allegheny Pittsburgh Coal Co.*, the U.S. Supreme Court struck down a local entity's assessment policy under the Fourteenth Amendment's Equal Protection Clause for increasing new residents' assessed property values while only making minor changes to the existing residents' properties.<sup>80</sup> The Court found that a sub-classification of property owners (new residents) could not be taxed differently than those of the same general class, because "[t]he equal protection clause . . . protects individuals from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class."<sup>81</sup> The parallels between what the Supreme Court found to be a violation of the United States Constitution in *Allegheny Pittsburgh Coal Co.* and the selective reassessments in *Valley Forge* are striking, but, in the past, Pennsylvania courts had protected local entities from the Supreme Court's ruling.<sup>82</sup>

Under Pennsylvania law, spot assessments are defined as "[t]he reassessment of a property or properties by a county assessment office that is not conducted as part of a countywide revision of assessment and which creates, sustains or increases disproportionality among properties' assessed values."<sup>83</sup> Up to this point, the Pennsylvania courts have held that entities engaging in selective appeals cannot be considered as having engaged in spot assessments, because local entities are not capable of assessing real estate, but only filing appeals to have properties reassessed.<sup>84</sup> In *Valley Forge*, the Pennsylvania Supreme Court criticized the distinction between setting and revising property values versus "the statutory right to appeal assessments."<sup>85</sup> Given the court's criticism, local entities' practice of selective appeals might be considered as engaging in spot assessments.<sup>86</sup> Thus, local

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<sup>79</sup> *Allegheny Pittsburgh Coal Co. v. Cty. Comm'n of W. Va.*, 488 U.S. 336 (1989).

<sup>80</sup> *Id.* at 338.

<sup>81</sup> *Id.* at 345 (citing *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946)).

<sup>82</sup> See *Weissenberger v. Chester Cty. Bd. of Assessment Appeals*, 62 A.3d 501, 508 (Pa. Commw. Ct. 2012) ("[T]he School District is expressly authorized to initiate assessment appeals, and it is not an entity clothed with the power to revise assessments . . . such that lodging an appeal constitutes an impermissible spot reassessment.").

<sup>83</sup> 53 PA. CONS. STAT. § 8802 (2018).

<sup>84</sup> *Weissenberger*, 62 A.3d at 504–09.

<sup>85</sup> *Valley Forge Towers Apts. v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 978 n.18 (Pa. 2017).

<sup>86</sup> See Wilhelm, *supra* note 14.

taxing entities may not be as safe from *Allegheny Pittsburgh Coal Co.* as they once were, and their authority under the statute may be found facially unconstitutional.<sup>87</sup>

### III. VALLEY FORGE AND WHAT COMES NEXT

The Pennsylvania Supreme Court has provided potential challengers with two critical claims against a taxing entity's authority to reassess property under the statute.<sup>88</sup> First, if local entities tried to establish a monetary threshold in a way that primarily affected commercial or higher value properties, they would likely be defeated under the uniformity clause.<sup>89</sup> Without being able to properly file appeals against higher value properties, taxing entities would have to begin reassessing more residential properties to continue generating revenue; however, such a practice would make the taxing bodies susceptible to local political opposition, which is exactly what they were trying to avoid in *Valley Forge*.<sup>90</sup> Raising the tax burden for single-family residences would almost certainly contribute to the rise in support for the elimination of property taxes, as voters have already demonstrated their sentiments towards property taxes in the most recent referendum.<sup>91</sup> Should that burden increase, Pennsylvania homeowners may be inclined to support policies and officials aligned with exempting or completely eliminating property taxes across the Commonwealth.<sup>92</sup>

Second, if taxing entities continue to apply the statute in a disparate manner, they risk their authority being challenged on constitutional grounds for engaging in

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<sup>87</sup> *See id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *See id.*

<sup>91</sup> *See supra* Part I.

<sup>92</sup> *See* McCorry, *supra* note 3 (describing how a single property reassessment propelled Pennsylvania property owner, Ron Boltz, to spend more than a decade working with grassroots organizations in support of the elimination of property taxes throughout the Commonwealth). In some instances, local school districts are experiencing political upheaval because of residential assessments. *See* Murphy, *supra* note 2 ("Residential appeals filed by the Jim Thorpe Area School District generated a firestorm of public outrage that prompted the district to announce it would discontinue filing year 2017 appeals and take steps to withdraw pending appeals."); *see also* Irina Zhorov, *Property reassessments for tax bills inspire big drama in Pennsylvania*, KEYSTONE CROSSROADS (July 29, 2014), <https://why.org/articles/property-reassessments-for-tax-bills-inspire-big-drama-in-pennsylvania/> (In Pennsylvania, "reassessments can cause upheaval and dramatic political wrestling matches.").

spot assessments, and potentially losing that authority altogether.<sup>93</sup> With their authority under the statute eliminated, the local taxing entities would still be able to tax properties in their district, but they would no longer possess the authority to have under-assessed properties reassessed. Taxing entities would be left with two options. First, they could accept the property values at their current rate and continue taxing them at a diminishing value. However, without the ability to have those values reassessed over time, local entities would be generating less and less revenue, and would be unable to respond to their budgetary needs. Their second option would be to wait until the state legislature puts forth legislation that would grant taxing entities authority to reassess property in a way that accounts for any constitutional concerns, such as engaging in spot assessments. However, given the public support for the Homestead Exclusion Amendment, the state legislature is unlikely to extend or renew any authority that perpetuates property taxes.<sup>94</sup>

The *Valley Forge* decision has put local taxing entities in a difficult position, and with the public support for the Homestead Exclusion Amendment, these local entities are unlikely to see any legislation help them out of this bind. Without any additional legislation, property tax reassessments might become a feckless resource, as taxing entities' assessment practices become the source of constant litigation over their constitutionality. Local taxing entities may even consider no longer engaging in reassessments,<sup>95</sup> or doing so on such a limited basis that it will have minimal positive effect on the revenue that they can generate over time.

With property reassessments so limited, local taxing entities may be inclined to take the politically advantageous route and implement the Homestead Exclusion Amendment, exempting property owners from 100% of the taxes for their primary residences.<sup>96</sup> However, even without effective reassessment policies, local entities may be reluctant to implement the exemption without a sound alternative to account for the lost revenue.<sup>97</sup> After all, this lack of alternative revenue was the very reason the 1998 exemption was generally considered a failure.<sup>98</sup> Proponents of property tax

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<sup>93</sup> Wilhelm, *supra* note 14.

<sup>94</sup> McCrystal, *supra* note 33.

<sup>95</sup> See Murphy, *supra* note 3.

<sup>96</sup> PA. CONST. art. VIII, § 2(b)(vii).

<sup>97</sup> See Richard C. Auxier, *Sorry, Pennsylvania Voters, Your Property Tax Isn't Going Anywhere*, TAXVOX (Nov. 17, 2017), <http://www.taxpolicycenter.org/taxvox/sorry-pennsylvania-voters-your-property-tax-isnt-going-anywhere>.

<sup>98</sup> See *id.*

elimination in the state legislature understand this hesitation and they are drafting several alternative policies to account for the lost revenue.<sup>99</sup> However, the alternatives gaining the most traction would produce far more financial hardship.<sup>100</sup>

#### IV. THE GOVERNMENT'S ALTERNATIVE

In 2015–16, local taxing entities generated an average of 80.9% of their revenue, or roughly \$12.6 billion, from real estate taxes.<sup>101</sup> This revenue is significant for funding many of the Commonwealth's most important public resources. For example, 57.2% of public school funding in 2015–16 came from this local tax revenue.<sup>102</sup> It is questionable whether the alternatives being proposed are capable of generating this same level of revenue, but even assuming that they can, they still do not adequately address the financial disparity throughout the state.<sup>103</sup> In fact, many of these alternatives have the potential to worsen that disparity.<sup>104</sup>

##### A. *The Proposal*

One proposal for filling in the gap of lost revenue would be by increasing the rates for personal income and sales taxes statewide, while expanding the scope for what would be subject to sales tax.<sup>105</sup> As of now, personal income tax rates are at 3.07%, but with the elimination of property taxes this rate would increase from anywhere between 4.34% to 4.95%.<sup>106</sup> Additionally, the sales tax rate would increase from 6.0% to 7.0%.<sup>107</sup> Not only would the rate for the sales tax increase, but the

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<sup>99</sup> McCrystal, *supra* note 35.

<sup>100</sup> See Hacke, *supra* note 8; Mezzacappa, *supra* note 17; see WOOD & WARD, *supra* note 4 at 1, 19.

<sup>101</sup> *Local Tax Revenue*, OPEN PA GOV., [http://www.openpagov.org/property\\_taxes.asp](http://www.openpagov.org/property_taxes.asp) (last visited Mar. 7, 2018).

<sup>102</sup> *All Revenue Sources*, OPEN PA GOV., [http://www.openpagov.org/property\\_taxes.asp](http://www.openpagov.org/property_taxes.asp) (last visited Mar. 7, 2018).

<sup>103</sup> Mezzacappa, *supra* note 17.

<sup>104</sup> See *id.*; Rick Lee, *School property tax elimination doesn't mean it's over*, DES MOINES REGISTER (Aug. 7, 2017), <http://www.desmoinesregister.com/story/news/2017/08/07/school-property-tax-elimination-doesnt-mean-its-over/528496001/>.

<sup>105</sup> McCrystal, *supra* note 33.

<sup>106</sup> INDEP. FISCAL OFFICE, *An Overview of School District Property Tax Reform* (May 19, 2017), [http://www.ifo.state.pa.us/getfile.cfm?file=/Resources/Documents/PA\\_Economy\\_League\\_Presentation.pdf](http://www.ifo.state.pa.us/getfile.cfm?file=/Resources/Documents/PA_Economy_League_Presentation.pdf) [hereinafter IFO]; *Property Tax Reform and Related Issues*, PA. ASS'N SCH. BUS. OFFICIALS, <http://www.pasbo.org/content.asp?contentid=179> (last visited Aug. 22, 2018) [hereinafter PASBO I].

<sup>107</sup> IFO, *supra* note 106.

scope of the sales tax would also have to expand to other goods and services that were previously unencumbered by such duties.<sup>108</sup> Today, the purchase of most food and clothing products in Pennsylvania remains unaffected by the sales tax, but with the elimination of property taxes, this would likely no longer be the case.<sup>109</sup> The sales tax may even extend to services that were previously unaffected, such as legal, mental health, and child care services.<sup>110</sup>

In the case of public school funding, the current proposals to replace the revenue lost from the property tax system “call for [school] districts to get the same amount of money as they do now.”<sup>111</sup> The funds raised as a result of the increase and expansion of the personal income and sales tax would be set aside in a public education fund and distributed annually to school districts.<sup>112</sup> In the first year without property taxes, school districts would receive the same amount of money they brought in under the previous property tax regime; and every year after the school districts would receive an adjusted amount based on any change in the average percentage increase in the sales and personal income taxes.<sup>113</sup> Although property taxes would formally be eliminated under such a system, school districts with pre-existing debt would be permitted to continue collecting property taxes on a limited basis to pay off that debt.<sup>114</sup>

### B. *Why the Alternative Does Not Work*

At first glance, these alternative policies appear to implement a system where the state would assume responsibility for school funding regardless of local taxpayers’ ability to pay, and the school districts would see no decrease in their overall funding.<sup>115</sup> However, there are serious concerns about the inequity that would

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<sup>108</sup> PASBO I, *supra* note 106.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*; Lee, *supra* note 104 (“The higher sales tax would also be imposed on . . . non-prescription medications; funeral expenses; diapers; child care services; trash collection; public transportation; newspapers and magazines; flags; horses; textbooks; candy; gum; and telecommunications (cellphone plans).”); WOOD & WARD, *supra* note 4, at 19 (suggesting that child and home health care would also be subject to sales tax under this new policy).

<sup>111</sup> Mezzacappa, *supra* note 17.

<sup>112</sup> PASBO I, *supra* note 106.

<sup>113</sup> *Id.*

<sup>114</sup> McCorry, *supra* note 3.

<sup>115</sup> Lee, *supra* note 104.



develop out of such a system.<sup>116</sup> First, the bulk of the redistributed funding would go to the school districts where the property tax values are the highest,<sup>117</sup> and thus these funds would not go necessarily where they are most needed.<sup>118</sup> With such a system in place, existing inequities in funding would be perpetuated as wealthier districts continually receive more funding than less wealthy districts.<sup>119</sup> Additionally, the elimination of property taxes would destroy a school district's autonomy to generate revenue for itself.<sup>120</sup> If a district would need to increase their revenue to address unexpected expenses or to expand their resources in any productive way, they would be unable to do so for themselves.<sup>121</sup>

There would also be significant consequences for the increase and expansion of personal income and sales tax. For one, these taxes rely on the health of the economy and a declining economy would severely limit the amount of money available to school districts.<sup>122</sup> Additionally, 97.6% of public school districts in Pennsylvania would be unable to eliminate property taxes for some time in order to pay off their pre-existing debt,<sup>123</sup> which in some cases could take more than twenty years.<sup>124</sup> Therefore, the property owners in almost every district would have to pay the increased personal income and sales taxes without receiving the benefits from the elimination of property taxes.<sup>125</sup> Generally, less wealthy school districts have

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<sup>116</sup> See *id.*; Mezzacappa, *supra* note 17; WOOD & WARD, *supra* note 4, at 19.

<sup>117</sup> Lee, *supra* note 104 (“School districts in Allegheny, Bucks, Chester, Delaware, Montgomery and Philadelphia counties have the highest property taxes, and in the one-to-one replacement funding promise, these districts will receive the lion’s share of the funding.”).

<sup>118</sup> See Mezzacappa, *supra* note 17.

<sup>119</sup> WOOD & WARD, *supra* note 4, at 19.

<sup>120</sup> Lee, *supra* note 104.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> See *School Property Tax Elimination? Not for Many.*, PA. ASS’N SCH. BUS. OFFICIALS, <http://www.pasbo.org/Files/SB76%204.pdf> (last visited Aug. 22, 2018) [hereinafter PASBO II] (providing data that 488 out of the 500 total Pennsylvania school districts would still have pre-existing debt to pay off, based on 2014–15 data).

<sup>124</sup> Hacke, *supra* note 8 (“If the proposal to eliminate property taxes gets the go-ahead . . . residents in the McKeesport Area School District would be paying nearly 80 percent of their property taxes for the next 22 years, while still paying the added sales and personal income tax like everyone else.”).

<sup>125</sup> PASBO II, *supra* note 123.

proportionally more debt.<sup>126</sup> Taxpayers in these districts would have to pay more in personal income tax, sales tax, and continue paying their property taxes, but they would not see any increased funding for their schools.<sup>127</sup> Thus, the poor would have to pay more, but receive less in return.

Some policy experts and politicians believe that the way public schools receive their funds from property taxes is outdated, inequitable, and ineffective.<sup>128</sup> However, the proposed alternatives to property taxes are just as problematic, if not worse.<sup>129</sup> In the long run, it would be better to fix the property tax system, rather than throw it away.

## V. PROPERTY ASSESSMENTS AND A PATH TO TAX UNIFORMITY

Property taxes are some of “the most reliable and stable source[s] of funding” for many different public resources.<sup>130</sup> The property tax system allows school districts to respond directly to the needs of their districts,<sup>131</sup> and provides them with a sense of a stability, enabling them to estimate year to year the funds they will have to budget.<sup>132</sup> Eliminating that resource for school districts will not only strip them of their autonomy, but it will prevent struggling communities from improving upon their facilities, their resources, and the overall education of their students.<sup>133</sup> Additionally, implementing the alternative tax regime would have disastrous effects across the Commonwealth, particularly in less wealthy districts.<sup>134</sup>

Without question, there are significant issues stemming from taxpayers’ struggles or inability to pay their property taxes, or to keep up with those payments

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*; Mezzacappa, *supra* note 17.

<sup>128</sup> Hacke, *supra* note 8 (referring to statements by Senator David Argall (R-Schuylkill)); Mezzacappa, *supra* note 17 (referencing statements by Zahava Stadler of EdBuild, a nonprofit focused on educated inequity and school funding).

<sup>129</sup> *See* Mezzacappa, *supra* note 17.

<sup>130</sup> WOOD & WARD, *supra* note 4, at 1 (“Property taxes . . . prevent[] cuts to schools, police, fire, and jails during economic downturns, and they are easy for local governments to administer.”).

<sup>131</sup> *See* Lee, *supra* note 104.

<sup>132</sup> Hacke, *supra* note 8.

<sup>133</sup> *See id.*

<sup>134</sup> *See supra* Part IV.

as their properties are reassessed at higher values.<sup>135</sup> However, these issues can be addressed without eliminating the property tax system. A substantial revision of the property reassessment system would lead to a more equitable and stable system of taxation for the entire Commonwealth.<sup>136</sup>

To attain a more sustainable and uniform system of property taxation, the state legislature should revise the property reassessment laws by: 1) eliminating the base year method for assessing properties; 2) mandating periodic, county-wide reassessments; 3) partially funding the mandated reassessments; and 4) establishing a state agency to oversee the reassessments throughout Pennsylvania. Over the past decade alone, Pennsylvania courts have dealt with an increasingly problematic reassessment system.<sup>137</sup> This system has led to pervasive inequities, particularly due to its failure to account for changes in fair market value for properties over extended periods of time.<sup>138</sup> This base year method in conjunction with the local entities' failure to periodically reassess properties has been the cause for much of the inequity throughout the Commonwealth.<sup>139</sup>

As the system currently exists, local entities are responsible for deciding when to reassess properties,<sup>140</sup> but the longer a taxing jurisdiction goes without reassessment, the less accurate the taxpayers' bills.<sup>141</sup> Local entities have little incentive to regularly reassess properties.<sup>142</sup> These reassessments can be incredibly

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<sup>135</sup> See generally McCorry, *supra* note 3 (describing the struggles that Ron Boltz, head of the Pennsylvania Liberty Alliance, faced following a significant increase in his property taxes); McCrystal, *supra* note 3 (explaining the concerns for elderly taxpayers keeping up with their property taxes, and why some grassroots organizations are pushing for tax reform); Zhorov, *supra* note 92 (discussing the financial burdens poorer property owners face when their counties do not conduct periodic reassessments).

<sup>136</sup> WOOD & WARD, *supra* note 4, at 20–21.

<sup>137</sup> See generally Valley Forge Towers Apts. v. Upper Merion Area Sch. Dist., 163 A.3d 962, 979 (Pa. 2017); see also Clifton v. Allegheny Cty., 969 A.2d 1197, 1222–29 (Pa. 2009) (finding that the use of a base-year method for property reassessment is not itself unconstitutional, but the practice can be subject to an as-applied constitutional challenge); Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals, 913 A.2d 194, 201 (Pa. 2006) (citations omitted) (recognizing that local entities have considerable leeway to use property assessment to discriminate against similarly situated property owners who are underrepresented in the general population).

<sup>138</sup> See *supra* notes 45–57 and accompanying text.

<sup>139</sup> Murphy, *supra* note 2.

<sup>140</sup> *Id.*

<sup>141</sup> Zhorov, *supra* note 92.

<sup>142</sup> WOOD & WARD, *supra* note 4, at 20.

costly, both politically and financially, and many local entities have difficulty bearing the burden of that cost.<sup>143</sup> However, properties need to be regularly reassessed to ensure that assessment values are accurate.<sup>144</sup> Without such accuracy, less wealthy areas can become over-assessed and the taxpayers would be forced to overpay, while wealthier areas can become under-assessed and those taxpayers would underpay.<sup>145</sup> This sort of disparity grows worse with time, because the market continues changing while the assessment value corresponds only to an isolated period of time (the base year).<sup>146</sup>

To ensure fairness, uniformity, and accuracy, local entities should be mandated to conduct periodic reassessments of all the properties within their taxing jurisdictions. Periodic reassessments would better reflect changes in the market value of properties, and thus enable taxpayers to pay at a rate that is more appropriate to their situation.<sup>147</sup> Over time, some areas may surge in popularity while others become less popular and periodic assessments would account for these changes.<sup>148</sup> This mandate, by itself, would leave local entities with a significant financial and political burden,<sup>149</sup> but the Commonwealth could relieve local entities of this burden.<sup>150</sup>

Pennsylvania's "anything-goes policy" has effectively created a different tax system for each of the sixty-seven counties across the Commonwealth.<sup>151</sup> The lack of uniformity in property taxes across the state means that taxes can be vastly different on similarly priced homes just because the properties are situated in different counties.<sup>152</sup> Recent studies indicate that Pennsylvania could achieve more equity in its funding schemes by implementing a more centralized system for

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<sup>143</sup> Zhorov, *supra* note 92.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Murphy, *supra* note 2.

<sup>147</sup> WOOD & WARD, *supra* note 4, at 20–21.

<sup>148</sup> Murphy, *supra* note 2.

<sup>149</sup> Zhorov, *supra* note 92 (“Allegheny County’s latest reassessment cost about \$13 million and its previous one about double that.”).

<sup>150</sup> WOOD & WARD, *supra* note 4, at 20–21.

<sup>151</sup> *Id.* at 5.

<sup>152</sup> *Id.*

assessing properties.<sup>153</sup> This more centralized system could be partially realized by establishing a state agency to oversee the reassessment process,<sup>154</sup> which might also prevent discriminatory assessment practices from taking effect, thwarting future litigation and the subsequent expense of judicial resources. Additionally, the state government could share the costs of these periodic reassessments to relieve local entities of the full financial burden.<sup>155</sup> By mandating the reassessments and helping to fund the process, the state government would shift some of the political and financial burden to themselves rather than the local taxing entities.

The Commonwealth's elimination of the base-year method and partial funding of the periodic reassessments, as well as creation of an agency to oversee the whole process, would allow local entities to administer a stable and reliable form of taxation, ensure school districts maintain their autonomy for generating revenue and provide taxpayers with bills that reflect their actual circumstances. Moreover, the importance of property reassessment laws and their relationship between citizens and the state government cannot be understated. The laws regarding these tax assessment appeals provide both the local entities and property owners with an opportunity to voice their claims in a judicial setting.<sup>156</sup> If a property owner believes their property taxes are too high, they have a right under the law as a taxing entity to challenge their assessed value and file an appeal.<sup>157</sup> The alternatives to the property tax system do not allow for that level of representation or protection under the law.

## VI. CONCLUSION

The motivation to eliminate Pennsylvania's property tax system is at an all-time high. The state legislature, grassroots organizations, voters, and the Pennsylvania courts have all had a hand in laying the groundwork for the potential elimination of property taxes. Financial disparity across the Commonwealth can be partially attributed to the current property tax regime. At first glance, the elimination of property taxes might seem like a victory, but given the alternative sources of revenue, that disparity would only become worse. School districts would lose their autonomy to respond to their district's specific needs, and poor property owners would have to pay more taxes overall and receive less benefit in return. A revision

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<sup>153</sup> EDBUILD, *supra* note 18, at 53.

<sup>154</sup> WOOD & WARD, *supra* note 4, at 20.

<sup>155</sup> *Id.* at 20–21.

<sup>156</sup> 53 PA. CONS. STAT. §§ 8854–8855 (2018).

<sup>157</sup> *Id.* § 8854.

of property assessment laws, rather than a complete elimination of property taxes, would be a more effective solution to these problems.

By eliminating the base-year method of assessing property, mandating periodic reassessments, partially funding these mandated reassessments and creating a state agency to oversee the reassessment process, Pennsylvania would attain a more equitable and uniform system of taxation. There is still the question of how these reforms would be funded, which is what the state government should primarily be focused on, if their goal is tax uniformity. The revision of property assessment laws is a long-term solution to the problems arising out of the current property tax system. It could potentially repair a broken system rather than throw it away. Eliminating that system of taxation and replacing it with something more problematic could have serious long-term consequences and exacerbate the very disparity it set out to avoid.

