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Student Symposium on Kentucky Property Tax: Introduction

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INTRODUCTION

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At this date a study of the weaknesses of property tax administration must be greeted with a certain sense of *deja-vu*. The property tax must rank among the most studied and lamented of American institutions, and among the least reformed. As the present articles point out, by 1916 the Kentucky property tax had been studied by no fewer than four different commissions. The abuses catalogued, and the remedies by that time prescribed, were essentially those advanced so cogently here over fifty years later. In state after state the story is the same. Eloquent, thoroughly-documented calls for reform lie buried away in the official archives.

When the abuses and their remedies are so well known, why has nothing been done? The urgency of need is not lacking. Where property tax administration most needs reform, it seems public revenues are in the worst condition. Regrettably, Kentucky itself provides an example. In eastern Kentucky, as Harry Caudill and others have so persuasively shown, local governments and school districts stand starved and threadbare astride some of the most mineral-rich land in the world. But corporations, some of the nation's most profitable, cart this wealth away, leaving not tax dollars but only rubble and ravaged, worthless land behind.

The revenue potential is there. Effective administration of existing property tax laws could get at much of it. Why has the property tax been allowed to remain so weak for so long?

Powerful private interests benefit from weak local property tax administration. While not the whole story, that is a good portion of it. Where administration is weak, where local officials lack power or competence or will or all three, large private concerns can be a tax law unto themselves. So it has been in Kentucky. Mr. Richard Kirby reported in the October, 1969 *Appalachian Lookout* that coal companies in eastern Kentucky literally present their own assessment to the county tax commissioner.

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They tell him how much land they own (in aggregate amounts only) and how much it is worth. "People (meaning 'coal companies') just paid what they thought they should. Still do, mostly" one tax commissioner said. Even if a commissioner wants to check the figures, he lacks the means. And should he be so presumptuous as to challenge the self-assessment anyway, the company promptly appeals to the county board of tax supervisors. The chairman of that board is typically an official of the county's largest coal company, according to Mr. Kirby.

The coal companies which write their own assessments have not been unduly harsh on themselves. The Louisville Courier-Journal said in 1965:

> Coal has been a reluctant taxpayer . . . The industry has been able to get rock-bottom assessments on land loaded with black wealth. Thousands of acres of coal land worth \$200 to \$300 an acre get on the assessment books at \$2.00 an acre. Other thousands of acres are literally hidden from the assessor.

In coal-rich Pike County, where 45.3% of the people live below the poverty level and where the school district could raise only 18.3% (rather high for eastern Kentucky) of its costs, 40% to 60% of the county's land and wealth were found to be under-assessed or not assessed at all. Over 65 million dollars worth of coal was mined out of this revenue-starved county in 1966.

As minimal as the public services have been in eastern Kentucky, someone has had to pay for them. Who? The small local property owners have been paying more than their share—subsidizing, in effect, their corporate malefactors. Mr. Caudill, in *Night Comes to the Cumberlands,* cites examples of land belonging to individuals being assessed at four times the rate of land belonging to the coal companies, and of the homes of company officials being assessed at a fraction of the value put on the plainer homes of working people. Then too, taxpayers in the rest of the state pick up much of the remaining tab. And even here, on the state level, it is individual and not corporate taxpayers who carry the load. Data presented at the recent National Education Association hearings in Kentucky revealed that, measured against fifty-state averages, Kentucky has over-utilized the general sales and individual income taxes, while it has under-utilized corporate income, general property, and severance taxes.[1] The sales tax is illustrative. Kentucky's sales tax rate is the second highest in the country, but machinery for new or expanded industry, including most mining equipment, is exempted.

The people of Kentucky are not alone in being victimized by large corporate interests. Riding roughshod over weak local property-tax administrators, and striving to keep them that way, appears to be a national corporate pastime. For example, a study published in the December 4, 1970 *Congressional Record* showed that oil and gas properties in Ector County, Texas, are being undervalued by over 55%, and that in east Texas, six counties and eight local school districts are losing over three-quarters of a million dollars annually through the underassessment of timberlands. Atlantic Richfield, Shell Oil, Cities Service, Owens-Illinois, and Champion-U.S. Plywood are among the needy beneficiaries of this assessment largesse.

Nor are small rural taxing districts alone in their inability to hold America's largest legal persons to the property tax laws. In Gary, Indiana, U.S. Steel openly defies a city ordinance and refuses to take out building permits when it makes additions to its plant. Thus it denies the city assessor any information on its property's value. The end result is the same as in the hills of eastern Kentucky—virtual self-assessment. And as in Kentucky, these self-assessments have not been unduly burdensome. Over the last decade U.S. Steel has put as much as 1.2 billion dollars worth of improvements into its Gary works, yet its property-tax assessment during that time has risen by only about $10 million. While property taxes on individual Gary residents have tripled, U.S. Steel's have gone up less than one-third.

In fact, U.S. Steel has left its mark on Kentucky as well as on Gary. In 1969 it consumed about two-fifths of all the coal used in steel manufacture in the United States, and it mined about one-fifth itself. It mines more coal out of Harlan County, Kentucky, than does any other extractor—International Harvestor is number two—and it operates a preparation plant in Corbin.

The corporate presence of U.S. Steel in Gary (pop. 174,132)

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[1] National Education Association, Commission on Professional Rights and Responsibilities, *Education in Kentucky: A Legacy of Unkept Promise* (May, 1971), p. 91.

and Harlan County (pop. 36,595), has been remarkably similar and malign. Both localities are strapped for school funds. Gary's fund for education, financed largely by property taxes, was nine million dollars short this year. Harlan County could pay for only 6.8 percent of its school costs in 1968. In Gary, Steel has not been as retentive with its pollutants as it has with its tax dollars. It and its subsidiary Universal Atlas Cement provide over four pounds of harmful emissions daily for every Gary resident. And Steel has been just as obliging in wrecking the Harlan County environment. According to Harry Caudill, it is strip mining the Big Black Mountain there—Kentucky's highest—on several levels. "One of its seams is eleven feet thick and occasionally the cut leaves highwalls ninety feet high," he writes.

How do companies like U.S. Steel contrive to keep local tax administration feeble and the communities in which they operate tax-poor? Influence in the state legislatures is widespread; there is an urgent need, in fact, to begin to monitor the actions of corporate lobbyists. On the local level, corporate money and influence have an arsenal of ways of working their will, from offers of jobs or emoluments to local officials or their relatives, to threats of reprisals against employees who "make trouble". In Kentucky, of course, many of the coal companies literally got in on the ground floor—they incorporated their company mining towns and thus had control of local politics from the start.

"Tax blackmail" is the ultimate tactic for keeping legislators and local officials in tow, and property tax administration weak. But compliant local officials have been too ready to accept on faith the corporate bleatings about tax burdens, and the threats to move elsewhere. Where officials and citizen groups have tested such assertions, they often have found them wanting. For example, taconite producers in Minnesota were guaranteed favorable tax treatment for twenty-five years in a 1964 referendum. Currently, taconite is taxed at only thirteen cents per ton, and the producers—among whom is our old friend U.S. Steel—avow that they need special treatment in order to survive in the world market. Commissioned to test these avowals, the Stanford Research Institute found that taxes on taconite actually could be increased to fifty cents per ton without affecting the level of taconite production in the state. Even larger increases, though possibly affecting yearly production, could result in still greater revenue gains.[2] It was said that, overall, Minnesota could be receiving over $40,000,000 yearly in additional revenues from taconite producers; and that if this revenue were applied to matching-funds programs, the figure could grow to $200,000,000 or more. One must wonder what such a study would reveal about the ability of Kentucky coal producers to absorb higher taxes.

The demand for a "tax incentive" is a special side of corporate tax blackmail. A handbook for business tax-dodgers advises on how to exploit the local boosters:

> It is often more advantageous to work with local groups, especially those with close connections to the local government—official or unofficial—than to work through State agencies. Local groups may be in a better position to arrange for such local matters as extending water and sewer lines to, and improving roads near, your site. Too, they may be able to obtain a "better break" for you on your property assessment.[3]

Far from applying residency requirements to corporate welfare applicants, localities have fallen over themselves to coax them in. The eagerness to attract new "industry", and the anxiety over losing old, is premised on two notions: first, that such industry is a boon to the locality even if it does not pay its share of taxes, and second that property tax levels are an important determinant of industrial location. Both of these notions have been accepted too often on faith, and both are questionable.

For the first, it is not completely clear that anyone actually benefits from local tax subsidies to corporations besides the corporation itself and a few special interests. Here in Kentucky, the United States Department of Agriculture examined the impact of new industry on five small towns. Some of the industries had been offered "incentives", ranging from "favorable" property tax assessments (at about one percent of market value) to free extensions of water lines. The USDA found that "The establishment of new manufacturing plants in five rural towns in Ken-

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[2] William V. Morris, *The Effect of Higher Production Taxes on the Minnesota Taconite Industry*, (SRI Project ECC-8298, Stanford Research Institute, Menlo Park, California, May, 1970).

[3] Prentice-Hall Inc., *The Prentice-Hall Guide to State Industrial Development Incentives*, (Englewood Cliffs, 1963), p. 10.

tucky during the period 1958-1963 had a negative net fiscal impact on most of the affected local government units".[4] The impact was negative (albeit small, in most cases), the Department found, *even when no special tax treatment was extended.* Moreover, the study was limited to *fiscal* impacts. The costs arising to the communities from pollution, congestion, and the other ill effects of industry were not considered.

The importance of tax rates in plant location decisions is likewise in doubt. After extensive study, the U.S. Advisory Commission on Intergovernmental Relations concluded in 1967, "Between distant states, tax differentials appear to exercise little plant location influence . . . As between neighboring states, there appears to be no clear relationship between industrial growth trends and tax differentials."[5] In other words, legislators may have an exaggerated fear—not discouraged by corporate officers—of taxing industry out of their jurisdiction. (The sad irony is that the quality of local services, especially the schools, *can* weigh heavily in location decisions. By starving themselves to grant tax breaks to some businesses, localities may be making themselves unattractive to others.) The ACIR did find that tax rates can become important when a company is choosing between locations within a state, and especially within a metropolitan region. Larger taxing jurisdictions, or better still, uniform treatment of all industries within a state, could remedy the problem at this level, and disarm corporate officials of the cudgel they now wield against local governments.

To stop corporate tax-shelter hunting, and corporate strong-arming of tax policy and administration, ultimately there must be action at the state, regional, and even the federal levels. But local governments, even the smallest, do not have to wait before daring to hold large corporate enterprises to the tax laws. Little Anmoore, West Virginia (pop. 1050) recently demonstrated this by calling the bluff of mighty Union Carbide (sales in 1969, 2,933 million dollars) and winning. Anmoore officials had long paid obeisance to the Carbide installation there—which, as one

[4] U.S. Department of Agriculture, Economic Research Service, *The Impact of New Industry on Local Finances in Five Small Towns in Kentucky,* (Agricultural Economic Report #191, September, 1970) p. iv.

[5] Advisory Commission on Intergovernmental Relations, *State-Local Taxation and Industrial Location* (#A-30, April, 1967) p. 70.

writer put it, "consumes a third of the town's total acres and all of its air." Carbide was assessed at only 30% of fair market value, as compared to 50% for everyone else, and until last year it had not even been subjected to an optional building and occupancy tax. (Last Year Anmoore levied only a small fraction of the tax). Last December, however, the fealty ended. Behind the leadership of Mayor Buck Gladden, a three-dollar-an-hour laborer, the city council imposed the business and occupancy tax in full. Anmoore will realize about 100,000 dollars annually in additional revenues, and it will be able to build sewers, and provide playgrounds for its young, for the first time.

As much as reform of the property tax is needed, reform of it alone may not be enough. To achieve tax equity, substantive changes in tax policy may be necessary; enactment of a severance tax, and more adequate taxation of business and corporate income, are two very likely possibilities. But what the history of the property tax can teach us, and what needs to be faced before tax equity of any sort can be achieved, is that powerful economic interests will try to undermine or distort whatever reforms are proposed. And no matter how equitable a system of taxation may seem on paper, it will become still another vehicle of injustice, a tool of the powerful, if it is not administered competently and with strength, and if an informed and alert citizenry does not ceaselessly watch at the gates.

The question is no longer what needs to be done. The question is now who will do it. The readers of these articles are in a unique position to lead. While the spirit of reform must run broadly throughout the people, the lawyer's tools will be the decisive ones in the legislatures and in the courts. Regretably, the bar will find little inspiration for such efforts in its own past. Comfortable retainers have too often made lawyers the docile agents of abuse. But as much as our culture worships comfort, the bar at least professes to value justice more. It is time for lawyers to practice what is professed and represent the unrepresented interests in the property tax arena.