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Byron L. Dorgan

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# AN ALTERNATIVE TO THE NORTH DAKOTA STATE BOARD OF EQUALIZATION

BYRON L. DORGAN\*

The North Dakota State Board of Equalization is a Board created by state law and referenced in the State Constitution.<sup>1</sup> It is this writer's opinion that with the present state law, inadequate authority is given the State Board of Equalization. The Board is inadequate to deal with requests from taxpayers for investigation and subsequent relief in the case of alleged inequitable tax assessments. Further, it seems that the State Board is ill-equipped to make informed judgments on railroad and public utility assessments. This is not meant to infer that the capabilities of the members of the Board of Equalization are the limiting factor in the Board's operation. It is a fact, however, that most of the Board of Equalization members are experts in fields other than taxation and do not have enough time to spend in the area of taxation to make the kind of judgments necessary for good tax administration. These observations indicate a change may be beneficial.

## *Scope of Article*

The bulk of this article will deal with the functions of the State Board of Equalization and alternative ways of dealing with the prescribed duties of that Board. It will consider long-run possibilities of changing the methods of tax review, equalization of levels of assessment, administration of new industry exemptions, and taxation of railroads and public utilities.

Although this article will give primary emphasis to a long-run perspective of change, it is my opinion that there are some short-range legislative changes which could be made as a prelude to other substantive changes to be considered by a constitutional convention.<sup>2</sup>

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\* M.B.A., 1966, University of Denver; B.S., 1964, University of North Dakota; Tax Commissioner, State of North Dakota, 1969 to present; Past President, Midwestern States Association of Tax Administrators; Treasurer, Multistate Tax Commission; Secretary, North Dakota Board of Equalization; Former Instructor in Economics, Bismarck Junior College; Advisor, College of Business Administration, Mary College.

1. N.D. CENT. CODE ch. 57-13 (1960, Supp. 1969); N.D. Const. Art. XI § 179 (1889).

2. North Dakota will hold a 30 day Constitutional Convention beginning January 1972.

### *Some Conclusions*

Since the State Board of Equalization is mentioned in the State Constitution, as a long-run proposition, it is recommended that the constitutional convention take action in deleting it from the constitution. There are also some short-range steps that the state legislature could take which would be a beginning in the reorganization of the above mentioned functions.

In the short-run, it is recommended that the 1971 Legislature initiate a study to create a Board of Tax Appeals. The Board of Tax Appeals would have a semi-administrative judicial status and would have as its chief function, the review of tax rulings issued by the Office of State Tax Commissioner as well as other taxing jurisdictions in the state.

The necessity for a Board of Tax Appeals is evident when we recognize the difficulty the North Dakota citizen has in seeking relief from alleged inequitable tax assessments. Relief from inequitable tax assessments should not be an exclusive achievement of only those wealthy enough to utilize the established court systems. Speedy, inexpensive review of tax decisions by the State Tax Commissioner and the local taxing districts is an absolute necessity for a good tax system.

The mechanics of the Board of Tax Appeals would require much more study and time than devoted to it in this article. The latest information indicates that 18 states and the District of Columbia have independent agencies concerned exclusively with the review of tax rulings issued by a state or local tax official.<sup>3</sup> Their membership and method of operation vary considerably. In most cases, when functioning as a tax review body, a Board of Tax Appeals is an agency that a taxpayer can approach without the expense of hiring a lawyer, if he so desires, and argue the merits of his case in a rather informal manner.

Some states have allowed the administrative review agencies such as a Board of Tax Appeals to replace the State Board of Equalization in those areas where the duties of the State Board of Equalization—those cases where the duties would not be performed in the State Tax Commissioner's Office. My proposal for a two-stage creation of a Board of Tax Appeals would envision the Board of Tax Appeals inheriting those responsibilities that the State Board of Equalization has in those cases where the duties would not be performed in the State Tax Commissioner's Office. It would also review decisions, on complaint, from the Tax Commissioner's Office on a broader scope.

The analyses in this article are not meant to be all inclusive.

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3. Information furnished by Charles Conlin, Executive Secretary, National Tax Association, Chicago, Illinois.

The article may well raise more questions than it answers. However, if this article has contributed to the dialogue in the never ending attempt to make tax laws and the administration of taxes more responsive to people, then a noble purpose will have been served.

### *Analysis*

One of the interesting characteristics of many state governments is the propensity to govern, as much as possible, by using the committee, board, or group method.

It is generally recognized that the committee approach to problem solving or administration will usually produce a better result than that which could be obtained from the worst member of the committee, but it will also usually produce a worse result than that which could be obtained from the best member of the committee. Because the committee approach to problem solving will generally, through compromise among its members, reject the extremes and reach a middle ground solution, it is a popular form of management for governmental units. In the government arena, the committee form of decision making also has the advantage of spreading the political risk of unpopular decisions among several members.

North Dakota State Government has many Boards and Commissions which are instrumental in the governing process. Many of the Boards and Commissions are very sound in theory and results. They provide the best possible method of dealing with a specific problem area. Other Boards and Commissions have served their function and should be abolished. Certain Boards and Committees should be revised and their charter renewed with fresh charges in order to make them more effective in today's governing process.

The State Board of Equalization is a Board which the constitutional convention should study carefully in order to evaluate its worth in today's governing process.

### *What is the State Board of Equalization?*

The State Board of Equalization is a board created by Chapter 57-13 of the North Dakota Century Code, and which is granted certain authorities under Art. XI § 179 of the North Dakota Constitution.

The Governor, state treasurer, state auditor, commissioner of agriculture, and the state tax commissioner are the members of the Board. The Governor is chairman of the Board and the tax commissioner serves as its secretary.<sup>4</sup>

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4. N.D. CENT. CODE § 57-13-01 (Supp. 1969).

*What does it do?*

The Board of Equalization has the following duties:

1. It must assess all state assessed property in accordance with the provisions of Art. XI § 179 of the constitution of the state and the statutes of the state. It establishes final assessed values on railroad and utility properties.
2. It must examine and compare the returns of the assessment of taxable property as returned by the counties in the state and it must equalize the same so that all assessments of similar taxable property are uniform and equal throughout the state.
3. It must administer the property and income tax exemption law as it applies to new industry outlined in Chapter 40-57.1 of the North Dakota Century Code (Supp. 1969).
4. It is authorized by the legislature to levy a state-wide tax on property when needed to meet legislative appropriations (See section 57-15-03 N.D. Cent. Code and Art. XI § 174 of the North Dakota Constitution); the last such levy was made by it in 1966.

*What are the Advantages of a Committee System in Tax Assessment?*

It seems obvious that those who drafted the statute establishing the State Board of Equalization had in mind a representative group of state officials getting together to maintain equity in state and local property taxation, and providing assistance to the state tax department in the difficult job of developing procedures for assessing railroad and public utility properties.

By establishing a diverse membership of state officials, the board has qualities of representation offering varied backgrounds, technical skills, and political philosophies.

The job of equalizing the levels of assessments in and between the counties of the state is not an easy job. It requires resistance to pressure from many different groups and it requires independent judgment of the facts. The committee system gives flexibility in judging these facts and it gives anonymity to the individuals of the committee in the unpopular job of equalizing.

*What are the Disadvantages of a Committee System in Tax Assessments?*

As mentioned earlier, the committee system usually produces something worse than the best possible result. The decision by committee on very complex tax problems necessitates an intensive educational effort during a three or four day period, and even then, the members of the Board can acquire only a minimum of knowledge. The Tax Department, in submitting tentative assessments and pro-

viding recommendations to the Board, also has to provide an educational review for the Board each year. This review cannot help but amount to a lobbying effort for the Tax Department's positions.

The State Board, in most instances, has simply become an affirmation voice for the Tax Department's tentative assessment. Five days of hearings rarely provide any revealing advantage by having five state officials spend time reviewing tax department assessments. It is not a productive or necessary procedure.

### *Does the Above Description of the Board of Equalization Issue a Call For a Change?*

Clearly, the State Board of Equalization is an obsolete tool of government. The duties it performs could be and should be performed in another arena by a different authority.

The presumption upon which Boards and Commissions like the State Board of Equalization were founded are as organizationally unsound today as they were twenty years ago. The fragmentation of authority among many state officials made it impossible for any one official to misuse authority. It also may have prevented the wise use of authority.

The State Tax Department should be given the authority necessary to carry out many of the functions now performed by the State Board of Equalization. Other functions should be performed by a Board of Tax Appeals mentioned later in the article.

### *Utilities Assessments Should Be Made by the State Tax Commissioner.*

The assessments of property of railroads and public utilities, as described in Chapters 57-05 and 57-06 of the North Dakota Century Code, is a job now performed by the State Board of Equalization. In practice, the State Tax Commissioner establishes the tentative assessments and the Board of Equalization fixes the final assessments. In only rare instances has the Board of Equalization set final assessments which differed from the tentative assessments.

### *Why Change This Method of Assessing State Assessed Property?*

The members of the State Board of Equalization are asked to perform an almost impossible task. They must disseminate, digest, and analyze a great deal of data in a few days and make some important decisions on millions of dollars of tax liabilities.

There is no evidence that this method produces results that are more accurate or equitable than if the Tax Department were to set the final assessments following the statutory guidelines for developing market value.

If the assessments as set by the Tax Department are too high,

the railroads or utilities companies could, as they may now, appeal the assessment to the district court. Similarly, if a citizen felt that the Tax Department was assessing at too low a value, relief may be sought in court. The Tax Commissioner, before setting final assessments, would hold public hearings to allow anyone or representatives of any company to testify regarding the tentative assessments.

*What Procedure Would Be Used To Equalize Levels of Locally Assessed Property?*

The task of equalizing levels of assessments between counties is the most difficult task that faces the State Board of Equalization. The task is difficult for three reasons. They are:

1. The absence of a strong county assessor system results in a generally poorer quality of assessment than that which could be expected if the assessment process were well organized.

2. The absence of 100% level of assessments also poses problems for the Board inasmuch as the Board must set arbitrary levels as goals and then must fight inflationary pressures every year in setting property assessment levels.

3. The presence of only one valid tool (the sales ratio study) for use in equalizing levels of assessments subjects the Board members to enormous pressure from special interest groups. (It is worth noting that the Board has stated it will use any and all statistical and subjective tools that it is provided in the equalizing process. Unfortunately, no such aids are evident, even to the critics of the sales ratio study.)

There needs to be action taken to assure that property will be assessed at the 100% level. This action could be in the form of legislation or it could be appropriate court action to enforce the law now on the books. The enactment of a strong County Assessor bill and a 100% assessment bill will make the job of equalizing between counties much easier.

Equalization should be made based on the use of the sales ratio study to determine the level of assessments. The counties would then be adjusted up or down to equalize at or near the 100% level.

If there are those who criticize the use of the sales ratio study as the criterion for moving assessments, let them produce another reliable statistical guide. If they are inclined to seek lower assessments on certain classes of property than those that are shown through the market value indicators, then let those persons or groups seek a classification bill in the legislature.

If we are all honest about the intentions and results of movements, up and down, of property assessments, then those who now

criticize the sales ratio study will turn their efforts toward legislation which would classify property for taxation purposes, and would recognize that the sales ratio study tests exactly what it should—market value. The Tax Department could make these adjustments of the counties assessments if the procedures and guidelines are properly codified. Again, proper appeals provisions would be available to an aggrieved taxing unit or taxpayer. These provisions will be presented in a later section of this paper.

#### *How Would the New Industry Exemption Be Handled?*

The applications for tax exemption for the new industry are now approved or disapproved by the State Board of Equalization. The difficulty that has been encountered in this task is the lack of clarity in the law in determining which businesses qualify for the exemption. The governing body of a city or county must apply on behalf of the new industry to the State Board of Equalization. The principal function of the Board is to determine whether the new business meets the criteria set out in the law.

If the law is clarified during the next legislative session, the function of approving or disapproving the applications from local government will become a rather simple task of relating facts to pre-established guidelines. The law should be changed to read that only businesses engaged in manufacturing, processing, fabricating, assembling or warehousing are eligible for the exemption. This focuses on the type of new industry we're trying to attract. This exemption could operate much like the Municipal Industrial Development Act exemptions.

If the law is clear, a formal application to the Tax Commissioner would be sufficient to manage such an exemption, providing local government is informed on the administration of this law.

#### *What About the 4-Mill Levy?*

The 4-mill levy which the State Board of Equalization may enact against taxable property in the state would simply be eliminated. As resolutions passed by the State Board of Equalization in recent years have stated, the state should leave the property tax base to local government. If emergency measures are necessary to increase revenues, then the Governor should be given emergency powers to increase the income tax or sales tax revenues on a temporary basis.

#### *Establishing a Board of Tax Appeals*

After setting the stage with the above suggestions on reallocation of powers and duties of the State Board of Equalization, it is proposed



that a Board of Tax Appeals, as mentioned in the opening section of this article, be created.

An independent Board of Appeals is necessary for several reasons. They are:

1. At the present time, in North Dakota, the property taxpayer is thwarted by law in seeking relief from an inequitable property tax assessment. If the taxpayer pursues the abatement route, he will encounter the employers of his assessor, (the township or city board), and if he does not get satisfaction there he may appeal to the board of county commissioners who will likely turn it down if the local governing body did not see fit to approve it. After being turned down by the county, the taxpayer must appeal to the court if he persists. Most of the property tax disputes are too small for the taxpayer to commit the amount of money it takes to pursue his claim in court. For these reasons the taxpayer needs another appeal route that is faster and less costly when he wishes a proper hearing.

2. If the taxpayer decides to seek relief from an inequitable assessment by appealing to the various Boards of Equalization, he is again facing a stacked deck. If the taxpayer is able to appeal to the township or city board of equalization, he is appealing to the employers of the city assessor who will be advising the Board of Equalization. In many cases the township or city board of equalization meetings are difficult to attend since they are not well publicized. In order to appeal to the State Board of Equalization, the taxpayer must have filed an appeal at each level of equalization. The appeal to the Boards of Equalization is not an easy route to obtain tax relief.

As previously stated, it is proposed for the convenience of the taxpayer and to assure that the tax laws are applied fairly and equitably, that North Dakota establish a Board of Appeals. The actual mechanics of such an appeal board are of less concern than the broad objectives which signal the need for its creation. Just for starters, however, I suggest that the Board of Tax Appeals be a board composed of a professional commissioner appointed by the Governor for a six year term. The law should specify the minimum qualifications for eligibility. Also, the office should be provided a competent investigator to investigate, analyze and make recommendations on tax matters.

As was mentioned in the very early part of this article, the Board of Tax Appeals should be initiated on a two-phase schedule. Initially, by virtue of enabling legislation, the Board of Tax Appeals would serve as a tax review body similar to a small claims court in facilitating review of tax rulings. Later, after the constitutional

question is dealt with, the Board of Tax Appeals would inherit a few of the functions now possessed by a State Board of Equalization. While the property tax area begs most prominently for an agency to review inequitable assessments, the Board of Tax Appeals would not have to limit its jurisdiction to the property tax area. In the long-run it would renew the faith people must have in their tax system to keep that system acceptable to the citizenry.

