

DRAFT

**PENNSYLVANIA'S TAR-BABY:
THE PROPERTY TAX AND ITS ENDLESS REFORM**

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INTRODUCTION

One day Brer Fox thought of how Brer Rabbit had been cutting up his capers and bouncing around until he'd come to believe that he was the boss of the whole gang. Brer Fox thought of a way to lay some bait for that uppity Brer Rabbit. He went to work and got some tar and mixed it with some turpentine. He fixed up a contraption that he called a Tar-Baby.

Joel Chandler Harris, "Brer Fox and the Tar-Baby"

Taxation is an economic process which has a symbiotic relationship with governmental policy and socio-economic conditions. Basically, all governments are dependent on some source of revenue, which typically is supplied from fees and taxes. While the purposes of government and what the govern society hopes to achieve is established within a constitution, the reality of what can be accomplished through enacted statute and bureaucratic implementation is, in-part, limited to what revenue the government can raise.

In order to accomplish any public policy, a government must establish some revenue source to fund that policy. The ability of that revenue source to provide adequate revenues for public policy, without being detrimental to other governmental policies, and without being detrimental to the socio-economic conditions of the state, is a method of measuring the success or failure of a particular revenue sources.

A perusal of an historical surveys of world societies, such as Toynbee or Durant, shows that no society as a whole, is happy about taxes. True to historical form, the United States is no exception, with our ancestors opposition to taxes having played a motivating role towards independence from Great Britain. Likewise, the Commonwealth of Pennsylvania has a colorful and vivid history of taxation hatred, most notably the "Whiskey Rebellion" of 1792 and "Fries Rebellion" of 1799.

Within the wide assortment of state and local taxes and fees, which invoke a multiplicity of Pennsylvania citizenry disdain, real property taxes appears to hold a special place of honor. The property tax was one of the first taxes imposed by the Provincial Council in the newly established proprietor colony of Pennsylvania. Ever since, it has produced a continual litany of complaints, criticisms, and legislative reform efforts. With each attempt at reform or change, there is a surprising lack of

actual change. In short the property tax just sits there, silent and taunting as successive legislative reform efforts throw their fists at it, thinking they will eventually get the knockout blow, however there is no knockout blow only fists stuck in the muck of the property tax tar-baby.

March 2006 shows the Pennsylvania General Assembly and the Governor yet again doing battle with the property tax tar-baby and getting themselves stuck in its oily muck as it just sits their. As the legislative staff of the honorable members of the conference committee attempt to develop a politically passable solution, it might be prudent to consider the history of the property tax in Pennsylvania. The Commonwealth has a long and valuable history of well-intentioned failure when it comes to the property tax and from it our tar encased selves can find the briar patch.

THE FIRST PROPERTY TAX AND THE FIRST REFORM EFFORT

Brer Rabbit came prancing along until he saw the Tar-Baby and then he sat back on his hind legs like he was astonished. The Tar-Baby just sat there, she did, and Brer Fox, he lay low.

"Good morning!" says Brer Rabbit, says he. "Nice weather we're having this morning," says he.

Tar-Baby didn't say a word.

Joel Chandler Harris, "Brer Fox and the Tar-Baby"

On January 30, 1683, William Penn, the Proprietor and Governor of "Pensilvania" and the 13 members of the Provincial Council met in Philadelphia and unanimously voted "that a Publick Tax upon Land ought to be Raised, to dray the Publick Charge."¹ The tax rate for the first Pennsylvania property tax is not known, due to the lack of surviving documents. What is known is that it was a fixed rate on every pound of "clear value" on the real and personal property. It is important to note that only personal property that contributed to the wealth production value of the real property was included. For example, a property included in a farm would consist not only of the land, but of all the farming tools and equipment. "Clear value" was the wealth production value of the land in terms of wealth actually produced or the market value if sold. Initially, the Council hired several men to make a tax roll and assess the clear value of the land, then the same men would serve as collectors of the tax.

Two weeks after the enactment of the first property tax, a compliant was filed with the Provincial Council regarding the assessment of property. Within a few months, the record of the Provincial Council shows over 100 complaints filed. There were tremendous problems determining the value of the land and in some cases

exactly which land would be taxed. The resulting disputes also made it difficult to collect the tax.

Initially, the Council decided that individual land owners would record the value of the property, but shortly afterwards disputes arose regarding each other's valuation. The Council returned to appointed assessors, but sought to decentralize the administration of the tax to local areas. Additionally, the Council developed and successively refined some general rules for assessing property. A decentralized approach, with some general guidelines for assessing took the burden of hearing complaints away from the Council and placed it on local officials who were appointed by the Council.

Eight years later in 1692, several hundred landowners from the three existing counties, Philadelphia, Bucks, and Chester, signed a petition to the Assembly listing the problems with the property tax and questioning even the need for its existence.² The complaints included: lack of uniformity in assessing property values; not related to the actual ability to pay resulting in the lost of land; and the excessiveness of the tax is placing an undue burden on estates.

The petition resulted in the Governor's Council appointing a committee to investigate the grievances and report back to the Council. Two years later, the committee issued a report on May 26, 1694 which found that records of assessors and tax collectors contained numerous mathematical errors and that assessors were prone to fraud and abuse of the system, in that they were undervaluing their own property and those of family and friends.³

In 1696, the first major reform of the property tax occurred. The Assembly passed and it was approved by the Governor's Council the hiring of six assessors in each county by the commissioners of the county. The job of the assessor was to establish the value of all property in the county and to provide a list annually to the county justices.⁴ Additionally, they were to calculate the tax bill for each freeman in the county, would establish the locations throughout the county for the payment of taxes, and audit the books of the county treasurer. The value of the land was determined, not by the sale price, but by the amount of money the land had the potential for earning.⁵ This led to numerous disputes, which are recorded in the minutes of the Governor's Council, which served as the final appeal board. The final reform was the introduction of a poverty exemption. Those who "had great charge of children and become indignant in the world and are so far in Debt, that the clear value of their Real and personal estate does not amount to thirty pounds are exempt."⁶

By 1700, the property tax became firmly established as a revenue source for the proprietor colony of Pennsylvania. After a contentious start, the first property tax reform effort can be noted for decentralization of the property tax to the county

level; establishing some guidelines for equitable assessments; providing an exemption for those in poverty; and, providing for a transparent process which had the publication of the tax rolls and an appeal process. While this settled some of the problems, disputes would continue about assessments and even the necessity of the tax.

REFORMS OF 1711 AND 1774

*"How are you feeling this morning?" says Brer Rabbit, says he.
Brer Fox, he winked his eye real slow and lay low and the Tar-Baby
didn't say a thing.*

*"What is the matter with you then? Are you deaf?" says Brer Rabbit,
says he. "Cause if you are, I can holler louder," says he.
The Tar-Baby stayed still.*

Joel Chandler Harris, "Brer Fox and the Tar-Baby"

The second property tax reform in Pennsylvania occurred in 1711, when the Governor's Council and the Assembly established the elected position of county commissioner, as the main administrative officer over the provincial tax system.⁷ The property owning freemen of each county were to elect three commissioners who had the authority to determine how much county tax should be levied and to order payments for various county services. Counties were permitted to have no less than three and no more than six assessors, who were to conduct annual assessments and provide a list to the commissioners, which the appointed county clerk would draft a duplicate for public record. The assessors were to be elected every three years and be paid a percentage of the property tax collected. The County Commissioners became the final appeal for land valuation disputes. Additionally, the maximum property tax of two pence on a pound of assessed value.⁸

From 1711 to 1764 as Pennsylvania transitioned through multiple constitutions and then became one of the main battle fields of the French and Indian Wars, there were no major changes in the overall property tax system. The County Commissioners would petition the Assembly every few years to raise the maximum tax rate limit in order to raise sufficient revenues for the government functions. In 1756 the rate had risen to six pence per pound, and by 1764 it was 18 pence per pound.⁹ This translates into an 800 percent increase over 53 years or approximately 15 percent increase every year.

The dramatic increase in the property tax rate, combined with continued sense of the inequity in assessments, created a strong anti-property tax sentiment in Pennsylvania. The Assembly commissioned for an investigation of property taxes and found widespread fraud, bribery of officials, and misreporting. Based on the results of this report, the fourth property tax reform occurred in the Tax Act of 1774 was enacted. Essentially, the Tax Act of 1774 provided for a limitation on

exemption from property tax, no more than thirty acres; and, provided county assessors with minimum and maximum values of different types of lands and developments.¹⁰

After the Revolutionary War and the establishment of Pennsylvania as a state, one of the first pieces of legislation which produced a great debate was the idea of financing local elementary schools. The Constitution of 1776 provided for “a school or schools to be established in each county.” An initial debate which occurred in the General Assembly was to fund these schools through a local property tax, with the state funding 1/5th of the total cost.¹¹ After a lengthy political debate that spanned several months the General Assembly decided on nothing and the issue of funding the measure was left to the counties, which choose to fund them primarily through a tuition system, with churches covering the costs of poor or indigent.

From the time the Commonwealth of Pennsylvania was established with the Constitution of 1776 on through the early 1800s, property taxes still brought the disdain of most land owners. Fair and equitable assessments remain a key issue with frequent disagreements on the how much land the would be capable of producing. During this time Allegheny, Fayette, Washington, and Westmoreland Counties opted to change the manner of the valuation of land, from the potential wealth it could produce in a year, to the actual value of the land if it was sold, thereby creating the state’s first ad valorem property tax. Altogether, this was considered more equitable and over the decade was adopted by all Pennsylvania Counties. Furthermore, since cash was in short supply, counties permitted farmers to pay their property taxes in like value of whiskey, which the county could than sell to taverns and inns, or sometimes even export to other states.¹² Interestingly, this became one of the main reasons for the adverse reaction to the first national tax, which was on whiskey, and became one of the reasons for the Whiskey Rebellion.

19TH CENTURY

*Brer Rabbit kept on asking her why she wouldn't talk and the Tar-Baby kept on saying nothing until Brer Rabbit finally drew back his fist, he did, and blip--he hit the Tar-Baby on the jaw. But his fist stuck and he couldn't pull it loose. The tar held him. But Tar-Baby, she stayed still.
Joel Chandler Harris, “Brer Fox and the Tar-Baby”*

By the beginning of 1800s the property tax had become the most difficult to collect tax for all the counties. The best year saw the counties collecting only 1/3rd of the estimated revenue that should be actually collected.¹³ Disputes over assessment values and even the right of the county government to collect the tax abounded. The issue reached a political point which spurred the General Assembly to the point of seeking of enacting a fifth reform of the property tax, this time focused on aiding the counties settling assessment disputes. On April 4, 1803 an

act was passed which required “the county commissioners to transmit lists of taxables to the Secretary of the Commonwealth by the second Tuesday of December in 1803 so that the Commonwealth might be laid out into suitable districts for the appointment of competent number of justices of the peace.”¹⁴

Through a combined lobbying effort of the Pennsylvania Society for the Promotion of Public Schools and the Society for the Establishment of Sunday Schools, “An Act to provide for the More Effectual Education of the Children of the Poor Gratis” was enacted in 1809.¹⁵ The Act required assessors to identify those families too poor to pay property tax and to pay for schooling, in turn those parents would be informed that their children would attend school for free. The tuition for those students were to be covered by the county government. Several counties had already enacted similar provisions on their own and were paying the tuition rates, and the supplies used by the students through a dedicated portion of the property tax.¹⁶

The public identification of those in poverty resulted in a public stigma, which in-turn resulted in some counties of a segregated school system for those in poverty and for those with means to pay.¹⁷ By 1831, the General Assembly established a school fund to provide for the establishment of a general system of education. The proceeds from the sale of designated state lands was to be placed in the fund with the interest each year added to the principal. Once the amount of the interest was above \$100,000, it would be distributed each year in support of schools to fund those in poverty.¹⁸

The next year, the Commissioner of Education was directed to compile a report of all the schools in the counties in order to know the status of the schools and to assist in development of way of distributing the monies from the school fund. His report of February 15, 1833 is an early example of advocacy by a public official. Not only does he report the facts, but he points out the difference of education between those “who are sick or stricken with misfortune” and he stated that the state was “instead of conferring a benefit, the actually inflict a stigma upon the poor, infusing a sense of inferiority upon growing youth.”¹⁹

The political debate creating the public school system spanned more than four decades. Finally, primarily through the efforts of Governor Wolf, and state Senators Samuel Breck and Thaddeus Stevens, on April 1, 1834, Pennsylvania enacted “An Act for the Purpose of General Education by Common Schools,” which became known as the Free School Act of 1834. School divisions were developed based on County boundaries and larger municipalities, with the smaller townships, boroughs and wards serving as school districts. The residents of each district were permitted to vote on whether or not to participate or maintain their current system. If they voted to participate, they would then elect a school board, which had the authority to set a school tax rate on property. Once the school property tax was enacted, the school districts would qualify for receiving state funds from the state school fund.²⁰

There was strong opposition to the Free School Act of 1834 and that manifested itself in the rejection by the county/municipality citizenry in the next election day of the formation of school district. After, the failure of the local elections to voluntarily implement the provision of the Free School Act of 1834. The issue was revisited in 1836. Largely, through the efforts of Thaddus Stevens, the General Assembly enacted the Basic School Law of 1836, which mandated the establishment of school districts conterminous to city, borough, or township boundaries.²¹ School districts would be managed by a school board of six school directors. Each school director would serve a three year term, with two directors being elected every year. The school boards were given the authority to levy the following taxes: 50 cent head tax on each male over the age of 21, an occupation tax not to exceed ten dollars; a personal property tax up to one-half cent per one dollar property valuation; and, a real property tax up to one-half cent per one dollar of county assessment. Altogether local school revenues could not be less than or three times more than the amount obtain from state appropriation.²²

Recognizing the need for expanded tax authority, a comprehensive property tax reform was passed at the same time, which became the first comprehensive local tax legislation.²³ Overall, the county assessors were to make a list of taxable property in each municipality and township and conduct a triennial assessments of real estate, personal property including domestic animals above four years of age, posts of profit and occupation, for all freemen above the age of twenty-one. The assessors and their assistants were to evaluate all property based on its fair market value. This list was than to be provided to the County Commissioners. No property tax could exceed one percent of the total value, or one cent per one dollar of assessed value. No tax on an occupation could exceed ten dollars per year. The law also established the office of tax collector as an appointed office with one being appointed by the County Commissioners and the remainder appointed by the county assessors as they deemed necessary. Additionally, boroughs and townships were limited to a property tax rate of one-half cent per dollar of assessed value, as determined by the county. Counties were to ensure that all schools within their boundaries were properly funded beyond the amount necessary after taking into consideration the funds provided by the state.²⁴

So property tax became the primary funding source for public education, with creation of a new taxing authority, the school boards. Limits had been placed on all local tax rates and a uniformed system of assessments with regular reassessments had been established. Throughout the 19th century and into the early 20th century, the General Assembly would not revisit the property tax issue and it became the longest period of time, 90 years, where there is no major change to the existing system. The inequities still existed and the public disdained still continued, but for the most part the General Assembly let the local school districts, municipalities, and counties deal with the issue.

20TH CENTURY

"If you don't let me loose, I'm going to hit you again," says Brer Rabbit, says he, and with that he drew back his other fist and blap--he hit the Tar-Baby with the other hand and that one stuck fast too. Tar-Baby she stayed still.

Joel Chandler Harris, "Brer Fox and the Tar-Baby"

The early 20th century marked the high point of the "Progressive Era" where wide ranging reforms were made to national, state, and local governments in an effort to make government administration more efficient, effective, and ethical. The idea of the city manager had started, and professional associations in city management and in education administration had started. The ideas of "scientific management" took hold in government administration and the with it a more intensive study of taxation and administration of revenue collection were conducted.

In 1905, political economist, Edwin Seligman, after studying property taxes in New York and Pennsylvania captured the general public's disdain for property taxes,

*"the property tax as actually administered is beyond all doubt one of the worst taxes known in the civilized world. . .It puts a premium on dishonesty and debauches the public conscience . . .its retention can be explained only through ignorance or inertia."*²⁵

The "inertia", Seligman refers to is the 96 years of no change despite the obvious problems with property taxes administration. Beginning just after the Civil War each year saw the General assembly slowly adjusted the property tax rate upward. In 1920, the General Assembly authorized school boards to set their own tax rates, thereby allowing school districts to increase their property taxes. This led to a dramatic increase in property taxes to pay for education reforms that were sweeping the country. By 1925, 87 percent of all local revenues and 95 percent of all school district revenues came from local real property tax.²⁶

During the economic prosperity of the 1920's the heavy reliance on property taxes survived, despite all of its problems, primarily because it produced a steady source of revenues. The advent of the Great Depression changed all of that and local revenues plummeted with the inability of residents to pay the high property taxes. Properties were seized, but their sale rarely produced the revenue needed to make-up what was lost in the inability of people to pay the property tax.

The failure of the property tax to produce adequate revenue spurred the General Assembly to the next major reform effort. This reform would first concern Philadelphia, which was viewed to be a fiscal meltdown. Philadelphia's revenues

had dwindled to a mere 30 percent of what they were before the Depression.²⁷ The City Council and the Mayor had attempted to enact their own taxes on hotels, amusements, sales receipts, and parking only to have the state Supreme Court rule them unconstitutional. Consequently, the General Assembly sought to ease Philadelphia's fiscal situation with the enactment of the Sterling Act of 1932.

The Sterling Act of 1932

The first major tax legislation of the 20th Century was the Sterling Act of 1932, which pertained to the City of Philadelphia and the Philadelphia School District. This act gave the city the broad authority to levy, assess, and collect any taxes it determined were necessary with the only limitation being that the city could not tax a subject preempted by a state tax.²⁸ Consequently, Philadelphia was able to impose a wide assortment of taxes, such as taxes on: wages and earnings, net profits, admissions to amusements, real estate transfers, parking lot receipts, mechanical devices, bowling alleys, and sound reproduction. The increase in the number of taxes, decreased the city's and the school district's dependence on real estate taxes.

By 1935, Pennsylvania was experiencing the brunt of the Great Depression. Unemployment was at 22.5 percent and the Federal government had assumed paying all of the state relief funds.²⁹ Local governments were unable to fund the public schools because of real property taxes and income taxes were failing to generate the necessary revenues. Governor George Earle sought, as part of broader plan which he called, "The Little New Deal," a way to shift the burden from property owners, to broader based state taxes, primarily on businesses and corporations.³⁰

1937 Earle Reform

After the election of 1936, the Democrats succeeded in winning more than two-thirds in the Senate and close to two-thirds of the seats in the House. The General Assembly session that began in 1937 quickly saw the enactment of Governor Earle's, "Little New Deal" and the first business and corporate personal property taxes were enacted. The state used the revenue to increase state aide to public schools, with a corresponding decrease in local real property taxes. Additionally, property owners who were unable to pay their taxes, were allowed to postpone payment and their property could not be seized.³¹

The increase in state aide to public schools helped to reduce reliance on property taxes by about seven percent, thereby bringing it down to 84 percent of all local revenues coming from property taxes for a few years, but by the end of World War Two the percentage had jumped back to 86 percent.

World War Two saw changes in the local situation as the overall economy moved to a war footing and employment levels rose to historic highs. Counties, municipalities, and school districts saw revenue levels returning to levels that could sustain their efforts. Consequently, in 1945 the General Assembly repealed the provision regarding the seizure sale of property of those who fail to pay the property tax, and for a short time it seemed there were no property tax problems.

Immediately following World War Two, the nation experienced an economic recession and once again property tax revenues decreased. Large amounts of property were seized and were being sold in tax sales. Given that many of these individuals had just returned from service in the war, this was considered an affront to veterans. This spurred a property tax reform movement which led to a major study of local taxation.³² As a result two pieces of legislation were enacted which led to major reform of the Pennsylvania property tax system: (1) the creation of the State Tax Equalization Board; and, (2) the first major tax shift from property taxes.

Act 477 of 1947 established the State Tax Equalization Board (STEB). The purpose of STEB was established in order to collect data from county assessor's offices on the number of taxable acres of land and the assessed valuation of each tract of land. The board was responsible to compile a list for each school district of the valuation of all taxable property within the school district. STEB would certify the amount and hear appeals by the school districts. The purpose of establishing STEB was to ensure equitable assessments across the state based on actual market values and provide an oversight on the tax authority of the school districts.

Act 481 of 1947, which became known as the "tax anything law."³³ Essentially, Act 481 of 1947 was conceived as an emergency measure to respond to fiscally distressed local governments, but it essentially became the framework by which Pennsylvania local taxes still operate. Local governments were permitted to levy taxes on earned income, amusement ticket sales, business gross receipts, occupations, and mechanical devises. It was believed that the increase in number of taxes which a local government could choose to enact would enable local jurisdictions to decrease reliance on real estate taxes, while at the same time enhancing local control and decision making on what would be taxed.

The Act limited real estate tax rates to the amount of ten mills with real estate assessments having to be the full value of the property. Interestingly, the total aggregate value of all taxes could not exceed the amount that would be generated if the maximum real estate tax rate had been imposed. Therefore, it is possible to see that this Act was specially designed to mitigate the reliance on real estate taxes, but not increase the aggregate tax burden within a local jurisdiction. In other words, this legislation represents the first tax shift.

Act 481 of 1947 did manage to reduce the reliance on property taxes by local tax jurisdictions. In 1945, real estate taxes accounted for 86 percent of all local tax revenues and by 1965 it was reduced to 70 percent.

The 1950s witness a period of economic growth that spurred a building boom within Pennsylvania as in most of the country. Consequently, the property tax base expanded which led to increases in the property tax revenues without have to increase rates. Additionally, other local tax sources increased, especially local earned income tax. All of this gave local governments and school districts a brief period of growth without having to increase the tax burden.

As the generation, which is called the “baby boomers” (those born 1945 to 1964) began to enter the public school system, there was a corresponding need to increase the number of resources. New buildings had to be made or expanded, more teachers hired, and there was changes in the curriculum to place greater emphasis on math and science. This happen to overlap with a period when public school teachers began to unionize and collective bargaining began to occur with local school boards. Simultaneously, the major industries in Pennsylvania would begin their steady, but progressive decline. The 1950s would see two major steel strikes which would lead to over 200,000 Pennsylvanians becoming unemployed. All of these factors would combine to create a demand on the municipalities and school districts to increase their taxing flexibility.

Likewise, taxpayers would demand a reduction of property taxes and changes to the system. These changes were captured in a major state study of taxation, which in-turn generated yet another reform effort. The study was released in 1963 and two years later it resulted in the Local Tax Enabling Act of 1965, which was a reenactment of the 1947 legislation. Act 511 of 1965 established new limitations on maximum tax rates but provided exceptions to the rates for debt service, personnel, libraries, and few other areas. Consequently, the limitations on the property tax rates had little effect because local taxing jurisdictions shifted costs so that each increase in rates always fell within the exceptions.

The 1968 amendments to the Pennsylvania Constitution authorized the General Assembly to make special tax provisions for certain classes of taxpayers and subjects of taxation, such as: the elderly, disabled, infirmed, or those in poverty. A few years later, on March 24, 1971, the Senior Citizen Property Tax or Rent Rebate program was an enacted. The rationale for the program was to ease the property tax burden on low-income senior citizens. Qualifying senior citizens and those who are disabled could apply for a rebate on rent or property taxes paid. Initially, the rebate was set at a maximum of \$200, and depending on the income level, one could qualify for a certain percentage of the \$200. Only those seniors or permanently disabled, with an income under \$7,500 qualified for the program.

Local Tax Reform Act of 1988 – Governor Casey

Governor Casey had made property tax reform a major part of his 1986 election campaign. Once in office, one of his first acts was to form the Local Tax Reform Commission, which conducted an 18 month study of the Pennsylvania local taxes and made recommendations for its changes. The Commission's report was issued October 30, 1987.³⁴ The two year study culminated in report being issued and the drafting of local tax reform legislation, entitled the Local Tax Reform Act of 1988 or Act 145 of 1988. The Act required the voters to adopt a homestead exemption amendment to the state Constitution. If the voters failed to approve the amendment, the entire Act would be repealed.

The Republicans, led by Senator Robert Jubelirer campaigned against the referendum and Act 145 on the basis that it mandated a one solution for all school districts and municipalities, and provided no flexibility for local governments. The overall contention being that it would result in an overall tax increase and property tax rates would continue to escalate.

On May 16, 1989, Pennsylvania voters rejected the constitutional amendment, by a three-to-one margin, thereby defeating the implementation of Act 145. Shortly afterwards, Senator Jubelirer, introduced a thirteen-bill local tax improvement package, Senate Bills 540 through 552. This package was designed to overcome the criticisms of Act 145, by This package featured additional wage tax capacity, voter referenda on tax increases (backend referendum), local flexibility on types of alternative taxes used to off set property taxes, and a series of reforms in assessment practices.

The economic recession of 1991 and the corresponding impact on state finances, and Governor Casey's health problems put on hold any additional property tax changes. In the final year of Governor Casey's term, House Bill 2202 known as the Optional Local Tax Enabling Act passed the House by a vote of 177 to 19 on February 8, 1994. House Bill 2202 was a bipartisan effort, which would offer a mix of income and sales tax revenue options to local jurisdictions (County, municipalities, and school districts) interested in reducing reliance on property taxes. In April, by a vote of 199 to 0, the House passed House Bill 217 which would amend the state constitution to permit a limited universal exemption from property taxes. Under a universal exemption, the market value of all property is reduced by the same amount before the property tax is computed. The Senate amended House Bill 217 from a universal exemption to a homestead only exemption. In June the Senate took up the Optional Local Tax Enabling Act, but in an attempt to get it passed it was amended was finally defeated by 24-26 vote.

In November Tom Ridge won the Governor's race and came to office in January 1995 having made similar campaign pledges as Governor Casey on

reforming property tax and easing the property tax burden. Similar to Senator Jubelirer's 1989 plan and the failed Optional Local Tax Enabling Act, he focused on increased local flexibility shifting tax structure and voter control over increases through a backend referendum. At the beginning of the new session, Senator Melissa Hart quickly introduced Senate Bill 2, which was similar to the original version of House Bill 2202 of 1994. In short, the Senate Bill 2 would permit local tax jurisdiction to opt into a new tax structure which sought to decrease reliance on property taxes and create a balance local tax structure between sales, income, and property taxes. Occupation, per capita, and other nuisance taxes would be eliminated. Opting into the new tax structure would be done through a voter referendum. After replacing the revenue from the eliminated taxes, property taxes would be reduced either through a homestead exclusion or millage rate reduction. Future property tax increases would require voter approval in a referendum. County, borough, and township associations, American Association of Retired People, and the Pennsylvania Farm Bureau all supported Senate Bill 2. The Pennsylvania State Education Association and the Pennsylvania School Boards Association, who objected to the voter referendum provisions. Additionally, several business groups were opposed to the idea of additional sales taxes and their overall increased taxes with no corresponding property tax relief. After multiple pitched bipartisan political battles, Senate Bill 2 ultimately failed in the House where on the last day of session, the House choose not to consider it.

Homestead Amendment and Act 50 of 1998

An amendment to the state constitution providing for a homestead exclusion passed the House and Senate in 1996 and 1997. In 1998, the Homestead provision went before the voters during the primary election and passed. The amendment states:

Authorize local taxing authorities to exclude from taxation an amount based on the assessed value of homestead property. The exclusions authorized by this clause shall not exceed one-half of the median assessed value of all homestead property within a local taxing jurisdiction. A local taxing authority may not increase the millage rate of its tax on real property to pay for these exclusions.

After the defeat of Senate Bill 2 in 1996, the Republican caucus decided to resort to a common legislative strategy of using a bill in conference committee as the vehicle for quickly passing a piece of legislation. Consequently, Republican staffs in both the House and Senate developed legislative language that could pass both chambers. In the end the language was a scaled down version of Senate Bill 2, which focused only on the school districts was developed. Once general agreement had been which among House and Senate leadership and the Governor's office, Senate Bill 669 was chosen as the vehicle for the language. Senate Bill 669 was a small economic development bill, which was making a few technical changes,

basically the conference committee removed the language of the original bill and inserted the language for the property tax shift. After lengthy and heated debate in the Senate and the House, Senate Bill 669 passed and was signed by Governor Ridge and became Act 50 of 1998.

The Taxpayers Local Control Act's main points are:

- ***A school district could impose an earned income tax at a rate up to 1.5 percent.***
- ***Voter approval would be required before district can impose an earned income tax.***
- ***Earned income tax revenue would be used to offset a reduction in property taxes on homestead.***
- ***A Homestead is a taxpayer's primary residence.***
- ***Voter approval would be required before a school district could raise property taxes.***
- ***Taxpayer's Bill of Rights established.***
- ***Existing or new nonelectoral debt for a school district capped at 225 percent of the district's borrowing base.***

The Taxpayers Local Control Act (TLCA), Act 50 of 1998, amends Title 53 (Municipalities Generally) to provide more local taxpayer control over the taxing ability of school districts. Under the TLCA a school district would be authorized to impose a higher earned income tax, in exchange for eliminating nuisance taxes and implementing the homestead exemption, but only if a referendum on the change is approved by the voters. If a school district fails to place a referendum on the ballot within two years, taxpayers could circulate petitions to require that the referendum be placed on the ballot.

TLCA permits a school district to appoint a Tax Study Commission. If the Commission recommends placing a tax change question on the ballot, and the school district fails to do so, the electorate could petition to have the Commission's recommendation placed on the ballot. The TLCA would also require a "back-end" referendum before

any significant increase in school district property taxes could be imposed in the future. A significant increase is defined as a tax rate increase above the percentage increase in the Statewide Annual Average Weekly Wage (SAAWW). Exceptions to the back-end referendum requirement include recovery from a disaster and implementation of a court order. Court approval would be required before using an exception.

School districts could levy the earned income tax at a rate up to 1.5 percent under the TLCA. During the first year under the new tax system, the new revenue would have to be used to eliminate nuisance taxes and reduce real estate taxes through an exemption for homestead property. A "homestead," as defined in the TLCA, is a dwelling, including the parcel on which the dwelling is located, and other improvements on the parcel, for which any of the following apply: the dwelling is used primarily as the domicile of an owner; the dwelling is a unit in a condominium or cooperative and is used as the primary domicile of the owner; or the dwelling does not qualify under the other two criteria, but a portion of the dwelling is used as the domicile of an owner.

An existing mercantile or business privilege tax could be retained under the TLCA, but the amusement tax would be frozen or prohibited for school districts. Furthermore, the TLCA reduces the threshold below which a school district may incur additional nonelectoral debt plus lease rental debt, without obtaining electorate approval. The threshold would be reduced from 350 percent to 225 percent of the borrowing base, which is the average of three years of revenue.

Other provisions of the TLCA include a Local Taxpayers Bill of Rights; homestead exemption implementation language; a real estate tax deferral program for low-income homeowners; and a 0.2756 percent tax credit against the state personal income tax for individuals paying the Philadelphia non-resident wage tax.

Additionally, Act 50 of 1998 allows all political subdivisions are authorized to establish a real estate tax deferral program for low-income homeowners with incomes not exceeding the limits imposed by the Senior Citizens Rebate & Assistance Act. The deferral applies to an increase in the property tax on the homestead in excess of the amount paid in the previous year. A lien in the amount of the deferred taxes is entered against the property for the amount of the taxes deferred.

The next year, Act 30 of 1999, the Senior Citizens Rebate & Assistance Act, amended the income-eligibility requirements for the Property Tax/Rent Rebate Program funded by the Pennsylvania lottery. The program allows senior citizens or disabled persons with an income of up to \$15,000 to receive a property tax rebate of up to \$500 based on their property taxes or rent paid each year. The amendment alters the income requirement to allow only fifty percent of social security or railroad retirement benefits to be considered as income.

Initially, it appeared that providing local governments with the option to change their tax structure was the key to making significant changes to the local property tax system. But problems, quickly arose. The first, involved the application process for the homestead exclusion. How was it to be done? Who was going to fund it? The General Assembly enact an appropriation to the county governments to fund the process. Each county tax assessor's office is responsible for drafting an application form and then collecting and processing the submitted forms. All applications were required to be turned in by March 1, 1999. Each county tax assessor's office implemented the application process in a different manner. Some mailed applications to all residential property owners, with a self-addressed stamped return envelope, while others distributed applications at central points, such as public libraries, and residents could pick one up if they wanted to. Still others required residents to formally ask for them in writing and then would mail the application to them. Altogether, approximately 20 percent of all residents filed homestead and farmstead exemption application forms. Of those that filed, an estimated 75 percent were approved. The cost of implementing the application

process was offset by grants which the legislature provided to each county assessor's office, but there is still a wide variation in cost, from as low as \$10,000 to a high of \$106,000.³⁵ A problem which has occurred in the application process is determining the portion of land that is actually approved for homestead. Some counties are using the entire lot on which the primary resident is built. Others are using only the piece of land which the house occupies.

- Local Tax Study Commissions
- Lack of flexibility within Act 50 prevented it from being cost effective/efficient for school districts
- 6 out of 501 adopt
- Central Dauphin SD experience.

2001 Special Session on Property Taxes and Governor Rendell's Administration

"Turn me loose, before I kick the natural stuffing out of you," says Brer Rabbit, says he, but the Tar-Baby just sat there. She just held on and then Brer Rabbit jumped her with both his feet. Brer Fox, he lay low. Then Brer Rabbit yelled out that if that Tar-Baby didn't turn him loose, he was going to butt her crank-sided. Then he butted her and his head got stuck.

Joel Chandler Harris, "Brer Fox and the Tar-Baby"

- Forced on the Governor and legislature by group of state Senators and Representatives
- 70 Bills introduced – none passed.
- Legislative Budget and Finance Committee conducted a study of Property Taxes in Pennsylvania, assessing the impact of three plans all flowing from the Michigan local tax reform accomplished in 1994.

On September 4, 2001 the General Assembly convened a special session to address the issue of property taxes, while both the Republican and Democratic Gubernatorial candidates have vowed to address the property tax issue if the General Assembly can not come to solution by the end of the session. During the current legislative session there have been over 70 Senate and House bills addressing some form of property tax changes. These bills have run the spectrum: some call for the complete elimination of property taxes; others seek to reduce property taxes by increasing income or sales taxes; still others amend portions of Act 50 of 1998; and finally others implement property tax freezes or increase the limits on the property tax/rent rebate program. Many of these bills have been carried over to the special

session; as of this writing 18 bills have been introduced in the Senate and 51 in the House.

On January 29, 2002, The House Resolution 386 and Senate Resolution 101, identical resolutions were passed, which instructed the Legislative Budget and Finance Committee to conduct a six month study on “the significant reduction or elimination of property taxes as a source of funding for Pennsylvania school districts.”³⁶ Their study was in July 2002 and found that “Pennsylvania is significantly more reliant on local property taxes to fund K-12 public schools than most states. In 1998-99, 42 percent of the school funds in Pennsylvania were derived from local property taxes, compared to the national average of 34 percent.”³⁷ Additionally, their analysis found significant variation in district reliance on property taxes. The study offered three options based on Michigan’s property tax reform of 1994.

The House of Representatives had a Select Committee on Education Funding which held hearings throughout Pennsylvania and issued a final report a little over a year later on September 10, 2002. This committee determined that:

“Real property tax, as it currently is imposed to fund the local costs of education, disproportionately impacts older Pennsylvania, and those who live in communities with less valuable property, causing ever greater taxes to be paid by those who can least afford it. The amount of school real estate tax collected at the district level should be reduced significantly, and its rate of growth restrained.”³⁸

On September 4, 2002, the General Assembly began a special session on of property tax reform. This special session saw an array of legislative proposals from the complete elimination of property taxes to limited measures targeted to aide Senior citizens with limited income. By the end, no proposal was passed but the groundwork was laid for the next session.

Finally, as part of the Gubernatorial campaign, both Ed Rendell and Mike Fisher promised that one of the first things they would do as a new Governor would be to convene a special session of the legislature to focus on property taxes. Governor-elect Ed Rendell has reiterated his proposal for a special session beginning shortly after he is sworn into office. Consequently, the General Assembly can expect a special session on property tax to occur early in the 2002-2003 legislative session.

The Homeowner Tax Relief Act of 2004

The Homeowner Tax Relief Act of 2004 uses a combination of state revenue (tax on slot machines) and local revenue (earned income tax increases) to permit school districts to reduce residential property taxes up to the maximum amount permitted

by the homestead provision in the Pennsylvania State Constitution. School districts would reduce residential property taxes through: 1) the enactment of a 0.1%

The Homeowner Tax Relief Act of 2004

- 1. Local School Districts enact a minimum 0.1% EIT increase.***
- 2. State provides funds from the slot machine gross revenue tax to each school district which enacts the EIT increase.***
- 3. School Districts can opt for a referendum to further increase the Homestead exclusion by additional increases in the EIT or changing over to a PIT.***
- 4. School Districts which accept state funds are restricted in the amount they can raise property tax rates.***

increase in the earned income and net profits tax (EIT); 2) state funds from a tax on gaming; and, 3) the enactment of an additional EIT increase dedicated to residential property tax relief or the enactment of a local personal income tax (PIT) for the purpose of residential property tax relief to replace the currently imposed earned income tax. Additionally, the Act provides for a reduction of the Philadelphia resident and non-resident wage tax, and mandates state reimbursement for nonresident Philadelphia Wage Tax deductions made by school districts.

School districts, except Philadelphia, would be required to adopt at least a 0.1% increase in the EIT in order to qualify for state property tax reduction funds. Based on the revenue received from the state tax on slot machines, the Act allocates the funds to school districts through a formula determined by calculating the relative tax capacity, tax effort and tax burden of each school district. As long as at least \$500 million in state funds is available and \$400 million has been set aside in a reserve fund, each school district that approves the 0.1% earned income tax increase would be eligible to receive state property tax reduction funds.

Each school district may place on the November 2005 ballot a referendum question asking voters whether they want to raise the EIT by 0.1% to qualify for state property tax reduction dollars, and, if they want to raise the EIT rate an additional amount (determined by the school board) that would provide additional property tax reductions up to the full homestead exclusion. Additionally, the Act requires that the resident of each school district, be given the opportunity to realize at least a 50% homestead exclusion up to a maximum of 100%. If the adoption of the 0.1% EIT increase (in addition to the state driven property tax relief and the optional 2005 EIT increase) does not provide a 50% homestead exclusion for the school district, a school district must place on the November 2007 ballot a referendum question asking voters whether they would like to further raise the EIT rate to an amount (determined by the school board) that would provide at least the minimum 50% exclusion. Furthermore, in either referendum (2005 or 2007) the school district may ask if the voters want to change from an EIT to a PIT.

- Only 108/501 School Districts opted-in

- Delays in implementation of slots – funds available for distribution – maybe 2007-2008 school year.
- From 2000 to 2005 average school district property tax have risen 30 percent.

Special Session of 2005-2006

43 different proposals can be broken into four groups:

- Modify Act 72 – mandate or public referendum
- Increase Sales and Use Tax Rate or Base to eliminate or significantly decrease school district property taxes
- Increase Personal Income Tax to eliminate or significantly decrease school district property taxes.
- Combination of Sales Tax, Income Tax, and Slot Tax to significantly decrease school district property taxes and expand other property tax related programs.

House of Representatives holds committee of the whole on the issue.

- Defeat of the Commonwealth caucus proposal
- Adoption of Representative Scavello's combination plan

Senate Special Committee on Taxation holds hearing and destroys the House plan.

Senate passes a bipartisan plan – House rejects – moves to Conference Committee

Conference committee – latest leaning towards Senate bipartisan plan³⁹

- 2007 elections have local referendums for increasing income taxes, with a corresponding decrease in property taxes.
- Increase the income eligibility and the rebate amounts for the Senior Citizen Property Tax and Rent Rebate Program.
- School budget increases beyond the rate of inflation would require a voter referendum.
- Any funds from the Slot machine tax would still be used to provide additional property tax relief.

Conclusion

Besides minor adjustments through the special exemptions constitutionally permitted, there have been no fundamental changes to Pennsylvania's property tax system since 1947. Interestingly, over time local government reliance on property taxes has decreased from 87 percent in 1925 to 67 percent in 2004.

- There is no universal property tax problem – it varies by locality – main problem areas are on northeastern area and southeastern and central western PA.
- Backend referendums do not work and have no effect on containing costs.
- Pennsylvania Homestead exclusion process is overly complicated and if implemented will lead produce a new aspect of the property tax problem as County commissioners deal with changing valuations and the failure of accurate assessments.
- What is required is a true fix rate on property tax and bringing it into balance with other taxes.
- Statewide standardization of property assessment.
- Shifting of public education funding to a foundational formula where local school districts are required to fund only up to a certain level, and the state covers the remainder of the amount to the foundation level. Thereby, control costs on the local level.

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