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EQUALIZATION OF ILLINOIS PROPERTY TAX ASSESSMENTS—1975 EVENTS

In the past 15 years there has been a growing list of cases¹ and legislation² dealing with the equalization of property tax assessments in Illinois.³ The most recent additions to this list are the Illinois Supreme Court decision in *Hamer v. Lehnhausen*⁴ and the Illinois General Assembly's enactment of House Bill 990 (H.B. 990).⁵ It is the impact of these two recent developments on the equalization process which is the focus of this Comment.

In accordance with a constitutional mandate,⁶ the Revenue Act of

1. See, e.g., *Harte v. Lehnhausen*, 60 Ill.2d 542, 328 N.E.2d 543, cert. denied, 96 S.Ct. 216 (1975) (equalization and the state common school fund); *Hamer v. Mahin*, 47 Ill.2d 252, 265 N.E.2d 151 (1970) (lower court has the power to determine extent of compliance required as to equalized assessments); *People ex rel. Hamer v. Jones*, 39 Ill.2d 360, 235 N.E.2d 589 (1968) (nonuniform equalized values recognized, dismissed for not stating a cause of action upon which relief could be granted); *People ex rel. Musso v. Chicago, B. & Q. R.R.*, 33 Ill.2d 88, 210 N.E.2d 196 (1965) (Dep't of Local Gov't Affairs not only an equalizing agent, but also the initial assessing authority for railroads); *Chicago, B. & Q. R.R. v. Department of Revenue*, 17 Ill.2d 376, 161 N.E.2d 838 (1959) (order directing Dep't of Revenue to assess and equalize all property subject to taxation as required by law); *People ex rel. Ruchty v. Saad*, 411 Ill. 390, 104 N.E.2d 273 (1952) (mandatory equalization duty of the Dep't).

2. The various provisions of the Revenue Act of 1939 have been amended frequently in recent years. See, e.g., P.A. 78-707, §1, [1973] Ill. Laws 2123-25 (eff. Sept. 10, 1973), amending ILL. REV. STAT. ch. 120, §629a (1975); P.A. 78-707, §1, [1973] Ill. Laws 2123, 2125 (eff. Sept. 10, 1973), codified as ILL. REV. STAT. ch. 120, §632a (1975); P.A. 77-2829, §56, [1972] Ill. Laws 2266, 2473 (eff. Dec. 22, 1972), amending ILL. REV. STAT. ch. 120, §§500.23-1, 501, 627, 629a, 632 (1975); P.A. 76-2516, §1, [1970] Ill. Laws 1017 (eff. Jan. 1, 1971), amending ILL. REV. STAT. ch. 120, §657 (1975). Some of the same provisions amended by the aforementioned acts have been amended again with the passage of House Bill 990, P.A. 79-703 (eff. Sept. 3, 1975). See note 5 *infra*.

3. Equalization of assessments is the adjustment of aggregate values of property as between different taxing districts, so that the value of the whole tax imposed upon each taxing district shall be justly proportioned to the value of the taxable property within its limits, in order that one county or taxing district shall not pay a higher tax in proportion to the value of its taxable property than another.

People ex rel. Bracher v. Orvis, 301 Ill. 350, 353-54, 133 N.E. 787, 788 (1921).

4. 60 Ill.2d 400, 328 N.E.2d 11 (1975).

5. P.A. 79-703 (eff. Sept. 3, 1975), amending ILL. REV. STAT. ch. 120, §§482, 488-89, 501, 501a-1, 501b-1, 502, 502a-1, 502a-3, 524, 530, 532, 535, 537, 555, 557, 561, 563, 568, 581, 589.1, 612, 627, 629a, 630, 632a, 643, 643a, 645a, 728a, 804 (1975).

6. ILL. CONST. art. IX, §1 provides that the general assembly shall provide such revenue as may be needed by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property. More specifically, the constitution provides:

SECTION 4. REAL PROPERTY TAXATION

1939⁷ required all property to be uniformly valued at "fair cash value." Originally defined as 50 percent of actual value,⁸ a recent amendment has changed this uniform valuation figure to 33 1/3 percent.⁹ In order to insure that this figure is complied with throughout the state, the Illinois Department of Local Government Affairs (the Department) is authorized to act as an equalizing authority.¹⁰

The system which has been developed for valuing real property in Illinois involves two steps:¹¹ first, the local assessor values the individual property within a given county;¹² second, the Department adjusts the

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to [sic] continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

Id. §4.

7. ILL. REV. STAT. ch. 120, §§482-811 (1975).

8. Law of August 12, 1971, ch. 120, §482(24), [1971] Ill. Laws 1496, 1498, *as amended*, ILL. REV. STAT. ch. 120, §484(24) (1975). The terms assessed value and actual value will appear often in this Comment. Actual value is synonymous with fair market value, the price a property will sell for on the open market between a willing buyer and a willing seller. The assessed value is the value that is found on the assessment roll for the specific property. Theoretically, it would be ideal if assessed value equalled actual value, but as a practical matter this is impossible. Therefore, assessed value is usually a fraction of actual value. The term equalized value is used when the assessed value is converted (equalized) to the level required by law.

9. P.A. 79-703 (eff. Sept. 3, 1975), *amending* ILL. REV. STAT. ch. 120, §484(24) (1975). See text accompanying notes 45-55 *infra*.

10. ILL. REV. STAT. ch. 120, §§611(7), 627 (1975). The very existence of the Department is in question in *Lehnhausen v. Downs*, 60 Ill.2d 528, 331 N.E.2d 65 (1975) (appeal transferred for further consideration). As recently as March 14, 1975, the Legislative Joint Subcommittee to Study the Property Tax proposed to remove the multiplier function from the Department entirely. Reply Brief for Defendants-Appellants at 4, *Hamer v. Lehnhausen*, 60 Ill.2d 400, 328 N.E.2d 11 (1975).

11. See generally *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120, 129, 92 N.E.2d 142, 147 (1950); *People ex rel. Isbell v. Albert*, 403 Ill. 469, 474, 86 N.E.2d 237, 240 (1949); *People ex rel. Little v. Collins*, 386 Ill. 83, 97, 53 N.E.2d 853, 859 (1944); Note, *Constitutionality of State Equalization of Property Assessments in Illinois*, 17 U. CHI. L. REV. 93 (1949).

12. The duties and powers of assessors appear in scattered sections of The Revenue Act of 1939, however, see generally ILL. REV. STAT. ch. 120, §§483-88 (1975). Generally, the

total assessed values of the different counties so that tax levies can be proportioned among them. This latter step is the equalization function.¹³ The Department examines the abstracts of the property within the taxing districts and then determines the actual level of assessed value.¹⁴ The actual level of assessed value in each county is then multiplied by a figure (the multiplier) which will raise or lower the final valuation figure to conform to the fair cash value requirement.¹⁵

It is important that all property be assessed at the same level throughout the state since the total assessed valuation of a county determines the qualifying rates used by the state in the distribution of grants for education,¹⁶ public assistance funds,¹⁷ and other state

assessors must assess all property at its fair value and make certain that all valuations of the same type of property are uniform. See Rackham, *New Technology: Its Management and Use By the Assessor*, THE NATION'S REVENUE SYSTEM 68, 69 (1973).

The Department of Local Government Affairs, however, has the initial assessment authority over certain types of property, *i.e.* railroads and stock assessment. ILL. REV. STAT. ch. 120 (1975). This authority is over a very limited area, and it is separate from the equalization procedure. See *People ex rel. Musso v. Chicago, B. & Q. R.R.*, 33 Ill.2d 88, 210 N.E.2d 196 (1965); *Hamer v. Mahin*, 13 Ill.App.3d 51, 299 N.E.2d 595 (2d Dist. 1973).

13. See note 3 *supra*. The Illinois Supreme Court noted in several prior decisions that the purpose of the equalization procedure was to prevent one county from paying a higher tax in proportion to the value of its taxable property than another county. See *People ex rel. Ingram v. Wasson Coal Co.*, 403 Ill. 30, 85 N.E.2d 182 (1950); *People ex rel. Isbell v. Albert*, 403 Ill. 469, 86 N.E.2d 237 (1947); *People ex rel. Bracher v. Millard*, 307 Ill. 556, 139 N.E. 113 (1923). See also 1 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, A COMMISSION REPORT: THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 21, 129 (1963) [hereinafter cited as COMMISSION REPORT]. Since there is no state-wide ad valorem tax, these decisions are no longer completely applicable. The purpose of equalization now is to prevent counties from obtaining an unfair share of state funds. See notes 16-18 and accompanying text *infra*. The constitution permits the legislature to apportion the tax burden of overlapping taxing entities, with the necessity of equalization. ILL. CONST. art. IX, §7. If the distribution of state aid were eliminated as based upon equalized assessed value there would be no need for equalization. See note 19 *infra*.

14. There are two basic methods for establishing equalized values—the appraisal approach and the sales analysis approach. An examination of these methods is not within the scope of this Comment. For further discussion see R. STAUBER, THE ADMINISTRATION OF THE PROPERTY TAX IN WISCONSIN: AN INTRODUCTION 101-06 (1972) [hereinafter cited as STAUBER]; COMMISSION REPORT, *supra* note 13, at 48.

15. ILL. REV. STAT. ch. 120, §630 (1975).

16. ILL. REV. STAT. ch. 122, §18-8 (1975) (method of apportionment from common school fund). The equalization rate determined by the Director of the Department of Local Government Affairs is used to compute total equalized assessed valuation for purposes of determining each school district's appropriate share from the common school fund. Specifically, to be eligible for the basic state grant of \$520 per child, the local school district may levy a tax of \$1.08 per \$100 of assessed valuation as equalized. After that contribution by the local school district, the remainder of the \$520 comes from the common school fund; *e.g.*, if the levy of \$1.08 raised \$200 per child, the state grant from the common school fund would equal \$320 per child. If the assessed valuation as equalized is overstated, the qualifying share is higher and the state's contribution is less.

17. ILL. REV. STAT. ch. 23, §12-21.13 (1975) (amount of local funds required to qualify for state public aid funds).

aid.¹⁸ Distribution of these funds is inversely proportionate to the assessed value. The lower the assessed value of a county, the greater the amount of state funds received by that county.¹⁹ Thus, equalization is needed in order to preclude counties with improperly low assessed value from having an advantage in the distribution of state funds.

The Illinois Supreme Court has clearly ruled that the duty of the Department to act as an equalizing authority is mandatory.²⁰ The problem addressed in *Hamer* and in H.B. 990 is the Department's consistent refusal to comply with this mandatory duty. Unfortunately, neither *Hamer* nor H.B. 990 provides an effective method of compelling the recalcitrant Department to fulfill its responsibilities.

HAMER V. LEHNHAUSEN

Taxpayer-plaintiffs in *Hamer v. Lehnhausen*²¹ sought to compel local and state officials to perform their statutory duty to equalize and assess all property at its fair cash value.²² During the course of the lower court's proceedings, evidence showed that equalized values for 1973 and 1974 throughout the state ranged from a high of 53.23 percent to a low of 25.13 percent.²³ Consequently, the trial court entered an order enjoining the Department and its director from certifying, without prior court approval, final 1974 multipliers for any county which would result in a

18. See, e.g., ILL. REV. STAT. ch. 121, §6-501 (1975) (distribution of highway funds); ILL. REV. STAT. ch. 122, §17-2.4 (1975) (vocational education building funds).

19. There is presently a suit pending which seeks to have those statutes which provide for the distribution of state funds based upon the assessed value of a taxing district declared unconstitutional. *Hamer v. Dixon*, Docket No. 75CH137 (Cir. Ct. Lake Cty., Ill., filed April 8, 1975).

20. *People ex rel. Ruchty v. Saad*, 411 Ill. 390, 394, 104 N.E.2d 273, 276 (1952).

21. 60 Ill.2d 400, 328 N.E.2d 11 (1975).

22. Plaintiffs instituted their suit in 1965. The history of the *Hamer* litigation involves three separate appeals. In *People ex rel. Hamer v. Jones*, 39 Ill.2d 360, 235 N.E.2d 589 (1968), the supreme court affirmed a dismissal of the complaint because of the chaos that the remedy would bring about, and because of the likelihood of legislative action. Plaintiffs next refiled their suit seeking injunctive and mandamus relief against the Department and its director. In *Hamer v. Mahin*, 47 Ill.2d 252, 265 N.E.2d 151 (1970), the supreme court reversed the lower court's dismissal of this suit and remanded for further proceedings. These further proceedings resulted in a summary judgment for defendants which was again reversed and remanded, this time by the appellate court in *Hamer v. Mahin*, 13 Ill.App.3d 51, 299 N.E.2d 595 (2d Dist. 1973). It is the appeal from these last proceedings on remand which resulted in the *Hamer* case which is the subject of this Comment.

23. Evidence showed further that the equalized assessed value for 1973 would range

level of equalized property assessments of less than 42 percent of full value.²⁴

The Department filed an interlocutory appeal²⁵ to the Illinois Supreme Court seeking dissolution of the injunction, and a cross-interlocutory appeal was filed by plaintiffs who objected to the 42 percent valuation figure. Plaintiffs wished to have the injunction level set at 50 percent of actual value, as required by law. The court granted a stay of enforcement of the injunction pending outcome of the appeal, thereby enabling the Department to certify the improper 1974 multipliers to the individual counties.²⁶ As to the appeal itself, the justices' inability to fashion a suitable remedy precluded their granting the relief that the taxpayers sought, despite their extreme displeasure with the Department's conduct.

The court had considered two possible remedies: compelling the recomputation of the previously certified 1974 multipliers, or acting prospectively only and requiring uniformity as to 1975 taxes, payable in 1976.²⁷ They chose the latter alternative and remanded the case to the circuit court, basing their decision on the premise that to compel recomputation of the multipliers would have a significantly adverse impact on the operations of various local taxing bodies. Of paramount importance was the fact that recomputation would delay needed funding at the local

from a high of 53.23% in Du Page County to a low of 36.01% in Effingham County, and that in the 30 counties that had been assigned a multiplier of 1.00 the range of equalized assessed value was from a high of 53.23% to a low of 36.01%. 60 Ill.2d at 405, 328 N.E.2d at 14. The assignment of a multiplier of 1.00 means that there would be no change in the median assessment level for that tax year. As to the 1974 equalized values, the Department filed two reports with the circuit court. One report showed that prior to equalization the three-year weighted average median assessment level ranged from 5.78% in Johnson County to 50.32% in Wabash County. *Id.* at 406-07, 328 N.E.2d at 15. The second report consisted of the Department's control sheet showing tentative 1974 multipliers which had been certified to all but 10 counties between December 16, 1974 and January 30, 1975. Read together, the two reports show a range of equalized assessed values as to the 92 counties certified from 25.13% to 50.32%. An example of the lack of uniformity reflected in the preliminary multipliers was the fact that the level of assessment prior to equalization in the 31 counties receiving a multiplier of 1.00 varied from 35.43% to 50.32%. *Id.* at 407, 328 N.E.2d at 15.

24. *Id.* at 408, 328 N.E.2d at 15.

25. *Id.* at 407-08, 328 N.E.2d at 15. The appeal was taken directly to the supreme court pursuant to Illinois Supreme Court Rule 302(b) (cases in which public interest requires expeditious determination). ILL. REV. STAT. ch. 110A, §302(b) (1975).

26. 60 Ill.2d at 408, 328 N.E.2d at 16.

27. *Id.* at 409, 328 N.E.2d at 16.

level, perhaps necessitating the borrowing of funds.²⁸ An understanding of this underlying rationale for the court's election of a prospective remedy is central to any analysis of the impact of *Hamer* on the equalization process.

IMPACT OF HAMER: THE QUESTION OF ABDICATION

The major question posed by the *Hamer* decision is whether it constitutes an abdication by the court of its responsibility to enforce the revenue laws of Illinois.²⁹ If the court has tacitly adopted a position of noninterference in equalization matters, then the Department is free to continue its blatant disregard of constitutionally and statutorily mandated procedures, with the traditional remedies of mandamus and contempt continuing to be as ineffective as they have been in the past.³⁰ The taxpayers' options would then apparently be limited to a direct action against the director of the Department,³¹ or possibly a federal equal

28. The real deterrent to compelling compliance . . . is the delay which that course of action necessarily involves. . . . To require the Department to recompute and recertify multipliers . . . would nullify the progress heretofore made by the county clerks. . . . Substantial delay in the collection of taxes would inevitably result, necessitating the borrowing of funds. . . . The costs of such borrowing will ultimately reduce the funds available to the taxing bodies, thereby curtailing to some extent their normal operations.

Id. at 410, 328 N.E.2d at 17. *But see* ILL. REV. STAT. ch. 120, §811.1 (1975). *See* P.A. 78-1097, [1974] Ill. Laws 669 (eff. July 26, 1974). Section 811.1 specifically addresses the failure of the Department to fulfill its equalizing duty. It also allows certain defined counties (any county having an elected assessor and four assessment districts) to compute and extend taxes without having to wait for the Department to certify a multiplier. While section 811.1 does not address all the local taxing bodies, it does indicate that the court's fear of a funding delay caused by recomputation can be dealt with by the legislature. Apparently, however, the court either did not know of section 811.1, or else they were not persuaded of its effectiveness as a state-wide taxing tool. This is a legitimate fear, indeed, when one considers the myriad of taxing bodies in the state, and the fact that smaller counties might not have the capabilities to extend taxes to all these units on their own.

29. Justice Kluczynski, dissenting, claims that *Hamer* does in effect constitute such an abdication. 60 Ill.2d at 411, 328 N.E.2d at 17 (Kluczynski, J., dissenting). *See* notes 38-44 and accompanying text *infra*.

30. The history of the *Hamer* litigation illustrates the ineffectiveness of these remedies. Since the inception of the original suit, *see* note 22 *supra*, plaintiffs have been unsuccessful in obtaining either a writ of mandamus or a contempt citation, although both have been specifically requested time and again. As to the reluctance of the courts to issue writs of mandamus, *see* *People ex rel. Hamer v. Jones*, 39 Ill.2d 360, 235 N.E.2d 589 (1968); *People ex rel. Bradford Nat'l Bank v. School Directors*, 309 Ill.App. 242, 32 N.E.2d 1008 (4th Dist. 1941). As to contempt citations, they have simply not been issued. The lower court in *Hamer* preferred to use injunctive relief instead. 60 Ill.2d at 405-06, 328 N.E.2d at 14. *But see* notes 44-45 *infra*.

31. Various penalties, including removal from office and double damages, are set forth

protection action.³²

The *Hamer* court would obviously contend that its decision constitutes no abdication of responsibilities. Indeed, the court clearly indicates that it expects the Department to comply with statutory equalization requirements in 1975.³³ Action taken by the court in the subsequent case of *Harte v. Lehnhausen*³⁴ substantiates the fact that the court believes the *Hamer* decision will be effective in providing relief. In *Harte*, plaintiff sought to enjoin certification of 1972 multipliers and to recompute the state aid payments made to Cook County school districts from 1969 through 1971, based on the fact that all Illinois counties had not been equalized properly.³⁵ The court affirmed the lower court's dismissal since Cook County, but not other counties, had been equalized at the lawful 50 percent level.³⁶ As to the problem of the other counties the court stated:

As to equalized, assessed valuations for 1975 taxes, payable in 1976, a different situation exists. As to them our judgment in *Hamer v. Lehnhausen* . . . should prove dispositive and eliminate inequities in future years.³⁷

Despite the court's apparent belief that *Hamer* will provide prospective relief with a minimal amount of disruption, it may in fact provide no relief and still disrupt local funding. Even after *Hamer*, taxpayers

in ILL. REV. STAT. ch. 120, §§803, 804 (1975).

32. States are allowed great discretion in establishing their taxing laws and equal protection challenges against such laws are difficult to sustain. See *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973). However, the present equalization problem in Illinois can be distinguished from these two precedents. Plaintiffs would not be contending that the Illinois law itself violated equal protection, but rather that the state's failure to enforce a law which *already mandates uniformity* violates equal protection. If an action is brought forth, the plaintiff can state that there are existing state statutes and constitutional provisions requiring uniformity of taxes, that the evidence shows a lack of that required uniformity, and that the failure of the Illinois Supreme Court to act on the matter comes under the concept of color of law. Even if the federal court decides not to answer the equal protection cause of action, it still can answer the state question under its ancillary jurisdiction. See generally C.A. WRIGHT, *HANDBOOK OF THE LAW OF FEDERAL COURTS* 62-65 (2d ed. 1970).

33. We assume, however, that the plaintiffs will not abandon their efforts to obtain judicial relief It should be evident from the views expressed earlier in this opinion that the persistent disregard of the law apparent in these proceedings will not be permitted to continue.

60 Ill.2d at 410-11, 328 N.E.2d at 17.

34. 60 Ill.2d 542, 328 N.E.2d 543, *cert. denied*, 96 S.Ct. 216 (1975).

35. *Id.* at 543, 328 N.E.2d at 544.

36. *Id.* at 549-51, 328 N.E.2d at 547-48.

37. *Id.* at 551, 328 N.E.2d at 548.

must depend on the good faith of the Department to equalize properly. Since the Department has refused to grant relief in the past, it is unclear why the court expects things to be different in the future.

As Justice Kluczynski pointed out in his dissent in *Hamer*, the realities of the *Hamer* case are ripe to reoccur each year.³⁸ He saw "no presently ascertainable basis from which to conclude that a comparable chronological sequence of events causing delay may not arise in succeeding years."³⁹ The fact that the lower court has been granted continuing jurisdiction to oversee the 1975 equalization is meaningless, particularly since this same method has previously proven ineffectual.

The same remedy problem of recomputation versus prospective relief had been before the lower court regarding the 1973 multipliers. The court chose not to recompute the 1973 multipliers, but rather to oversee the computation of the 1974 multipliers.⁴⁰ The Department was required to make periodic progress reports. When it became clear to the court that the Department was not moving toward uniform equalization, an injunction was granted prohibiting the Department from certifying the 1974 multipliers until they were in compliance with the statute.⁴¹ Because no progress toward equalization had been made, compliance with the injunction would have created the same delays in funding which prevented recomputation of the 1973 multipliers. This potential funding problem was undoubtedly a factor in the supreme court's decision to stay the injunction,⁴² a stay which allowed the Department to certify the 1974 multipliers, despite the lower court's attempt at prospective relief. In any event, it is clear that the Department, by its refusal to cooperate, can force the courts into allowing improper certification of

38. 60 Ill.2d at 412, 328 N.E.2d at 17 (Kluczynski, J., dissenting). As Justice Kluczynski noted, plaintiffs in *Hamer* acted as expeditiously as possible. Even with the continuing jurisdiction of the Lake County court, it is unclear how litigation could be brought to fruition more quickly. Indeed, the speed with which plaintiffs bring suit is irrelevant as long as the key to the court's decision continues to lie in a possible funding delay. See text accompanying notes 39-44 *infra*.

39. *Id.* at 412, 328 N.E.2d at 17.

40. The supreme court noted:

[T]he trial court determined that it was too late to take any judicial action to correct the problem for the 1973 tax year. Instead, the court announced it would retain jurisdiction in an attempt to prevent a recurrence as to 1974 taxes.

Id. at 405, 328 N.E.2d at 14.

41. *Id.* at 406, 328 N.E.2d at 15.

42. Defendants emphasized the harm a delay would cause when they originally asked the lower court to dissolve its own injunction. On appeal, this portion of the record was excerpted for the court. Excerpts from Record at C126, *Hamer v. Lehnhausen*, 60 Ill.2d 400, 328 N.E.2d 11 (1975).

multipliers in order to avoid the delayed funding problem. For example, if under its continuing jurisdiction in *Hamer* the Lake County court grants another injunction, the Department would not have to appeal this injunction in order to raise the fear of delay. Even without a time-consuming appeal, the lower court may face the possibility that its own orders would bring about the funding delay. The Department could simply delay its compliance long enough to force the lower court to stay its own injunction.

The only remaining tool available to the court would be a contempt citation against the Department and its director.⁴³ While this may finally force the Department's compliance, it would not prevent a delay in funding, especially in view of the certain appeal by the director.⁴⁴ Ultimately, the Illinois courts must at some time be willing to incur the adverse funding effects likely to arise from recomputation.

The court's fear of the problems created by delayed funding gives the Department the ultimate weapon in its battle with the taxpayers. Continued deference by the courts places the future of statutory compliance on equalization within the total discretion of the Department. At some point, the court must prove that the *Hamer* decision has not resulted in a de facto abdication.

LEGISLATIVE RESPONSE: HOUSE BILL 990

While the supreme court was considering *Hamer*, the general assembly attempted to correct the ills of the system by passing H.B. 990.⁴⁵ H.B. 990 made two major changes in the Revenue Act of 1939. The first change merely lowered the statutory level of equalized values from 50

43. Public officials are not immune by virtue of their offices from punishment for contempt. *Land v. Dollar*, 190 F.2d 623, 640 (D.C. Cir. 1952); *Ex Parte Craig*, 282 F. 138, 153 (2d Cir.), *aff'd sub nom. Craig v. Hecht*, 263 U.S. 255 (1923).

44. There is recent precedent in Illinois for holding state officials in contempt. In *O'Leary v. State*, Docket No. 74CH1378 (Cir. Ct. Cook Cty., Ill., Jan. 27, 1976), the Director of the Illinois Department of Revenue, Robert H. Alphin, and the Chief Investigator of the Illinois Department of Revenue, Philip Mitchell, were held in contempt for allegedly violating a court injunction prohibiting enforcement of ILL. REV. STAT. ch. 120, §453.9c (1975) (illegal to transport into or within Illinois, in one lot, more than 2000 cigarettes whose packages are not tax stamped). Messrs. Alphin and Mitchell were sentenced respectively to 10 days and 20 days in the Cook County jail. Judge Donald O'Brien refused to stay execution of the sentences. A stay of execution has since been granted by Justice Mayer Goldberg of the appellate court, pending appeal. *O'Leary v. State*, Docket No. 76-391 (Ill. App. Ct., 1st Dist., filed March 23, 1976), leave to appeal granted, Docket No. 43329 (Sup. Ct. Ill., May 28, 1976).

45. P.A. 79-703 (eff. Sept. 3, 1975), amending ILL. REV. STAT. ch. 120, §§482, 488-89, 501, 501a-1, 501b-1, 502, 502a-1, 502a-3, 524, 530, 532, 535, 537, 555, 557, 561, 563, 568, 581, 589.1, 612, 627, 629a, 630, 632a, 643, 643a, 645a, 728a, 804 (1975).

percent to 33 1/3 percent of actual value.⁴⁶

The second and more important change made by H.B. 990 is found in section 627,⁴⁷ where a provision was added to gradually move the equalized values to the 33 1/3 percent level over a three year period. From reading the extremely confusing language of the revised provision, it appears that in subparagraph (1), if a multiplier of less than 1.00 would be necessary to reach a 33 1/3 percent level for the 1975 and 1976 tax years (assessments above the 33 1/3 percent level), that multiplier would be ignored, and the aggregate equalized assessments for 1974 would be used instead.⁴⁸ Therefore, if a county was at an equalized assessment level of 45 percent for 1974, that same equalized value would remain for the 1975 and 1976 tax years, since to obtain a level of 33 1/3 percent a multiplier of approximately 0.75 would have to be used.⁴⁸ For the 1977 tax year the correct multiplier would be used to finally reach the statutory assessment level of 33 1/3 percent.

Subparagraph (2) allows a transition period of three years in which the Department must bring all assessments below 33 1/3 percent up to this prescribed level in equal yearly installments.⁵⁰ Therefore, if a county is at an equalized assessment level of 24 percent, three percent (rounded) must be added to the assessment level for each of the next three years. So for the 1975 tax year the equalized assessment level would be 27 percent, for 1976 it would be 30 percent, and for 1977 it would be 33 1/3 percent.⁵¹

46. This change is made in each section of the Act in which the term fair cash value appears. ILL. REV. STAT. ch. 120, §§482(24), 488-89, 501, 501a-1, 501b-1, 502, 502a-1, 502a-3, 524, 530, 532, 535, 537, 555, 557, 561, 563, 568, 581, 589.1, 612, 627, 630, 804 (1975).

47. *Id.* §627.

48. *Id.*

49. The following example illustrates the difference between remaining at an equalized value of 45% and dropping to a value of 33 1/3% in terms of school aid.

Facts: residence with market value=\$90,000
 tax rate=\$1.08 per \$100 assessed value
 basic state grant=\$520 per child

At 45%

45% x \$90,000=\$40,500
 \$40,500 x \$1.08/\$100=\$437.50
 \$520 - \$437.50=\$82.50

At 33 1/3%

33 1/3% x \$90,000=\$30,000
 \$30,000 x \$1.08/\$100=\$324
 \$520 - \$324=\$196

Difference: \$196 - \$82.50=\$113.50 per child

50. ILL. REV. STAT. ch. 120, §627(2) (1975).

51. The following example illustrates the effects of such a gradual change, using the funds that will come from the state common school fund.

Despite the remedial intent of H.B. 990, it is not clear how merely changing the level of equalized assessments from 50 to 33 1/3 percent corrects the internal failures and problems of the Illinois equalization process. Theoretically, it does not matter, except for levy limitations,⁵² whether one equalizes at 100 percent, 50 percent, 33 1/3 percent, or one percent of actual market value so long as all property is assessed uniformly.⁵³ Ultimately, the effectiveness of this new program hinges upon the cooperation of the Department. If the Department chooses not

Facts: residence with market value=\$90,000
 tax rate=\$1.08/\$100 assessed value
 basic state grant=\$520 per child

At 24%

24% x \$90,000=\$21,600
 \$21,600 x \$1.08/\$100=\$233.28
 \$520 - \$233.28=\$286.72

At 27%

27% x \$90,000=\$24,300
 \$24,300 x \$1.08/\$100=\$262.44
 \$520 - \$262.44=\$257.56

At 30%

30% x \$90,000=\$27,000
 \$27,000 x \$1.08/\$100=\$291.60
 \$520 - \$291.60=\$228.40

At 33 1/3%

33 1/3% x \$90,000=\$30,000
 \$30,000 x \$1.08=\$324
 \$520 - \$324=\$196

From the common school fund:

at 24%—\$286.72
at 27%—\$257.56
at 30%—\$228.40
at 33 1/3%—\$196

52. The following example illustrates the results of changing the valuation level from 50% to 33 1/3%, if the existing tax rate is not adjusted.

Facts: residence with market value=\$90,000
 unadjusted school tax rate=\$1.08/\$100

At 50%

50% x \$90,000=\$45,000
 \$45,000 x \$1.08/\$100=\$486
 Result: \$486 school tax

At 33 1/3%

33 1/3% x \$90,000=\$30,000
 \$30,000 x \$1.08/\$100=\$324
 Result: \$324 school tax

53. This position would be valid if all assessing and equalization were done competently, but in actual practice there is a tendency for nonuniformity to increase when property is assessed at low fractions of full value. See COMMISSION REPORT, *supra* note 13, at 56-57; STAUBER, *supra* note 14, at 52; MacDougall & Jaffe, *Prospects for Assessment Reform: An Overview*, in PROPERTY TAX REFORM: THE ROLE OF THE PROPERTY TAX IN THE NATION'S REVENUE SYSTEM 32, 40-41 (1973). Many reasons have been advanced for the lowering of the equalized assessment levels in the different property tax reforms, but the most prevalent one is political. This Comment does not discuss the relative merits of various assessment levels, but the reader should be aware of the non-technical reasons for change. A lower assessment level shows the taxpayer a lower value on his property. Therefore, he feels less hostile when the tax bill finally arrives.

to cooperate, once again relief would have to be obtained in the courts. This would resurrect the specter of delayed funding, presenting the courts with another *Hamer* dilemma.

One further word of caution is in order concerning H.B. 990. Over the past years, the court has continually looked to the general assembly to solve the equalization problem.⁵⁴ After years of inaction, the court still deferred immediate action in *Hamer*. Now, with H.B. 990's three year phase-in, the court has a convenient excuse to continue to defer action, at least for those three years.⁵⁵ If, after three years, the Department has not equalized as required by H.B. 990, then *Hamer* will have reappeared.

CONCLUSION

It is evident that the Department of Local Government Affairs has not been performing its statutory duty as the state's equalizing authority. Whether it will in the future is still an open question, notwithstanding the *Hamer* decision and the enactment of H.B. 990. The Department does not have discretion to decide whether or not to equalize. Section 627 of the Revenue Act states that the Department *shall* equalize.⁵⁶ The malfeasance of both the local officials and the Department "has not only eliminated any possibility of uniformity in taxation, but has also disrupted the statutory scheme of state aid apportioned on the basis of equalized assessed valuations."⁵⁷

The Department is not the only party to be blamed for this disregard of the law; the general assembly and the governor⁵⁸ must also share in it. Both the executive and the legislature have a duty and responsibility to guide and direct the agencies and departments that make up the state government. This persistent disregard for the law and the rights of the taxpayer cannot be allowed to continue. After a quarter of a century of litigation the taxpayer has a right to better treatment.

John P. Higgins

54. See, e.g., *People ex rel. Hamer v. Jones*, 39 Ill.2d 360, 372, 235 N.E.2d 589, 596 (1968); *People ex rel. Schmulbach v. City of St. Louis*, 408 Ill. 491, 499, 97 N.E.2d 252, 256 (1951).

55. Indeed, it appears that the court has to allow nonuniform equalized values to exist for three years, according to the provisions of ILL. REV. STAT. ch. 120, §627 (1975).

56. *Id.*; *People ex rel. Ruchty v. Saad*, 411 Ill. 390, 394, 104 N.E.2d 273, 276 (1952).

57. 60 Ill.2d at 409, 328 N.E.2d at 16.

58. Some blame for the equalization problems can be laid directly at the door of Governor Daniel Walker. In February, 1973, the governor ordered multipliers frozen. Thus the 1972 multipliers carried forward the inequities of the 1971 valuation. *Harte v. Lehnhausen*, 60 Ill.2d 542, 547, 328 N.E.2d 543, 546 (1975).