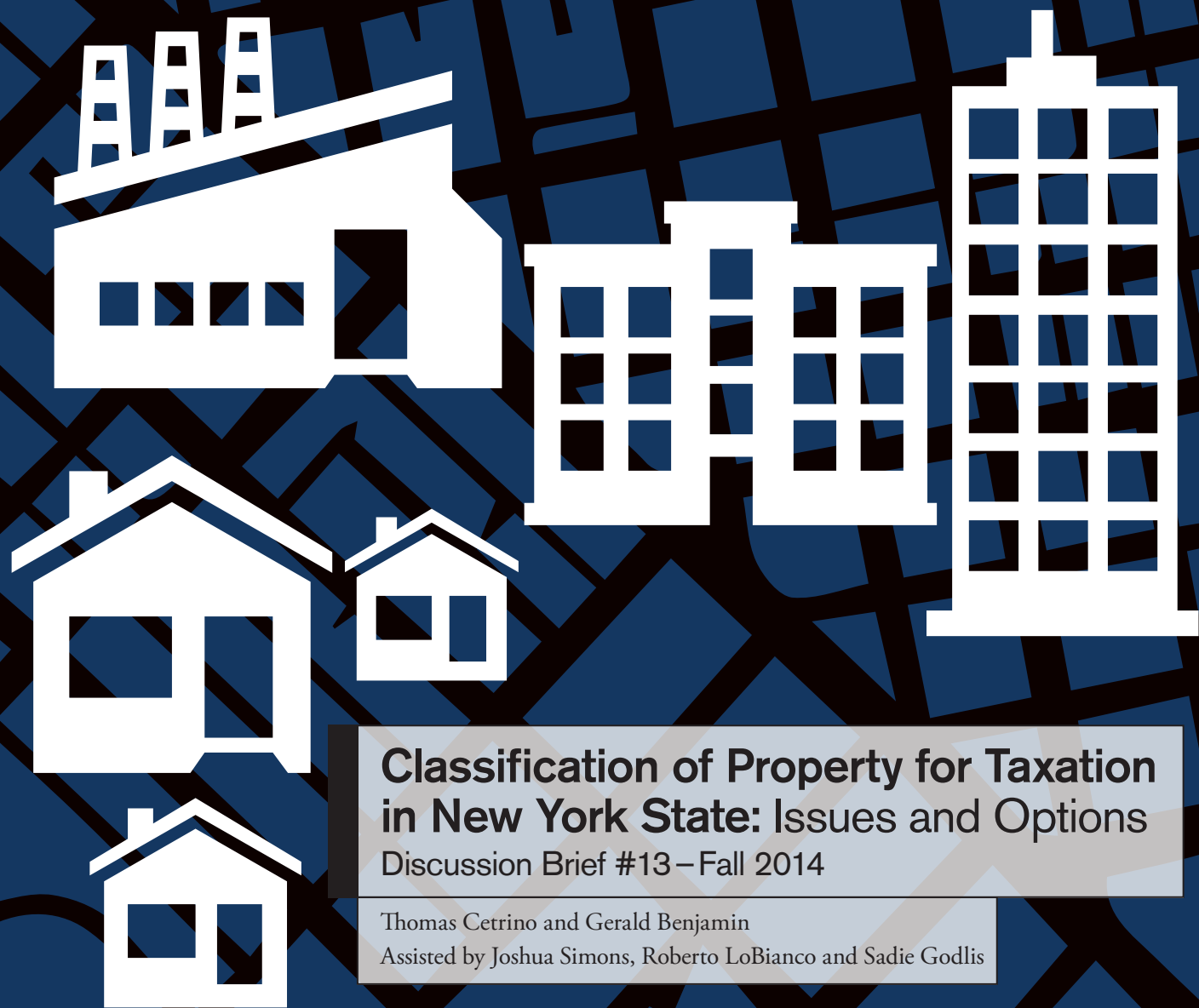


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STATE UNIVERSITY OF NEW YORK AT NEW PALTZ



Classification of Property for Taxation in New York State: Issues and Options Discussion Brief #13 – Fall 2014

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In February of 2014, a class action suit with potentially explosive consequences for all of New York government was filed in State Supreme Court. It alleged that NYC's real property tax levying practices violated the national and state constitutions and federal law because they had the effect of discriminating against the poor, many of whom are members of racial and ethnic minority groups.¹ Lucas Ferrara, the lead attorney for the action, said of the city's long standing practice: "For too long, this has been a reverse Robin Hood where the government has been taking from the poor to subsidize the rich."² *Why explosive?* Most obviously because, this suit, if successful, might cause the redistribution of taxes on real estate in the city that, in 2014, generated more than a quarter of municipal revenues, a total of over \$20 billion. But it also has major implications for other localities all across New York State.



This essay is about those implications.

¹ See the brief of the plaintiffs in *Robinson and Rodriguez vs. NYC and NYS* at: <http://www.capitalnewyork.com/sites/default/files/NYC%20TAX%20FHA%20Complaint%202026%2014%20FINAL%20FOR%20FILING.pdf>

² Josh Barbanel, "New York City's Property-Tax System Faces a Challenge." *Wall Street Journal*, Eastern Edition (New York, NY) 27 Feb 2014: A.19.

The creation of four classes of properties in New York City and Nassau County, and permitting the taxation of different properties within each class at different rates, was devised by the state legislature over a third of a century ago. In the *Hellerstein* case, decided in 1975, the state's highest court, the Court of Appeals, ruled as inequitable and illegal the fractional property tax assessment practices that then prevailed, and found that full value assessment was required.³ But movement to full value assessment would have resulted in a massive shift of the tax burden onto single family homeowners. Governor Hugh Carey was willing to proceed, but members of the legislature, especially those from New York City and Long Island, found this outcome to be politically unacceptable.

In 1981, after several years of delay and over the governor's veto, the legislature adopted a statute for property tax administration in the city that created classes of properties of different types, each of which could be taxed at different rates. This protected homeowners from an immediate tax spike, and allowed their continued protection from rapid property tax increases, even if homeowners' aggregate proportion of the tax base increased faster than the shares of properties in other classes.⁴ Currently, properties in the city's Class One—buildings with one, two or three residences—pay only 15% of the property taxes, though they make up almost three-quarters of the parcels (73%), totaling almost half the property value (46%).⁵ Meanwhile larger rental buildings that comprise just over 23 percent of the city's property

value pay 37 percent of its property taxes.⁶ Poorer people are far more likely than others to rent—not own—their housing. Taxes passed through are estimated to make up about 30% of rents. So poor, often minority group members, it is argued, end up paying a disproportionate share of the property tax.

The same 1981 law that created the *mandatory* classification scheme for property taxation in New York City and Nassau County provided for the *voluntary* use of a two property-class system—the categories are homestead and non-homestead properties—by upstate municipalities and school districts. Over time, this option was taken up by thirteen cities, seventeen towns, eighteen villages and thirty-eight school districts. Included in this number are the cities of Albany, Binghamton, Buffalo and Rochester. Currently, more than a third (36%) of the aggregated property tax base of New York State's cities (outside of New York City) is subject to the homestead/non-homestead classification system for property taxation, and about one tenth of the base for towns (10%), school districts (10%), and villages (11%). Little attention has as yet been given to the implications of *Robinson and Rodriguez v New York City and New York State* for these other local governments in New York State. Many of these also have a disproportionate share of black and Hispanic people living in rental properties of more than three units. As alleged in *Robinson and Rodriguez*, these residents would therefore pay, through their rents, a proportionally greater share of their municipalities'/school districts'

property taxes than do homeowners who are primarily white.

In addition to racial equity issues there are two other concerns about the classification of properties for tax purposes that are shared by downstate and upstate communities. The first is the fairness with which the property tax burden is distributed between or among classes, and the manner in which relative burdens change over time with changes in economic and social conditions. The second is the effect of this dual tax structure on the economic attractiveness and competitiveness of jurisdictions that have adopted it.

Another problem facing New York State's property tax system is its staggering complexity. New York has among the largest number of assessing jurisdictions in the nation. Assessment at partial value is not easily understood by citizens, and often masks intra-jurisdictional equity issues. This, when combined with local government layering and overlapping non-co-terminal municipal/school district jurisdictional boundaries, necessitates a tax equalization process to assure inter-jurisdictional taxpayer equity. Even in jurisdictions that do not employ classification, and therefore have a single tax rate, most property owners have little idea how their property tax is derived. In places that employ the homestead/non-homestead classification option, an additional source of complexity, even many professional assessors and commercial property realtors are challenged to understand the system's nuances and implications. Perhaps most important, this

³ Matter of *Hellerstein v. Town of Islip* 37 N.Y.2d 1, 332 N.E.2d 279 (1975)

⁴ Late legislation, also challenged, advantages co-op and condo owners by basing their tax liability not on the amount they paid for a home but instead on the estimated value of the home if it was rented out. Also co-op and condo owners may receive tax abatements.

⁵ Robert Knakal. <http://commercialobserver.com/2014/03/robinson-and-rodriguez-the-two-most-powerful-people-in-nyc-real-estate/> (Last visited August 5, 2014.)

⁶ Lucas Anderson. "Property Taxes Key to Solving Housing, Inequality Crises," *City Limits*, May 14, 2014 <https://www.citylimits.org/conversations/253/taxes-housing-and-fairness> (Last visited on August 5, 2014.)

complexity, and resultant opacity, generates further skepticism about and distrust of government.

Classification for Taxation: The Recent Evolution of New York State Property Tax Assessment Law

It was a widespread practice over much of New York's history for local governments to over-value commercial real property and under-value residential real property. This was based on the belief that businesses could better afford to pay property taxes than homeowners and was exacerbated by the fact that many business owners did not live or vote in the communities in which their businesses were located. This outcome was generally achieved concomitant with the practice of assessment at partial value, even though the real property tax law has always required property to be assessed at its full value. The State courts validated partial value assessment when they held that "full value" merely required "... that the assessments be at a uniform rate or percentage of full or market value for every type of property in the assessing unit."⁷

Then, in 1975, the New York State Court of Appeals ruled in the *Matter of Hellerstein v Assessor of Town of Islip* that fractional assessments violated the long-standing section 306 of the Real Property Tax Law (RPTL) and that assessors were indeed required to assess all property at full value. State legislators feared a massive redistributive effect of implementing this court decision, substantially raising homeowners' taxes, especially in New York City and its suburbs.

The State Legislature therefore delayed implementation of the *Hellerstein* decision until 1981 when, over the veto of Governor Carey, it enacted Chapter 1057 of the laws of 1981, which repealed section 306 of the RPTL and replaced it with a new section 305 and established Articles 18 and 19 of the RPTL.⁸

The 1981 law used what came to be called a "shares of the pie approach" to implement *Hellerstein*. This characterization arose because the intent of the policy was to keep the portion of the tax levy paid by commercial and residential properties within each taxing jurisdiction that used classification the same as it was in a designated base year. The law provided for assessment on a uniform standard (but not necessarily full value), created four classes of property for New York City and Nassau County and mandated their use (Article 18 of the RPTL) and provided the option of a two-class system for upstate jurisdictions (Article 19 of the RPTL).⁹

Under Article 19 of the RPTL, after an upstate municipality reassessed its property to achieve greater equity and became an "approved assessing unit," it could elect to fix the proportion of the real property tax paid by properties in a "homestead" class (one, two, and three-family residential units, farm homes, mobile homes that are owner-occupied and separately assessed, and originally constructed condominiums) and "non-homestead" class (all other properties including apartment and commercial buildings) to that in the year before the reassessment. Thus, if non-homestead properties paid

sixty percent of the municipality's real property taxes in aggregate prior to reassessment, they would continue to pay sixty percent of the municipality's real property taxes after reassessment.

As noted, in order to implement this option, an "approved assessing unit has to complete a property revaluation project that met State regulations." Once certified as "approved," the local governing body of the assessing unit could then adopt a local law stating its intent to tax properties within two classes: homestead and non-homestead. In following years, the approved assessing unit is required to make annual adjustments for different rates of appreciation in the two classes of property based on the changes in the current market value of the classes, subject to a five percent cap.

School districts may adopt the homestead system, but under different rules. One-fifth of the district's parcels must be located in a homestead taxing jurisdiction. The determination of class shares is based on current market value with adjustments at the discretion of the school district within limitations set by law. According to the Office of Real Property Tax Services, twenty-four of the forty-eight municipalities and twenty of the thirty-eight school districts that currently use this system are in downstate suburban Nassau, Suffolk, Rockland, and Westchester counties.

Approved assessing units and school districts may opt out of the homestead property tax system simply by adopting a local law or

⁷ *Matter of Hellerstein v Assessor of Town of Islip*, 37 N.Y.2d 1, (1975) p. 5.

⁸ For a more detailed account of the legislative politics see: New York City Independent Budget Office: "Twenty-Five Years After S7000A: How Property Tax Burdens have Shifted in New York City" (December 5, 2006) pp. 8–12. <http://www.ibo.nyc.ny.us/iboreports/propertytax120506.pdf> (Last visited on July 27, 2014.)

⁹ Under Article 18 Class 1 consists primarily of one, two, and three-family houses but other property types have been moved into Class 1, including small condo buildings with three or fewer units that were built as condos. Class 2 consists of all other residential properties including coops and condos not in Class 1. Class 3 includes property of regulated utilities and holders of franchises and Class 4 consists of all other property, ranging from gas stations and corner stores, to factories and warehouses, up to office skyscrapers.

resolution, without referendum, to rescind the system before the next levy of taxes. (RPTL §1903-a 5). According to the Office of Real Property Tax Services, only two places that chose to use it—the City of Schenectady and the Town of Colonie—have opted out of the homestead tax system: Schenectady in 1999 and Colonie in 2010.

The 1981 law also repealed the requirement for full value assessment and instead provided that:

- The existing assessing methods in effect in each assessing unit may continue;
- All real property in each assessing unit should be assessed at a uniform percentage of value;
- Any assessing unit at full value through a revaluation may adopt a uniform percentage of value as its new standard.¹⁰

In New York City and Nassau County the establishment of class shares is also based on the share of property tax each of the four classes paid when the system was implemented.¹¹ The 1981 law also limited the adjustment of class shares in NYC and Nassau. In Class 1, assessment increases that result from market conditions cannot exceed six percent in a single year and twenty percent over five years, regardless of how fast market values have grown. Assessment limits are handled differently for Class 2 buildings with more than 10 units and in Class 4. For these properties the law requires that assessment changes due to market conditions be phased in over five years.

New York Property Tax Classes

CLASS 1

One, two, and three-family houses, small condo buildings with three or fewer units that were built as condos.



CLASS 2

All other residential properties including coops and condos not in Class 1



CLASS 3

Property of regulated utilities and holders of franchises.



CLASS 4

All other property, ranging from gas stations and corner stores, to factories and warehouses, up to office skyscrapers.



¹⁰ Section 306 of the Real Property Tax Law.

¹¹ In New York City the base year is 1990 but since no adjustments were made in class shares from 1981 to 1990, the base year is really 1981.

Another new section added to the law in the 1981 legislation required that cooperatives and condominiums be valued as if they were rental property.¹² New York City uses the capitalized net income method to determine the value of rentals, an approach that almost always results in a lower number than if sales prices are used. This results in discounted market values, and lower taxes, for existing coops and condos.

All changes adopted by the State Legislature to Articles 18 and 19 of the Real Property Tax Law since 1981 have sought to constrain property tax increases for homeowners.¹³ Most notably, the Cooperative and Condominium Property Tax Abatement Program in 1996, was created in response to complaints from co-op and condo owners that they were taxed at several times the rate of owners of one- to three-family homes. This program effectively reduced co-op and condo owners' property taxes by between 17.5 and 25 percent.¹⁴ Then, in 2006, the New York City Independent Budget Office found that the co-op and condo tax abatement had lowered the effective tax rate for many apartment owners *to below that of homeowners*. Out of the \$293 million spent on the abatement in 2006, \$156 million went to co-op and condo owners, many on Manhattan's Upper East and West sides, whose effective tax rates were already below that of homeowners or who did not need the full abatement to reach the homeowners' level. Meanwhile, the same study found that many owners of co-ops in Brooklyn and Queens

still had higher tax burdens than homeowners.¹⁵

Past Challenges to the Constitutionality of New York's Homestead Property Tax System

New York's courts have upheld the constitutionality of most provisions of the homestead property tax system in two specific decisions: *Foss v City of Rochester* (1985) and *Treichler v Niagara-Wheatfield Central School District* (1992).

In *Foss*, an owner of a four-unit dwelling in the City of Rochester made two claims based upon the state constitution: that the state's statutory allowance of the use of fractional assessments was unconstitutionally vague and that the law constituted an unconstitutional delegation of the legislative power to tax. The Court rejected both.

However, the plaintiff in *Foss* was successful in an equal protection challenge to the use of classification to raise taxes for county government. The court agreed that the higher county tax rate on non-homestead properties in the City of Rochester than on non-homestead properties located outside the city but in Monroe County that resulted from this practice was unconstitutional. It held that there must be "a rational reason for deliberately imposing demonstrably different tax burdens on similar properties because of their different geographic locations" and that Monroe County had "no rational demographic basis for such a difference."¹⁶

In *Treichler*, the plaintiffs, owners of non-homestead property, challenged their school district's establishment of a dual tax rate for homestead and non-homestead property within it. They contended that the standard set out in law to implement the homestead property tax system in a school district (formerly one-third, now one-fifth, of the parcels located in a homestead taxing jurisdiction) was arbitrary. They also contended, relying on the *Foss* decision, that Article 19 RPTL was unconstitutional because it enabled the school district to impose a greater tax burden on non-homestead taxpayers within the school district than non-homestead taxpayers in the same towns but in another school district. The Court rejected both these arguments holding that the one-third parcel standard was reasonable because it encouraged revaluation. Neither of these decisions addressed the issues raised in the current *Robinson and Rodriguez v New York City and New York State* case.

The Homestead Property Tax System's Impact in Upstate New York

Three studies have looked at New York's homestead property tax system's impact on economic development in Upstate New York communities, two completed in the 1990s and one in 2014.¹⁷ All reached essentially the same conclusion: property taxes matter but not very much when it comes to a business' decision to relocate or expand. The studies go on to show that such other factors as public safety, the education system, and the quality of

¹² Section 581 of the Real Property Tax Law

¹³ For more detail see: New York City Independent Budget Office "Twenty-Five Years After S7000A: How Property Tax Burdens have Shifted in New York City" (December 5, 2006) pp. 15-18. <http://www.ibo.nyc.ny.us/iboreports/propertytax120506.pdf> (Last visited on July 27, 2014).

¹⁴ Furman Center for Real Estate and Urban Policy at New York University, "The State of New York City's Housing and Neighborhoods"(2011) p. 14.

¹⁵ *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006), New York City Independent Budget Office p. 5.

¹⁶ *Foss v City of Rochester* 65 N.Y.2d 251, (1985) p. 135.

¹⁷ *Taxes and State and Local Economic Development: The Homestead Tax Option in New York* (1998) by Wai-Ho Wilson Wong of Syracuse University, *Non-Homestead Tax Rates and City Competitiveness* (1996) by Kent Gardner of the Center for Governmental Research and *The Impact of Kingston's Homestead Tax System on Kingston's Economic Development* (2014) by Gerald Benjamin and Thomas Cetrino of the Center for Research, Regional Engagement, and Outreach (CRREO) at SUNY New Paltz.

infrastructure are also important to a municipality seeking job growth.

All three studies also found that:

- Higher property taxes paid by non-homestead property owners are borne mostly by those property owners, are capitalized in a property’s value, and have a negative impact on that value.
- A major problem with the homestead tax system is that, as non-homestead property values go down, their property tax burden increases, and as homestead property values increase, their property tax burden decreases. This widens the gap between the relative effective tax rates of the two property classes.
- While there is no statistical evidence that higher commercial property taxes under the homestead property tax system have a significant influence on business location decisions, the homestead tax system has a “perceptual as well as real effect” on those decisions.

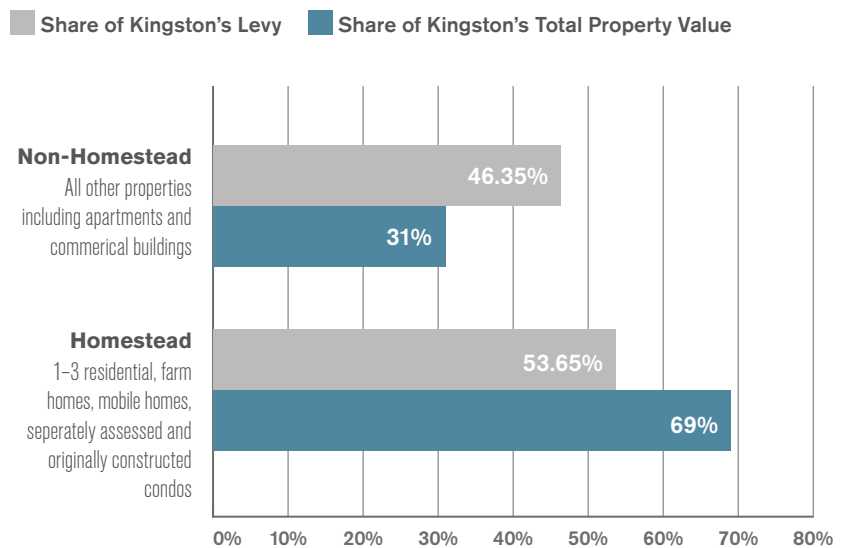
Additionally, John Yinger of the Maxwell School at Syracuse University, who has done considerable study of this issue, finds the homestead property tax system, in which the non-homestead property tax rate gap is likely to go up continually and without limit, is likely to have a negative impact on business location decisions. The 2014 Center for Research, Regional Engagement, and Outreach (CRREO) at SUNY New Paltz study also found this to be true in Kingston, New York.

The Kingston Example and Its Implications for Upstate Municipalities and School Districts

In order to get a better understanding of this issue, we looked in detail at the effect of the use of different property tax rates for homestead and non-homestead properties in Kingston, New York. The homestead property tax system has been a source of controversy since it was implemented by the City of Kingston in 1989, where high property taxes relative to those in close-by jurisdictions have been a persistent issue. An earlier study, completed by CRREO in 2008, showed that, within Ulster County, there were 55 distinct property tax burdens resulting from the combined effect of levies by overlapping taxing jurisdictions. Of these, the combined burden of the property tax was second highest for non-homestead properties within the City of Kingston, and sixth highest for homestead properties within the City.¹⁸

What has happened in Kingston since it implemented the homestead property tax system in 1991 demonstrates what all major studies have found about the homestead property tax system in upstate New York: over time, the gap widens between relative effective tax rates between homestead and non-homestead property. **In 1991, non-homestead property comprised 33% of the full value of taxable property in Kingston and paid 50% of the property tax burden. Today, non-homestead property makes up 31% of the full value of taxable property in Kingston and pays over 46% of the property tax burden.**

Chart A
Kingston’s 2013 Non-Homestead Property Tax Burden Is Greater Than Its Share of Kingston’s 2013 Total Property Value



Source: City of Kingston 2013 Budget

¹⁸ Rachel John and Gerald Benjamin, “Equity and the Property Tax Burden for Citizens in Ulster County” (SUNY New Paltz: CRREO Discussion Brief #1) Fall 2008, p. 4.

CRREO’s study also found that, between 1991 and 2013, the period over which the homestead/non-homestead classification scheme was used, the total real value, in 2012 dollars, of homestead properties rose 19.8% (from \$870.7 million in 1991 to \$1.044 billion in 2013) while non-homestead values showed a 10.2% increase in value (from \$424.5 million in 1991 to \$468.2 million) about half the homestead rate of growth (see Chart B).¹⁹

A regression model was used to examine how changes to non-homestead property values were impacted by changes in property tax rates, property crime, unemployment rate, poverty rate (as measured by the number of free and reduced school

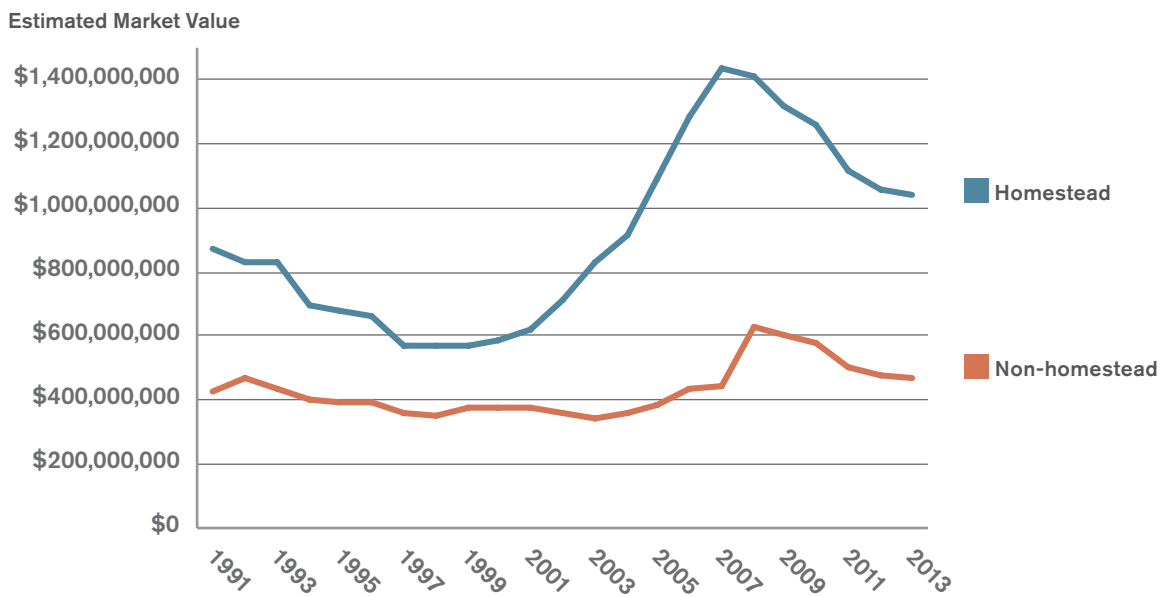
lunches) and population. It found no significant statistical relationship between non-homestead property values and non-homestead property tax rates. The factor that had the most statistical impact on non-homestead property values was the property crime rate. This does not contradict the fact that non-homestead property’s higher property tax rates are capitalized in that property’s value, and have a negative impact on that value. The higher non-homestead property tax rates are simply not the only or the major cause of Kingston’s stagnant non-homestead property values.

One indicator of the effect of the homestead/non-homestead option for commercial properties in Kingston is the ratio of the tax rate

used for homestead property to that used for property in the non-homestead category. A 1:1 ratio means that properties in both categories are taxed at the same rate. In 2013, of the thirteen New York State cities that use this system, Glen Cove (1:2.83), Rochester (1:2.12) and Lackawanna (1:2.09) had the three highest ratios. (Stated otherwise, this means that in Glen Cove, for example, non-homestead properties are taxed at almost three times the rate of homestead properties.) Additionally, ratios exceeded 1:2.0 in the Towns of Tonawanda and Niagara and the Villages of West Havestraw, Mineola and Sea Cliff, with many other localities approaching this level (see Table 1 and Appendices A and B).

Chart B

Estimated Market Value of Homestead and Non-homestead Properties | City of Kingston, 1991–2013 In Year 2012\$



Source: Office of Kingston Assessor, Tax Levy Worksheets RP6701, 1992–2013

¹⁹ The disparity is even greater if the growth rates are measured starting from 1992. During this time period, homestead rates grew over twenty-two percent while non-homestead rates actually decreased by .7%. This is largely due to an unexplained \$38 million increase in the assessed value of non-homestead property between 1991 and 1992 probably as a result of a misclassification of property in 1991.

In 2013, the City of Kingston's homestead/non-homestead ratio was 1:1.81, up from 1:1.73 in 1989. This was fourth highest in the state for cities that used this system. Kingston's 2013 ratio is thus the most disadvantageous to non-homestead properties among cities in the Mid-Hudson region that also use the homestead property tax system—Poughkeepsie (1:1.29), Beacon (1:1.48), Newburgh (1:1.33) and Port Jervis (1:1.59) (See Table 1).

Between 2001 (the year for which the earliest comparative data is available) and 2012, all cities in the Mid-Hudson Valley that use the homestead system, except Poughkeepsie, had a higher rate of growth in the assessed full value of non-homestead property than the rate of growth of non-homestead property in Kingston. All of these cities have lower homestead to non-homestead tax ratios than Kingston.

Table 1

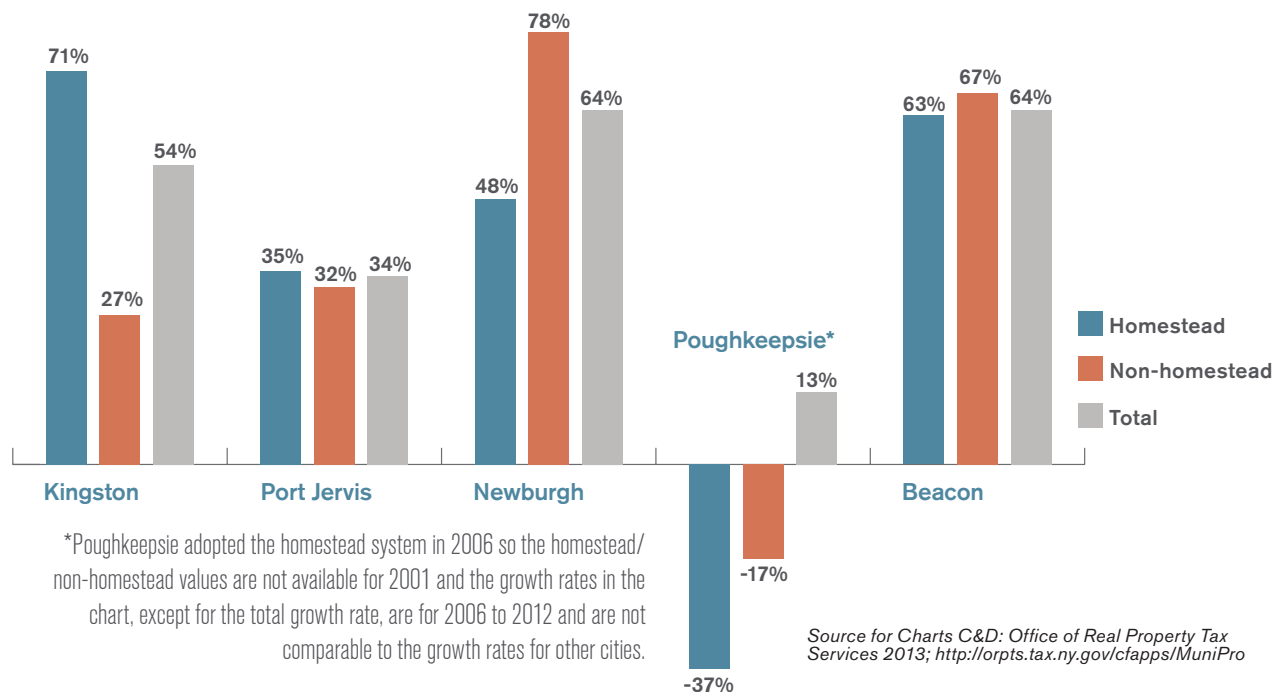
Non-homestead to Homestead Property Tax Ratio New York State Cities 2014

CITIES	NON-HOMESTEAD/HOMESTEAD RATIO				
	1.0–1.25	1.25–1.5	1.51–1.75	1.76–1.9	2.0+
Long Beach		1.28881			
Poughkeepsie		1.29078			
Newburgh		1.33297			
Albany		1.33837			
Beacon		1.47509			
Buffalo			1.54567		
Port Jervis			1.59461		
Binghamton				1.77758	
Niagara Falls				1.78355	
Kingston				1.88166	
Lackawanna					2.09462
Rochester					2.11919
Glen Cove					2.82808

Source: CRREO Survey of Homestead Municipalities and School Districts (2014), unpublished

Chart C

Homestead Cities' Assessed Property Value Growth 2001–2012 | Full Value in 2012\$



Source for Charts C&D: Office of Real Property Tax Services 2013; <http://orpts.tax.ny.gov/cfapps/MuniPro>

However, during the same time period only one Mid-Hudson Valley “single-rate” city (one that does not use the homestead system), the City of Hudson, had a higher growth rate for commercial property (the closest comparable property class to non-homestead property in single rate cities) than Kingston’s growth rate for non-homestead property. This data supports what other studies of the homestead property tax system have found; factors other than tax rates affect the value of non-homestead/commercial property (see charts C and D).

Opting Out Of the Homestead Property Tax System

Localities have three options in relation to changing the homestead property tax system. They may:

- make the incremental changes in each class’s share based on their market appreciation subject to the five percent cap as allowed under the law; or,
- ask the State Legislature to limit the increase in a class’s share, generally done to minimize the increase in homestead properties’ class share; or,
- opt out of the system by adopting a local law or resolution before the next levy of taxes.

As noted previously, the City of Schenectady in 1999 and the Town of Colonie in 2009 are the only two places in New York State that have opted out of using the homestead/non-homestead option once adopting it. Both were able to do this with little controversy because there was

little impact on the homeowner. In Schenectady, the homestead and non-homestead property tax rates were similar. In Colonie, homeowners actually benefited from the change. Tactically, the effect of these opt-outs was partially masked by being done in conjunction with a revaluation.

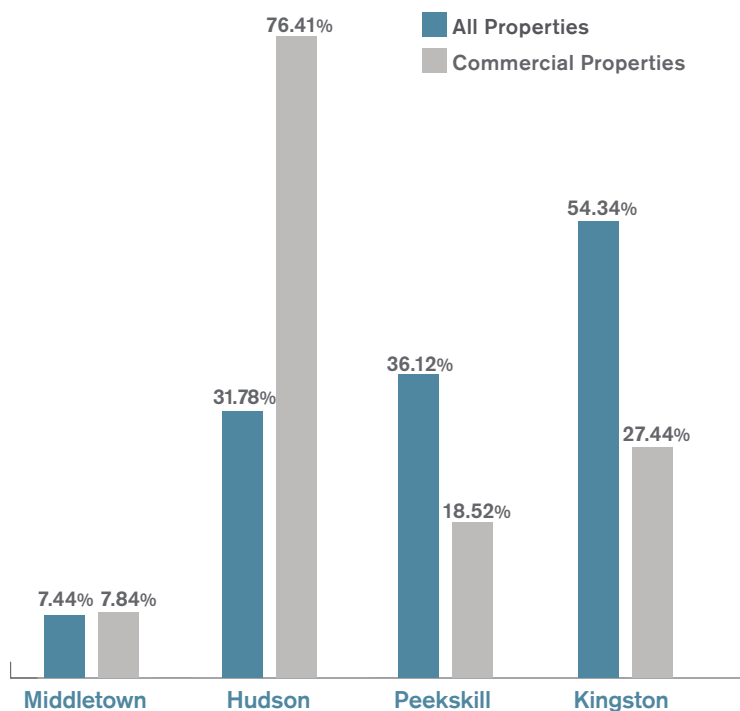
These cases offer another way to determine the impact of dual tax rates on value. If rates were a major influence on non-homestead/commercial property values, then Schenectady commercial property values should have increased at a significantly greater rate than Kingston’s non-homestead property values in the years after the change.²⁰ Conversely, since

commercial property tax rates increased after Colonie opted out of the homestead property tax system, there should have been a resulting a significant decrease in commercial property values when compared to Kingston’s non-homestead property values for the same period. (The expected effect of the Colonie opt-out in 2009 is complicated by its timing: the great recession starting in 2008 and 2009 decreased all property values in most localities.).

After the opt-out, commercial property values in Schenectady increased by thirty-nine percent between 2001 and 2012, slightly more than the growth rate for non-homestead

Chart D

Homestead Cities’ Assessed Property Value Growth 2001-2012 Full Value in 2012\$



Source for Charts C&D: Office of Real Property Tax Services 2013; <http://orpts.tax.ny.gov/cfapps/MuniPro>

²⁰ The assessed full value of all commercial property is not the same as non-homestead property but it is a fair barometer of the value of non-homestead property. After Schenectady opted out of the homestead property tax system it no longer kept data on non-homestead property values.

property in Kingston (twenty-seven percent) over the same time period. Commercial property values in Colonie decreased by over eight percent from 2009 to 2012, only slightly lower than the decrease in non-homestead property values in Kingston over the same time period. In sum, the difference in growth rates of non-homestead/commercial property values among these three jurisdictions give little initial indication of a significant negative effect

of dual tax rates on commercial property values (see Tables 2 and 3).

The law makes adoption of a dual property rate system reversible, but practical reality blocks change. First, the negative impact on homeowners is too great. The 2014 CRREO study found that if the City of Kingston and the Kingston Consolidated School district opted out of the homestead property tax system and moved to a single rate system in one year—the only option

available under current law—the result would be a 19.4% increase in homeowners' property taxes and a 26.1% decrease in non-homestead/commercial property taxes. While Kingston's example may be extreme because of its high homestead to non-homestead tax ratio (1:1.88) it is clear that most municipalities and school districts that use the homestead property tax system cannot opt out of the system without significantly increasing homeowners' property taxes. Second, there is the

Table 2
Cities of Kingston and Schenectady | Assessed Property Values 2001–2012 in 2012\$

	2001	2012	% Change
Kingston Full Value Homestead	619,666,215	1,056,577,941	+70%
Kingston Full Value Non-Homestead	372,593,569	474,850,541	+27%
Kingston Total Full Value	992,259,784	1,531,428,482	+54%
Schenectady Full Value All Property	2,580,141,724	3,484,689,258	+35%
Schenectady Full Value Commercial Property	538,841,846	749,774,061	+39%

Table 3
Assessed Full Values of Town of Colonie and City of Kingston Property 2008, 2009 & 2012 in 2012\$

ASSESSED FULL VALUE	2008	2009	2012	% Change 2008 to 2009	% Change 2009 to 2012
All Property COLONIE	11,134,432,512	11,266,112,133	10,151,531,601	+1.18	-9.89
Commercial Property COLONIE	3,420,799,012	3,430,863,315	2,979,553,283	+0.29	-13.15
Non-homestead Property KINGSTON	626,558,183	599,720,859	474,850,541	-4.28	-20.82

Source: Office of Real Property Tax Services 2013 <http://orpts.tax.ny.gov/cfapps/MuniPro/>

potential impact on those school districts—the places that collect by far the most property tax—that have opted into the use of the two rate system.

School Districts and the Homestead Property Tax System

With the exception of the 2014 study by CRREO, the use of homestead property tax system in school districts in New York has gone largely unexamined. Thirty-seven school districts in the state currently use this system; twenty-two of them are in Nassau, Suffolk, Rockland, and Westchester counties. These districts serve 225,067 children and have 11% of the property value of districts throughout New York, outside of New York City.²¹ Most New York school districts do not have boundaries coterminous with general purpose municipalities, but cities are a partial exception. Of those districts that use the homestead system, eight of them are coterminous with cities.²² Differential and often higher property tax rates for school and non-school purposes in these cities results in a combined impact on homeowners, and even greater complexity.

The Kingston School District has used the homestead property tax system since the 1988–89 school year, but reliable data only exists from the 1990–91 school year forward. From the beginning, the school district has shifted about eleven percent of the homestead tax burden, close to the maximum permissible under the law, to non-homestead properties.²³ In addition to the City of Kingston, the Kingston Consolidated School

District includes all or parts of nine towns.²⁴ One effect of the School District’s adoption of the homestead/non-homestead option practice is to place a greater tax burden on the City of Kingston and the Town of Ulster, which together have over eighty-three percent of the taxable full value of all non-homestead property in the school district. Within the City of Kingston, the homestead /non-homestead school district tax ratio has ranged between 1:1.4 (1991–92) to 1:1.5 (2013–2014); the ratio is lower in other towns and villages within the school district.²⁵

In New York State, school district property tax burdens generally range from well over half to as much as three quarters a property owner’s tax bill. In 2014, the City of Kingston schools collected seventy percent of a property owner’s property taxes. If a municipality is considering opting out of the homestead property tax system, the school district that serves its children may lose the ability to use that system as well, since one-fifth of its parcels may no longer be within a homestead taxing jurisdiction, as the law requires. The Menands school district includes the Town of Colonie. When Colonie opted out of the homestead property tax system, homeowners in the Menands school district saw their property taxes rise. Under the law, the district was no longer eligible to use the homestead property tax system.

The Impact of New York City’s Property Tax System on Different Classes of Property

Three major studies have examined the use of the “shares of the pie” approach to property taxation in *New York City: Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006) by the New York City Independent Budget Office, and *The State of New York City’s Housing and Neighborhoods for 2011 and Shifting the Burden: Examining the Undertaxation of Some of the Most Valuable Properties in New York City* (2013), both by the Furman Center for Real Estate and Urban Policy at New York University.

The studies all found that the property tax burden in New York City was unequally distributed among its four classes of property.²⁶ Homeowners of one to three-family homes and owners of small cooperative and condominiums were favored over rental and other commercial, industrial and utility properties.

Table 4 shows that in 2005 and 2014 one to three family homes in New York City (Class One) provided a significantly lesser share of property taxes, while the other three property classes paid a higher share of New York City property tax revenue than their respective shares of citywide market value. *Table 5* shows that between 2007 and 2014 the effective tax rate of Class Two residential property was between four and six times that of Class One and the effective tax rate for Class Three and Four property was between four and one-quarter and almost ten times the effective tax

²¹ CRREO Survey of Homestead Municipalities and School Districts (2014), unpublished.

²² *Ibid.*

²³ Real Property Tax Law, Section 1903.5.

²⁴ CRREO Survey of Homestead Municipalities and School Districts (2014), unpublished.

²⁵ Gerald Benjamin and Thomas Cetrino *The Impact of Kingston’s Homestead Tax System on Kingston’s Economic Development* (2014) pp 28, 30.26

²⁶ Class 1 consists primarily of one, two, and three-family houses including small condo buildings with three or fewer units that were built as condos.

Class 2 consists of all other residential properties including coops and condos not in Class 1. Class 3 includes property of regulated utilities and holders of franchises and Class 4 consists of all other commercial and industrial property.

rate of Class One property (see Table 5). These are far greater ratios than those in effect in upstate New York communities using the homestead/non-homestead option.

These disparities in property tax burdens are intentional. However, and different from the case upstate, the disparity between each property

class' share of the property tax burden and its market value, as well as the disparity between the effective tax rates of Class One property and Class Two, Three, and Four properties, have gradually decreased since 2005 (see Tables 4 and 5). The 2006 IBO report, which calculated effective tax rates using different data and a different methodology

than Table 5, and the Furman Center reports, also cite the trend of decreasing disparity between the effective tax rates of Class One and other class properties since 2005.²⁷

According to the Furman Center's 2011 report, the strong preference shown to homeowners at the expense of large rental properties

Table 4
New York City Market Value & Property Shares by Property Class (2005 & 2014)

Property Class	Share of Citywide Market Value 2005	Share of Citywide Billed Property Tax Levy 2005	Difference between 2005 Share of Property Tax & Market Value	Share of Citywide Market Value 2014	Share of Citywide Billed Property Tax Levy 2014	Difference between 2014 Share of Property Tax & Market Value
Class 1	52.47%	14.4%	(-38.07)	46.25%	15.4%	(-30.85)
Class 2	21.44%	33.1%	+11.66	23.6%	34.7%	+11.1
Class 3	3.08%	7.7%	+4.62	3.29%	7.2%	+3.91
Class 4	23.00%	44.8%	+21.8	26.87%	42.7%	+15.83

Source; the New York City Department of Finance, New York City Property Tax FY 2005 and 2014 Annual Reports

Table 5
New York City Market Value & Property Shares by Property Class (2005 & 2014)

Property Class	Effective Property Tax Rate 2005 ³⁰	Effective Property Tax Rate 2007 ³¹	Effective Property Tax Rate 2011 ³²	Effective Property Tax Rate 2014 ³³
Class 1	0.61%	0.56%	0.67%	0.79%
Class 2	3.48%	3.37%	3.31%	3.48%
Class 3	5.64%	5.40%	5.49%	5.16%
Class 4	3.97%	3.85%	3.36%	26.87%

Source; the New York City Department of Finance, New York City Property Tax FY 2007, 2011 and 2014 Annual Reports using a methodology developed by the Furman Center for Real Estate and Urban Policy

²⁷ New York City Independent Budget Office, *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006), p 19.

²⁸ Furman Center for Real Estate and Urban Policy at New York University, *The State of New York City's Housing and Neighborhoods* (2011), p 11.

²⁹ New York City Independent Budget Office, *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006), p 5.

³⁰ This figure is derived from the New York City Department of Finance New York City Property Tax FY 2005 Annual Report by dividing Net Tax Levy Billed for each class by Market Value.

³¹ This figure is derived from the New York City Department of Finance New York City Property Tax FY 2007 Annual Report by dividing Net Tax Levy Billed for each class by Market Value

³² This figure is derived from the New York City Department of Finance New York City Property Tax FY 2011 Annual Report by dividing Net Tax Levy Billed for each class by Market Value.

³³ This figure is derived from the New York City Department of Finance New York City Property Tax FY 2014 Annual Report by dividing Net Tax Levy Billed for each class by Market Value.

results in New York City imposing one of the highest tax burdens on apartment buildings in the country. Conversely, the City's tax on one- to three-family homes is one of the lowest in the country.²⁸ The IBO 2006 report also found that commercial property tax burdens are higher in New York City than in other U.S. cities with populations over one million.²⁹

The Impact of New York City's Property Tax System on Cooperative and Condominium Properties and Large Rental Buildings (Class Two Properties)

The recent studies on the City's property tax system also examined how the system valued and taxed cooperative and condominium properties, and found that:

- coop and condominium properties are currently undervalued for the purposes of assessing their property tax, especially in certain neighborhoods in Manhattan and Brooklyn;
- current policies reduced the effective tax rate for coops and condos to a level close to that paid by owners of one to three family residences (Class One property);

The 2006 IBO study found that, citywide, co-ops and condos were being valued at an average of 23.4 percent of the amount that they would have been assigned using an alternative, sales-based methodology.³⁴ Moreover, the discount that

condo and co-op owners enjoyed on their market valuation varies widely across the City, ranging from condos and co-ops in Park Slope/Carroll Gardens valued at 12.5 percent of their sales-based market value to those in Jamaica valued at 44.8 percent.³⁵ The most undervalued co-ops/condos were concentrated in Brooklyn and Manhattan.³⁶ All the major studies agreed that this variation in the discount in valuation resulted from rental buildings being used as comparable properties that are variable in their differences from the co-ops and condos to which they are compared. The differences were particularly significant for pre-1974 co-ops, which were often compared to rental buildings subject to rent regulation. The primary result is the shift of the property tax burden from co-ops and condos to large rental buildings within New York City's Class Two property category.³⁷

The IBO used a unique model in order to determine the effective tax rates of the different types of residences within the Class Two property category; it employed proprietary data to value co-ops and condos at a level closer to their market price. Its 2006 study found that these rates widened between rental buildings and co-ops and condos from 1997 to 2007, moving from rental building tax rates being 1.8 times higher than co-ops and condos in 1997 to 5.5 times higher in 2007.

Such a shift in the property tax burden has implications for the rent

paid by tenants in large rental buildings. While it is not known who bears the exact economic burden of the property tax within rental properties, the major studies say that it is likely borne by both renters and property owners. Estimates in pending *Robinson and Rodriguez* litigation are that property taxes comprise 30% to 33% of rents.³⁸

Most significantly for the *Robinson and Rodriguez* challenge, tenants in Class Two rentals have very different demographics than the households who live in Class One properties and co-ops and condos. The 2006 IBO study found that the median household income of homeowners, including owners of coops and condos, was almost twice that of renters.³⁹ The 2011 Furman Center report found that median household income of homeowners was more than double that of renters. Both the 2011 and 2013 Furman Center reports found that renters were disproportionately black, Hispanic, living in poverty, and/or receiving public assistance (see Table 6).⁴⁰

The Issues Raised in *Robinson and Rodriguez v New York City and New York State*

Robinson and Rodriguez v New York City and New York State is a class action lawsuit that was filed in February 2014. The lawsuit is primarily based on the findings of the 2006 IBO report and the Furman Center reports of 2011 and 2013 that we have already discussed. In general, the lawsuit claims that the current property tax system

³⁴ New York City Independent Budget Office, *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006), p. 33, Table 7.

³⁵ *Ibid.*, p. 35, Table 8.

³⁶ *Ibid.*, pp 32-35, *Ibid* 23, p. 14, Furman Center for Real Estate and Urban Policy at New York University, *Shifting the Burden: Examining the Undertaxation of Some of the Most Valuable Properties in New York City* (2013), pp 3-4.

³⁷ *Ibid.*, *Shifting the Burden* (2013), pp 6-7.

³⁸ *Robinson and Rodriguez v New York City and New York State* (2014), pp. 2,7.

³⁹ New York City Independent Budget Office, *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006), p. 48.

⁴⁰ Furman Center for Real Estate and Urban Policy at New York University, *The State of New York City's Housing and Neighborhoods* (2011) p. 24, and *Shifting the Burden: Examining the Undertaxation of Some of the Most Valuable Properties in New York City* (2013), p. 7.

Table 6**Characteristics of New York City Households by Tax Class and Property Type (2011)**

	Citywide	Class 1	Class 2 Coops Pre-1974	Class 2 Coops Post-1974 & All Condos	Class 2 Rental Buildings
Median Income	\$48,040	\$58,800	\$68,000	\$98,000	\$40,000
% Poverty	17.4	11.9	9.3	10	20.6
% White	41.3	42.4	61.9	57.8	38.2
% Black	22.3	23.8	14.6	9.3	21.4
% Hispanic	23.9	18.7	12.8	10.2	29.5
% Asian	11.5	14.2	9.9	21.2	9.8
% With Children	30.2	37.4	18.4	24.4	26.90
% Receiving Public Assistance	16	10.6	6	4.4	20

Source: *New York City Housing and Vacancy Survey, Furman Center for Real Estate and Urban Policy*

in New York City discriminates against blacks and Hispanics because they pay a disproportionate share of the City's property tax burden. They cite that the effective tax rate of Class Two buildings is five times that of Class One buildings and that at least 30% of that higher property tax is passed on to renters in those Class Two buildings who are disproportionately black and Hispanic. The lawsuit also cites the findings of the 2006 IBO and 2011 and 2013 Furman Center reports that co-op and condos are systematically undervalued and therefore shift a greater share of the Class Two property tax burden to larger rental buildings.⁴¹ The lawsuit claims that these and other facts discussed in the IBO and Furman Center reports show that New York City's property tax system violates

the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, *42 U.S.C. § 3601* and the equal protection clause in the Fourteenth Amendment of the US Constitution.

Policy Options To Reform New York's Current Property Tax System

This discussion brief has summarized the major problems that have arisen in the implementation of the property tax reforms enacted since 1981 in Article 18 and 19 of the Real Property Tax Law (RPTL). The primary problems in New York City concern property tax equity and its disparate impact on renters who are disproportionately black and Hispanic. Outside of New York City, the primary problems concern property tax equity within municipalities and school districts that have

adopted the Homestead Property Tax system and its impact on economic development and job creation. Since the problems in implementing Article 18 and 19 of the RPTL differ within and outside New York City, the policy options needed to address them also differ and will be discussed separately.

Reforming Article 18

There is no definitive evidence that if municipalities and school districts opted out of the homestead property tax system they would increase commercial property values, attract more businesses or create more jobs. There are too many other factors that affect commercial property values and economic development. However, the evidence is clear that reducing high homestead/non-homestead tax rate differentials,

⁴¹ *Robinson and Rodriguez v New York City and New York State* (2014) pp. 6–8.

those over 1 to 1.25, combined with other economic development tools, is likely to give “homestead” municipalities a better chance of increasing commercial property values and attracting jobs.

Under current law the only option municipalities and school districts have to reduce the homestead/non-homestead rate differentials is to go to one single tax rate in one year. In Kingston, using 2014 data, such a step would result in a 27.8% increase in property taxes for homestead property for City purposes and a 15.9% increase for school district purposes, without taking account of any new city revenue needs from those sources for the fiscal year. The combined City and school district increase would be 19.4%. Such large, single-year property tax increases for homeowners are not feasible. In order to minimize the impact on homeowners while assuring continued delivery of the necessary services that municipalities and school districts provide, reductions in the homestead/non-homestead property tax differentials would be best implemented over a decade or more.

Policy Option One: Enact Reform Legislation Proposed by the Office of Real Property Tax Services in 2009

In 2009, the Office of Real Property Tax Services proposed homestead property tax system reform legislation that was subsequently passed by the New York State Senate. This legislation would have given all local governments that adopted the homestead property tax system the option to phase out high homestead/non-homestead property tax

differentials and implement an up to 25% cap on those differentials over a ten year period. A jurisdiction that elected to take this action would be required under law to keep that commitment over the entire ensuing decade. School districts and villages which use the same assessing roll for the levy of their taxes could opt to impose such capped class tax rates as well. This reform legislation would also have required an assessing unit to complete a homestead-compliant revaluation at least once every four years. If such a revaluation was not undertaken, the assessing unit and the school districts and villages associated with it would lose their ability to establish different tax rates for homestead and non-homestead properties. School districts could not remain in the old homestead tax system once their approved assessing unit opted into the new system. Moreover, they could only opt into the new program if one-fifth of their parcels were in an approved assessing unit that had previously opted in. Also, the proposed legislation would restrict additional assessing units that wished to use the homestead/non-homestead option to the new “capped” system.

This legislation would also change the definitions of “homestead class” and “non-homestead class” so that the homestead class would also include co-operative apartments and, if a locality chose, could be further expanded to include either apartment buildings or business property within a locally-designated area, or both.

In 2014, implementation of this option would have resulted in a 1.35% increase in Kingston

homestead property taxes and a 1.57% decrease in non-homestead property taxes. If adopted in the school district in 2014 it would have resulted in a 1.51% increase in homestead property taxes in the City of Kingston and a 2.3% decrease in the non-homestead property taxes. It is likely that the annual tax rate changes over the ten year period would be of a similar size to the 2014 changes.

In the three cities, seven towns, and four villages that have homestead to non-homestead tax ratios greater than Kingston’s 1 to 1.88 (see Table 1), there would be a greater annual incremental impact of systematically reducing the disparity between homestead and non-homestead rates, raising a higher barrier to change. A possible amendment to the Office of Real Property Tax Services (ORPTS) proposal would be to allow municipalities with homestead to non-homestead tax ratios greater than 1 to 1.9 to reduce their homestead to non-homestead tax ratios by a targeted percent. One such target might be thirty-five percent, the percentage reduction that Kingston would accomplish if it reduced its homestead to non-homestead tax ratio from 1 to 1.88 to 1 to 1.25. This amendment would reduce the property tax shift to homeowners in these high disparity municipalities to a level that would be more feasible to implement.

The New York State Assembly did not pass the ORPTS reform legislation in 2009 because of concerns that it would result in an increase of the property tax burden for homeowners. These concerns still

exist today. They must be balanced against the likelihood that municipalities currently using the dual rate system that revise it will attract more businesses, create more jobs, and increase the market value of commercial property. Over the long run, this will reduce homeowners' property tax burdens. This general approach appears a preferable economic development policy to giving property tax breaks to select businesses, with uncertain effect.

Policy Option Two: State Financial Assistance to Municipalities and School Districts that Opt Out of the Homestead Property Tax System

Legislation could be enacted that would commit the State to make a series of payments for a specified period—say 10 years—to soften the negative impact of any local government opting out of the homestead property tax system in a single year. In Kingston, that would require a first year State payment of \$1.128 million to the City in order to allow non-homestead properties to reach the homestead tax rate with no impact on homestead property taxes. State payments might be reduced incrementally by ten percent of the original amount per year in subsequent years, phasing in local assumption of the costs of the change (and providing an incentive for fiscal discipline). The State might specify conditions for making resources available for this purpose; for example, definitive steps to consolidate services with other local governments. Places rated by the Comptroller as already “distressed” might be given priority consideration for participation in

this program. Once it accepted the program, a locality would be required to maintain the non-homestead rate at the targeted level. Another requirement might be consistent adherence to the tax cap.

Many of the State's largest localities, including the cities of Rochester and Buffalo, employ the homestead/non-homestead option. The cost of such a program statewide, especially if school districts are included, would be several hundred million dollars in the first year and ten percent less each year thereafter for ten years. Even without the inclusion of effected school districts, if made available to all or most of the homestead municipalities under qualifying criteria, the cost of this option to the State would be significant.

Moreover, it is near certain that municipalities and school districts that now use a single rate would resist targeting State aid in this manner. There would have to be more compelling rationale than we have thus far identified—supported by arguments based, for example, upon smart growth (using existing infrastructure), economic development, or tax equity—to rationalize such a change in State policy.

Reforming Article 19

Previously cited recent studies of New York City's property tax system made recommendations for reform, and estimated their impact on the property taxes of all four property classes. All of these policy options address the issues raised in the *Robinson and Rodriguez v New York City and New York State* case.

Policy Option One: Improved Disclosure

All three studies recommended that the property tax should be made more transparent to renters either by requiring landlords to disclose the share of rents that goes toward property taxes, or a building's tax assessment. While the Rent Guidelines Board already makes available detailed information about its estimates of landlords' costs for rent regulated buildings (including the property tax component) and how these costs factor into permitted rent increases on its website, a summary document for all tenants could make the information more accessible.

Policy Option Two: Replace Assessment Caps

Replacing the current assessment caps in Class 1 and Class 2A and 2B with a phase-in period for adjustment to changes in property values similar to the five-year phase in period that currently applies in Class 2 and Class 4 is also proposed. Such a phase-in period would temporarily defer the taxation of some market value growth (just as current phase in policies now do), but because market value growth would no longer be lost as a result of assessment caps, such a change would result in a larger tax base. With a larger tax base, City leaders would have the choice of maintaining the tax rate that would yield additional revenue for the City or cutting the rate to offset some of the gain in the base. In either case, such a system would result in a property's tax burden to be more commensurate with its market value.

Policy Option Three: Use Market Values for Assessing Co-ops and Condos

Article 19 could be amended to authorize the use of sales prices to estimate the value of co-op and condo buildings rather than valuing them as rental buildings, diminishing the current system's effect of shifting the property tax burden in Class Two from co-ops and condos to rental buildings, especially in Manhattan and Brooklyn.

Note: As with recommendations for jurisdictions outside New York City that are likely to result in similar large shifts in the tax burden, this and the following options would have to be phased in over time. The 2006 IBO report recommended a transition period of between five and ten years. A ten-year transition period would be the most feasible.

Policy Option Four: Institute a Single Rate System

Article 19 could be amended to require a single tax rate for all types of property and use sales prices to estimate the value of condos and co-ops rather than valuing them as rental buildings. The IBO's 2006 study suggested that, at that time, this option would have increased the revenues from Class 1 properties in New York City by \$3.6 billion (or approximately \$5,200 per unit) as the share of the levy from that class jumped from 13.9 percent to 40.8 percent (commensurate with its share of citywide market value at that time). The IBO predicted that under such a new regime, elevator and walk-up rental buildings would have seen their annual taxes cut by \$1,513 and \$1,042 per unit,

respectively, while condos and co-op units in large buildings would have seen their taxes increase by \$4,501 and \$2,482 per unit, respectively.

Such a change would also incentivize different kinds of development, resulting in additional housing units. The 2011 Furman Center report stated that such shifts in tax liability would, to the extent zoning allowed, shift land use in the City away from one- to three-family homes (Class 1) and from condominiums and co-ops towards rental buildings.⁴² This reform would also address the equity issues raised in *Robinson and Rodriguez v New York City and New York State*.

Whatever the benefits of this option, its enactment is not feasible for the same reason that policy changes introducing "tax shocks" are impractical outside New York City: it would result in a large increase in homeowners' and coop-and-condo owners' property taxes. A phase in period of over ten years might be more politically palatable, but would almost certainly still face strong opposition in the New York State Legislature

Policy Option Five: Institute a Two Class System for New York City

This two-class alternative would have one residential class containing all properties currently in Class 1 and Class 2 in New York City, and one commercial class containing all properties now in class 3 and Class 4. Neutrality would be achieved by requiring that net revenue for each class equal the sum of current net revenues from its component classes. The class tax rate would be obtained

by dividing the sum of current net tax revenues by the sum of market values for the class components. Using one tax rate and full market values for all residential properties would result in significant tax increases for one-, two-, and three-family homes and significant tax reductions for large rental buildings. According to the IBO 2006 report, at that time, owners of one-, two-, and three-family homes would face a 72.9 percent increase (averaging \$2,039 per parcel) and Class 2C one-to-four unit apartment buildings would face a 62.4 percent increase (\$2,501 per apartment). Condos and coops in large buildings would face much smaller percentage increases of 15.8 percent and 16.5 percent, respectively (\$751 and \$428 per apartment, respectively). Together these increases would cover large cuts in the tax bills for larger rental buildings. Elevator buildings would have a 78.7 percent reduction (\$1,854 per apartment) and walk-ups would have an 81.2 percent reduction (\$1,237 per apartment).⁴³

In the new commercial class, most changes in tax bills would be fairly small; office buildings, the single largest component of the class, would see a tax reduction of 5.6 percent. Among the largest changes would be a 42.8 percent increase for "other" Class 4 properties. Vacant properties would also have a 13.9 percent increase. These and some smaller increases would finance a 27.4 percent cut in taxes for Class 3 properties and more moderate changes for other types of commercial properties. Overall, commercial properties would still pay 51.3 percent of the levy, while

⁴² Furman Center for Real Estate and Urban Policy at New York University, *The State of New York City's Housing and Neighborhoods* (2011), p. 25.

⁴³ New York City Independent Budget Office, *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (2006), p. 58.

⁴⁴ *Ibid.*, p. 58

comprising just 18.3 percent of market value.⁴⁴

Ironically, the goal of reform for New York City in this option—a two class system with fixed shares of the pie for each class and no cap on tax liability growth within classes—is the very system that many upstate jurisdictions are interested in containing, or ending.

Conclusion

New York's property tax, among the highest in the nation, is a political third rail. Politicians at every level give priority to containing or reducing it. Any changes in New York State's current property tax system that would shift a greater burden to homeowners, including co-op and condo owners, is likely to be strongly resisted by the New York State Legislature, even with a long phase-in period. This would be true even if it could be definitively shown that such a shift would result in more jobs and greater economic development upstate and a decrease in rents in New York City and its suburbs. Current research does not show that a decrease in commercial property tax rates would automatically create new jobs; at best it may induce dynamics in the market that would increase values, with some longer term indirect effect on jobs in upstate municipalities and school districts that currently use the homestead property tax system. In addition, if apartment buildings receive a lower property tax rate there is no guarantee under current law that the lower property tax paid by the landlord will be passed on to tenants in rent reductions, except indirectly for rent regulated buildings in New York City.

It is clear that localities that adopted the homestead/non-homestead system have experienced unanticipated, undesired effects of this choice. First, different rates of growth of aggregate values within classes lead to unpredictable, uncapped shifts in the tax burden between homestead and non-homestead properties. The Kingston example demonstrates the difficulty for localities of making even incremental adjustments of the burden between classes to offset this dynamic. Second, the homestead/non-homestead alternative was made available by the State for local choice, with a provision that it might also be given up by a locality that no longer wished to use it. But two factors have made the local choice to use the homestead/non-homestead option irreversible as a practical political matter, in all but very special circumstances. One is the "tax shock" for city, town or village homeowners that such a change would produce. Another is the derivative denial of use of the dual tax system to overlapping school districts, with the even greater "tax shock" on homeowners that would follow.

Increasingly over the decades activists have turned to litigation to achieve large-scale social policy change. However, victories in the courts have not always resulted in concomitant successes on the ground. This has been the case, for example, for urban education. *Robinson and Rodriguez v New York City and New York State* may succeed. If it does, the door will be open to reform how New York jurisdictions, both upstate and downstate, levy and administer their property taxes. This reform is needed, especially in the State's upstate cities, and, in fact, would correct errors in the design of the policy that have resulted in undesired, unanticipated circumstances. But long experience with property tax politics suggests that State legislation to address the equity issues raised in *Robinson and Rodriguez*, and the linked economic development issues upstate, will not be easily enacted.

Appendix A

Non-Homestead to Homestead Property Tax Ratio New York State Towns 2014

TOWNS	NON-HOMESTEAD/HOMESTEAD RATIO				
	1.0-1.25	1.26-1.5	1.51-1.75	1.76-1.9	2.0+
Orangetown	1.23487				
Southeast		1.28713			
Fishkill (inside)		1.30769			
Clarkstown (outside)		1.40556			
Fishkill (outside)		1.41516			
Islip		1.50704			
Rotterdam			1.59514		
Poughkeepsie (inside)				1.78378	
Wappinger (outside)				1.85326	
Wappinger (inside)				1.8642	
Poughkeepsie (outside)				1.93275	
Niskayuna				1.97004	
Tonawanda (inside)					2.00468
Tonawanda (Townwide)					2.1711
Tonawanda (outside)					2.21477
Tonawanda (outside)					2.25868
Niagara					2.37654
East Greenbush	N/A				
Haverstraw	N/A				
Islip (outside)	N/A				
Newcomb	N/A				
Pelham	N/A				
Rye	N/A				
Stony Point	N/A				

Source Appendix A&B: CRREO Survey of Homestead Municipalities and School Districts (2014), unpublished.

Appendix B

Non-Homestead to Homestead Property Tax Ratio New York State Villages 2014

VILLAGES	NON-HOMESTEAD/HOMESTEAD RATIO				
	1.0-1.25	1.26-1.5	1.51-1.75	1.76-1.9	2.0+
Port Chester		1.29432			
Fishkill		1.42949			
Rye Brook			1.57396		
Wappingers (T/Pok)			1.61608		
Wappingers (T/Wapp)			1.62691		
Great Neck			1.69521		
Kenmore			1.75358		
Westbury				1.9727	
West Haverstaw					2.29389
Mineola					2.60112
Sea Cliff					2.85969
Farmingdale	N/A				
Lake Success	N/A				
Pelham	N/A				
Pelham Manor.	N/A				
Piermont	N/A				
Russell Gardens	N/A				
Sleepy Hollow	N/A				
Williston Park	N/A				

Source Appendix A&B: CRREO Survey of Homestead Municipalities and School Districts (2014), unpublished.

Citation

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Comment

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Author Bios

Gerald Benjamin is the Associate Vice President for Regional Engagement and Director of the Center for Research, Regional Education and Outreach (CRREO) at SUNY New Paltz. He became a Distinguished Professor, the university's highest rank, by action of the SUNY Board of Trustees in 2002. Benjamin, a Fulbright scholar, previously served at New Paltz as Chair of the Department of Political Science and Dean of the College of Liberal Arts and Sciences. He has written and commented extensively on state and local government and regional governance with a special emphasis on New York. He was formerly the Director of the Center for the New York State and Local Government Studies at Rockefeller Institute of Government, served as Research Director of the Temporary State Commission on Constitutional Revision (appointed by Governor Mario Cuomo), was Principal Research Advisor to a New York City Charter Revision Commission, served as Ulster County's legislative chair—then the chief elected officer—and headed the Commission that produced and won adoption of the Ulster County charter. Benjamin earned a B.A. with distinction from St. Lawrence University. His Masters (1967) and Doctoral (1970) degrees in Political Science are from Columbia University.

Thomas Cetrino is a member of CREEO's Advisory Board and serves as a research consultant on many of CRREO's local government projects. Prior to his role at CREEO, Tom worked on a wide range of state and local government policy issues. As the Research Director for the Public Employees Federation, he was the primary researcher and author of several reports that documented the cost-effectiveness of using state-employees rather than consultants to handle most of New York State's engineering and information technology work. His efforts helped lead to the enactment of the *Contract Disclosure Law of 2001* which requires consultants hired by New York State to disclose their costs and the nature of their work as well as to improve State reporting of consultant costs in State agency budgets. Prior to his work at PEF, Tom served in many positions with the Office of New York State Senate Minority Leader serving as the primary researcher and author of reports that lead to the passage of several current laws including the establishment of a Community Dispute Resolution Center program within the Office of Court Administration and the development of a para-transit system in New York City. Tom holds a BA in Political Science from the State University College at New Paltz and a MA in Criminal Justice from the State University at Albany.

Joshua Simons holds a Bachelor's Degree in Political Science, magna cum laude (2008), from SUNY New Paltz. He is now employed at CRREO as a Senior Research Associate specializing in geographic information systems, redistricting, and shared service analysis. Some of his recent projects include the creation of an online interactive map and web site to display information on properties of historic significance in the Town and Village of New Paltz, and serving as the redistricting consultant to facilitate the Redistricting Commission of the City of Oneonta create a viable redistricting plan for the city, and document the process. He also served as a judge for the 2012 Fordham Law School Redistricting Competition. In addition his projects, Mr. Simons also provides GIS support and map making to other studies conducted by CRREO.

Sadie Godlis and **Roberto LoBianco** are research interns at CRREO.

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