The Legal Requirements Regarding Valuation of Land and Improvements for Property Tax Purposes

David Brunori
and Jennifer Carr

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Abstract

This paper investigates two main questions regarding the state-level requirements governing the valuation of land and improvements for property tax purposes. First, does state law directly or indirectly address the issue of whether land must be valued separately from improvements for property tax purposes? Secondly, do local governments have a process which values land separately from buildings, houses, and other improvements? This paper examines the law and valuation practices in nineteen states and the District of Columbia.

About the Authors

David Brunori is contributing editor at *State Tax Notes* magazine and teaches state and local tax law at The George Washington University Law School.

State Tax Notes
6830 North Fairfax Drive
Arlington, VA 22213
Phone: 703-533-4461
Fax: 703-533-4484
E-mail: dbrunori@tax.org.

Jennifer Carr is a law student at The George Washington University Law School and is clerking at the Mutlistate Tax Commission during 2001.

E-mail: jcarr@law.gwu.edu

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I. Introduction

This report constitutes the first part of a research project designed to determine the state level legal requirements governing the valuation of land and improvements for property tax purposes. This report examines the law and valuation practices in nineteen states and the District of Columbia. The jurisdictions examined in this report are listed in Exhibit A.

To date, the research has focused on two primary questions. First, does state law directly or indirectly address the issue of whether land must be valued separately from improvements for property tax purposes? In this regard, improvements are defined as non-natural attachments (i.e., buildings and other structures) to the land. In examining this question, our research was limited to valuation for property taxation. This report does not focus on the related issue of whether the land and improvements must be assessed separately, although the results indicate that the laws in many states use the term assessment and valuation interchangeably. This report also does not examine the legal authorities that govern whether land and improvements can be taxed at different rates.

The second question we explored is whether local governments charged with the responsibility for administering property taxes value land and improvements separately. That is, notwithstanding the legal requirements, do local governments have a process which values land separately from buildings, houses, and other improvements? We believe this is an important question because in virtually all states "real property" is legally defined as land and improvements and is taxed as a single unit. The question, however, is whether local governments in determining the total value of real property for tax purposes separately value the land and improvements.

The results of our examination are set forth in Part II. The methodology used in conducting both the legal and field research is set forth in Exhibit B.

II. Results

A. Legal Authorities Governing Valuation of Land and Improvements

Of the twenty jurisdictions examined, the statutory laws of eight states expressly require that land and improvements be valued separately for property tax purposes. Those states are California, Colorado, Hawaii, Illinois, Iowa, Kansas, Kentucky, and Maine. In seven of these states, the requirement that land be valued separately from improvements is set forth by statute. In California, however, there are both statutory and constitutional provisions requiring separate valuation.

It should be noted that in Colorado the legal requirement that land and improvements be valued separately only applies to non-agricultural land. When determining the property tax for agricultural land, the land and all improvements connected or attached thereto are valued as a single unit.

In twelve jurisdictions there are no statutory or constitutional requirements that land and improvements be valued separately for property tax purposes. Those jurisdictions are: Alabama; Alaska; Arizona; Arkansas; Connecticut; Delaware; District of Columbia; Florida; Georgia; Idaho; Indiana; and Louisiana.

Of those twelve jurisdictions, appellate courts in one state (Georgia) have ruled that there is no legal requirement that land and improvements should be valued separately. But the Georgia courts did not say such valuation was prohibited. This apparently leaves the local governments imposing property taxes with the option of valuing land and improvements as one unit or separately.

Of those twelve jurisdictions, the courts in the District of Columbia have ruled that equity and fairness may require that land and improvements be valued separately for property tax purposes. Once again, however, the courts refused to expressly mandate (or prohibit) that land must be valued separately from improvements in all situations.

It should be noted that in 20 jurisdictions examined we found no statutes, constitutional provisions, or court opinions prohibiting the separate valuation of land and improvements for property tax purposes.

B. Local Government Valuation Practices

In our survey of 92 government offices charged with administering local property taxes in the twenty jurisdictions, we found that all offices valued land separately from improvements for tax purposes. This was, of course, to be expected in the eight states that legally require separate valuations. Indeed, in those states, government officials cited existing law as the reason they valued land and improvements separately.

But we were surprised to discover that the eleven states and the District of Columbia, in which there is no legal requirement for separate valuation, local governments valued land

and improvements separately. Moreover, they did so as a matter of routine policy, i.e., all real property was subject to separate valuation.

In those twelve jurisdictions, local government officials offered a variety of reasons for separately valuing land and improvements. Approximately seventy percent of the respondents cited administrative convenience as the primary reason for the separate valuations. And, all of those respondents were aware that their particular state laws did not require separate valuation. Ten percent of the respondents indicated that they believed that there were legal requirements to value the land apart from improvements, although they could not identify any legal authority to that effect. The remaining twenty-percent of the respondents could not explain why land and improvements were valued separately. Most simply responded that their offices had always valued land and improvements in this manner.

Property owners were largely aware of the practice of valuing land and improvements separately for tax purposes. Of the 92 offices surveyed, 57 (60 percent) notified property owners of the separate valuations. In the remaining 35 offices surveyed, local governments did not provide property owners with notice of the separate valuations. Rather, the values of the land and improvements were combined into one amount upon which the tax was imposed.

It is not clear why the 35 offices charged with administering the property tax do not inform taxpayers of the separate valuations. We found no legal authority in any of the twenty jurisdictions forbidding the disclosure of the separate valuations. None of the responding government officials in these 35 offices could identify the reason why property owners were not notified of the separate valuations for their land and improvements.

It should be noted that in all of twenty jurisdictions the land and improvement values are combined for purposes of determining the taxes owed.

III. Assessment of the Findings—Land Value Taxation

This research project has focused on the legal authorities governing valuation of land and improvements. Under classic land value taxation theory, land is subject to ad valorem taxes, while improvements are not. Much of the contemporary discussions of land value taxation in the United States have centered on the notion that improvements would be taxed at a lower rate than land, but would not necessarily be exempt from levy. In either case, however, land value taxation is dependent upon the government's ability—both legally and practically—to value land apart from improvements.

As noted above, eight of the twenty subject jurisdictions require separate valuation. And twelve jurisdictions do not address the question of whether land should be valued separately from improvements. None of the twelve jurisdictions prohibit separate valuation.

Taxing land and improvements at different rates requires, by definition, separate valuation systems. Those valuation systems are in place in eight states, and are not constitutionally or statutorily prohibited in the other twelve jurisdictions. Thus the law is, at least with respect to valuation, favorable to those promoting land value taxation as a means of financing government.

As significantly, perhaps, proponents of land value taxation should be encouraged by the valuation practices of the local governments in these twenty jurisdictions. If land value taxation requires a system in which land and improvements are valued separately, this requirement is met, again at least in the twenty jurisdictions initially surveyed. That is, local assessor offices will not be required to create a system in which land is valued separately from improvements for property tax purposes.

Despite some inconsistencies with the legal authority, every local government agency charged with administering the property tax valued land and improvements separately. Thus, from a political/policy standpoint, those charged with administering the property tax are unlikely to protest a system that is based on separate valuation of land and improvements. That is not to say, of course, that local taxing authorities and other interested groups would not oppose land value taxation. But that opposition is unlikely to be based on the issue of valuing land and improvements separately.

Moreover, the current valuation system that is being used in most of the states surveyed leads us to conclude that the public is not likely to oppose land value taxation—again at least on grounds related to valuation. In 57 of the 92 surveyed local governments property owners are notified of separate valuations of their land and improvements. That is, on a regular basis property owners see the difference in the values of their land and buildings or other improvements thereon. The other 35 local governments surveyed did not routinely notify property owners of the differences in the values of land and improvements. But in most of those jurisdictions, the information was available by request. Although it is not clear how many property owners took advantage of this access.

While the public may or may not accept the notion of land value taxation, its views are unlikely to be influenced by the need to value land separately from improvements.

IV. Preliminary Recommendations for Further Research

We recommend that research similar to that contained in this report be conducted for the remaining thirty-one states. This research should include an examination of the legal authorities governing the valuation of land and improvements. It should also include a survey of local government offices charged with administering property taxes to determine how the cities and counties in each state value property and improvements. Completion of this phase of research will provide detailed information with respect to an important aspect of property taxation.

Once this initial research is completed, we recommend that research be conducted for each state and the District of Columbia to determine the laws governing taxation—as opposed to merely valuation—of land and property. Specifically, we recommend that the laws prohibiting (either expressly or implicitly) land value taxation be identified for each jurisdiction.

V. Specific Information by Jurisdiction

This section contains information collected in the course of this research.

ALABAMA

Neither the constitution nor statutes of Alabama address the issue of whether land should be valued separately from improvements for property tax purposes.

The Code of Alabama (Sections 40-7-4, 40-7-7, and 40-7-20) requires all landowners to submit a listing of their property to the assessor. In doing so, land and improvements must be listed separately.

The assessors are required to include all property in their records (Code of Alabama Sec. 40-7-14), but there is no requirement that land and improvements must be listed separately in those records.

There is a substantial authority for the proposition that land and improvements are considered a single unit for property tax purposes. The Code of Alabama defines real property as including land and improvements (Section 40-1-1). Land and improvements are required to be assessed together (Section 40-7-1(a)). The Alabama courts have interpreted these requirements narrowly. (See *State v. Mortgage Bond Co. of New York*; 224 Ala. 406, 140 So. 365 (1932); *Golden Flake, Inc. v. State*, 45 Ala. App. 315, 229 So.2d 815 (1969)).

Nonetheless, in a survey of six Alabama counties, the assessor's offices informed us that they in fact valued land separately from improvements. There is less consensus on the question of whether property owners are aware of the separate valuations. Three of the counties surveyed informed property owners of the separate valuation as a matter of course. Two of the counties never informed property owners of the separate valuation. And one county did not provide the information unless it was specifically requested by the property owner.

ALASKA

Neither the constitution nor statutes of Alaska address the issue of whether land should be valued separately from improvements for property tax purposes. Indeed, the Alaska statutes do not mention any distinction between land and improvements (Sections 29.45.160 - 29.45.170), except to include improvements in the definition of real property (Section 29.71.800).

The Alaska courts have not addressed the issue of separate valuation of land and improvements. The Alaska Supreme Court has, however, interpreted the statutes as forbidding the government from taxing real and personal property at different rates (*Kenai Peninsula Borough v. State of Alaska*, 1988 AK. 41, 751 P.2d 14 (1988)).

In our survey of four Alaska cities, we found that the assessor's office in each routinely valued land separately from improvements. The four surveyed cities also notified property owners of the separate valuations.

ARIZONA

There are no explicit legal requirements that land and improvements be valued separately. Arizona statutes require that assessors maintain a list of all land and improvements (A.R.S. sec. 42-15102). For non-residential property only, the assessor must list the full cash value of the land and the improvements separately (A.R.S. sec. 42-15102). But land and improvements must be assessed as a single value for property tax purposes. (See *TransAmerica Development Company v. County of Maricopa*, 107 Ariz. 306, 489 P.2d 1971 (1971)).

Despite the vagaries of Arizona law with respect to valuation, the six counties we surveyed all valued land separately from improvements for all classes of property. Five of the counties surveyed informed the property owners of the different valuations in all cases. But one county only informed property owners of the difference when the Cost Approach method of valuation was used. When other methods of valuation were utilized, the property owners were informed only of the combined value of land and improvements.

ARKANSAS

Neither the constitution nor statutes of Arkansas address the issue of whether land should be valued separately from improvements for property tax purposes. The Arkansas statutes define real property as including both land and improvements (Section 26-1-101(1)). But the assessor's offices are required to list land and improvements separately on the tax roles (Section 26-28-101 (1-3)).

The Arkansas courts have not addressed any issues concerning the separate valuation of land and improvements.

Our survey of six Arkansas counties found that all assessors' offices valued land separately from improvements. No counties that were surveyed, however, informed the property owners of the separate valuations. Rather, all counties surveyed informed the property owner of the combined value of land and improvements.

CALIFORNIA

Both the California Revenue and Tax Code (Section 607) and the California Constitution (Article XIII, section 13) require land and improvements to be separately valued and assessed for property tax purposes. This requirement has been noted by the California courts (T.M. Cobb v. County of Los Angeles, 16 Cal. 606, 547 P.2d 431 (1976)).

Our survey of six California counties found that all counties valued land separately from improvements. And all counties informed the property owners of the separate valuations.[1]

COLORADO

In Colorado, for purposes of taxing non-agricultural real property, land and improvements are valued separately (C.R.S. Section 39-5-105). For purposes of taxing agricultural real property, land and improvement are valued as a single unit (C.R.S. Section 39-5-105).

Interestingly, the notices from assessors for non-agricultural real property must list land and improvements together (C.R.S. Section 39-5-121(1)(a)). But notices from assessors for agricultural real property must list land and improvements separately (C.R.S. Section 39-5-121(1)(a)).

Our survey of six Colorado counties found that assessors' offices valued land and improvements separately for non-agricultural real property and as a single unit for agricultural real property. That is, their practices were consistent with Colorado statutory law.

In all surveyed counties, residential property owners were notified of the separate valuations, while agricultural property owners were not. Again, this appears to be consistent with Colorado law.

CONNECTICUT

Neither the constitution nor statutes of Connecticut address the issue of whether land should be valued separately from improvements for property tax purposes.

The Connecticut statutes define real property as land and all improvements, and mandate that they must be assessed uniformly (Section 12-203-12-64).

We found no Connecticut appellate court cases addressing either directly or indirectly the issue of valuation of land and improvements.

We surveyed six Connecticut cities/towns. We found that all assessor offices valued land separately from improvements. Property owners in the surveyed towns/cities, however, were notified only of the combined total value of the real property.

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[1] Two California counties that were surveyed indicated that for property continuously owned since enactment of Proposition 13 in 1978, property owners were notified only of the combined value of land and improvements.

DELAWARE

Neither the constitution nor statutes of Delaware address the issue of whether land should be valued separately from improvements for property tax purposes. Delaware requires that all real property, including improvements, be taxed at the same rate (9 Del. Code Sec. 8101(b)). There is no requirement that land and improvements be listed separately on the tax roles.

Nonetheless, we surveyed three Delaware counties and found that each valued land separately from improvements. One county routinely informed property owners of the separate valuations. The other two counties surveyed did not provide notice of the separate valuations. Interestingly, personnel in the two counties that did not inform property owners of the separate valuations indicated that their counties were considering changing that practice in light of citizen demands.

DISTRICT OF COLUMBIA

Land and improvements are required to be listed separately on assessment roles (Sections 47-821 and 47-824.) Whether the land and improvements must be valued separately however has been the subject to much discussion in the courts. The courts have concluded that land and improvements should be valued separately if such a valuation will result in an equitable outcome. *1111 19th Street Associates v. District of Columbia*, 1978 D.C. 26, 521 A.2d 260 (1987); *Wolf v. District of Columbia*, 1992 D. C. App. 160, 609 A.2d 672 (1992*); The Washington Post Company v. District of Columbia*, 1991 D.C. 182, 596 A.2d 517 (1991).

As a result of the considerable legal wrangling on this issue, the District of Columbia now routinely values land and improvements separately. Property owners are notified of the separate valuations, as well as the combined real property value.

FLORIDA

Neither the constitution nor statutes of Florida address the issue of whether land should be valued separately from improvements for property tax purposes.

All statutory references to real property include land and improvements (See Fla Stat. Sec. 195.027; Sec. 192.042; Sec. 192.011). The Florida courts have interpreted those statutes as requiring that land and improvements must be assessed as a single unit. (See *Korash v. Mills*, 1972 Fla. 3639, 263 So.2d 579 (1972)).

Our survey of six Florida counties found that all six valued land separately from improvements. Property owners were not, however, notified of the separate valuations in any of the counties surveyed. Rather property owners were informed of only the combined value of the land and improvements.

GEORGIA

Neither the constitution nor statutes of Georgia address the issue of whether land should be valued separately from improvements for property tax purposes.

Unfortunately, there is no additional information available that discusses valuation procedures. The Georgia statutes define real property as land and improvements (O.C.G.A. Section 44-1-2). And one court has stated that land and improvements are taxed as a single unit. (See *Eckerd Corporation v. Coweta County Board of Tax Assessors*, 228 Ga. App. 94, 491 S.E.2d 173 (1997)).

Our survey of six Georgia counties found that all six valued land and improvements separately for property tax purposes. Four of the counties surveyed notified the property owners of the separate valuations. Two of the counties did not (they provided a combined valuation with the assessment notice).

HAWAII

Hawaii requires that land and improvements be valued and assessed separately for property tax purposes. (HRS Sections 246-10, 246-43).

Our survey of two Hawaii cities found that the assessor offices in each valued land separately from improvements. Each city also notified property owners of the different valuations. These practices are consistent with Hawaiian law.

IDAHO

Neither the constitution nor statutes of Idaho address the issue of whether land should be valued separately from improvements for property tax purposes. The Idaho Code states that real property includes improvements (Sec. 63-201). The Idaho Code does provide for assessment of improvements constructed or otherwise placed upon the land after the yearly assessment period (Sec. 63-317). This suggests that the Idaho legislature contemplated valuing these improvements separately from the land.

Interestingly, for students of land value taxation, Idaho is already exempting improvements from property taxation to some degree. During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation (Sec. 63-602G).

Our survey of two Idaho counties found that both valued land separately from improvements. In both cases the property owners were notified of the separate valuations.

ILLINOIS

Illinois requires that land and improvements be listed and valued separately. (35 ILCS 200/9-155). This statutory requirement has been upheld by the Illinois Supreme Court (see *Deal v. Nelson*, 43 Ill.2d 192, 251 N.E. 2d 234 (1969)). The courts have ruled that despite the separate valuations, land and improvements are to be considered a single assessment (*City of Chicago v. Illinois Department of Revenue,* 147 Ill. 2d 484, 590 N.E. 2d 478 (1992)).

Our survey of six Illinois counties found that all six valued land separately from improvements. Four of the surveyed counties informed property owners of the separate valuations. Two of the surveyed counties, however, only provided property owners with the amount of the combined valuation.

INDIANA

Neither the constitution nor statutes of Indiana address the issue of whether land should be valued separately from improvements for property tax purposes. We could find no little mention of land and improvements except for ISA Sections 6-1.4-4-24 and 6-1.1-1-15 which state that land and improvements must be assessed for property tax purposes.

Nonetheless, our survey of four Indiana counties found that all four valued land separately from improvements. All four counties also notified the property owner of the separate valuations.

IOWA

State law states that land and improvements are considered property for tax purposes (See. 427A.1). All improvements made to real property after assessment of the class must valued and assessed (Sec. 428.4). The law requires land and improvements be "itemized" on the statement of taxes due provided to the property owner (Sec. 445.5). Specifically, the taxable value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year after application of any equalization orders, assessment limitations, and itemized valuation exemptions

We interpret the Iowa statutes as requiring separate valuation of land and improvements. But the Iowa courts have apparently struggled with this question. The Iowa Supreme Court has held that land and improvements are to be valued as a single unit. *Maytag v. City of Newton*, 210 N.W. 2d 584 (1973). That decision relied on a precedent which stated that combined valuation was required only for agricultural property. *Tiffany v. County Board of Review*, 188 N.W. 343 (1971). The Iowa Supreme Court later stated that improvements should be valued separately. (*Carlon Company v. Board of Review of the City of Clinton*, 572 N.W. 2d 146 1997).

Our survey of six Iowa counties found that all six counties valued land separately from improvements. Three of the surveyed counties did not inform the property owners of the separate valuations, while three others did.

KANSAS

Kansas requires that land and improvements be valued separately for property tax purposes (see K.S.A. Section 79-412). That same statute however states that land and improvements—once valued—are to be considered a single valuation and entered on the assessment roles as a single value. The requirement that the land be valued separately from improvements, but assessed as a single value has been upheld by the Kansas courts. (See *Protest of Spangles*, 17 Kan. App. 2.d 335, 835 P.2d 699 (1992); *Appeal of Andrews*, 18 Kan. App. 2.d 311, 851 P.2d 1027 (1993)).

Our survey of four Kansas counties found that all six jurisdictions valued land separately from improvements. None of the counties surveyed, however, informed the property owners of the separate valuation.

KENTUCKY

Kentucky requires that land and improvements be valued and assessed separately for property tax purposes (K.R.S. section 132.30). The separate valuations must be listed publicly on the assessment roles (K.R.S. sections 91.350 and 92.460).

Our research found no Kentucky appellate court cases or administrative rulings interpreting these laws.

Our survey of four Kentucky counties found that all four valued land separately from improvements. Three of the surveyed counties did not make the separate valuations available to property owners as part of the assessment notice or tax bill. But in each of the three counties property owners were notified that they could request the separate valuation amounts. One county routinely notified property owners of the separate valuations.

LOUISIANA

Neither the constitution nor statutes of Louisiana address the issue of whether land should be valued separately from improvements for property tax purposes. One statute, however, implies that land and improvements should be valued as a single unit for property tax purposes. LA. R.S. section 47:1958 states that the assessor should "take into consideration the enhanced value of such lands and lots arising from the buildings and improvements thereon."

We were unable to locate any court cases or administrative rulings interpreting this statutory provision. But at least one appellate case's procedural history notes that the land and improvements were properly valued separately. *Sternberg Reality v. Louisiana Tax Commission*, 560 So.2d 868 (1990).

Our survey of four Louisiana cities found that the assessor's offices in each value land separately from improvements. Three of the cities notified the property owners of the

separate valuations. One city provided property owners notice of the combined values of land and improvements.

MAINE

Maine requires that land and improvements be valued and assessed separately for property tax purposes (36 MRS Section 383). We could locate no other statutory or regulatory authorities discussing the valuation process. Nor could we find any court opinions directly or indirectly addressing this issue.

Our survey of four Maine counties found that all four valued land separately from improvements. In each of the counties, property owners were notified of the separate valuations.

Exhibit A: Jurisdictions Subject to Review

Alabama

Alaska

Arizona

Arkansas

California

Colorado

Connecticut

Delaware

District of Columbia

Florida

Georgia

Hawaii

Idaho

Illinois

Indiana

Iowa

Kansas

Kentucky

Louisiana

Maine

Exhibit B: Methodology

The Law

In determining the legal requirements regarding valuation of property and improvements, we examined the particular state's constitution, regulations, statutes, administrative rulings, and appellate court opinions. In doing so, we looked for specific language in the legal authorities expressly or implicitly requiring the taxing jurisdiction to value land separately from improvements.

We did not review state trial court opinions, state tax court decisions, or government documents of a non-legal nature (i.e., press releases, bulletins, public advisories, etc.)

We limited our research to state law. We did not conduct research on individual local governments (i.e., the laws of a particular city or county in the jurisdictions subject to the report). We recognize however that such laws may have a bearing on the question of how property is valued, particularly with respect to valuation practices.

Practice

In determining how local governments actually value land and improvements, we conducted a survey of randomly selected jurisdictions in each state. We tried to contact as many local governments charged with administering the property tax as possible given time and resource constraints. In total 92 local government offices were surveyed.

In some states as many as six local government offices were surveyed. While in others (i.e., the District of Columbia) fewer government offices were surveyed. With the exception of the District of Columbia, Hawaii, Delaware, and Idaho at least four jurisdictions that imposed real property taxes were surveyed in each of the remaining sixteen states. The surveys were conducted by telephone during the period March 1 - April 1, 2001.

We are not making any assertions as to the statistical relevancy or accuracy of the survey. While we hope that the sample is representative of the jurisdictions in the state, we did not possess the resources or the technical expertise to conduct a scientifically valid experiment. Nonetheless, we are confident, given the unanimity of the results, that the answers provide significant insight to the valuation procedures for local governments imposing real property taxes.