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# Driving us Crazy: A History and Analysis of New Haven's Personal Property Taxes

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**Driving us Crazy: A History and Analysis of New Haven's Personal Property Taxes**

Noelle E. Lyle

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## Introduction

On October 7, 2003, California Governor Gray Davis became the second Governor in American history to be recalled.<sup>1</sup> Multiple factors contributed to his lack of popularity, from natural disasters to record budget shortfalls in the wake of the dotcom bust, but for many the tipping point came when he declared that he would be tripling California's motor vehicle tax to shore up the state's budget. Most of Davis's challengers pledged to repeal the increase.<sup>2</sup> Tom McClintock, who came in third in the recall election and now serves as one of California's Representatives, made lowering vehicle taxes the main focus of his campaign.<sup>3</sup> Eventual winner Arnold Schwarzenegger made his feelings on the increase clear by dropping a wrecking ball onto a junker with the words "Davis Car Tax" spray painted onto the side.<sup>4</sup> Governor Schwarzenegger reduced vehicle taxes down to their previous levels his first day in office.<sup>5</sup>

While few can rival California's penchant for drama, similar debates take place across the states that currently levy annual ad valorem taxes on vehicles. Furthermore, while taxpayers have largely resigned themselves to real property taxes, they perennially debate not only vehicle tax rates and relief provisions, but also whether or not the tax should be levied at all. Yet, while scholars have done exhaustive studies on the real property tax, as well as the taxation of intangible property, they have given little thought to the category between the two – tangible

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<sup>1</sup> Katharine Q. Seyle, *For Gray Davis, Great Fall from the Highest Height*, N.Y. TIMES, Oct. 8, 2003, available at <http://www.nytimes.com/2003/10/08/us/california-recall-governor-for-gray-davis-great-fall-highest-height.html?emc=eta1>.

<sup>2</sup> Michael Hiltzik, *Reversing Car Tax Pledge Is Best Course*, L.A. TIMES, Oct. 9, 2003, at C1. The tax, used to fund local governments, had been lowered in 1998, with the State of California promising to make up the local shortfall. Governor Davis' tax increase restored vehicle taxes to their pre-1998 levels, because the state could no longer afford to make payments to its localities.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> John M. Broder & Dean E. Murphy, *Schwarzenegger Takes Oath and Vows to End Divisions*, N.Y. TIMES, Nov. 18, 2003, available at <http://www.nytimes.com/2003/11/18/us/schwarzenegger-takes-oath-and-vows-end-to-divisions.html>.

personalty, now taxed mostly in the form of automobiles and the personal property of businesses.

No doubt part of this lack of attention is due to the fact that taxes on tangible personalty make up only a small portion of local revenues,<sup>6</sup> with many localities not collecting personal property taxes at all.<sup>7</sup> Taxes on personalty, however, have been a component of local revenue since colonial times. Moreover, in their current manifestation as annual levy on vehicle values these taxes have outsized effects upon state and local politics. As one political analyst puts it, “Nothing excites Americans like tax breaks and automobiles. Thus it is hard to imagine a more potent tax proposal than one which lowers the tax on automobiles.”<sup>8</sup>

This paper will examine the tangible personal property tax in New Haven, with a focus on the tax as it is levied on residents rather than businesses. Part I will trace the history of the tax from the cow to the car, focusing on how administrators have dealt with frequent attempts at evasion and the challenges involved in having the state set the tax law while localities assess and collect the tax. Part II will examine the tax in its modern form, using a novel application of the theory of tax morale to local taxation, showcasing why the vehicle tax is so controversial, and arguing that it should be locally controlled. Part II then evaluates the tax from a local finance perspective, adapting the benefits tax framework to personal property and arguing that vehicle tax may increase local government efficiency by acting as a benefits tax for renters. Part III concludes with a roadmap for implementing local control of the vehicle tax in Connecticut.

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<sup>6</sup> Neither the Census of Governments nor the Tax Foundation distinguish personal property taxes from real property taxes in their regularly-gathered statistics, with the result that inter-state data is difficult to come by. Two exceptions are a special report in the 1957 Census of Governments, Frederick L. Bird, Public Administration Service, *The General Property Tax: Finding of the 1957 Census of Governments*, and a 1998 report, Scott Mackey & Mandy Rafool, *State and Local Value-Based Taxes on Motor Vehicles*, 14 STATE TAX NOTES 541 (1998).

<sup>7</sup> In Connecticut, for example, taxes on motor vehicles make up about ten percent of local tax revenue. See Report of the State of Connecticut Blue Ribbon Commission on Property Tax Burdens and Smart Growth Initiatives, 30 (2003).

<sup>8</sup> Laura A. Wheeler, *An Analysis of the Economic Consequences of Modifying the Property Tax on Motor Vehicles in Georgia: Alternative Proposals and Revenue Effects*, FRP Report No. 19, 1 (Sept. 1998), available at <http://aysps.gsu.edu/frc/files/report19.pdf>.

## Part I: The Tangible Property Tax in New Haven's History

### A. Taxation in Early New Haven and Early Connecticut: 1638-1818

Personal property taxes have been levied in New Haven since 1649 when the General Court adopted Massachusetts's tax code, which included taxes upon livestock.<sup>9</sup> In fact, livestock taxes were a large part of the reason why New Haven adopted a new tax system. The Colony had previously levied taxes almost exclusively upon farmland,<sup>10</sup> but many of its large landholders had invested heavily in failed ventures during the dozen years in which the settlement had been active.<sup>11</sup> They complained that they were unable to pay their taxes, while others with little land had become more prosperous but contributed less to the general coffers.<sup>12</sup>

The Massachusetts Code addressed their complaints by instituting a poll tax on all adult males, levying a "faculty tax" meant to reach the wealth of merchants and professionals with little land,<sup>13</sup> and listing livestock at a much higher value than land.<sup>14</sup> All lands were listed at 20 shillings per acre, while livestock were listed at anywhere from ten pounds (horses three years old or older) to eight shillings (goats one year old or older) depending upon their species and

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<sup>9</sup> FREDERICK ROBERTSON JONES, HISTORY OF TAXATION IN CONNECTICUT, 1636-1776, 20-21 (1896).

<sup>10</sup> There were two exceptions. First, if any free planter chose not to accept a land allotment, he was to be taxed a flat rate of 1 shilling per year. RECORDS OF THE COLONY AND PLANTATION OF NEW HAVEN, FROM 1638-1649, 186, 199 (Charles J. Hoadly, ed., 1857) [hereinafter RCNH I]. Second, wealthy traders and merchants were to be taxed periodically as the town saw fit, because they owned little land and would thus escape taxation. *Id.* at 199.

<sup>11</sup> Farmland had been apportioned in New Haven based upon the size of one's family and the size of one's estate. *Id.* at 92. As a result, the tax indirectly reached wealth as measured at the time lands were given out. However, many of New Haven's wealthiest citizens had invested large sums in establishing a trading post along the Delaware River. They bought lands in the area from nearby Indian Tribes, but the Dutch and Swedes, who also claimed the area, eventually drove them away. See JONES, *supra* note 9, at 20 ("On account of the failure of the Delaware Company, those individuals who were rich in 1640 became impoverished, and possessing more land than their neighbors, who had accumulated personal property rather than real estate, the burdens of the land tax bore heavily upon them.")

<sup>12</sup> RCNH I 448. The General Court also heard the complaint that large families were unable to pay their taxes on account of having been given so much land. Historians seem to have ignored this argument, likely because it is less convincing than the first: far more land was given out to the rich than to those with large families.

<sup>13</sup> The faculty tax was essentially an income tax adapted to a property tax system: merchants and professionals were to have their businesses set on the list at an amount that would lead them to be taxed on their gains, as property was supposed to be set on the list according to the gains that it would bring in. See JONES, *supra* note 9, at 25-26.

<sup>14</sup> For a list of taxable property under the 1649 tax code, see Appendix A.

age.<sup>15</sup> These values were roughly based on the worth of land and livestock, as measured by the amount of food and basic goods that they could produce in a year.<sup>16</sup> The livestock tax thus allowed New Haven to better reach the wealth of its residents.<sup>17</sup> It also would have been familiar to settlers, having been levied in England since the Middle Ages.<sup>18</sup> Livestock taxes were also justified under the theory that tax was paid in return for government benefit. Men were taxed, in the form of a poll tax, for the protection that government afforded them.<sup>19</sup> Likewise, property was taxed for the protection that government afforded it. This benefit theory of taxation left little room for redistribution of wealth as a virtue of the tax system. The Colonists, however, seem to have been untroubled by this fact. At the time, poverty was often seen as the result of moral failings, and charity was primarily the work of the church.<sup>20</sup> As the church was tax-supported, some level of redistribution existed in the colonial system;<sup>21</sup> poll tax abatements were also given

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<sup>15</sup> One pound is the equivalent of 20 shillings, meaning that a full-grown horse and ten acres of land were taxed equally. After much debate, New Haven decided to tax houses based on imputed rental value. *See* Appendix A. Connecticut exempted houses from taxation entirely in 1664, but reinstated the tax a few years later. By 1771, houses were taxed based upon the number of fireplaces inside. *See* Arthur F. Potter, *Taxation System of Connecticut in 1776*, 23 BULL. OF THE NAT'L TAX ASSOC. 130, 136 (1938).

<sup>16</sup> *See, e.g.*, JENS PETER JENSEN, PROPERTY TAXATION IN THE UNITED STATES 21 (1931).

<sup>17</sup> *See, e.g.*, EDWIN R.A. SELIGMAN, ESSAYS IN TAXATION 16-17 (8th ed. 1915) (noting that taxes on productive property were the basis for taxation in New England, but not in the southern colonies which tended to use excise taxes and shy away from poll tax, which would have in effect been a tax on slaves.)

<sup>18</sup> *See, e.g.*, JENSEN, *supra* note 16, at 23. The tax on livestock dates back to the Danesgeld. Originally a bribe paid to the Vikings in exchange for not raiding villages, it eventually turned into an annual levy.

<sup>19</sup> *See, e.g.*, JONES, *supra* note 11, at 15 (The duty of every citizen to contribute his share in the support of the colonial government was very clearly set forth in the Code of Laws.... This duty... was based upon the theory of benefit received by reason of the existence of the government. The amount of the contribution was determined by the ability of the inhabitant to pay, and his ability, by the amount of land and property he possessed, while every able-bodied freeman was required to pay a specified sum as a poll tax.); Potter, *supra* note 24, at 135 ("There should be a stiff tax on persons in return for the protection afforded them and a stiff tax on property in return for the protection afforded it. Since all persons received equal protection from the government the personal or poll tax should be equal on all. Since property ownership varied, the tax on property should vary according as one's ownership of property varied. So agreed the political economists of the day as they elaborated the now almost universally discarded Benefit Theory of taxation."). For New Haven's poll tax rate, see Appendix A.

<sup>20</sup> *See, e.g.*, David Villar Patton, The Queen, the Attorney General, and the Modern Charitable Fiduciary: A Historical Perspective on Charitable Enforcement Reform, 11 U. Fla. J.L. & Pub. Pol'y 131, 152-52 (2000); Note, *The Enforcement of Charitable Trusts in America: A History of Evolving Social Attitudes*, 54 VA. L. REV. 436, 440 (1968).

<sup>21</sup> In early New Haven, people were taxed to support the Congregationalist church; ministers also received special tax breaks. *See* JONES, *supra* note 11, at 23.

for men who were sick and disabled and thus could not work.<sup>22</sup> The early New Haven records, however, give no evidence of a desire to tax the rich at higher rates than the poor.

## 1. Colonial-Era Tax Administration

In the 1650s, New Haven had two levels of tax: town taxes and colony taxes. Both were based off the same list of ratable property.<sup>23</sup> Taxes were levied as of a specific date – August twentieth throughout most of the colonial period.<sup>24</sup> Towns elected listers each year to take an account of all the adult males in their towns and to ask all families for a list of their land and livestock. As property was set on the list at a fixed amount rather than as a percentage of its value, listers could with little effort turn an account of each family's property into a Grand List of all the taxable property in their town.<sup>25</sup> All town lists together served as the Colonial Grand list.<sup>26</sup> The colonial government would set a Colony tax rate, normally one penny for every pound of property on the list.<sup>27</sup> Each family would pay their share of the grand list to their town constable, who then remitted the money to the colonial government.<sup>28</sup> Towns, and eventually parishes, counties, and school districts also levied taxes using the town grand list or portions thereof. As a result, although the Colony controlled what classes of property were set on the

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<sup>22</sup> See, e.g., RCNH I, 500.

<sup>23</sup> See Appendix A.

<sup>24</sup> See Potter, *supra* note 15, at 131.

<sup>25</sup> JONES, *supra* note 11, at 9. The faculty tax, of course, was more difficult to assess. The result seems to be that listers deferred to businessmen and professionals, essentially allowing them to set their own taxes. *Id.* at 26.

<sup>26</sup> Originally, one lister per town was selected to give the list to the General Court and to serve as inspector of the list. In 1796, the law was changed and listers instead gave the list to the state comptroller, who with the state treasurer drew up the State grand list. Henry F. Walradt, *The Financial History of Connecticut from 1789 to 1861*, 17 CONN. ACADEMY OF ARTS AND SCI 1, 21 (1912).

<sup>27</sup> This is the rate set out in the Code of 1656, but the General Court often levied double rates or early rates, especially in times of war. See JONES, *supra* note 4, at 41 (describing the high taxes levied during King Phillip's War).

<sup>28</sup> *Id.* at 46-48.



grand list at what rates, it was almost completely dependent upon the town listers for revenue.<sup>29</sup>

The towns, however, had more leeway in revenue raising. New Haven relied upon fines and fees to supplement its taxes.<sup>30</sup> In addition, it often levied what were in essence special assessments, where those who would benefit most from an improvement were asked to pay for a portion.<sup>31</sup>

## 2. Colonial-Era Tax Evasion

It is probably no accident that the first penalties for failure to list property were designed to punish those who had not been listing their cattle.<sup>32</sup> Though livestock constituted a large part of colonial wealth, the livestock tax was relatively easy to evade. First, while land and adult men were difficult to hide, livestock could be moved elsewhere just before listing day.<sup>33</sup> It could also be sold or butchered immediately before. Second, many people wintered their cattle in different towns, or in areas outside of town boundaries, and town listers had no way of discovering far-off property.<sup>34</sup> Third, it would have been easy to list livestock as younger than they were in order to pay less tax, or avoid it all together.<sup>35</sup> Most of these flaws in the tax can be directly attributed the fact that livestock, as movable property, increased opportunities to evade tax - opportunities

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<sup>29</sup> Indirect taxes and tonnage duties were also levied, mostly at the colonial level, but formed only a miniscule part of the colonial revenue. *Id.* at 53.

<sup>30</sup> Residents could be fined for failing to report to the watch, or for arriving late to church. The fine for both offenses was one shilling. *Id.* at 33, 310. In addition to paying any court-ordered fines for their crimes, convicted criminals had to pay the town Marshall one shilling for the privilege of being put in jail. *Id.* at 83.

<sup>31</sup> For example, erecting fences was often a joint venture between the town and those whose land was being fenced. *Id.* at 61. Often, the town would pay for half the cost of fencing in land, with the owners of the newly enclosed land would pay the other half plus the cost of maintaining the fencing. Bridges could be financed by requiring those living nearby to give money and labor; they could in turn be rewarded with extra fishing rights. *Id.* at 143.

<sup>32</sup> THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT FROM AUGUST 1689 TO MAY 1706, 80 (Charles J. Hoadley, ed., 1868) [hereinafter CT PUB. REC. 4] (“[I]t is now by this Court ordered that such catle as are left out of the list shall be forfeited, or the value of them as they are valued in the list of esstates, provided all such complaints be prosecuted within one twelue moneth after such neglects of forfeitures.”).

<sup>33</sup> JONES, *supra* note 11, at 36.

<sup>34</sup> Unincorporated lands were supposed to be taxed by the town closest to them, but apparently frequently escaped taxation. See CT PUB. REC. 9, 208, in which the General Assembly changes the law in 1728 to make owners list their livestock in the towns where the owners live, in part because of the frequency of tax evasion.

<sup>35</sup> The Code of 1656 had complex rules for when an animal less than a year old was to count as a year old for tax purposes. NHCR II, 581-82.

which the colonists were more than happy to look for and exploit.<sup>36</sup>

Colonists could also exploit administrative weaknesses in the rating system. Tax collection was relatively easy unless a taxpayer moved to another town: the collectors could auction off property and jail debtors, and were willing to do so because they had to pay out of their own funds to make up for any uncollected taxes.<sup>37</sup> The same could not be said for the listing of property, however. Listers were elected for a one year period, worked only a few days out of that period, had little incentive to discover the unlisted property of their neighbors, and were not beholden to the colonial government.<sup>38</sup> These problems remained even after New Haven Colony was subsumed by Connecticut in 1664, as Connecticut had also adopted the Massachusetts tax code and had the same grand list system.<sup>39</sup> Sometimes, a town lister would simply fail to rate the cattle in his town, or would fail to appear and present a list to the General Court.<sup>40</sup> In 1705 the Colonial government enacted a four-fold penalty system, punishing evaders by taxing them four times the normal rate on the property they had failed to list and

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<sup>36</sup> Potter, *supra* note 15, at 167. For example, in 1702 the law was changed to exempt one horse per soldier, for use in military service. In 1792, stallions and stud horses were rated much higher than other horses – at \$67 as opposed to \$10. By 1799, the General Assembly had to amend the law to specify that soldiers could not use their stud horses as their one tax-exempt horse.

<sup>37</sup> Town constables, and later locally-elected collectors, had the power of distress. They could auction off property, take land, and jail people, in that order, to recover unpaid taxes. If, as occasionally happened, the constable or collectors were found to be insolvent, the selectmen of the town would have to pay and be reimbursed by the town. . JONES, *supra* note 11, at 47-51. Collection was surely more difficult in times of high taxes, but by the end of the 18<sup>th</sup> century, almost all tax was collected by six months after it was due. Oliver Wolcott, Jr., *Direct Taxes*, H.R. DOC. NO. 100-4 (1796), *reprinted in* 1 AMERICAN STATE PAPERS: CLASS III FINANCE 414, 423, 426-27, 431 (Walter Lowrie & Matthew St. Clair Clarke eds., Gales & Seaton 1832).

<sup>38</sup> No mention is made of payment for the listers in the early records, nor of travel expenses for the one lister from each town unlucky enough to be tasked with bringing his town list to the colonial seat. The first remuneration appears to have been made in 1789, and was set at 2 shillings and six pence for every thousand pounds on the grand list. Potter, *supra* note 15, at 173.

<sup>39</sup> *Id.* at 21.

<sup>40</sup> For example, in 1676, Stratford's listers omitted cattle from their town list. CT PUB. REC. 3, 3. In 1682, Stonington failed to turn in their list, *Id.* 113, and in May 1690 its townspeople were preventing the town constable from collecting the colony tax, CT PUB. REC 4, 24. New London, which by 1703 was a prosperous town of 298 adult men and had the third-largest town grand list in the colony, was a serial offender. It failed to turn its town list in 1689, 1697, and again in 1700. *Id.* 4, 9, 237. In 1704, it was reported that some towns had not been assessing faculty taxes. *Id.* at 493.

rewarding listers by giving them half of the extra tax.<sup>41</sup> Even with the new penalty, however, there is evidence that evasion was widespread and that townspeople viewed evaders with some sympathy. The colonial records include multiple cases where a lister found unlisted property, but the town officials refused to assess the four-fold fine.<sup>42</sup>

Personal property taxes in the Colonial period were thus plagued with two related problems. First, the taxes were easy to evade. Second, although the Colony set colony-wide tax laws and decided what property should be taxed, local listers had de facto control over what was set on the Grand List, making evasion even easier. Today, New Haven and other Connecticut localities continue to wrestle with these same two basic problems.

## **B. Towards a General Property Tax: 1818-1860**

By the beginning of statehood, tax rates had gone up, both to pay for the Revolutionary War and to pay for increased local services – New Haven, for example, created its first fire department and board of health in the 1780s.<sup>43</sup> At the same time, however, residents again began to complain that the tax system was failing to reach wealth. Land and livestock were set on the grand list at rates that were meant approximate their annual productive capacity.<sup>44</sup> In an

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<sup>41</sup> The lister, or whoever had discovered the evasion, originally received three-fourths of the four-fold rate. One fourth went to the public purse. Later, the law was changed so that half the penalty went to whoever had caught the fraud, and half went to the colony. JONES, *supra* note 11, at 33.

<sup>42</sup> For example, in 1718 Guilford listers found unlisted property of 336 pounds, but town selectmen unilaterally abated the rates. The listers complained to the general assembly because they did not get their portion of the four-fold assessment, and the assembly reversed the abatement. CT PUB. REC. 6, 73. Similar events took place in 1758 in Stonington, and 1759 in Wallingford. In May of 1747, listers made an 8000 pound four-fold assessment, and the justices and selectmen of the town abated it rather than allow the listers to collect. The case was complicated by the fact that the Justices were among the people that the listers had found fraudulently hid taxable property, and the General Assembly appointed outside men to investigate. CT Pub Rec. 9, 368. In 1761, a Fairfield man went so far as to make up a fraudulent lease document to try and escape paying a four-fold fine.

<sup>43</sup> MICHAEL SLETCHER, *NEW HAVEN: FROM PURITANISM TO THE AGE OF TERRORISM* 46 (2004).

<sup>44</sup> The rating system for land had been refined over the years: Land was broken down by type (pasture land, cropland, meadowland etc.) and was set on the list at different rates based on type and the area of the colony in which it was found. Hartford meadowlands, considered to be the Connecticut's best, were taxed the highest rate. *Id.* at 141.

agricultural economy, this would have been the same as their capital value. With land starting to be used for new, commercial purposes, however, the rating system broke down and livestock bore a heavy part of the tax burden even as they became a less important source of wealth. By 1796, Connecticut's tax revenue was comprised of about 39% polls, 27% real estate, and 29% livestock, with cattle alone making up 21% of the total Grand List.<sup>45</sup> The faculty tax, which should have acted somewhat as a corrective by requiring listers to assess the value of businesses and professional firms, brought in little revenue. This was likely because listers habitually deferred to businesses' own estimates of their worth.<sup>46</sup>

The General Assembly added more categories of personal property to the grand list – including clocks, watches, silver plate and carriages<sup>47</sup> – likely in the hopes that taxing the trappings of wealth would quiet some of the discontent that was starting to build around Connecticut's tax system. The attempt failed, however: luxury items never made up a large percentage of the grand list, and by the beginning of the 19<sup>th</sup> century, the state grand list was declining despite inflation and population growth.<sup>48</sup> Henry Walradt in his *Financial History of Connecticut*, posits that the list shrank because men were amassing untaxed forms of wealth such as stock, bonds, and cash.<sup>49</sup> An additional possibility is that their taxable wealth in the form of personalty went unlisted.

By the time Oliver Wolcott Jr. became Governor of Connecticut in 1817, he decried the

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<sup>45</sup> See Potter, *supra* note 15, at 132-34. The remaining five percent of revenue came from personal property such as carriages and household goods. See *infra*, note 47.

<sup>46</sup> *Id.* at 134.

<sup>47</sup> Coaches, Chariots and Phaetons were among the highest-rated items on the tax list, coming in at \$168, \$134, and \$100 respectively. They did not, however, make up a very large percentage of the grand list revenue, either because of evasion or because not very many coaches and carriages existed at the time. Walradt, *supra* note 14, at 22-23.

<sup>48</sup> The 1796 grand list was \$5,890,883, and it declined most years after that, until it was just \$5,559,784 in 1818. *Id.* at 27.

<sup>49</sup> *Id.* at 27.

tax system as “ancient” and pointed out that industry and the increased use of stock and bonds meant that it failed to get at residents’ ability to pay.<sup>50</sup> In 1818, Wolcott instituted sweeping tax reform. All property was assessed at a percentage of its market value, instead of being listed at a set rate.<sup>51</sup> Different classes of property were treated differently at first, with luxury items such as silver plate and clocks taxed at 50% of their value and carriages at 40%. By 1824, however, all property was divided into only two classes: real property, which was assessed at 3% of its value, and personal property, which was assessed at 6%. In 1850, the law was changed once again, with all property set on the grand list at 3% of its value.<sup>52</sup>

The switch to taxes based upon property value was accompanied by administrative difficulties for the town listers. They became, in name as well as duty, assessors.<sup>53</sup> Responsible for evaluating all taxable property in their towns, they were still elected for a one-year term only, and worked only a few days of the year.<sup>54</sup> The result was wide variation in real property assessments across the towns, leading Connecticut in 1820 to create a board of equalization to

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<sup>50</sup> *Id.* at 61 (quoting Manuscript of Governor Wolcott’s Message to the May Session of the General Assembly (1817) at pp. 4-7). Wolcott was no stranger to fiscal policy: George Washington had appointed him to succeed Alexander Hamilton as Secretary of the Treasury in 1795. In 1796 he drew up a report for the U.S. House of Representatives surveying all direct taxes levied by the states. He resigned his Treasury post in 1800, following a smear campaign against him in which he was accused, among other things, of setting fire to the State Department building. He spent several years as a businessman in New York, which had not levied direct taxes since 1788, before returning to Connecticut as a farmer – an experience which may have been enlightening, as it was farmers who bore the brunt of Connecticut’s tax. Nation Governor’s Association, Governor’s Information, Connecticut Governor Oliver Wolcott Jr., *available at* <http://www.nga.org/portal/site/nga/menuitem.29fab9fb4add37305ddcbeeb501010a0/?vgnextoid=095a224971c81010VgnVCM1000001a01010aRCRD>.

<sup>51</sup> When rating real estate, listers (now assessors) were to take its use into account. Houses were listed at 2% of their value, land at 3%, and stores, mills and other buildings used for business at 3%. Professions were still assessed at the discretion of the assessors. Horses, mules, and asses were rated at 8%, cows and cattle at 6%. Other livestock were exempt from taxation. Walradt, *supra* note 26, at 63-64.

<sup>52</sup> In 1860, the law changed again, with all property to be put on the list at its full value. Walradt, *supra* note 26, at 113.

<sup>53</sup> The term “assessor” was first used by the General Assembly in 1777 to describe those listers who dealt with the faculty tax, and thus had to determine the value of a business or professional enterprise. Potter, *supra* note 15, at 172.

<sup>54</sup> *Id.* at 171-172.

make up for the worst of the discrepancies.<sup>55</sup> As for personal property, assessors essentially relied upon the honor system. Any other solution would have either required assessors to go into people's homes and appraise their goods, or would have required a registration system well beyond the capabilities of the time and certainly beyond the capabilities of the assessors.

### **C. The Rise and Fall of the General Property Tax: 1860-1956**

From 1820 to around 1860, states changed their laws and constitutions to require that all property be assessed according to its value and taxed at a uniform rate.<sup>56</sup> The impetus for this movement, according to scholars, was the rise of Jacksonian Democratic ideals.<sup>57</sup> Universal taxation was linked to universal (white male) suffrage and the conviction that all should be taxed according to their wealth.<sup>58</sup> Farmers, who had borne the brunt of the previous tax system, ardently supported the general property tax.<sup>59</sup> Dissenters were few. Shortly after Connecticut instituted its own General Property tax in 1850, New Haven's grand list was made up of 59% real property, 17% tangible property, and 17% stocks, bonds, cash and other intangible property.<sup>60</sup> Cattle, the mainstay of the tax system fifty years earlier, now accounted for only \$13,162, or 0.068% of the grand list. Coaches, carriages, and pleasure wagons were reported at \$62,260, about 3% of the

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<sup>55</sup> JENSEN, *supra* note 18, at 360. By 1851, the treasurer and controller constituted the board of equalization, and had a list of enumerated duties. CONN. GEN. STAT. §12-42 (1875).

<sup>56</sup> For a list of such amendments see JENSEN, *supra* note 18, at 39. Connecticut is one of the few states in the nation that has never codified its tax law in its constitution.

<sup>57</sup> See, e.g., Glenn W. Fisher, *The General Property Tax in the Nineteenth Century: The Search for Equality*, 6 PROPERTY TAX JOURNAL 99, 103 (1987). But see Robin L. Einhorn, *Species of Property: The American Property-Tax Uniformity Clauses Reconsidered*, 61 J. OF ECON. HIST. 974 (2001) (arguing that the general property tax was championed by slaveholders worried that their slaves would be taxed more heavily than other property, instead of by farmers looking towards Jacksonian democratic ideals).

<sup>58</sup> See, e.g., John Joseph Wallis, *A History of the Property Tax in America*, PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 123, 137 (Wallace E. Oates ed., 2001)

<sup>59</sup> See, e.g., GLENN W. FISHER, THE WORST TAX?: A HISTORY OF THE PROPERTY TAX IN AMERICA 23 (1996).

<sup>60</sup> GRAND LIST OF THE STATE OF CONNECTICUT FOR THE FIRST OF OCTOBER, 1854, PREPARED BY THE COMPTROLLER FROM THE RETURNS OF THE SEVERAL TOWN CLERKS (1855). "Other property" made up the final 7% of the grand list.

grand list.<sup>61</sup> The bulk of personal property came in the form of merchandise and manufacturing equipment.<sup>62</sup>

The proportion of tax levied upon tangible personalty steadily declined under the general property tax – not just in New Haven but across the nation. Census figures show that tax revenue from personalty decreased 24% from 1860 to 1880, while that from realty increased 87%.<sup>63</sup> Some of the decrease was natural; intangible property such as stocks and bonds made up a greater proportion of wealth, and real estate’s value increased as manufacturing and industry created new highest and best uses for land. However, a portion of the increase was due to widespread tax evasion and to routine underassessment of movable property.<sup>64</sup> In Connecticut, moreover, the town-state tax system provided a strong incentive to underassess property of all types.<sup>65</sup> By understating values and then raising the town mill rate to make up for the underassessment, towns could minimize the tax their residents owed to the state without suffering lost revenue themselves. As a result, differing rates of underassessment among towns was a source of complaint among assessors for decades.<sup>66</sup>

By the 1870s, such practices were well known. Tangible property was undertaxed and

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Sumner Benson, *A History of the General Property Tax*, THE AMERICAN PROPERTY TAX: ITS HISTORY, ADMINISTRATION, AND ECONOMIC IMPACT 53 (George C.S. Benson ed. 1965). For a more specific example, see JENSEN, *supra* note 18, at 266 (explaining that personalty in New York made up \$1,717,295 of the tax list in 1897, but declined every year thereafter, except for one, until it was only \$50,210 in 1924.).

<sup>64</sup> *Id.* at 266.

<sup>65</sup> The state-provided school fund once acted as a check on shrinking grand lists, since its dividends were given out on the basis of the town lists. However, in 1819, the General Assembly had adopted a more equitable method of giving out school fund dividends, apportioning them based on the number of school age children in each town. Walradt, *supra* note 26, at 81.

<sup>66</sup> See, e.g., MABEL NEWCOMER, SEPARATION OF STATE AND LOCAL REVENUES IN THE UNITED STATES 75-82 (1917); Benson, *supra* note 63, at 52-53.

unlisted. Intangible property was even worse: most of it escaped taxation entirely.<sup>67</sup> Scholars began to turn against the general property tax, pointing out that it was almost impossible to have a tax that reached all property and reached it only once, given division of ownership interests, the fact that property was often owned in many different taxing jurisdictions, and the ease of evading tax.<sup>68</sup> In 1888, Richard Ely, a professor at Johns Hopkins and a member of the Maryland Tax Commission, called the general property tax “unnecessarily demoralizing,” saying that it was far too tempting to evade, especially when the taxpayer owned personal or intangible property.<sup>69</sup> Charles Bullock, an economics professor at Harvard, wrote in 1909 that “In the United States we have the proud distinction of possessing about the worst methods of local taxation to be found in any part of the civilized world.”<sup>70</sup> E.R.A Seligman, the most prominent tax scholar of his day, echoed Bullock, saying “[t]he general property tax as actually administered is beyond all doubt one of the worst taxes known in the civilized world.... It puts a premium on dishonesty and debauches the public conscience.”<sup>71</sup> In theory, the only way to decrease one’s tax burden under the general property tax was to become poorer. In practice, the tax incentivized those with movable or intangible property to hide it. Assessors had neither the inclination nor the means to stop evasion and actively engaged in underassessment, with the effect that a tax that had been championed as equitable and equal was neither.

By the end the 19<sup>th</sup> century, Connecticut, like many state governments, had solved the problem of the general property tax at the state level by giving up on it and relying upon other

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<sup>67</sup> Many scholars note that part of the reason why intangible property escaped taxation so readily was that it usually had a clear face or market value, and was thus difficult to underassess, putting it at a disadvantage as compared to all other types of property. *See, e.g.*, E.R.A. SELIGMAN, *ESSAYS IN TAXATION* 62 (10th ed., 1928).

<sup>68</sup> *See, e.g.*, JENSEN, *supra* note 18, at 50-52.

<sup>69</sup> RICHARD T. ELY, *TAXATION IN AMERICAN CITIES AND STATES* 230 (1888). The sources in the following paragraph are taken mostly from Fisher, *supra* note 57.

<sup>70</sup> CHARLES JESSEE BULLOCK, *A CLASSIFIED PROPERTY TAX* 95 (1909).

<sup>71</sup> SELIGMAN, *supra* note 67, at 62.



sources of revenue instead.<sup>72</sup> Connecticut drew revenue from an inheritance tax, a corporate tax, and a tax on railroads to fund its operations.<sup>73</sup> If it had sufficient revenue for the year, it did not levy a tax on the grand list at all. In the years when it did levy the tax, the amount was small. Although the state continued to set tax laws, taxation of personal property had essentially become a local concern.<sup>74</sup>

States also experimented with a return to classification as a way to solve widespread evasion, taxing different types of property at different rates, as Connecticut had done from 1818 to 1850.<sup>75</sup> Several scholars, including Simeon Leland, an economics professor at the University of Chicago, would later champion the classified property tax movement, positing that many of the inequities found in the general property tax could be cured by “adjusting the tax burden to varying capacity to pay taxes and varying capacity to evade taxes as between different classes of property.”<sup>76</sup> States began to officially adopt classification provisions as early as 1900.<sup>77</sup> Some amended their constitutions to allow classification, while others were permitted to classify because of judicial interpretation of their state laws.<sup>78</sup> Other states returned to classification in fact if not in law: assessors routinely undervalued certain classes of property.<sup>79</sup> This “illegal

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<sup>72</sup> Fisher, *supra* note 56 at 110-114. It was during this period that scholars began to call for state income taxes.

<sup>73</sup> Treasurer’s Report, Public Documents of the State of Connecticut, Vol. I (1903). By 1913, the state changed the way it collected money from the towns, leaving behind the grand list system and instead apportioning the town’s portion of the state tax burden among the towns on the basis of their tax receipts over the previous three years. State officials declared this system much better, since it meant towns no longer had an incentive to keep their grand list low but their tax rate high, minimizing their state taxes. Biennial Report of the Tax Commissioner, 1920 and 1921, Public Documents of the State of Connecticut. The state had also relied little upon the town tax in the early 1820s and 30s, but started back up again after the state’s financial position worsened, presumably because of the Panic of 1847. See Walradt, *supra* note 26, at 75; Wallis, *supra* note 58, at 124.

<sup>74</sup> The state tax on towns was eventually repealed in 1947. Report of the Connecticut State Tax Survey Committee, Submitted to the Governor January 3, 1949, 161.

<sup>75</sup> JENSEN, *supra* note 18, at 173-74.

<sup>76</sup> SIMEON E. LELAND, THE CLASSIFIED PROPERTY TAX IN THE UNITED STATES 39 (1928).

<sup>77</sup> *Id.*, at 423 (setting out in table form a list of all classification amendments to state constitutions from 1900 to 1928).

<sup>78</sup> NATIONAL INDUSTRIAL CONFERENCE BOARD, STATE AND LOCAL TAXATION OF PROPERTY 95 (1930).

<sup>79</sup> *Id.*, at 418; JENSEN, *supra* note 18, at 174.

classification” often received the unofficial approval of the state.<sup>80</sup> This de facto classification seems to have been a response to the two persistent problems of the personal property tax: evasion and the state-local divide. Assessors likely taxed personal property at lower rates as a concession to the fact that personal property taxes were so easy to evade.<sup>81</sup> They also developed practices suited to their own towns – taxing different classes of property differently in order to best please residents.<sup>82</sup>

### **1. The Vehicle Tax as a Local Tax**

This, then was the tax climate when the motor vehicle became popular. By 1908, the year the model-T came out, it was immediately taxed as personal property (the Connecticut grand list abstracts already had a category labeled “wagons, automobiles, and bicycles”), the state had essentially ceded the general property tax to the towns, and scholars had declared the tax broken beyond repair. Taxes on personalty were thought to be especially unworkable, since they were easier to evade and since widespread evasion made even honest taxpayers reluctant to pay.<sup>83</sup> At the time, New Haven had a population of around 133,000. State vehicle registration roles for 1910 show about 800 vehicles registered to New Haven addresses, plus two auto manufacturers and a handful of auto dealers.<sup>84</sup> Real property made up 89% of the Grand List, personalty about 10%, and intangibles – even easier to hide than personalty – about 1%.<sup>85</sup>

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<sup>80</sup> See, e.g., LELAND, *supra* note 76, at 402.

<sup>81</sup> *Id.* at 412-13.

<sup>82</sup> *Id.* at 412-13.

<sup>83</sup> See, e.g., SELIGMAN, *supra* note 67, at 22-28 (giving examples of falling assessments on personalty and explaining that one of the problems with the general property tax is “failure to reach personal property. This defect, although the most flagrant, perhaps requires the least comment; for it is so patent that it has become a mere byword throughout the land.”).

<sup>84</sup> State of Connecticut, Laws Concerning Motor Vehicles and List of Automobiles 1910.

<sup>85</sup> State of Connecticut, Report of the Tax Commissioner for Biennial Period 1909 and 1910, 122.

New Haven at the time was at the forefront of advances in tax collection and assessment. Its tax collector was paid a salary of \$4000 while most other towns in Connecticut still compensated their collectors using a percentage of the money they collected.<sup>86</sup> In 1910, most Connecticut towns still elected assessors for a one year term, had them work only ten to twenty days a year, and paid them a pittance.<sup>87</sup> New Haven, however, paid its five assessors a yearly salary of \$2000 and had them work the entire year. They were appointed by the Mayor for staggered five-year terms.<sup>88</sup> This move drew praise from the State Tax Commissioner, who noted that longer terms allowed assessors to develop expertise in valuing property, and that appointment instead of election insulated them somewhat from the pressure to undervalue the property of the politically connected.<sup>89</sup> New Haven was also at the forefront of motor vehicle assessment. It was one of the first Connecticut cities to use manufacturer values plus set depreciation schedules to assess cars.<sup>90</sup>

By 1917, when the state Joint Committee on Taxation and State Finance issued a report on Connecticut's tax system, the consensus was that personal property taxes were so easy to evade as to be hopeless.<sup>91</sup> Motor vehicles, however, were a different story. First, they were valuable and numerous. New Haven at the time was home to about 30 car dealers and over 3000

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<sup>86</sup> State of Connecticut, Information Relative to the Assessment and Collection of Taxes 1908, 7.

<sup>87</sup> *Id.* at 6, 20. The average number of days worked for an assessor in Connecticut was 32. The average pay per day was \$2.73.

<sup>88</sup> Report of the Tax Commissioner for Biennial Period 1909 and 1910, *supra* note 85, at 27.

<sup>89</sup> *Id.* at 27.

<sup>90</sup> *Id.* at 19.

<sup>91</sup> Fred Rogers Fairchild, Report of the Joint Committee on Taxation and State Finance (1917) (“[T]he present method of collection a tax upon various kind of personal property is very nearly a complete failure. The taxes are generally evaded and the operation of the system is most unequal throughout the state and produces numberless injustices.”) This Joint Committee report compared the grand lists to the census, finding that personal property was both underreported and undervalued. They also found that the smallest towns listed the largest percentage of personal property. New Haven was particularly bad. Although Connecticut's densest city, it was next to last in proportion of personalty to real property. *Id.* at 11.

cars.<sup>92</sup> Second, motor vehicles were harder to hide than other personal property, since each year the state motor vehicle department gave municipalities a list of cars registered to addresses within their borders.<sup>93</sup> Difficulties in evasion and collection remained however. A 1915 report found that about 25% of vehicles registered that year hadn't yet been entered onto any assessment lists.<sup>94</sup> Residents must have known that the DMV would not send their car registrations to the city until the next year, and a portion of them saw no reason to pay for their first (and most expensive) year of car ownership. Moreover, city assessors often found that car owners frequently claimed residency in low-tax towns rather than the higher-tax cities that they had originally given as their address for registration purposes.<sup>95</sup> In 1920, the *Hartford Courant* reported that three-fifths of its auto taxes were uncollectable, and that many people were able to evade the tax by selling their cars, by buying at strategic times, or by moving to other towns.<sup>96</sup> Various officials, as well as some newspapers, called for the state to either collect the tax itself or exempt vehicles from taxation.<sup>97</sup> In 1926, a panel of state assessors called it “the most troublesome tax now levied.”<sup>98</sup>

## 2. The Vehicle Tax and State Highway Finance

And yet, automobiles were so popular and roads took up so much of the state and local budget during the period that few were willing to get rid of the tax entirely. In the late 1920s and early 1930s, road construction and maintenance was the state's single largest expense, coming in above education and corrections, and accounting for 35 to 40 percent of Connecticut's

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<sup>92</sup> Connecticut Motor Vehicle Register, Official Publication (1915).

<sup>93</sup> See *Automobile Tax Results in Mix-up*, HARTFORD COURANT, Nov. 1, 1922 at 19.

<sup>94</sup> Fairchild, *supra* note 91 at 18, citing a 1915 state commission on taxation report.

<sup>95</sup> See, e.g., *Automobile Tax Results in Mix-up*, *supra* note 93.

<sup>96</sup> *City Losing on Automobile Tax*, HARTFORD COURANT, Dec. 18, 1920 at 11.

<sup>97</sup> See, e.g., Biennial Report of the Tax Commissioner 1921 and 1922, *supra* note 73, 37-38; *Wants Auto Taxes Collected by the State*, HARTFORD COURANT, Dec. 14, 1920 at 13.

<sup>98</sup> *Suggests New Plan for Town Auto Tax*, HARTFORD COURANT, Mar. 30, 1926 at 1.

expenditures.<sup>99</sup> About 17% of municipal revenue was also devoted to road work.<sup>100</sup> Moreover, motorists were desperate enough for more and better roads that they were willing to pay special taxes earmarked for road construction and upkeep.<sup>101</sup> Gasoline taxes and increased motor vehicle registration fees became a fast-growing source of state revenue.<sup>102</sup> States began to issue highway bonds.<sup>103</sup> Many also considered levying an annual fee on vehicles in lieu of a property tax. This move had the advantage of simplifying tax administration, since states were already in charge of vehicle registration. It also erased the difference in tax burdens across localities, at the same time erasing the incentive to register one's car in a different city or town. By 1930, seven states had decided to levy state-wide vehicle fees in lieu of local taxes.<sup>104</sup> These new fees essentially took motor vehicles out of the general property tax and earmarked all vehicle taxes for use in highway construction. The argument was that highways should be paid for primarily by vehicle owners, since good highways were used for cars and little else.<sup>105</sup> Local roads, on the other hand, could more properly be paid out of local property taxes, since they benefited local

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<sup>99</sup> Report of the Connecticut Temporary Commission to Study the Tax Laws of the State and to Make Recommendations Concerning Their Revision, Nov. 9, 1934, at 39, 50. Municipalities were also liable for damages because of defective bridges or roads, and could be ordered to do road work. *Id.* at 131. CONN. GEN. STAT. § 1420-1424 (1934).

<sup>100</sup> *Id.* at 50.

<sup>101</sup> *See, e.g.*, Introduction to the Report of the Connecticut Temporary Commission to Study the Tax Laws of the State and to Make Recommendations Concerning Their Revision, Nov. 9, 1934, at 71-76; Letters from the People, *The Automobile Tax*, HARTFORD COURANT, Mar. 10, 1915 at 8.

<sup>102</sup> *Id.* at 8 (stating that motor vehicle registration fees tripled between 1918 and 1927); *see also* Report of the Connecticut Temporary Commission, *supra* note 101, at 485-491.

<sup>103</sup> These bonds were issued in part to that states could receive federal matching funds for the amount that they spend on highways. The first matching funds were given under the 1916 Federal Aid Road Act, which apportioned money based in part on the amount of road miles in a state. *See* John Chynoweth Burnham, *The Gasoline Tax and the Automobile Revolution*, 48 MISSISSIPPI VALLEY HIST. REV. 435 (1961). They were followed in 1921 by the Federal Highway Act. *See* U.S. Dept. of Transportation, Federal Highway Administration, Highway History, <http://www.fhwa.dot.gov/infrastructure/blazer01.cfm>.

<sup>104</sup> NATIONAL INDUSTRIAL CONFERENCE BOARD, *supra* note 78 at 26, 107-116. Idaho, Iowa, New York, Oklahoma, Oregon, Vermont and North Dakota levied license fees in lieu of taxes. Of those seven states, only Iowa still has a fee in lieu of tax. It is state collected, with the state keeping the revenue.

<sup>105</sup> *See e.g.*, *The Automobile Tax*, *supra* note 101, at 8.

property owners.<sup>106</sup> In essence, administrators wanted to use vehicle taxes as benefit taxes – harkening back to the colonial theory of taxation and early New Haven’s use of special assessments when building fences and bridges.<sup>107</sup> The same logic is still used today in some states’ vehicle tax collection statutes, presumably for the same reason: officials believed if they tied vehicle taxes to road construction and upkeep, motorists would be more willing to pay.<sup>108</sup>

### 3. The Vehicle Tax after the Great Depression

The Great Depression exposed problems with the real property tax that made the automobile tax look straightforward in comparison. Real property was only infrequently reassessed, with the result that people were overpaying property taxes at the same time as they had lost significant portions of their wealth.<sup>109</sup> The problem of variations in assessment also received increased public scrutiny. According to one Connecticut tax report:

[U]nderassessment is – or at least was prior to the depression – the rule rather than the exception, and it is a well-established fact that, where underassessment prevails, inequalities in assessment are likewise prevalent. . . . such real and personal property as is assessed is listed at widely varying proportions of true value. Such conditions evidence

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<sup>106</sup> Connecticut Temporary Commission, *supra* note 101, Introduction at 71-72 (“Recognition has . . . been given to a division of all highways into two classes, designated by the United States Bureau of Public Roads as (1) general use highways and (2) land utilization highways. General use highways have been laid out or are now primarily used for the benefit of the motorist as such, and such highways may properly be financed wholly out of special motor vehicle taxes. Land utilization highways, including most of what are known as town roads and city streets, are used primarily as a means of access to the land, are of primary benefit to property owners, and may logically be financed out of property taxes and special assessments upon real estate.”)

<sup>107</sup> *See infra* note 267 and related text.

<sup>108</sup> For example, the proceeds from Arizona’s vehicle tax are apportioned among the Arizona Highway User Revenue Fund, The State Highway Fund, the general funds of Arizona’s counties, and the transportation funds of Arizona’s counties. ARIZ. REV. STAT. §28-5808. It was suggested in Connecticut as early as 1910 that tying car taxes to road expenditures would increase motorists’ willingness to pay. *See* Report of the Tax Commissioner for Biennial Period 1909 and 1910, *supra* note 85 at 19 (“Instead of [a local tax] it has also been suggested that the same be credited to the amount which the town would pay the State in connection with the construction of any highways within its borders. This plan would ensure that the money paid by automobile owners would be applied definitely to the roads. If this were clearly understood, the tax might be paid with much more willingness, than if the amount received were used in defraying general town expenditures.”).

<sup>109</sup> Arthur O’Sullivan, *Limits on Local Property Taxation: The United States Experience*, in PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 177, 179 (Wallace E. Oates ed., 2001) (“[T]he share of income absorbed by the property tax doubled between 1929 and 1932, reaching 11.3 percent in 1932. During this three-year period, personal income was cut in half while property tax revenue decreased by only 9 percent.”).

wholesale disregard for the law and wide departure from equity in the distribution of the property tax burden.”<sup>110</sup>

Road construction, on the other hand, was seen as a solution to urban decay and unemployment – roadwork would provide jobs and encourage people in the surrounding areas to go into the cities.<sup>111</sup> Federal New Deal funding, combined with gas taxes and registration fees earmarked for roads, reduced the amount of Connecticut general fund revenue being spent on road maintenance and construction down to less than ten percent by 1948.<sup>112</sup> Meanwhile, gas taxes were bringing in so much money that states began to divert the revenue they generated to non-road uses such as education and state general funds – much to the chagrin of vehicle owners, who in 21 states successfully lobbied for “anti-diversion” amendments to their state constitutions.<sup>113</sup> By 1956, the beginning of federal funding for the interstate highway system, nineteen states had done away with ad valorem vehicle taxes entirely and instead levied state-wide registration fees.<sup>114</sup> All but four of those states continue to levy no vehicle tax today, while only three states that levied a vehicle tax in 1956 have no tax now.<sup>115</sup> It appears that the decades in which states and localities themselves shouldered most of the burden for road financing were the crucial ones in deciding whether or not they would rely upon an ad valorem vehicle tax.

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<sup>110</sup> Report of the Connecticut Temporary Commission, *supra* note 100, Introduction at 39.

<sup>111</sup> MARK H. ROSE, INTERSTATE: EXPRESS HIGHWAY POLITICS, 1939-1989, 10-12 (1990).

<sup>112</sup> Report of the Connecticut State Tax Survey Committee, 39 (1948). Federal road funding, and road construction itself, was limited during World War II, but picked back up again under the 1944 Federal Aid Highway Act. *See* ROSE, *supra* note 111 at 26.

<sup>113</sup> These amendments, requiring that gas taxes and registration fees be used to pay for roads, succeeded in 21 states. *Id.* at 32.

<sup>114</sup> *See* Appendix B.

<sup>115</sup> *See* Appendix B. In addition, all but one of the states that levied a uniform state-wide tax in 1956 continues to levy a uniform rate today. The exception is Washington state, which abolished its vehicle tax in favor of a flat \$30 fee in 1999. Erik D. Craft & Robert M. Schmidt, *An Analysis of the Effects of Vehicle Property Taxes on Vehicle Demand*, 58 NAT'L TAX J., 697 (2005)

In Connecticut, the General Assembly slowly removed personal property from the tax rolls.<sup>116</sup> Motor vehicles, however, despite presenting “formidable problems of assessment and even greater problems of tax collection,” were deemed “too important a source of revenue to be summarily freed from property taxation.”<sup>117</sup> Despite occasional calls to join the other states that had opted for a state-wide tax rate,<sup>118</sup> the vehicle tax in Connecticut remains as a local tax, as well as the last vestige of the personal property tax levied on Connecticut’s residents.

## **Part II: The Modern Personal Property Tax**

### **A. New Haven’s Vehicle Tax**

The current vehicle tax is free of many of the disadvantages that haunted its predecessors. The state Department of Motor Vehicles still maintains a registry with addresses of all Connecticut vehicle owners, giving the New Haven’s Assessor’s Office a list of all cars registered in the city as of October first.<sup>119</sup> Now, however, it also prepares a supplemental list in November of those vehicles registered to New Haven addresses since October first. Taxes are prorated for the first year the vehicle is owned, with the result that residents can no longer time their car purchases to avoid a year of taxes.<sup>120</sup> The problem of differing valuations across cities has also been solved. All Connecticut municipalities now use the annual National Automobile Dealer’s Association (NADA) guide to new and used car prices to set each car on the grand list

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<sup>116</sup> The law still states that all property is taxable, but §12-81 of the General Statutes chronicles the slow death of the personal property tax through a list of 77 exemptions including cattle, household furniture, all livestock except horses and ponies above a certain value, carriages, wagons, and bicycles, boats, and aircraft.

<sup>117</sup> *Id.* Introduction at 40.

<sup>118</sup> *Id.* Introduction at 40. *Wants Auto Taxes Collected by the State*, *supra* note 97.

<sup>119</sup> Residents are normally taxed where they reside, CONN. GEN. STAT. §12-71(f). Non-residents are taxed where their car is garaged. *Id.*

<sup>120</sup> CONN. GEN. STAT. § 12-71 (2010). Most towns prorate by the month, as the DMV does not give them the exact date that a vehicle is registered. *See* John Rappa, OLR Research Report: Supplemental Motor Vehicle Property Tax, 2004-R-0113.



at seventy percent of its fair market value.<sup>121</sup> Tax bills must be paid before vehicle registrations can be renewed.<sup>122</sup> This registration restriction, combined with aggressive collection by the Tax Collector's office and the private contractors that it hires, has for the past few years allowed New Haven to collect over ninety percent of vehicle taxes due.<sup>123</sup>

## **1. The Tax Rate and the Budget Process**

The grand list system continues to work much the same as it has since colonial times, though there is no longer a state-wide tax on the town grand list. New Haven's tax rate is now determined annually and based upon projected revenues and expenditures. Each fiscal year, the mayor compiles a budget, estimates all non-tax sources of revenue, and uses the previous year's grand list to set a mill rate that will bring total revenues in line with budgeted expenditures. The mayor then tenders the budget to the Board of Aldermen, who holds public hearings and then workshops with its finance committee. The Board of Aldermen has the power to modify the budget and increase or decrease the tax rate accordingly.<sup>124</sup>

Statewide, local governments collect over \$557 million in vehicle taxes each year, or about ten percent of total local revenue.<sup>125</sup> Vehicle assessments make up about six percent of New Haven's grand list.<sup>126</sup> However, since the city receives significant state funding, taxes on

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<sup>121</sup> The Office of Policy and Management put in place state-wide use of the NADA guide, in accordance with CONN. GEN. STAT. § 12-71d (2010), which requires the OPM to choose a schedule for motor vehicle values. After valuation, all motor vehicles – as well as all real property and business personal property - are put on the grand list at seventy percent of their value. CONN. GEN. STAT. § 12-62a(b) (2010).

<sup>122</sup> In fact, if a taxpayer hasn't paid taxes on one of the vehicles registered his name, then he cannot renew registrations on any of his other vehicles either. *See infra* note 188.

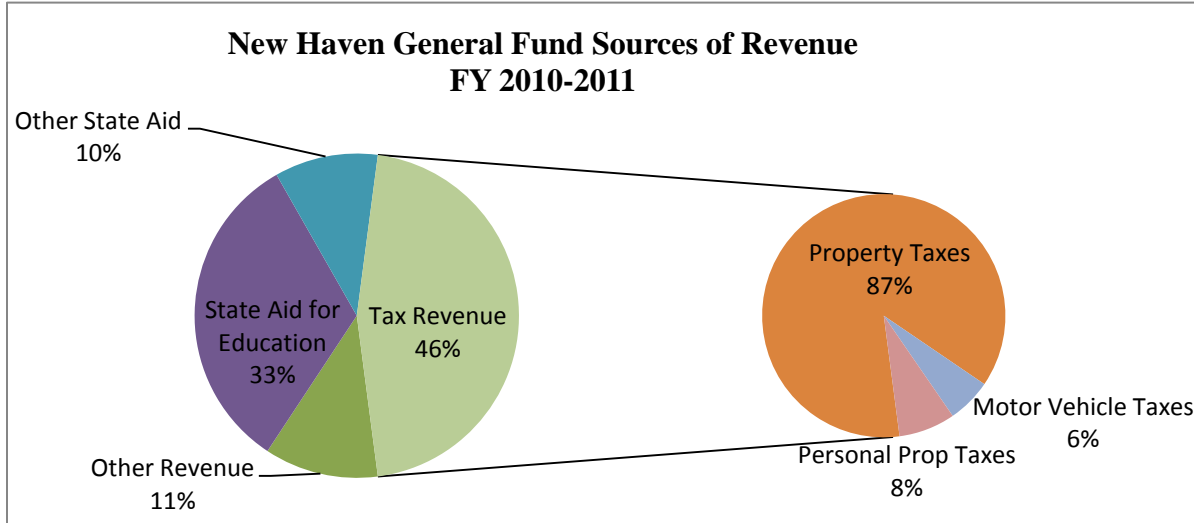
<sup>123</sup> CITY OF NEW HAVEN, ADOPTED FISCAL YEAR 2009-2010 BUDGET § 1-32. *See infra*, Part II, Section C.

<sup>124</sup> According to the New Haven Charter, the Aldermen can decrease the tax rate with a simple majority vote, but need a two thirds majority to increase the rate. NEW HAVEN CITY CHARTER, Art. XI, § 58.

<sup>125</sup> *See* Blue Ribbon Commission *supra* note 7, at 30 (2003); *see also* Report on Bills Favorably Reported by Committee, Bill No. HB-5661, *available at* <http://www.cga.ct.gov/2004/jfr/h/2004HB-05661-R00FIN-JFR.htm>.

<sup>126</sup> CITY OF NEW HAVEN, ADOPTED FISCAL YEAR 2010-2011 BUDGET § 2-61, [hereinafter BUDGET FY 2010-2011], *available at* [http://www.cityofnewhaven.com/Finance/pdfs/FY\\_2011\\_BOA\\_Approved\\_Budget.pdf](http://www.cityofnewhaven.com/Finance/pdfs/FY_2011_BOA_Approved_Budget.pdf).

its grand list supply a smaller portion of its budget than that of most other Connecticut cities.



Real Property Taxes	\$187,203,562
Motor Vehicle Taxes	\$12,759,464
Personal Property Taxes	\$16,247,784
State Aid for Education	\$153,136,528
Other State Aid	\$48,649,904
Other Revenue	\$53,585,853
<b>Total General Fund Revenue</b>	<b>471,583,095</b>
Capital Fund Revenue (City Bonds)	28,571,527
Special Funds	148,431,143
<b>Total Revenue</b>	<b>648,585,765</b>

The “Other Revenue” category in the general fund is made up mostly of city-collected licenses, permits, fees and fines.<sup>127</sup> “Other State Aid” comes mostly from the state PILOT program, which reimburses municipalities for a portion of the real property tax that they would have received had the educational institutions and hospitals within their borders not been tax-exempt.<sup>128</sup> State law contains vehicle tax exemptions for certain non-profits as well as for

<sup>127</sup> *Id.* § 2-22.

<sup>128</sup> *See* State of Connecticut, Office of Policy and Management, Colleges (Private) and General Free Standing Chronic Disease Hospitals – Payments in Lieu of Taxes, <http://www.ct.gov/opm/cwp/view.asp?a=2985&q=383134>.

veterans, active duty servicemen, and certain vehicles used on farms.<sup>129</sup> In addition, New Haven's status as a "distressed municipality" allows it to exempt commercial vehicles used by companies engaged in recycling, biotechnology, or manufacturing.<sup>130</sup> However, only about two percent of New Haven's motor vehicles receive tax exempt status.<sup>131</sup>

## **2. Tax Collection**

The New Haven Charter drives the city to aggressively collect vehicle taxes. According to the Charter, the mayor must account for uncollected taxes when he sets the tax rate. He must assume that one percent fewer taxes will be paid in the current budget year than were paid in the previous year, and he cannot present an unbalanced budget to the Board of Aldermen.<sup>132</sup> It thus behooves the mayor to ensure that the tax collection rate is high: all other things being equal, an increase in uncollected taxes would force him to either cut the budget or raise the mill rate.

New Haven's current Mayor, John DeStefano Jr., has taken the one percent rule to heart. When he assumed office in 1994, motor vehicle tax collection rates were around 85 percent, real property collection rates were at 92 percent, and New Haven had one of the highest mill rates in Connecticut. For fiscal year 2006-2007, the last year for which the City Budget lists motor vehicle collection rates separately, the vehicle collection rate was 92.83 percent and the real property collection rate was 99.26 percent.<sup>133</sup> New Haven still had one of the highest mill rates in Connecticut, but, Mayor DeStefano is quick to point out, it may have been even higher if the

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<sup>129</sup> CONN. GEN. STAT. § 12-81 (2010). In addition, active duty servicemen are exempt under federal law from paying property taxes in a state in which they do not reside. 50 U.S.C. app. § 571(d)(1) (2006).

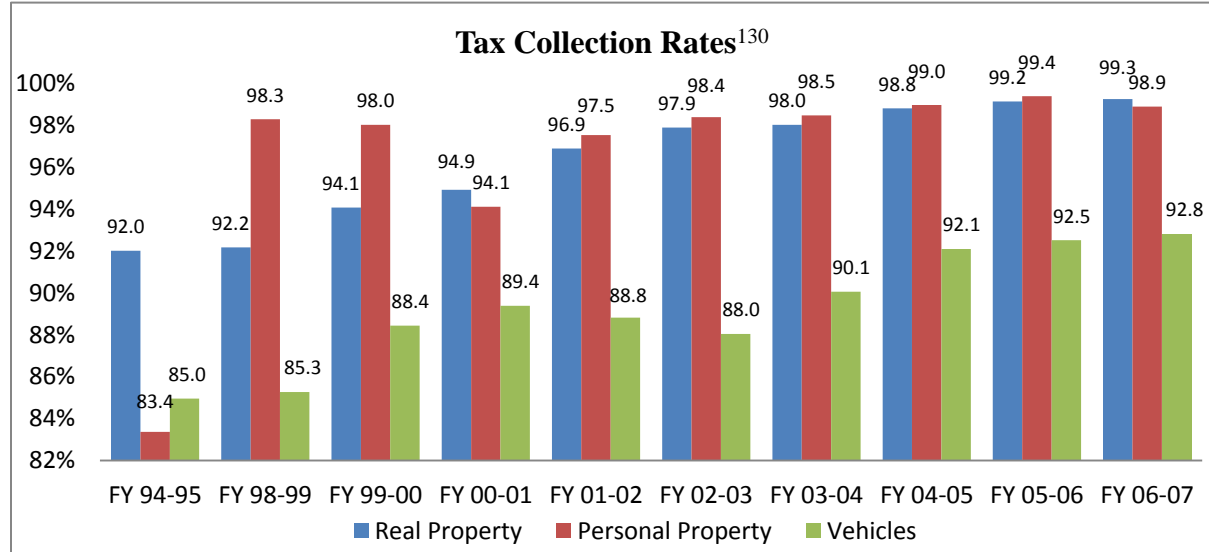
<sup>130</sup> CONN. GEN. STAT. § 12-94b (2010). Note that this provision is set to sunset in 2013. Companies themselves must apply for these exemptions, which are subject to review by the State.

<sup>131</sup> BUDGET FY 2010-2011 § 2-16.

<sup>132</sup> NEW HAVEN CITY CHARTER, Art. XI, § 58.

<sup>133</sup> BUDGET FY 2008-2009, 36-37.

vehicle tax collection rates were lower.<sup>134</sup>



### 3. Appeals and Abatements

Taxpayers can file vehicle tax appeals with the tax assessor and then with the Board of Assessment Appeals. This board has its roots in the colonial Board of Relief, a three-person administrative body that heard complaints about inaccurate listing of property.<sup>136</sup> It still has three members, now appointed by the Mayor, and performs essentially the same function. After going before the Board, or before if the taxpayer believes that the city laid a tax that was “manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property”, taxpayers can file suit in Superior Court.<sup>137</sup> Very few people avail themselves of this process, however. Despite the fact that New Haven does not take mileage or needed repairs into account in valuing vehicles, only forty

<sup>134</sup> Jeff Holtz, *Tax Collector Hits the Road in New Haven*, N.Y. TIMES, Sept. 19, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9E05E6D81F30F93AA2575AC0A9629C8B63&sec=&spon=&&sc p=1&sq=bootfinder&st=cse>.

<sup>135</sup> Data is compiled from different charts and tables in the budget books of New Haven for FY 2008-2009, FY 2009-2010, and FY 2010-2011.

<sup>136</sup> See JONES, *supra* note 11, at 34; Potter, *supra* note 15, at 174.

<sup>137</sup> CONN. GEN. STAT. § 12-119 (2010).

people and one corporation appealed their motor vehicle taxes to the Board last year.<sup>138</sup> Only twenty-one attended the mandatory appeals meeting; fifteen appeals were granted.<sup>139</sup>

There is some debate as to whether vehicle taxes can be abated or forgiven. New Haven's Aldermanic Tax Abatement Committee has abated vehicle taxes in the past, but in doing so it apparently acted against its own bylaws, which specify that it will only abate real property taxes.<sup>140</sup> In any event, relatively few taxpayers ask for vehicle tax abatements. According to the Tax Abatement Committee's minutes, only nine requests have been made in the past two years, despite the fact that a majority of those requests have been granted.<sup>141</sup>

#### **4. Public Reaction to the Vehicle Tax**

The above description makes the vehicle tax sound like an orderly but insignificant part of New Haven's current tax system. Newspaper articles, statements from the tax assessor, and press releases from Mayor DeStefano's office tell a different story. William O'Brien, New Haven's current assessor, echoes the assessors of the 1920s and 30s, saying that vehicles taxes are by far the most contentious tax the city levies<sup>142</sup> – quite a feat given the current economic

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<sup>138</sup> Meeting Minutes, New Haven Board of Assessment Appeals, Oct. 19, 2010, *available at* <http://www.cityofnewhaven.com/Assessor/pdfs/Written%20minutes%2010-19-101.pdf>; Meeting Minutes, New Haven Board of Assessment Appeals, Sept. 30, 2010, *available at* <http://www.cityofnewhaven.com/Assessor/pdfs/BTR%20minutes%209.30.10.pdf>.

<sup>139</sup> *Id.* Note that the one corporation who filed an appeal, First Student Corporation, was a school bus company with 139 separate vehicles on appeal. All of those appeals were denied.

<sup>140</sup> Board of Alderman President Carl Goldfield discovered that the Abatement Committee had been acting contrary to its by-laws after the Committee came under scrutiny as a result of its investigation of the Board of Assessment Appeals. See Melissa Bailey, *Goldfield Calls for Review of Tax Panel*, NEW HAVEN INDEPENDENT, Sept. 21, 2010, *available at* [http://newhavenindependent.org/index.php/archives/entry/tax\\_panel\\_powers\\_to\\_be\\_reexamined/](http://newhavenindependent.org/index.php/archives/entry/tax_panel_powers_to_be_reexamined/).

<sup>141</sup> *City of New Haven, Tax Abatement Committee, Meeting Minutes*, Sept. 14, 2010; *City of New Haven, Tax Abatement Committee, Meeting Minutes*, July 26, 2010; *City of New Haven, Tax Abatement Committee, Meeting Minutes*, June 21, 2010; *City of New Haven, Tax Abatement Committee, Meeting Minutes*, April 14, 2010; *City of New Haven, Tax Abatement Committee, Meeting Minutes*, Nov. 12, 2009; *City of New Haven, Tax Abatement Committee, Meeting Minutes*, May 6, 2009. All meeting minutes are available at <http://www.cityofnewhaven.com/aldermen/LegistarCalendar.asp>.

<sup>142</sup> *Suggests New Plan for Town Auto Tax*, *supra* note 98.

climate and the current controversy generated by other New Haven local taxes.<sup>143</sup>

## **B. The Vehicle Tax and Tax Morale**

### **1. Local Government and Tax Morale**

The scholarly literature on tax compliance begins with the Allingham and Sandmo model, which takes the economics of crime model made popular by Gary Becker and applies it to tax evasion, arguing that evasion will vary inversely with the probability of detection and the degree of punishment.<sup>144</sup> However, this model predicts far lower compliance than is actually found in the target of most scholars' attention: the federal income tax. As a result, social scientists and others began to study tax morale, defined as whatever attitudes, moral codes, and virtues of the tax system lead to more compliance than can be explained by rational deterrence.<sup>145</sup> Social scientists and economists have found that factors such as democratic processes, perception of

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<sup>143</sup> The Board of Assessment Appeals was devoid of members for a period last year after resident complaints led to a round of subpoenas and eventual allegations of nepotism, inadequate records keeping, and gross incompetence. Betsy Yagla, *No Accountability*, NEW HAVEN ADVOCATE, June 22, 2010, available at <http://www.newhavenadvocate.com/featured-news/no-accountability>. Cameras with audio have recently been installed in the assessor's and collector's office after complaints that staff had been dismissive and disrespectful. Pamela McLoughlin, *New Haven Makes Changes in Tax Assessor's Office*, NEW HAVEN REGISTER, July 26, 2010, available at [http://www.nhregister.com/articles/2010/07/26/news/new\\_haven/doc4c4df57633672822383225.txt](http://www.nhregister.com/articles/2010/07/26/news/new_haven/doc4c4df57633672822383225.txt). Assessor O'Brien valued business personal property at a flat \$5000 last year for a number of small businesses who for years had reported the same small amount of business personal property on their tax bill. He also sent bills to several organizations who had previously been given tax exempt status. Abbe Smith, *Nonprofits Score on the Rebound*, NEW HAVEN REGISTER, Aug. 10, 2010, available at <http://www.nhregister.com/articles/2010/08/10/aa1monnenonprofits081010.txt>. As a result, a great many small business owners and their aldermen are calling for his removal and around 50 lawsuits have been filed in Superior Court. Allan Appel, *Tax Assessor Grilled*, NEW HAVEN INDEPENDENT, June 22, 2010, available at [http://newhavenindependent.org/index.php/archives/entry/tax\\_assessor\\_taxed\\_and\\_/](http://newhavenindependent.org/index.php/archives/entry/tax_assessor_taxed_and_/). Adding to his woes is a clerical error that led to higher tax bills for hundreds of low-income seniors participating in the state's real property tax freeze program. Melissa Bailey, *Tax Office Glitch Startles Seniors*, NEW HAVEN INDEPENDENT, July 2, 2010, available at [http://newhavenindependent.org/index.php/archives/entry/tax\\_office\\_glitch\\_startles\\_seniors/](http://newhavenindependent.org/index.php/archives/entry/tax_office_glitch_startles_seniors/)

<sup>144</sup> Michael G. Allingham & Agnar Sandmo, *Income tax evasion: A Theoretical Analysis*, 1 JOURNAL OF PUBLIC ECONOMICS 323 (1972).

<sup>145</sup> See, e.g., BENNO TORGLER, TAX COMPLIANCE AND TAX MORALE: A THEORETICAL AND EMPIRICAL ANALYSIS 4-5 (2007); Bruno S. Frey & Lars P. Feld, *Deterrence and Morale in Taxation: An Empirical Analysis* (CESIFO, Working Paper No. 760, 2002).

fairness, and belief that neighbors are also paying all increase tax morale.<sup>146</sup>

However, tax morale is by definition measured using increases or decreases in compliance rates. Such a measurement would be difficult to apply to New Haven's local taxes. Real property is almost impossible to keep off the grand list. The assessor's office has the resources to keep track of all uncollected taxes, and property would have to be subject to an underwater mortgage or worth far less than its assessed value in order for a tax sale to be in the best interest of the property's owner. Vehicles are slightly easier to keep off the grand list, but in order to do so, most New Havenites would have to fail to register their cars or register them in another state.<sup>147</sup> The interest rate on past-due taxes is eighteen percent, and special tow or boot fees apply as well.<sup>148</sup> In short, the consequences of non-payment are dire enough, and the chances of being caught high enough, that high collection rates and low morale can easily co-exist.

Instead, the literature on local government taxation focuses on benefits/tax ratios, tying back to the idea – espoused by motorists in the 1930s and 40s and by scholars of Colonial taxation – that local taxes should furnish residents with local services.<sup>149</sup> The willingness of an individual to pay for public goods forms the numerator of the benefits/tax ratio while the individual's tax burden is the denominator.<sup>150</sup> Normally, when social scientists focus on the numerator in the benefits/tax ratio, they focus on an individual's preference for a certain package

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<sup>146</sup> For an overview and introduction to these studies, see TORGLER, *supra* note 145, at 64-105.

<sup>147</sup> The Tax assessor's office contracts with a private agency to sweep the city looking for out of state plates. Once they find one, they run a credit check and check the registered voting roles to see if a car is owned by a New Haven resident. Interview with Roger Palmer, Assistant Assessor, City of New Haven (Feb. 28, 2011).

<sup>148</sup> See discussion *infra*, Part II, Section 2B(II).

<sup>149</sup> See, e.g., GLENN BEAMER, CREATIVE POLITICS: TAXES AND PUBLIC GOODS IN A FEDERAL SYSTEM 11-28 (1999) (discussing benefits/tax ratios). See *supra* note 19 and related text for a discussion of benefits taxation in the highway funding context. See *supra* note 113 and related text for scholars' views on colonial taxation and the benefits tax theory.

<sup>150</sup> BEAMER, *supra* note 167, at 11.

of goods and services, or on whether taxpayers believe that an extra unit of government benefit is worth the extra tax cost.<sup>151</sup> However, since tax morale also affects resident's willingness to pay tax, it too is a component in the benefit/tax numerator. It is thus possible for an individual's benefits/tax ratio to change even though she pays the same total dollar amount in taxes and receives the same services as she did before. For example, if she likes paying the real property tax more than she likes paying the vehicle tax, then her willingness to pay will be increased if the vehicle tax is abolished. Put another way, tax morale is a public good.<sup>152</sup> This is hardly a new insight or a new phenomenon. Adam Smith put it in slightly different terms in *The Wealth of Nations*:

A tax may take out or keep out of the pockets of the people a great deal more than it brings into the public treasury.... it may expose them to much unnecessary trouble, vexation, and oppression; and though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which every man would be willing to redeem himself from it.<sup>153</sup>

The insight has direct consequences for modern New Haven. Since the city has control over the assessment, tax rates and enforcement of real property and motor vehicle taxes, tax morale surrounding those laws will be almost entirely a *local* public good. And, although tax collection rates are unlikely to significantly decrease – or perhaps in part *because* they are unlikely to significantly decrease and the taxpayer cannot silently protest by failing to pay<sup>154</sup> – tax laws have power to shape resident's willingness to support local programs, and thus their attitudes towards

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<sup>151</sup> *Id.* at 12-13; William A. Fischel, *Municipal Corporations, Homeowners, and the Benefit View of the Property Tax*, PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 33, 33 (Wallace E. Oates ed., 2001).

<sup>152</sup> See, e.g., Anup Malani, *Valuing Laws as Local Amenities*, 121 HARV. L. REV. 1273 (suggesting that laws be evaluated as local public goods instead of by evaluating their effects upon behavior).

<sup>153</sup> ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 372 (J. R. McCulloch ed., 1863).

<sup>154</sup> TORGLER, *supra* note 145, at 26, citing Skimrod, Frey. "Increased enforcement of the tax system might produce disincentive effects..."



local government.<sup>155</sup>

Moreover, since tax laws affect both the numerator and the denominator of the benefits/tax ratio, they are likely to have a greater effect on residents' satisfaction with local government than other laws do. Since residents see taxes as the price they pay for government services, resentment towards a tax has the potential to color residents' views on every service local government provides them. As such, the deck is already stacked against government. Even in a world where residents received benefits exactly equal to their tax burden, loss aversion would still make them unlikely to think that their taxes were worth it. When some taxes are more despised than others, however, the picture has the potential to become even bleaker. Under taxpayers' mental accounting, it is possible that every service they are provided can be seen as being paid for by the tax that they like the least.<sup>156</sup> Therefore, even a small tax can have outsized effects on a benefits/tax ratio, and thus on a taxpayer's attitudes towards local government.

Of course, aggregate levels of benefits/tax ratios are almost impossible to tease out.<sup>157</sup>

Loss aversion and the possibility of freeriding give residents an incentive to understate their willingness to pay.<sup>158</sup> And, even if you could discover individual's ratios, different voting blocs

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<sup>155</sup> See, e.g., WILLIAM A. FISHEL, *THE HOMEVOTER HYPOTHESIS* (2001); Wallace E. Oates, *Property Taxation and Local Government Finance: An Overview and Some Reflections*, in *PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE* (ed. Wallace E. Oates, 2001).

<sup>156</sup> See Richard Thaler, *Mental Accounting and Consumer Choice*, 4 *MARKETING SCIENCE* 199 (1985); Richard H. Thaler, *Mental Accounting Matters*, 12 *J. BEHAV. DECISION MAKING* 183 (1999). Under mental accounting theory, consumers assign expenditures to certain benefits accounts. For example, a resident pays \$100 in vehicle taxes, \$300 in real property taxes, and receives \$500 in local services. If she dislikes the vehicle tax more than the real property tax, then whenever she thinks of a particular government benefit, she may be more likely to assign that benefit to her vehicle tax payment, decreasing her willingness to pay for it. The fact that her aggregate benefit level is above her aggregate tax level may not matter.

<sup>157</sup> BEAMER, *supra* note 149, at 11-12.

<sup>158</sup> *Id.* at 11. Some attempt has been made to solve this problem through use of the "Lindahl tax." In Lindahl equilibrium, each resident reveals the price he is willing to pay for a particular public good, and a demand curve is created using all resident's prices. The idea is attributed to Erik Lindahl. Erik Lindahl, *Just Taxation - A Positive Solution* (1919), reprinted in *CLASSICS IN THE THEORY OF PUBLIC FINANCE* 168 (Richard A. Musgrave & Alan T. Peacock eds., 1958). For an overview of the Lindahl tax concept and its subsequent incorporation into literature on

or interest groups in local politics would no doubt have different ratios.<sup>159</sup> Likewise, different residents will have different views on equity, fairness in administration, and other factors that affect tax morale.<sup>160</sup> Nevertheless, many of the factors that social scientists have identified as decreasing tax morale are present in the vehicle tax, and may help to explain what New Haven and other municipalities can do to make the tax more palatable.

## **2. Comparison with the Real Property Tax**

New Havenites' benefits/tax ratio will include their attitudes towards both the vehicle tax and the real property tax. It would be difficult to consider the two separately, however: residents' perception of the vehicle tax will be based not only upon its own merits and drawbacks, but also upon whether residents believe it to be a better or worse tax than the real property tax.

### **I. Intrinsic Morale-Lowering Factors**

Vehicles depreciate quickly, and often have a useful life of a decade or less.<sup>161</sup> This may decrease tax morale, as residents can easily imagine the money they pay in vehicle taxes as coming directly out of the savings that they plan to use to buy a new car. Those inclined to think in terms of present value can calculate out how much their taxes add to the expense of car ownership. Real estate, on the other hand, tends to appreciate. This causes its own difficulties, especially for those on a fixed income, but Connecticut has put in place circuit breaker programs

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just taxation, see Barbara H. Fried, *Symposium: Federal Tax Policy in the New Millenium: The Puzzling Case for Proportionate Taxation*, 2 CHAP. L. REV. 157, 168-79 (1999).

<sup>159</sup> *Id.*, citing Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

<sup>160</sup> See, e.g., RICHARD A. MUSGRAVE, *THE THEORY OF PUBLIC FINANCE: A STUDY IN PUBLIC ECONOMY* 1057-58 (1987).

<sup>161</sup> Only 37% of the vehicles in the U.S. are ten years old or older. *Changes in the U.S. Household Vehicle Fleet: National Highway Travel Survey Brief* (National Highway Administration, U.S. Dep't of Transportation, Sept. 2009).

to help those most likely to be in that situation.<sup>162</sup> In addition, vehicles are re-assessed each year based on their NADA value.<sup>163</sup> Real property assessments happen less often, with the result that real property is often underassessed and undertaxed. Also, property taxes are to some extent already capitalized into the price residents paid for homes. Higher tax rates lead to lower home prices, and only unexpected changes in the property tax rate will put property owners at an economic disadvantage.<sup>164</sup>

Equity concerns may also help to explain resident's reaction to the vehicle tax. Tax morale is higher when people believe that they are paying a reasonable amount in relation to their peers.<sup>165</sup> And yet, as a tax on the consumption of cars, the vehicle tax is likely regressive.<sup>166</sup> No one knows exactly how regressive, however. Any calculations would also

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<sup>162</sup> CONN. GEN. STAT. § 12-170aa-cc. The state also has in place a tax freeze program for seniors, but it was closed to new applicants in 1979. CONN. GEN. STAT. § 12-129b. In addition, the state allows municipalities to freeze property taxes for certain low-income seniors. CONN. GEN. STAT. §12-170v-w; CONN. GEN. STAT. §12-129n. In New Haven, seniors with an income of less than \$50,000 per year and who have lived in New Haven for over ten years can apply to have their property taxes frozen. Melissa Bailey, *Tax Office Glitch Startles Seniors*, NEW HAVEN INDEPENDENT, July 2, 2010, available at [http://newhavenindependent.org/index.php/archives/entry/tax\\_office\\_glitch\\_startles\\_seniors/](http://newhavenindependent.org/index.php/archives/entry/tax_office_glitch_startles_seniors/).

<sup>163</sup> Although taxes generally decrease as cars age, the grand list for the previous fiscal year is used to levy taxes in the current year, with the result that residents routinely pay more tax than the current state of their vehicle warrants. Since vehicle assessments are based on NADA value, assessors cannot skew assessments low to appease taxpayers. In fact, since the market for new cars cooled this past year, the NADA increased the value of some used cars, leading to higher taxes this year than last for a number of unhappy residents. See Thomas MacMillan, *City Wants More for Vanessa's Chevy*, NEW HAVEN INDEPENDENT, June 29, 2010, available at [http://newhavenindependent.org/index.php/archives/entry/city\\_wants\\_more\\_for\\_vanessas\\_chevy/](http://newhavenindependent.org/index.php/archives/entry/city_wants_more_for_vanessas_chevy/)

<sup>164</sup> See, e.g., JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, *STATE AND LOCAL TAXATION: CASES AND MATERIALS* 95 (6th ed. 1997). Of course, the effect of this phenomenon on tax morale will depend upon whether or not residents view their property taxes as capitalized into the value of their homes.

<sup>165</sup> See Michael W. Spicer & Lee A. Becker, *Fiscal Inequity and Tax Evasion: An Experimental Approach*, 33 NAT'L TAX J., 171. But see TORGLER, *supra* note 145, at 95 (summarizing other studies that found lesser or statistically insignificant effects).

<sup>166</sup> Only three studies of vehicle tax regressivity appear to exist. All three have found that the tax is at least mildly regressive. Craft & Schmidt, *supra* note 115 (using data from Virginia to estimate vehicle tax incidence); Jennifer Dill et. al., *California Vehicle License Fees: Incidence and Equity*, 2 J. OF TRANSP. STAT. 2, 133 (2002), available at [http://www.bts.gov/publications/journal\\_of\\_transportation\\_and\\_statistics/volume\\_02\\_number\\_02/jts\\_v2\\_n2.pdf](http://www.bts.gov/publications/journal_of_transportation_and_statistics/volume_02_number_02/jts_v2_n2.pdf); Rebecca A. Bremer, *Assessing the Incidence of the Personal Property Tax on Vehicles*, University of Richmond Honors Thesis (2001)(cited in Craft & Schmidt, *supra* note 115, as analyzing regressivity using data from 904 families in Connecticut, California, and Rhode Island). Governor Rell's office claimed that the tax is also regressive in Connecticut, although she was trying to eliminate the tax at the time. M. Jodi Rell, Governor of Connecticut: Frequently Asked Questions: Governor Rell's Proposal to Eliminate the Car Tax, available at <http://www.ct.gov/governorrell/cwp/view.asp?a=1809&q=311006>.

have to take into account Connecticut's property tax credit, which applies both to real property and vehicle taxes, and which erases the vehicle tax burden for some low-income taxpayers.<sup>167</sup> And, even if the vehicle tax's relative burden were clear, scholars have debated for decades about whether or not the real property tax is regressive, making comparisons between the two taxes difficult to make.<sup>168</sup> Furthermore, even if the vehicle tax were more regressive than the property tax, the fact that vehicle taxes can be avoided by using public transportation or carpooling may affect the way people think about the burden it places on residents.

However, regardless of its true incidence, the vehicle tax is considerably more salient than the property tax for the portion of New Haven's population that rents.<sup>169</sup> Although a percentage of their rent is shifted property tax, renters – and economists for that matter – are unable to calculate the exact amount.<sup>170</sup> Such “hidden” taxes naturally lead to less concentrated political opposition, since it is more difficult to be incensed about a tax when you don't know how much of it you pay.<sup>171</sup> As a result, renters tend to be apathetic about the real property tax, while homeowners monitor it closely.<sup>172</sup> The vehicle tax, on the other hand, is paid directly to the city every year, by renters and homeowners alike. (In fact, the vehicle tax may be more

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<sup>167</sup> For an overview of the current property tax credit, see Connecticut General Assembly, Office of Fiscal Analysis, Connecticut Tax Expenditure Report 21 (Mar. 2010) *available at* <http://www.scribd.com/doc/29102050/Tax-Expenditure-Report-March-2010>.

<sup>168</sup> For a summary of the debate on whether or not the property tax is regressive, see HELLERSTEIN, *supra* note 164, at 93-95. The debate boils down to the question of who bears the burden of the tax: property owners/user or those supplying capital for building.

<sup>169</sup> See, e.g., Wallace E. Oates, *Property Taxation and Local Government Spending: The Renter Effect*, 57 J. URB. ECON. 419, 2005 (“[T]here is some indirect, but pervasive, evidence suggesting that renters don't think that they pay local property taxes. This has led to the claim that there is a “renter illusion” associated with the tax.”). Oates goes on to postulate that there is a “renter effect” of about ten percent in local budgets. That is, local governments overspend by ten percent because of renters. See also *infra* note 292 and related text.

<sup>170</sup> For an overview of real property salience and its effects on renters, see Wallace E. Oates, *On the Nature and Measurement of Fiscal Illusion: A Survey*, in TAXATION AND FISCAL FEDERALISM: ESSAYS IN HONOUR OF RUSSELL MATHEWS 65 (1988). For a discussion of property tax shifting as between renters and landlords see George R. Zodrow, *Reflections on the New View and the Benefit View of the Property Tax*, in PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE, 100-01 (Wallace E. Oates ed., 2001).

<sup>171</sup> See, e.g., Chetty et al., *Salience and Taxation: Theory and Evidence*, 99 AM. ECON. REV. 1145 (2009).

<sup>172</sup> See FISCHER, *supra* note 155, at 4.

salient than the real property tax even for some homeowners, as those who escrow their property taxes may not realize how much they pay.<sup>173</sup>) While many residents get their vehicle taxes back in the form of a state property tax credit, the initial pain of paying the tax is nevertheless present. In New Haven, where approximately thirty-six percent of residents rent, this salience is likely to have a profound effect on tax satisfaction.<sup>174</sup>

## II. Local Factors Affecting Vehicle Tax Morale

The above downsides to the vehicle tax exist wherever the tax is levied, though they may operate with more force where vehicle tax rates are higher. New Havenites, however, have additional reasons to dislike the tax. First, they pay an unusually high amount of it, both compared to those living in other states,<sup>175</sup> and compared to other Connecticut cities.<sup>176</sup> While New Haven's 2010 mill rate was set at 43.9, Hamden's is set at 31.16 and Orange's at 28.30.<sup>177</sup> Hartford has the state's highest rate at 72.79 and Greenwich its lowest at 8.596.<sup>178</sup> As a result, one of the things that makes cars a good object for a property tax – their easily ascertainable value – also makes it quite clear that different cities have unequal car tax burdens. Car insurance, also particularly high in New Haven as compared to its surrounding suburbs, further adds to the

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<sup>173</sup> See M. Jodi Rell, Governor of Connecticut, Testimony of Governor M. Jodi Rell at a Public Hearing Before the Finance, Revenue and Bonding Committee, Feb. 27, 2006, *available at* <http://www.ct.gov/governorrell/cwp/view.asp?a=1809&q=311002> (“As opposed to residential property taxes, the car tax is not paid through a bank or a mortgage company. It comes right out of our personal savings or checking accounts without the luxury of being buried in an escrow payment or a mortgage charge.”).

<sup>174</sup> U.S. Census Bureau, Quarterly Vacancy and Homeownership Rates by State and MSA, *available at* <http://www.census.gov/hhes/www/housing/hvs/rates/index.html>. The New Haven-Milford Metropolitan Statistical Area had a homeownership rate of 64.1 in the fourth quarter of 2010.

<sup>175</sup> Eighteen states do not levy vehicle taxes at all. See Appendix B. Even in those states that do, New Haven has an especially high rate. Scott Mackey & Mandy Rafool, *supra* note 6.

<sup>176</sup> Intergovernmental Policy Division, Office of Policy and Management, Mill Rates, *available at* <http://www.ct.gov/opm/cwp/view.asp?a=2987&q=385976>.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

cost of car ownership.<sup>179</sup>

Moreover, while real property taxes are capitalized into the price of property, vehicle taxes are not. And, as State Senator Michael Looney notes, “While you might be able to argue that the value of homes might vary greatly depending upon location, it seems clear that a car is a car wherever it is.”<sup>180</sup> Other politicians prefer to use more populist language. As Governor Rell noted in her 2006 State of the State address,

A taxpayer in Greenwich pays \$273 in property taxes for a 2005 Four Door Mercedes-Benz Sedan. A taxpayer in Waterbury taxpayer pays \$278 in property taxes for a 2000 2-Door Convertible Chevrolet Cavalier. Does it make sense for a Greenwich taxpayer to pay \$5 less in property taxes per year for a new Mercedes than a Waterbury taxpayer pays for a 6-year old Chevy?<sup>181</sup>

Much of the dissatisfaction with the vehicle tax can surely be attributed to the fact that vehicle tax, in addition to being highly salient, is easy to compare across states and municipalities.

Moreover, New Haven is extremely aggressive in its efforts to collect the vehicle tax. It was the second local government in the nation to use the “bootfinder,” a hand-held license plate scanner that is linked to a database of vehicles with parking tickets and outstanding taxes.<sup>182</sup> Use of the bootfinder was novel enough to warrant an article in the *New York Times*, which interviewed Mayor DeStefano.<sup>183</sup> He told reporters that the vehicle tax collection rate lagged behind the city’s real property tax collection rate, and said that he hoped the new device would

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<sup>179</sup> Interview with Roger Palmer, *supra* note 147.

<sup>180</sup> George Judson, *New Haven Mayor Pushes Property-Tax Issue*, N.Y. TIMES, Jan. 4, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9E02EED8103EF937A35752C0A962958260&pagewanted=all>

<sup>181</sup> Governor M. Jodi Rell, 2006 State of the State Address, available at [http://www.hartfordinfo.org/issues/wsd/taxes/governor\\_address\\_Feb06.asp](http://www.hartfordinfo.org/issues/wsd/taxes/governor_address_Feb06.asp); see also M. Jodi Rell, *supra* note 166 (“Consider this: If you own a 2003 Ford Taurus Wagon 4D SE and you live in Bridgeport, you pay \$309 in car taxes. If you live in New Canaan and drive the same car, you pay \$103 – one-third the cost of your neighbor in Bridgeport!”).

<sup>182</sup> The first was Arlington County, Virginia, home to a campaign to abolish the vehicle tax that once popularized “ax the tax” bumper stickers. Mike Allen, *Car Tax Issue Drives Gilmore’s Campaign While Breyer’s Stalls*, WASH. POST, Nov. 2, 1997.

<sup>183</sup> Holtz, *Tax Collector Hits the Road*, *supra* note 134.

increase the vehicle tax collection rate to similar levels.<sup>184</sup> It partially succeeded: in New Haven, and in the municipalities that followed it in using the bootfinder, simply announcing the new program brought in tens of thousands of dollars in past-due taxes.<sup>185</sup> But complaints – about the device itself and about the vehicle tax in general – began to mount.

Aggressive collection is made possible by several practices that decrease tax morale by flying in the face of residents' ideas about how the government should interact with them as taxpayers, and as a result further decrease tax morale.<sup>186</sup> The Assessor's office requires residents to prove that they have disposed of a vehicle by turning in its plates and either showing proof of sale or a receipt from a junkyard, leading residents to complain that the Assessors office is treating them as presumptively guilty of tax evasion.<sup>187</sup> Delinquent taxpayers also decry the use of "jeopardy collection," whereby they must pay not only their past-due taxes, but also their current ones before their car is released from impound.<sup>188</sup>

Even those not inclined to be sympathetic to the plight of tax cheats can find fault with the current collection system. High interest rates and lack of notice can result in residents

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*; Jeff Holtz, *City's Hunt for Tax Cheats Hits Resistance*, N.Y. Times, Aug. 27, 2006, available at <http://select.nytimes.com/gst/abstract.html?res=F40615FB385A0C748EDDA10894DE404482&scp=4&sq=bootfinder&st=cse> (discussing Bridgeport's use of the bootfinder); Amanda Pinto, *West Haven Getting 'Boot' Again?*, NEW HAVEN REGISTER, Feb. 7, 2011, available at [http://www.nhregister.com/articles/2011/02/07/news/bb1\\_mon\\_whboot020711.txt](http://www.nhregister.com/articles/2011/02/07/news/bb1_mon_whboot020711.txt) (discussing controversy over West Haven's Bootfinder pilot program). The increase in tax collection rates can also be seen in the graph accompanying note 135.

<sup>186</sup> See Frey, *supra* note 145.

<sup>187</sup> Having turned in the vehicle's registration is not enough, the assessor's office says, because in the past people have evaded taxes by turning in their registration only to re-register their cars directly afterward. Interview with Roger Palmer, *supra* note 147. They point out that the Assessor's Office policy of requiring a bill of sale or a junkyard receipt makes it very difficult for those who, for whatever reason, are assessed on vehicles not their own. Proving that you do not and have never owned a particular vehicle turns out to be a rather involved process. Thomas MacMillian, *Is An Affidavit Enough?*, NEW HAVEN INDEPENDENT, Oct. 26, 2010, available at [http://newhavenindependent.org/index.php/archives/entry/is\\_an\\_affidavit\\_enough/](http://newhavenindependent.org/index.php/archives/entry/is_an_affidavit_enough/).

<sup>188</sup> CONN. GEN. STAT. §12-163. See also Erin Cox, *Taxes Made Easy in New Haven*, News8 wtnh.com, available at [http://www.wtnh.com/dpp/news/new\\_haven\\_cty/news\\_wtnh\\_newhaven\\_taxes\\_made\\_easy\\_200906251836\\_rev1](http://www.wtnh.com/dpp/news/new_haven_cty/news_wtnh_newhaven_taxes_made_easy_200906251836_rev1). Adding insult to injury for those behind on their taxes, the tax collector has declared that, although you may retrieve personal property from your car while it is in impound, you may not strip it of its stereo, radio, tires, and battery and then leave it sitting in the impound lot. City of New Haven, Connecticut, Office of the Tax Collector, <http://www.cityofnewhaven.com/TaxCollector/Seizedvehicle.asp>.

receiving hefty bills on cars that they have not owned in years and never intended to hide from collectors.<sup>189</sup> Even DMV registration has not fully overcome the colonial-era difficulties of taxing movable property: if a taxpayer fails to notify the DMV of a change in address, he may not receive a vehicle tax bill.<sup>190</sup> Yet, lack of notice does not excuse a vehicle owner from paying taxes or penalties, and the state imposes an eighteen percent annual interest rate on all past-due property tax.<sup>191</sup> This high rate is a source of consternation for those who owe back taxes. Even the FDIC considers it excessive: in 1997, it challenged the rate in court after the tax sale of a property in which it had a mortgage interest, arguing that the rate was so high that a portion of it must constitute a fine or penalty.<sup>192</sup> The statute of limitations for tax collection is fifteen years, allowing a considerable amount of interest to build up.<sup>193</sup> A proposal to keep the fifteen year statute of limitations for all other taxes but decrease it to six years for motor vehicle taxes has been floated in the General Assembly several times, presumably because of the possibility of taxpayers owing large amounts of interest and not knowing until town collectors tracked them down years later. However, the consensus at committee meetings has been that the vehicle tax requires harsh laws to encourage collection.<sup>194</sup>

Moreover, towing or booting is a highly invasive means of tax collection – without access to their cars, people often find themselves without an easy way to get to work, pick up

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<sup>189</sup> Interview with Roger Palmer, *supra* note 147.

<sup>190</sup> Before 2010, the DMV did not automatically update addresses, even if residents changed their address with the U.S. Postal Service. Now, thanks to an amendment to CONN. GEN. STAT. § 14-163, the Commissioner of Motor Vehicles may (though not must) use Postal Service change of address information to update vehicle owners' addresses.

<sup>191</sup> CONN. GEN. STAT. § 12-146 (2010).

<sup>192</sup> *Town of Monroe v. 837 Main Street Corporation*, 712 A.2d 996 (1997). 12 U.S.C. Sec. 1825(b)(3) exempts the FDIC from paying fines or penalties. The court, however, declared the eighteen percent interest rate non-punitive because it was set at a time when the prime rate was almost as high.

<sup>193</sup> CONN. GEN. STAT. § 12-174 (2010).

<sup>194</sup> PD Committee Hearing Transcript for 03/03/2008. It is worth noting that other municipalities have not been nearly as successful as New Haven in enforcing tax rates. Bridgeport, for example, had a 70% collection rate in 2004, and in 2005 had over 100,000 tax warrants out on motor vehicles. Jeff Holtz, *City's Hunt for Tax Cheats Hits Resistance*, *supra* note 185.



their children, or get to the tax collector's office to pay their taxes. (Indeed, public pressure has caused the Tax Collector's office to declare the parking spaces in front of City Hall a "safe zone" lest people have their cars towed while they are going in to pay their taxes).<sup>195</sup> In addition, people may naturally hold the real property tax collection process up as a standard against which to judge motor vehicle tax collection.<sup>196</sup> Tax liens may keep you from selling your home, but they at least allow you to continue using it. Tax sales of real property, though an uncomfortable process, at least have the virtue of taking a long time. Moreover, notice of a pending real property sale is more or less a constitutionally-protected right.<sup>197</sup> In comparison, having a motor vehicle towed immediately deprives car owners of the use of their property, creating considerable resentment. As Assistant Assessor Roger Palmer puts it, "A person's house could burn down, and they'll deal with it. But if you tow their car, they go nuts. I've seen it happen here. You can always crash at a friend's house, but you can't necessarily always get to work."<sup>198</sup>

New Haven also contracts with private companies both to sweep the city for unregistered or out-of-state vehicles and to tow cars with back taxes. All levels of government have, at one time or another, contracted tax collection out either to private companies or to "tax farmers," normally paying them based upon a percentage of the taxes they collected.<sup>199</sup> However, modern taxpayers often express anxiety about giving private companies access to their personal information, even though it may be publically available at the assessor's office. They like it even less when tow trucks come on to private property to collect cars. Many are also concerned about tow trucks targeting lower-income neighborhoods, where more vehicles are likely to be delinquent

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<sup>195</sup> Erin Cox, *supra* note 188.

<sup>196</sup> Interview with Roger Palmer, *supra* note 147.

<sup>197</sup> More accurately, anyone with a "legally protected property interest" whose location and name is "reasonably ascertainable" by "reasonably diligent effort" is entitled to notice "reasonably calculated" to inform them of a sale. *Missions v. Adams*, 462 U.S. 791 (1983).

<sup>198</sup> Interview with Roger Palmer, *supra* note 147.

<sup>199</sup> See Metin Cosgel & Thomas J. Miceli, *Tax Collection in History*, 37 PUB. FIN. REV. 399 (2009).

and where residents use on-street parking rather than closed garages.<sup>200</sup> In addition, the average tax due on motor vehicles in New Haven – around \$270 – is high enough to be a burden for many, but not so high as to be a significant source of city revenue.<sup>201</sup> Residents may question the worth of using private collectors because the amounts involved are low from the government’s perspective, while at the same time believing that the small amounts impose significant hardship upon them and their neighbors.<sup>202</sup>

On a more practical level, the additional fees paid to the towing companies anger many.<sup>203</sup> Public perception of these contract towers is, unsurprisingly, negative. Their mistakes and mishaps are reported in the local papers with great glee – especially when it turns out that they owe back taxes on the very trucks that they use to tow other tax delinquents.<sup>204</sup> The bootfinder program was suspended for a period in 2008 after public complaint about politically connected State Marshalls and incidents in which cars were mistakenly towed.<sup>205</sup> Since reopening the program, the city has taken steps to make the towing process less frustrating by reducing tow fees<sup>206</sup> and allowing towers to collect taxes on behalf of City Hall instead of

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<sup>200</sup> See, e.g., Holtz, *supra* note 134.

<sup>201</sup> *Id.*

<sup>202</sup> Interview with Roger Palmer, *supra* note 147.

<sup>203</sup> In addition to back taxes (and current taxes if the bills for that year have gone out), New Haven’s delinquent taxpayers must pay a \$77 tow fee or a \$55 boot fee, and a storage fee if their car is in the impound lot for more than 24 hours.

<sup>204</sup> Melissa Bailey, *Bootfinder Booted*, NEW HAVEN INDEPENDENT, April 13, 2009, *available at* [http://newhavenindependent.org/index.php/archives/entry/bootfinder\\_booted/](http://newhavenindependent.org/index.php/archives/entry/bootfinder_booted/).

<sup>205</sup> Paul Bass, *Towing Program Halted*, NEW HAVEN INDEPENDENT, Apr. 11, 2008 *available at* [http://www.newhavenindependent.org/archives/2009/02/platehunter\\_pro.php](http://www.newhavenindependent.org/archives/2009/02/platehunter_pro.php). In this case, turning collection over entirely to private contractors may have made administration more fair, by erasing motive for Marshalls not to tow those who are politically connected.

<sup>206</sup> Tow fees were reduced in 2009, and are now \$77 down from \$88. See Thomas MacMillian, *Towing Companies Cry Foul at Crown’s Monopoly*, NEW HAVEN INDEPENDENT, Apr. 12, 2010, *available at* [http://www.newhavenindependent.org/index.php/archives/entry/as\\_work\\_goes\\_to\\_crown\\_towing\\_o/](http://www.newhavenindependent.org/index.php/archives/entry/as_work_goes_to_crown_towing_o/)

forcing them to wait until business hours to pay at the tax collector's office.<sup>207</sup> Overall, however, New Haven has been unwilling to be less aggressive in its tax collection efforts.

When Mayor DeStefano insists upon aggressive vehicle tax collection, his rationale is that New Haven needs the revenue, and that everyone should be made to pay their fair share of the tax.<sup>208</sup> Indeed, there is good reason to worry about low collection rates: there is a chance that any tax morale gains brought on by softer collection policies would be erased by higher rates of tax evasion. Belief that their neighbors are getting away without paying tax both lowers residents' motivation to pay and lowers their morale if they do pay.<sup>209</sup> Mayor DeStefano, who is probably in the best position to know, apparently believes that the high collections rate on motor vehicles is worth the political cost.

He does recognize, however, that the tax causes problems for New Haven. It is expensive to administer. New Haven has approximately 27,000 parcels of land to track, but about 85,000 vehicles are on the grand list and supplemental list each year.<sup>210</sup> Tracking vehicles and sending out tax bills takes up time and effort that would perhaps be better used in improving the real property tax, which provides so much more revenue for the city. According to Gian-Carl Casa, director of the Connecticut Conference of Municipalities, "In our community I think about 70 percent of our effort is spent collecting the motor vehicle tax which generates about seven percent of our revenue. If it were a manufacturing line, you would discontinue it."<sup>211</sup> In Mayor

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<sup>207</sup> Thomas MacMillian, *Towing Companies, Prize Contract Breaks the Law*, NEW HAVEN INDEPENDENT, May 18, 2010, available at

[http://www.newhavenindependent.org/index.php/archives/entry/towing\\_companies\\_city\\_is\\_breaking\\_the\\_law/](http://www.newhavenindependent.org/index.php/archives/entry/towing_companies_city_is_breaking_the_law/)

<sup>208</sup> Holtz, *Tax Collector Hits the Road*, *supra* note 134; see also Thomas MacMillian, *List: Boot Assessor, Send Info Before Deadline*, NEW HAVEN INDEPENDENT, Nov. 23, 2010, available at

[http://newhavenindependent.org/index.php/archives/entry/tax\\_abatement\\_committee\\_live\\_blog/](http://newhavenindependent.org/index.php/archives/entry/tax_abatement_committee_live_blog/)

<sup>209</sup> TORGLER, *supra* note 145, at 50.

<sup>210</sup> *Id.* §2-77; Interview with Roger Palmer, *supra* note 147.

<sup>211</sup> Transcript, Finance Revenue and Bonding Committee Hearing, 37-38 (Mar. 15, 2010).

DeStefano's words, "I'd certainly love to lose the auto tax. It's the lowest collection rate. It's the hardest to keep track of.... we'd like to see it go."<sup>212</sup>

### **3. Tax Morale and Local Solutions to the Vehicle Tax**

At first glance, the vehicle tax's many problems may seem to point to abolishing it entirely. Those factors that cause local dissatisfaction may also point to levying vehicle taxes at a state-wide uniform rate. However, all taxes result in taxpayer dissatisfaction, and the benefits/tax ratio analysis above also suggests a third way of resolving some of the vehicle tax's most persistent problems. Currently, Connecticut law mandates that vehicles and real property be taxed at the same rate.<sup>213</sup> However, if local governments could choose whether or not to levy a vehicle tax, or could choose to set vehicle tax rates independent of real property tax rates, they would be able to adjust their tax systems to maximize the benefits/tax ratios of their residents. Since the vehicle tax is primarily a local public good, this move would also insure that the level of government bearing the benefits and burdens of the tax would be the same level of government with the power to set and control it.

Allowing towns to set different rates for vehicle taxes than for real property is hardly unprecedented. It would essentially reinstitute the classified property scheme described in Part I Section C and championed by Simeon Leland and others scholars as a solution to the inequities of the general property tax.<sup>214</sup> By giving local governments increased control over the tax, it would echo the old practice of de facto classification via state-sanctioned underassessment,

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<sup>212</sup> *Id.*

<sup>213</sup> CONN. GEN. STAT. § 12-62a. There is, however, an exception that will be discussed in Part III, *infra*, for those Connecticut localities that have multiple taxing districts.

<sup>214</sup> LELAND, *supra* note 76.

presumably without the favoritism and inequality that result from that practice.<sup>215</sup>

There is also good reason to believe that communities have different overall benefits/tax ratios when it comes to the vehicle tax, and that local governments are in the best position to discover those ratios. The vehicle tax may not be as hated, or as burdensome, in towns with lower mill rates and less aggressive collection. Towns could also take steps to make the tax less hated – for example by tweaking the collection and notification process, or by earmarking all vehicle tax revenue generated for road work or road-related police services.<sup>216</sup> Differences in wealth and the rate of vehicle ownership may also affect the way residents view the tax. For example, in Greenwich, Connecticut, a town which in 2006 had more vehicles than people, and was home in to 94 Ferraris, 65 Maseratis, 39 Rolls Royces and 3,769 BMWs, the vehicle tax may act more as a luxury tax than in other towns.<sup>217</sup> Even in New Haven the tax may have appeal to some residents: for example, New Haven having long ago lost the battle to tax dormitories,<sup>218</sup> vehicle taxes may be the only local taxes that a substantial portion of Yale students pay.<sup>219</sup> Moreover, the revenue effects of changing the car tax may be different in different localities. In some, a reduction in vehicle taxes may actually lead to increased revenue if residents respond by buying more and newer cars.<sup>220</sup>

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<sup>215</sup> *Id.* at 423 (setting out in table form a list of all classification amendments to state constitutions from 1900 to 1928).

<sup>216</sup> In the past, tax officials have suggested that the vehicle tax would be better received by the public if it were turned into something closer to a user fee, by restricting the revenue from the tax to road-related services. See Report of the Tax Commissioner for Biennial Period 1909 and 1910, *supra* note 85.

<sup>217</sup> Christopher Keating, *Fancy Cars, Taxing Debate: Rell Plan Spotlights Greenwich Culture*, HARTFORD COURANT, Mar. 18, 2007, available at [http://articles.courant.com/2007-03-18/news/0703180734\\_1\\_greenwich-avenue-car-taxes-aston-martins](http://articles.courant.com/2007-03-18/news/0703180734_1_greenwich-avenue-car-taxes-aston-martins).

<sup>218</sup> *Yale University v. New Haven*, 42 A. 87 (1899) (holding that Yale's dormitories were tax-exempt as building exclusively occupied for college use).

<sup>219</sup> Vehicles registered outside of Connecticut are technically taxed as personal property instead of as motor vehicles. CONN. GEN. STAT. §12-42. When the mill rates are the same, however, the distinction is arbitrary.

<sup>220</sup> See Craft & Schmidt, *supra* note 115, at 698. When Craft and Schmidt studied Virginia's car tax reduction, they found that residents did respond to reduced tax rates, by buying fewer but higher-value cars. *Id.* at 709.

Communities are likely to take advantage of the ability to tax vehicles at a different rate, with some reducing or eliminating the tax and others raising it. In Alaska, Texas, and Louisiana where vehicle taxes are now optional at the local level, most jurisdictions appear not to levy the tax.<sup>221</sup> Last year, as a result of its budget crisis, Rhode Island repealed a provision under which the first \$6000 of every vehicle was exempt from local tax.<sup>222</sup> It gave local governments the option of either keeping the exemption or doing away with it, effectively raising the rate at which vehicles were taxed.<sup>223</sup> As of last July, nine Rhode Island municipalities had opted to keep the full exemption, thirteen repealed it, five cut it in half, and two cut it down to a credit of \$2500 or less.<sup>224</sup> In other instances, localities tax vehicles at higher rates than real property when given the opportunity. Connecticut's current uniform rate provision was put in place in 1958 after a court case revealed that the town of Bristol regularly taxed all real estate at fifty percent of its value, business personal property at ninety percent of its value, and motor vehicles at one hundred percent of their value.<sup>225</sup> Currently, New Haven essentially taxes vehicles at a slightly higher rate because it has, as allowed under state law, frozen property tax assessments at their 2008 levels.<sup>226</sup> Most municipalities in Rhode Island and Virginia also have higher vehicle tax

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<sup>221</sup> Scott Mackey & Mandy Rafool, *supra* note 6 (noting that only 124 of Texas's 3000 taxing jurisdictions levy a vehicle tax. In Alaska, no municipalities appear to currently levy a vehicle tax (although some do have a vehicle rental tax). See Office of the State Assessor, Information About Alaska's Taxing Jurisdictions and Municipal Taxation, [http://www.commerce.state.ak.us/dcra/osa/osa\\_summary.cfm](http://www.commerce.state.ak.us/dcra/osa/osa_summary.cfm). Louisiana does not appear to track the tax policies of its municipalities.

<sup>222</sup> The state government had reimbursed local governments for the exempt amount, but was unable to do so any longer because of budgetary constraints. Paul Edward Parker, *Survey Shows Vehicle Tax Exemption Levels for R.I. Communities*, PROVIDENCE J., July 20, 2010, available at [http://www.projo.com/news/content/CAR\\_TAX\\_EXEMPTIONS\\_07-20-10\\_DBJ8JT8\\_v27.175ec03.html](http://www.projo.com/news/content/CAR_TAX_EXEMPTIONS_07-20-10_DBJ8JT8_v27.175ec03.html).

<sup>223</sup> Rhode Island rates and ratios of assessment were frozen by statute in 1996. See State of Rhode Island Department of Revenue, FY 2011 Tax Rates by Class of Property, available at <http://www.muni-info.ri.gov/documents/finances/property%20tax%20info/TaxRatesFY2011.pdf>

<sup>224</sup> Parker, *supra* note 222.

<sup>225</sup> *Ingraham Co. v. Bristol*, 132 A.2d 563 (Conn. 1957).

<sup>226</sup> BUDGET FY 2010-2011, at 6.

rates than real property tax rates.<sup>227</sup> The fact that localities react differently when give the power to raise or lower their vehicle taxes reflects tax morale's position as a local public good.

Different localities have different benefit/tax ratios, and even those intrinsic morale-lowing aspects of the vehicle tax – such as salience and quick depreciation – operate with different force depending upon the demographics and preferences of a locality's residents.

#### **4. Downsides to State-Level Reform**

Why not solve Connecticut's vehicle tax problems at the state level? Nineteen states have already done so by doing away with the tax entirely, and another sixteen tax all residents at a uniform state-wide rate.<sup>228</sup> These solutions have been raised multiple times in Connecticut, the earliest in 1910, the latest by Governor Rell in 2006 and 2007.<sup>229</sup> They champion the possibility of increasing tax morale by doing away with differences in local rates, thus keeping residents in high-tax areas from resenting their large vehicle tax burdens. However, a state solution to the vehicle tax is a blunt instrument: it would either raise taxes in some jurisdictions or reduce revenue at a time when budgets are already strained. For this reason, local governments have been reluctant to cede control of the tax, especially since it currently raises about ten percent of Connecticut's local government revenue.<sup>230</sup> A state solution or state-mandated repeal would also hobble local governments in their ability to control benefits/tax ratios. Doing away with the

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<sup>227</sup> See State of Rhode Island Department of Revenue, *supra* note 223; John L. Knapp, *What Will Become of the Car Tax?*, 2006 VA. ISSUES & ANSWERS 29.

<sup>228</sup> See Appendix B; *see also* John Rappa, OLR Research Report, *Statewide Motor Vehicle Property Taxes*, Mar. 1, 2010.

<sup>229</sup> Report of the Tax Commissioner for Biennial Period 1909 and 1910, *supra* note 85, at 63 (positing that state administration would be easier and less expensive than local administration); *see also* Biennial Report of the Tax Commissioner, 1921 and 1922, *supra* note 73, at 36-39. The most recent proposal for state collection was H.B. 6183 (Conn. 2007). The bill never had hearings or made it out of Committee.

<sup>230</sup> *Id.* at 30; Testimony of Gian-Carl Casa, Transcript, Finance Revenue and Bonding Committee Hearing, *supra* note 211, at 37-38 (“The concern that we all have locally though [with eliminating the vehicle tax] is the fear that there would be an erosion in whatever our expectation of revenue would be...It's something we're fearful of giving up because at least right now we can control our destiny.”).

vehicle tax entirely leaves residents with just the real property tax, limiting local government flexibility and hurting those jurisdictions in which residents would prefer to pay some amount of vehicle tax to higher real property tax rates. Switching to a state-wide rate likewise either decreases the amount of revenue some localities bring in, lowering the benefits they are able to provide, or increases the tax rate in some localities.

In addition, eliminating the vehicle tax without decreasing local government revenue has proven almost impossible in Connecticut. Former Governor Jodi Rell's 2006 proposal to eliminate the tax can serve as an example.<sup>231</sup> Governor Rell claimed that her solution was revenue neutral, but it involved repealing the state tax property tax credit and giving municipalities revenue from the Mashantucket Pequot and Mohegan Fund.<sup>232</sup> Rell clearly believed that her proposal was politically popular: proposals to eliminate the vehicle tax had been politically advantageous in other states,<sup>233</sup> and her plan was unveiled at her State of the State address, where she made multiple references to how hated Connecticut's vehicle tax was.<sup>234</sup> Repealing the state property tax credit, then set at a maximum of \$350, also doesn't appear to have been a fatal flaw. The credit, given for both real property taxes paid and for vehicle taxes, phases out at a certain income level.<sup>235</sup> The majority of people – especially renters and high-income homeowners – would have paid less total tax under her plan. Municipalities would have saved money and time as well, since they would only have had to

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<sup>231</sup> S. 50 (Conn. 2006) available at <http://www.cga.ct.gov/2006/TOB/S/2006SB-00050-R00-SB.htm>.

<sup>232</sup> *Id.* Those over age 65 would have been able to keep their state property tax credit, and towns would have continued to impose a tax on vehicles used for business purposes. Governor Rell revised the plan in 2007 to include relief only for those vehicles valued at \$30,000 or below, but her proposal never made it out of committee. M. Jodi Rell, Governor of Connecticut, <http://www.ct.gov/governorrell/cwp/view.asp?A=2791&Q=335486>.

<sup>233</sup> See *infra* note 250 for an outline of other states' vehicle tax reduction and elimination proposals.

<sup>234</sup> Frequently Asked Questions, *supra*, note 166.

<sup>235</sup> CONN. GEN. STAT. § 12-704c(b) sets out a schedule of maximum property tax credits for certain years. In 2010, phase-outs for single filers began at an AGI of \$56, 500. Single filers with an AGI of more than \$146,000 received no credit at all.



track cars owned by businesses. The problem was that the Mashantucket Pequot and Mohegan Fund - cleverly renamed under Rell's bill as the Casino Assistance Revenue (CAR) fund - comes from an agreement between Connecticut and its Indian gaming operations and varies directly with the amount of slot machine revenue Connecticut's two Indian casinos take in. Towns lobbied against Rell's tax cut because they were unwilling to take a gamble on an uncertain revenue source, and the state refused to guarantee to step in and make up any future deficits.<sup>236</sup>

A uniform state-wide tax rate would be easier to implement, and would undoubtedly have its advantages. Such a tax would presumably be easier to administer, since the DMV already collects vehicle information. A uniform rate would also allow for equality of burden across municipalities, as well as the possibility of wealth redistribution among towns and cities. At first glance, it seems like New Haven would champion such a move. Connecticut cities and towns are uncommonly dependent upon the property tax, raising less revenue from fees and other charges than most local governments.<sup>237</sup> Furthermore, there is no county-level tax to smooth out differences in wealth and property value between urban centers such as New Haven, Hartford and Bridgeport and their surrounding suburbs.<sup>238</sup> The lack of larger taxing jurisdictions also makes sales taxes less attractive, as residents could simply drive to a lower-tax area to shop. Connecticut cities, so the argument goes, are stuck in a vicious cycle of harmful tax competition with the suburbs. They have lower property values, but need to provide more services than the suburbs because their population is poorer and crime rates are higher. They raise taxes, which

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<sup>236</sup> See, e.g., Testimony of Gian-Carl Casa, *supra* note 211; Christopher Keating, *An Engine for Change? Rell's Plan to End Car Taxes Viewed Warily*, HARTFORD COURANT, Feb. 10, 2006, available at [http://articles.courant.com/2006-02-10/news/0602101010\\_1\\_collection-rate-car-taxes-tax-burden](http://articles.courant.com/2006-02-10/news/0602101010_1_collection-rate-car-taxes-tax-burden).

<sup>237</sup> Therese J. McGuire, *Alternatives to Property Taxation for Local Government*, PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 301, 302 (Wallace E. Oates ed., 2001).

<sup>238</sup> Connecticut established counties in 1785, but never vested much power in them. In 1960, they were officially abolished, leaving the state as the only taxing entity above the municipal level. Some scholars have attributed New Haven, Hartford, and Bridgeport's high property taxes to the lack of county taxes. HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK 78-84 (Krane et al. ed., 2001).

causes capital – in the form of businesses and wealthier residents – to flow out to the surrounding suburbs.<sup>239</sup> Property values decline, so tax rates must be pushed higher, and the entire cycle begins anew.<sup>240</sup> Thus, in a competition for mobile capital, the suburbs benefit every time New Haven raises its tax rates, and New Haven is harmed every time the suburbs lower theirs. As a result, the suburbs may seek to undercut New Haven, ignoring the negative externalities of such a move because they are diffused among the entire region while the positive results of a low tax rate are borne primarily by their residents.

Taxing vehicles as a way to partially correct this asymmetry has a certain elegance to it, since cars play a large role in suburb-city tax competition, spurring the creation of suburbs and allowing suburban homeowners to shop and work in cities while living in low tax areas.<sup>241</sup> Even if they believe in race-to-the-bottom tax competition, however, New Haven’s elected officials, have good reason to remain reluctant to support a state-wide vehicle tax. In Connecticut’s wealthier cities, a uniform rate would likely lead to reduced local revenue or higher effective tax burdens. For New Haven, the opposite would be true. However, wealthier Connecticut cities currently receive minimal state funding, and are thus somewhat insulated from state budget deficits and political battles.<sup>242</sup> New Haven, on the other hand, already receives significant aid

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<sup>239</sup> See, e.g., Richard C. Schragger, *Cities, Economic Development, and the Free Trade Constitution*, 94 VA. L. REV. 1091, 1099, 1117. However, this argument does not take into account local rents: the additional tax that cities can charge merely because people wish to live in the cities rather than commute in from the surrounding suburbs. See Dick Netzer, *Local Property Taxation in Theory and Practice: Some Reflections*, PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 321, 334 (Wallace E. Oates ed., 2001).

<sup>240</sup> William Fischel and others have pointed out that property will eventually become cheaper in the inner cities, which may encourage businesses to relocate and allow them to bounce back. Many question, however, whether going through that process is more trouble – in terms of distributive justice and negative externalities – than it is worth. Richard Schragger, book review, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land Use Policies*, 101 MICH. L. REV. 1824, 1839 (2003).

<sup>241</sup> See William A. Fischel, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 URBAN STUDIES 317, 321 (theorizing that motor buses and motor trucks spurred suburban development and the need for exclusionary zoning).

<sup>242</sup> For example, in Greenwich, CT, 87% of the General Fund comes from property taxes, while 1.8% comes from state and federal aid. TOWN OF GREENWICH, FINAL BUDGET, FISCAL YEAR 2010-2011, Budget Schedules, 1,

from the state. Forty-two percent, or approximately \$202 million of its general fund comes from state sources, to say nothing of the approximately \$70 million in special purpose grants that it is expected to receive from the state this fiscal year.<sup>243</sup> As a result, the city is at the mercy of state finances and state legislative battles, constantly looking to the General Assembly for assurances that its redistribution programs be fully funded.<sup>244</sup> With Connecticut currently facing a \$3.67 billion budget deficit and reducing PILOT payouts, New Haven is understandably reluctant to give up a local revenue source, even if it were slated to receive increased state revenue in exchange.<sup>245</sup> Instead, its elected officials are focusing on new state or regional taxes as a way to bring more money into New Haven.<sup>246</sup>

There is another reason for local governments to be leery of having the state take over vehicle tax administration. No state that administers a vehicle tax allows local government to set their own vehicle tax rates, likely because local differences are part of the problem states hope to solve.<sup>247</sup> However, even if the state were to allow local governments to set their own tax rates, state administration would likely bring more scrutiny to bear on the vehicle tax. The tax-benefits link provided at the local level is more attenuated at the state level, with the result that residents

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*available at*

[http://greenwichct.virtualtownhall.net/Public\\_Documents/GreenwichCT\\_Estimate/bet\\_Final\\_Town\\_Budget\\_2010-2011.pdf](http://greenwichct.virtualtownhall.net/Public_Documents/GreenwichCT_Estimate/bet_Final_Town_Budget_2010-2011.pdf).

<sup>243</sup> BUDGET FY 2010-2011, § 2-7 and § 5-4.

<sup>244</sup> See GERALD E. FRUG & DAVID J. BARRON, CITY BOUND 90-95 (discussing the effects that a high amount of state aid has had on Boston, Massachusetts).

<sup>245</sup> Christine Stuart, *Malloy Slices New Haven's Budget Gap by \$11M*, NEW HAVEN INDEPENDENT, Feb. 9, 2011, *available at*

[http://www.newhavenindependent.org/index.php/archives/entry/malloy\\_slices\\_new\\_havens\\_budget\\_gap\\_by\\_11m/](http://www.newhavenindependent.org/index.php/archives/entry/malloy_slices_new_havens_budget_gap_by_11m/)

<sup>246</sup> New Haven's legislative agenda, as set out in the FY 2010-2011 budget, includes lobbying for a state-wide real property tax. BUDGET FY 2010-2011, § 1-14 to 1-15. In addition, Mayor DeStefano is currently working with the Connecticut South Central Council of Governments, suggesting regional sales and income taxes.

<sup>247</sup> See Appendix B. In Kansas, however, the state collects the vehicle tax, but the rate varies by county, based on the average tax rate in all taxing jurisdictions across that county. Kan. Stats. Ann. § 79-5105. See also Scott Mackey & Mandy Rafool, *supra* note 6.

often view state taxes as more burdensome than local ones.<sup>248</sup> In other words, the aggregate local-state benefits/tax ratio of residents would decrease simply because the state and not localities were administering the tax (though it would likely increase in those localities where the new state-wide rate was lower than the previous local rate). Moreover, local politics are generally less partisan and less hotly contested than state politics, and making a tax as controversial as the vehicle tax part of state political campaigns had led to trouble in recent decades.<sup>249</sup>

In the late 1990s, a period of budget surplus, multiple states were considering reducing or eliminating vehicle taxes.<sup>250</sup> Those who reduced the tax and had their state government reimburse towns for the gap in revenue have found themselves mired in controversy. The vehicle tax that was such a divisive topic in the 2003 California recall election was a uniform state-collected tax with revenues going to local governments. In 1998, California had instituted a phase-out of its tax, reimbursing municipalities for their lost revenue. However, the law included a proviso saying that such reimbursement could be discontinued if the state faced budget shortfalls. Governor Gray Davis was faced with mounting debt but unable to easily increase taxes because of Proposition 13 and California's referendum system. He canceled the

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<sup>248</sup> TORGLER, *supra* note 145, at 70-79 (summarizing research on tax morale and direct democracy).

<sup>249</sup> See Clayton P. Gillette, *Fiscal Home Rule*, 86 DENV. U.L. REV. 1241, 1251 (1999).

<sup>250</sup> South Carolina, Kansas, Kentucky, Oklahoma, Utah, California, Virginia, Missouri, Rhode Island and Washington State all had campaigns to reduce or eliminate the vehicle tax during this period. See Craft & Schmidt, *supra* note 115, at 697. In South Carolina, Kansas, Kentucky, Virginia, Missouri and Rhode Island the tax was locally collected at local rates. In Utah and California it was locally collected at a uniform state rate. See Appendix B. Washington succeeded in eliminating the tax entirely. Rhode Island's tax was going to phase out beginning in 2005, but that provision was repealed before it could take effect. 2005 R.I. Pub. Laws 117. A South Carolina bill that would have eliminated the vehicle tax by 2011 passed the South Carolina House, but stalled in the Senate. See *Reduction in Car Tax Hot Topic*, AUGUSTA CHRON., Apr. 19, 1998, available at [http://chronicle.augusta.com/stories/1998/04/19/met\\_226384.shtml](http://chronicle.augusta.com/stories/1998/04/19/met_226384.shtml). In 1994, Connecticut too passed legislation lessening the vehicle tax by giving motor vehicle tax credits on income tax returns. The provision never took effect, however. It was supposed to phase in starting in 1997, but was eliminated after the General Assembly passed other tax relief measures, including a reduction in the state gas tax and the current property tax credit, covering both vehicles and primary residences. CONN. GEN. STAT. Sec 12-704, repealed by 1997 Ct. P.A. 309. The credit has increased since it was first instituted, and does not appear to have been the cause of major political strife.

phase-out, bringing vehicle taxes up to their pre-1998 levels.<sup>251</sup> The vehicle tax then became the focal point for those campaigning against him.<sup>252</sup>

In 1998, following through on a campaign pledge by Governor Gilmore, Virginia also began to reduce its vehicle tax, making the first \$20,000 of each vehicle exempt and giving state money to local governments to make up for the lost revenue.<sup>253</sup> Political controversy followed soon after, when the state faced budget shortfalls in 2002 triggering a provision that halted scheduled reductions in the tax.<sup>254</sup> In short, loss aversion across an entire state, set in a larger and more fractious political landscape, makes raising vehicle taxes at the state level a dangerous proposition. As a result, local governments may receive more revenue in the long run if they keep the tax and its headaches for themselves. Indeed, many of the states that levied a state-level tax or fee in the 1930s now have no vehicle tax at all today.<sup>255</sup> Local control over the tax, then, seems more likely to lead to reforms and rate changes that maximize residents' benefits/tax ratios. In addition, as discussed immediately below, although locally-controlled rates may lead to tax competition, they may not necessarily lead to *harmful* tax competition.

### **C. The Vehicle Tax versus the Real Property Tax as a Local Revenue Source**

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<sup>251</sup> Hiltzik *supra*, note 2.

<sup>252</sup> *Id.*

<sup>253</sup> Spencer S. Hsu, *Va. Car-Tax Fear: Cut Now, Pay Later*, WASH. POST, Apr. 5, 1998, at B1.

<sup>254</sup> See Knapp, *supra* note 227, at 27. See also Rosalind S. Helderman, *Kaine May Renew Virginia's Car Tax Debate Amid Budget Gap*, WASH. POST, Dec. 17, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/16/AR2009121604072.html>. Note that the effect of tax reductions may cause another problem for those states with reimbursement policies: if the reduced tax burden causes residents to buy more and newer cars, then states may end up paying far more in reimbursement dollars than they anticipated. See Craft & Schmidt, *supra* note 115 at 698.

<sup>255</sup> In 1930 Idaho, Iowa, New York, Oklahoma, Oregon, Vermont, and North Dakota were the only states that levied state-wide fees in lieu of the general property tax. Only Iowa currently has a tax. Also, of the nineteen states that levied no motor vehicle taxes in 1957, only four have switched back to having a tax. Two of those states, Michigan and Minnesota, keep the tax for state use instead of remitting it to localities. Iowa keeps sixty percent of the vehicle tax for itself, giving the other forty percent to counties and municipalities. Louisiana has made the tax optional for local governments. See Appendix B. For information on the states that levied a vehicle tax in 1957, see Bird, *supra* note 6.

Part II Section B already surveyed the similarities and differences between the real property tax and the vehicle tax from a tax morale perspective. The following section will offer a comparison from a local finance perspective, focusing on the role local taxation plays in public service provision. Instead of the story of race-to-the-bottom tax competition outlined above, scholars who champion local taxation view it as a vehicle to keep local governments accountable in its service provision. They concede that redistribution of wealth is best done at the state or federal level<sup>256</sup> – essentially the position New Haven is in now thanks to state PILOT programs and grants for education.<sup>257</sup> They claim, however, that local taxation to provide local services promotes Tieboutian race to the top tax competition and allows residents to better police local government programs.<sup>258</sup>

In this story, built upon the Tiebout model and championed by scholars Bruce Hamilton, Wallace Oates, and William Fischel, cities and towns compete against one another for residents, with people choosing to live in the area that has the package of goods and services that best suits them.<sup>259</sup> Local governments respond to voter preference on tax rates and service provision because they know that inefficiencies or rent-seeking will lead residents to either exit their jurisdiction or vote them out of office.<sup>260</sup> Allowing local governments to provide services but

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<sup>256</sup> See e.g., WALLACE E. OATES, FISCAL FEDERALISM 131-40 (1972); Richard A. Musgrave, Fiscal Federalism, in PUBLIC FINANCE AND PUBLIC CHOICE: TWO CONTRASTING VISIONS OF THE STATE 155, 160-61 (James M. Buchanan & Richard A. Musgrave eds., 1999).

<sup>257</sup> See supra note 128 and related text.

<sup>258</sup> See generally PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE (Wallace E. Oates ed, 2001). See also McGuire, supra note 237.

<sup>259</sup> Charles M. Tiebout, *A Pure Theory of Local Public Expenditures*, 64 J. POL. ECON. 416 (1956). Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUDIES 205 (1975) (using zoning and property taxation to prevent fiscal freeriding). Wallace E. Oates, *The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and the Tiebout Hypothesis*, 77 J. POL. ECON. 957 (1969) (showing that differences in local government spending are capitalized into home values). FISCHEL, THE HOMEVOTER HYPOTHESIS, supra note 155 (arguing that local government decisions are driven in large part by homeowners protecting their property values).

<sup>260</sup> See, e.g., Oates, *Effects of Property Taxes*, supra note 259; Oates, *Fiscal Decentralization and Economic Development*, 45 NAT'L TAX J. 237, 241 (1993).

receive revenue from the state, however, tends to undercut the political force of this local exit and voice.<sup>261</sup> If too much funding comes from the state, then local governments will negotiate with higher levels of government to receive more funding instead of weighing the costs of services against their benefits.<sup>262</sup> Local governments also tend to increase their spending more when given grants than when given an equivalent increase in local tax revenue.<sup>263</sup> In addition, higher levels of government often give aid with strings attached, undermining residents' preferences.<sup>264</sup>

Because some redistribution is necessary to provide services to those who cannot afford to pay for them, and because services often create spillover effects, most proponents of local taxation favor some level of state grants. They contend, however, that municipalities will be more efficient in their service provision and more responsive to local concerns if they raise enough revenue from local sources to cause their residents to police marginal spending decisions and tax increases or decreases.<sup>265</sup> The question, of course, is how much local taxation is optimal, and whether certain services – public schools especially – should be funded by state sources because of equity concerns.<sup>266</sup>

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<sup>261</sup> Oates, *Fiscal Decentralization and Economic Development*, *supra* note 260, at 238, citing ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY (1970).

<sup>262</sup> Oates, *Property Taxation and Local Government Finance*, *supra* note 155 at 24; *see also*, Oates, *Fiscal Decentralization and Economic Development*, *supra* note 260.

<sup>263</sup> This “flypaper effect” may be in part explained by lack of salience in grant funding. *See* Oates, *On the Nature*, *supra* note 170, (“What the electorate sees is a reduction in tax rates needed to finance local spending programs, and this reduction is erroneously viewed as a reduction at the margin in the ‘tax-price’ of these programs. The budgetary process thus transforms what is, in truth, a lump-sum inter-governmental grant into what is perceived by individuals as a reduction in the tax-price of local public goods. The result is a willingness on the part of the local electorate to support higher levels of spending than if they correctly perceived the relevant fiscal parameters.”).

<sup>264</sup> Oates, *Fiscal Decentralization and Economic Development*, *supra* note 260, at 241.

<sup>265</sup> *See e.g.*, Oates, *Property Taxation and Local Government*, *supra* note 155, at 26-27.

<sup>266</sup> *See, e.g.*, William N. Evans, et al., *The Property Tax and Education Finance: Uneasy Compromises*, PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 209 (Wallace E. Oates ed., 2001). Note that about ninety percent of New Haven’s school budget comes from state or federal sources. In the 2010 budget, New Haven spent \$254,097,211 on education. About \$19,882,769 came from local revenue and \$7,798,408 from city bonds. The remaining \$226,416,034 came from state or federal sources. BUDGET FY 2010-2011 §§2-7, 2-15.

There is a caveat to this view of local taxation, however, and that is that not all local taxes are created equal. To be effective in constraining local governments and policing levels of service provision, local taxes should be non-distortionary and should closely approximate benefits taxes.<sup>267</sup> Benefits taxes are levies in which a resident's tax burden is proportionate to the benefits he or she receives from the government. Equity in this context means that people who receive the same value of services are taxed the same, not that people with the same ability to pay are taxed the same.<sup>268</sup> This link between payment and service provision promotes government efficiency by allowing residents to see how much public goods and services cost them.<sup>269</sup> If a tax increase does not provide an equal or greater benefits increase (or, put in slightly different terms, if the numerator in the benefits-tax ratio does not increase more than the denominator) then residents will protest. Scholar's descriptions of colonial taxation, where men were taxed by the head for the protection afforded them and property was taxed for the protection afforded it, is an example of a broad benefits tax.<sup>270</sup> Motorists in the 1940s protesting the use of highway funds for general purposes is a more fine-grained example: they were unwilling to bear a special tax burden unless they also received a special tax benefit in the form of more and better roads.<sup>271</sup>

### **1. The Property Tax as a Benefits Tax**

In evaluating the vehicle tax as a source of local revenue, it once again makes sense to compare it to the only other local tax that New Haven residents pay – the real property tax. The

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<sup>267</sup> Oates, *Fiscal Decentralization and Economic Development*, *supra* note 260, at 241.

<sup>268</sup> Adjustments to the model may be made to account for the fact that the wealthy may get more benefit from services, or for the fact that local redistribution could be itself a public good. See Mark V. Pauly, *Income Redistribution as a Local Public Good*, 2 J. PUB. ECON. 35 (1973).

<sup>269</sup> Oates, *Property Taxation and Local Government Finance*, *supra* note 262, at 21.

<sup>270</sup> See *supra* note 19 and related text.

<sup>271</sup> See *supra* note 113 and related text. The gas tax, in fact, straddles the line between a tax and a user fee, as highway use can be restricted to those who buy gasoline.



question from the local finance perspective then becomes whether one acts as a better benefits tax than the other, or whether the two complement each other to provide a more complete benefits tax package than either would alone. The quintessential local benefits tax (and the one used by Tiebout in his original article) is the poll tax.<sup>272</sup> The tax acts as an “entrance fee” into the community, and every resident pays equally for an equal amount of goods and services.<sup>273</sup>

In his 1928 indictment of the general property tax, Simeon Leland makes the case for the property tax as a benefits tax:

“Turning from the measure of ability to the obligation to pay for benefits received, property becomes a more satisfactory measure. Though the benefit theory has been discarded as worthless by many writers of public finance, nevertheless it cannot be thrown aside altogether. Under local governments many benefits are conferred directly on property by public expenditures. These benefits often not only enhance the value of the property but frequently add to its net return. In such cases it is only just that the government recoup itself for these benefits from the property on the owners thereof.”<sup>274</sup>

Indeed, part of the reason why the colonial tax system gave way to taxation according to full value in the early 1800s was the ability of government services to raise property values by building canals and other improvements, and by providing services such as city fire brigades.<sup>275</sup>

Modern scholars – most notably Wallace Oates and William Fischel – have reinvigorated and built upon the benefit theory, arguing that in a community with sufficient zoning to prevent fiscal freeriding property taxes are a payment for 1) benefits in the form of goods and services provided by the government and 2) benefits in the form of increasing property values attributable to government services.<sup>276</sup> In this simple model, the property tax is efficient and creates no deadweight loss, as those who pay more in tax receive correspondingly higher amounts of

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<sup>272</sup> Peter Mieszkowski & George R. Zodrow, *Taxation and the Tiebout Model: The Differential Effects of Head Taxes, Taxes on Land Rents, and Property Taxes*, 27 J. ECON. LITERATURE 1098-99 (1989).

<sup>273</sup> *Id.* at 1099.

<sup>274</sup> LELAND, *supra* note 76, at 15-16.

<sup>275</sup> See, e.g., Wallis, *supra* note 58, at 125.

<sup>276</sup> Fischel, *Municipal Corporations*, *supra* note 151, at 33-35.

benefit in the form of capitalization.<sup>277</sup> Homeowners – who have a vested interest in ensuring that their property values rise – closely police local government through the political process.<sup>278</sup> Their benefits/tax ratio revolves around their home, which is usually by far their largest asset: even if a homeowner does not directly benefit from a service he will nevertheless support an increase in funding if it raises his property value by more than the marginal increase in property taxes.<sup>279</sup> The municipality thus becomes the equivalent of a corporation, with “homevoters” as its stockholders.<sup>280</sup>

## 2. Downsides to the Property Tax

Other views of the real property tax are less sanguine. Some scholars argue that the tax is a distortionary tax on capital.<sup>281</sup> If it were sufficiently distortionary, its ability to lead to efficient service provision would be destroyed.<sup>282</sup> Cities would underprovide services for fear that taxing capital would cause it to flee to lower-tax areas or cause people to spend less developing property than they otherwise would.<sup>283</sup> In New Haven’s case there are other problems as well. First, New Haven may be especially sensitive to distortionary taxes on capital since it has a large non-profit sector, allowing capital to stay in the city but still escape taxation. Second, the property-tax-as-benefits-tax theory was developed and is discussed largely with the suburbs in mind.<sup>284</sup> The link between property values and government services that it champions depends upon the median voter model and upon homeowners jealously guarding their property values and

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<sup>277</sup> *Id.* at 33.

<sup>278</sup> *Id.* at 40.

<sup>279</sup> *Id.* at 34.

<sup>280</sup> *Id.* at 41.

<sup>281</sup> See, e.g., Mieszkowski & Zodrow, *Taxation and the Tiebout Model*, *supra* note 272.

<sup>282</sup> Thomas J. Nechyba, *The Benefit View and the New View: Where do We Stand, Twenty-Five Years into the Debate?*, PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 115-16 (Wallace E. Oates ed, 2001).

<sup>283</sup> See George R. Zodrow & Peter Mieszkowski, *Pigou, Tiebout, Property Taxation and the Underprovision of Local Public Goods*, 19 J. URB. ECON. 356, 358-66 (1986); Oates, *Property Taxation and Local Government Finance*, *supra* note 155, at 22.

<sup>284</sup> Fischel, *Municipal Corporations*, *supra* note 151, at 54.

restricting new housing so that services will be capitalized into home values instead of spread to new developments.<sup>285</sup> Studies have shown, however, that the median voter model does not work as well in cities as it does in the suburbs.<sup>286</sup>

The property tax may also falter as a benefits tax in cities because many urban residents rent.<sup>287</sup> As discussed in Part II, Section 2BII, the real property tax is not salient for renters, and is a function not just of tax rates and home values but also of how much tax is shifted to renters from their landlords.<sup>288</sup> Rental prices may not respond to government service provision in the same way that property values do.<sup>289</sup> Even if they did, renters might not champion services that led to higher housing values, as they have a vested interest in keeping their rent payments low.<sup>290</sup> As a result, when a significant portion of the community rents, the real property tax does not act as an entrance fee into the community, nor does it give renters reason to scrutinize the level and type of services government is providing them.

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<sup>285</sup> See, e.g., *Id.* at 54; Schragger, *supra* note 240, at 1830.

<sup>286</sup> William A. Fischel, *Property Taxation and the Tiebout Model: Evidence for the Benefit View from Zoning and Voting*, 30 J. ECON. LITERATURE 171, 174 (1992). For possible explanations, see David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507. According to Schleicher and the scholarship he reviews, developers often have greater political pull in large cities than homeowners do, reducing the median voter model's effectiveness in cities. Also, agglomeration gains draw people to cities rather than government service provision, and may lead people to stay in cities even if service provision is inefficient. *Id.* at 1532. In the case of low-income residents, cities may also offer a more attractive place to live because low-income residents have more limited access to transportation and rely upon urban population-density to give them the services that they require. *Id.* at 1536-37.

<sup>287</sup> In most empirical studies of rent shifting as a result of higher property taxes, landlords have been found to bear a greater portion of the tax increase than renters. See Zodrow, *Reflections on the New View*, *supra* note 170 at 100-01. See also Robert Carroll & John Yinger, *Is the Property Tax a Benefit Tax? The Case of Rental Housing*, 47 NAT'L TAX J. 295 (1994). This empirical study of property tax increases in the Boston metropolitan area found that landlords bore 84-91 cents per dollar of tax increase. As a result, the marginal costs paid by renters for a service increase is significantly below that of homeowners, and likely well below that marginal costs required for the property tax to act as a benefits tax.

<sup>288</sup> See e.g., Zodrow, *supra* note 192, at 100.

<sup>289</sup> In theory, changes in service would be capitalized into rents over a very short period of time. Anup Malani, *Valuing Laws as Local Amenities*, *supra* note 152, at 1289. However rental contracts, as well as a different exit/voice calculus, skew this kind of rapid capitalization in practice. Oates, *On the Nature and Measurement of Fiscal Illusion*, *supra* note 170, at 72-73. FISCHEL, *THE HOMEVOTER HYPOTHESIS*, *supra* note 155, at 85 (citing Robert C. Ellickson, *Rent Control: A Comment on Olsen*, 67 CHICAGO-KENT L. REV. 947, 951 for the proposition that rents are not usually adjusted up to market levels while tenants remain in their apartments.).

<sup>290</sup> Schragger, *supra* note 240, at 1841. This is especially true of poor renters who don't wish to leave but fear getting priced out of their apartments.

### 3. The Vehicle Tax as a Benefits Tax for Renters

For renters, the vehicle tax may act as a better benefits tax than the real property tax. Its salience, one of the tax's biggest vices when considering tax morale, turns to a virtue in the benefits tax context. Also, the vehicle tax clearly has the ability to rouse apathetic residents, and should in theory rouse renters just as much if not more than homeowners. In fact, the vehicle tax is a common local government tax in Italy and other countries in part because of its ability to function as an entrance fee into the community.<sup>291</sup>

The lack of politically engaged renters is troubling for two reasons. First, the presence of renters in a community may decrease the efficiency of local government service provision.<sup>292</sup> Either lack of salience leads renters to ignore the link between their rent and local government services, or their local tax burden is low as compared to homeowners, because they consume less housing and thus engage in fiscal freeriding.<sup>293</sup> Either cause leads to the same result: municipalities with a large bloc of renters tend to spend more on local service provision.<sup>294</sup> Second, when homeowners vote and renters do not, local officials are more likely to pass regulations favoring homeowners at the expense of renters. If renters' political silence is a result of relative satisfaction with service provision – a natural result if they are truly paying less for the same services as renters – then their lack of voice is mostly harmless, although still troubling

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<sup>291</sup> Federico Revelli & Edoardo Di Porto, *Central Command, Local Hazard, and the Race to the Top*, University of Turin Working Paper Series (2009) “[D]ue to the high visibility of vehicle taxes and the widespread ownership of motor vehicles, vehicle taxation can work as a signal of a government’s quality and competence, and could therefore foster accountability and yardstick competition between decentralized governments.” Khairul Mahadi et al., *Provincial Motor Vehicle Taxation in Indonesia*, 29 BULL. INDONESIA ECON. STUDIES 95 (1993).

<sup>292</sup> Oates, *Property Taxation and Local Government Spending: The Renter Effect*, *supra* note 169.

<sup>293</sup> According to Oates, renters’ lower tax burden could be caused by the fact that they on average consume less housing than homeowners and thus are engaging in a form of fiscal freeriding. See Jorge Martinez-Vazquez, *Renters’ illusion or savvy?*, 11 PUB. FIN. QUARTERLY 237 (1983). It could also be that their tax burden for services is lower than homeowners because of low amounts of tax increases being shifted to them from landlords. See Carroll & John Yinger, *supra* note 287.

<sup>294</sup> Oates, *Property Taxation and Local Government Spending: The Renter Effect*, *supra* note 169.

from a democratic perspective. However, there may be other consequences to renter silence. For example, there may be social consequences to having local politics be dominated by homeowners. If poor and minority residents are more likely to rent while homeowners are likely to be white and middle or upper class, then the concerns of minority and low-income residents may not receive much attention. Moreover, homeowners of all income levels and nationalities will want to maximize their property values, which may lead them all to vote the preferences of the stereotypical (white, middle class) homeowner.<sup>295</sup>

The vehicle tax may have value as an entrance fee into the community and thus as a way to incentivize broader supervision of local government service provision.<sup>296</sup> However, the tax is still lacking the other characteristics of a good local tax – non-distortionary character and a link between amount of tax burden and the amount of services. Vehicle taxes are likely to be highly distortionary, since residents can choose to not own cars, or simply to own older, cheaper cars in response to tax increases.<sup>297</sup> This would allow residents to escape or reduce their tax burden instead of becoming involved in local politics, partially erasing the virtues of the tax. Vehicle value is also unlikely to correlate well with services received, especially since vehicles depreciate so rapidly. Also, while the vehicle tax may make for a better poll tax equivalent than the real property tax, there is no capitalization of services into vehicle value. Tax payments and benefits may not be well correlated. Moreover, in Fischel’s view the power of the property tax to rouse residents comes not only from its ability to act as an entrance fee but also from the fact

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<sup>295</sup> Lee Anne Fennell & Julie A. Roin, *Symposium: Reassessing the State and Local Government Toolkit: Controlling Residential Stakes*, 77 U. CHI. L. REV. 143, 152 (2010).

<sup>296</sup> However, the state property tax credit may partially erase the entrance fee benefit of the tax. See *supra* note 167 and related text for information on Connecticut’s property tax credit, which applies to both real property and motor vehicle taxes.

<sup>297</sup> Craft & Schmidt, *supra* note 115. This study of car consumption in Virginia following their 1998 property tax relief bill found that high vehicle taxes encouraged families to own *more*, older cars rather than fewer newer ones.

that homeownership gives residents the ability to enjoy upside gain from government policies.<sup>298</sup> Political involvement to protect or raise the value of your home may be inherently more productive than political involvement brought about by a desire to lower taxes. Unfortunately, no studies have attempted to compare service provision or rates of renter political involvement in municipalities with a local vehicle tax versus without, or in localities where a vehicle tax has been recently reduced or increased. It is quite possible, however, that since car values do not increase in response to local government action, renters will concentrate their efforts on eliminating or evading the tax instead of on policing service provision.

When evaluating the vehicle tax as a source of local revenue, then, the first question is whether the tax, in combination with the real property tax, leads to more efficient service provision by approximating a benefits tax for renters. Empirical research is needed, especially since the number and type of renters in a community may affect how much a vehicle tax acts as a benefits tax. The next question is whether any efficiency gain brought about by the tax is worth the concomitant drag on tax morale and the administrative expense associated with levying and collecting the tax.<sup>299</sup> The answer to this question may differ across localities, though it seems to be answered in the affirmative in at least some communities.<sup>300</sup> As a result, local governments should be allowed to vary their vehicle tax rate from their real property tax rate, or to decrease the vehicle tax rate to zero.

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<sup>298</sup> FISCHER, THE HOMEVOTER HYPOTHESIS, *supra* note 155, at 8-14. Fennell & Roin, *supra* note 295, at 143-147 (discussing the political and economic value of residents having a stake in their residence).

<sup>299</sup> Diversification of revenue and decreased deadweight loss as a result of multiple tax bases may also be gains associated with the vehicle tax/property tax mix. However, the amount of money that New Haven receives from the vehicle tax is likely too small - and the vehicle tax itself too likely to create deadweight loss - for those gains to be realized.

<sup>300</sup> *See infra* note 307 and related text.

There is one final consideration, however: that of equity. Taxing vehicles in order to create a community entrance fee for renters is essentially an argument that we should tax renters for their own good – or for the good of the community as a whole. But because it is predicated upon benefits taxation, the argument ignores the fact that the vehicle tax is likely to disproportionately burden low income residents.<sup>301</sup> It also ignores the fact that a vehicle tax may price low-income residents out of the vehicle market, undermining their ability to choose the jurisdiction that has their preferred mix of taxes and services.<sup>302</sup> In addition, some scholars would argue that allowing localities to set their own tax rates would lead to race-to-the bottom tax competition<sup>303</sup> (though if such competition exists, it is already happening with the real property tax).<sup>304</sup>

Simeon Leland and others envisioned classification as a way to discourage evasion and unfairness by taxing personal property less than real property.<sup>305</sup> However, if homeowners dominate local politics and would rather spread the tax burden to renters than have higher property taxes, they would likely be able to prevail against the interests of renters and raise the vehicle tax. This political triumph of homeowners over renters may be inequitable if one is concerned about taxpayers' ability to pay, since renters tend to have lower incomes.<sup>306</sup> (Raising vehicle tax rates may lead to *greater* equity, however, in the benefits tax context. If renters pay

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<sup>301</sup> See *supra* note 166 and related text.

<sup>302</sup> If low-income renters are priced out of the car market, their lack of transportation may force them to live in urban areas where jobs are close by. This effect would strengthen the agglomeration effects already thought to be at work for the urban poor, who would not find the services they needed in less-dense suburban areas. See Schleicher, *supra* note 286, at 1536-37.

<sup>303</sup> See *supra* note 239 and related text.

<sup>304</sup> Wallace Oates and others dispute the race-to-the-bottom theory of tax competition. See *supra* note 258 and related text. In addition, there is good evidence that zoning laws act as an effective means of preventing renters from living in particular areas, making it a more effective barrier to entry than the vehicle tax is likely to be. See, e.g. FISCHER, THE HOMEVOTER HYPOTHESIS, *supra* note 155, at 54-57.

<sup>305</sup> *Id.* at 39.

<sup>306</sup> See *supra* note 302 and related discussion.

less in tax for the same services as homeowners, and the gain in property values does not make up for the extra tax that homeowners pay, then renters have an unfair advantage.)

However, since most homeowners also own cars, since high vehicle taxes would decrease tax morale, and since the tax is distortionary, rates are unlikely to rise precipitously. In Rhode Island, where localities control the vehicle tax and can divorce vehicle mill rates from real property mill rates, most municipalities have higher mill rates for vehicles.<sup>307</sup> Other states with local levies often assess both classes of property at the same rate, but apply the tax to a lower portion of residential property value than motor vehicle value, with the result that real property bears less of the tax burden than vehicles do.<sup>308</sup>

In short, allowing greater local control of the vehicle tax may lead to higher tax rates in some localities, thus burdening renters more. However, it may also lead to more efficient local service provision, a greater renter stake in local politics, and more flexibility for local government, which can in turn increase the benefits/tax ratio of their residents. Given existing state and federal redistribution of wealth, as well as the state property tax credit, allowing local control of the vehicle tax is worth the equity cost.

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<sup>307</sup> See Rhode Island Economic Development Corporation, Rhode Island 2008-2009 Municipal Tax Rates, [http://www.riedc.com/data-and-publications/municipal-tax-rates#3\\_key](http://www.riedc.com/data-and-publications/municipal-tax-rates#3_key). In some municipalities the difference is less than ten mills. In others, it is considerably more. Central Falls, for example, has a real property mill rate of 10.54 and a motor vehicle mill rate of 48.65.

<sup>308</sup> In Georgia, motor vehicle rates are tied to the previous year's real property tax rate. See Georgia Department of Revenue, Local Government Services Division, <https://etax.dor.ga.gov/ptd/cds/csheets/millrate.aspx>. In Alabama, real property and motor vehicle rates are the same, but are applied to 15% of motor vehicle and 10% for owner-occupied homes. Alabama law also gives each homeowner a homestead exemption, with the result that real property bears less tax burden than real property. Alabama Department of Revenue, Property Tax, <http://www.revenue.alabama.gov/advalorem/other/caltax.html>. In Missouri, real property and personal property rates are the same, but vehicles are taxed on 33.3% of their value and residential property on 19%. See State of Missouri, State Tax Commission Definitions, <http://www.stc.mo.gov/definitions.htm>. Similarly, in Mississippi, rates are the same for real property and motor vehicles, but real property is assessed at 10% of its value and vehicles at 30%. State of Mississippi, Department of Revenue, Ad Valorem Tax, <http://www.dor.ms.gov/taxareas/property/advalor.html>. North Carolina also uses a uniform rate, but assesses residences at 4% of their value and personal property at 10.5%. South Carolina Department of Revenue, Property Tax Information, <http://www.sctax.org/Tax+Information/property/prop.html>.



### Part III: Implementing Local Control

The Connecticut General Statutes state that, “Each...municipality shall assess all property for purposes of the local property tax at a uniform rate of seventy per cent of present true and actual value...”<sup>309</sup> Each taxing district levies a single rate for all the property in its district. However, those towns with two or more taxing districts have an affirmative grant from the legislature to treat motor vehicles differently, giving some Connecticut towns clear statutory authority to divorce their vehicle tax rate from their property tax rate. Section 12-122a of the Connecticut General Statutes, enacted in 1974, states that “[a]ny municipality which has more than one taxing district may by a majority vote of its legislative body set a uniform city-wide mill rate for taxation of motor vehicles.” Currently, eight Connecticut municipalities have multiple districts, while the remaining 161 do not. Varying the mill rate achieves the same effect as varying the percentage of property valuation: some property is taxed more heavily than other property. Yet, it was presumably inconvenient, and seemed unjust, to tax half the city one vehicle tax rate and the other half another. Also, the same colonial spirit that led people to house their cattle outside of town on listing day would surely also lead some present-day taxpayers to claim residency on one side of town rather than the other.<sup>310</sup> The General Statutes say nothing about cities with only one taxing district. The legislature likely thought that cities would chose a uniform motor vehicle mill rate that fell between or close to the real property tax rate in their two districts.

That is not, however, how the law has been interpreted, at least by Stamford and Norwalk. Stamford currently has several taxing districts with mill rates ranging from 15.68 to 16.82 and a

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<sup>309</sup> CONN. GEN. STAT. § 12-62a(b).

<sup>310</sup> For Connecticut residents, vehicle taxes are taxed to the locality in which you reside. For non-residents, the vehicle is taxed where it is garaged. *Lombardi Enterprises v. Waterbury*, 1999 Conn. Super. LEXIS 2551 (1999).

car tax rate of 26.5.<sup>311</sup> Norwalk taxes real property at mill rates from 18.850 to 20.517, and has a car tax rate of 25.168. Since the legislature has given affirmative approval for motor vehicles to be taxed at different rates when more than one taxing district exists in a municipality, in theory every Connecticut municipality could either set up a shell tax district or split their town into multiple districts and specify that real property rates would be uniform across all districts.<sup>312</sup> Towns would then be free to create their own motor vehicle mill rate. However, taxpayers could bring action in Superior Court, challenging the new rates as against state statute. In addition, the state would likely object if New Haven ever tried to implement such a scheme. The state reimburses New Haven for the motor vehicle tax that New Haven forgives under the distressed municipalities program. This program, meant to encourage manufacturing and construction, allows New Haven to exempt from taxation the vehicles of certain developers and businesses.<sup>313</sup> The state has objected to similar plans by Stamford and New London to create shell business personal property taxing districts on the ground that, by taxing personal property at higher rates than real property, both cities had been reimbursed by the state at a higher rate than called for under the distressed municipalities program.<sup>314</sup> The safest course of action for New Haven,

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<sup>311</sup> Intergovernmental Policy Division, Office of Policy and Management, *supra* note 176.

<sup>312</sup> Note that vehicles registered out of state are taxed as personal property rather than motor vehicles. If the personal property rate and motor vehicle rate were different, as they are in Stamford, then non-residents and residents would be taxed differently. The state may have to amend its laws to avoid a dormant commerce clause challenge to its tax laws.

<sup>313</sup> CONN. GEN. STAT. § 32-9s, *supra* note 313.

<sup>314</sup> New London and Stamford have both tried to set up shell tax districts in the past, hoping to create higher tax rates for business personal property. However, unlike vehicle taxes, the Connecticut General Statutes are silent business personal property taxation across districts. The State Office of Policy and Management claimed that the districts went against legislative intent. Stamford asked the Connecticut Attorney General for an opinion, and he found that the statutes were unclear. Op. Att’y Gen. (Feb. 22, 2006), *available at* <http://www.ct.gov/AG/cwp/view.asp?A=1770&Q=310324> (“CONN. GEN. STAT. § 7-148(c) is silent on whether municipalities may establish different mill rates for personal and real property within a municipal tax or sub tax district. Additionally, this office has found no court cases interpreting or providing guidance on this issue.”). On the one hand, powers of taxation rest with the state, not municipalities. *Pepin v. City of Danbury*, 368 A.2d 88 (1976). On the other, the Home Rule Act favors local control of “purely local affairs,” and

therefore, is to lobby the General Assembly to allow Connecticut's municipalities to institute a classified property tax.

## **Conclusion**

Since colonial times, the personal property tax has been relatively easy to evade. Since personalty is easily comparable across taxing jurisdictions, residents have always had an incentive to either move their property to low-tax districts or hide it. As a result, states largely gave up on collecting personal property taxes from their residents, either doing away with the tax entirely or leaving it to local governments.

Motor vehicles are both the last of residents' personal property taxed in most states, and the category of personalty most amenable to taxation. They are registered, high value, and relatively easy to track. Although they create a drag on tax morale, especially in localities like New Haven with high tax rates and aggressive collection practices, they also open up the possibility for increased benefits/tax ratios, allowing local governments to optimize the tax burden between cars and homes. They may also increase local government efficiency and incentivize renter participation in local affairs by acting – albeit imperfectly – as a benefits tax. In short, there is perhaps a reason the tax has survived this long. However, Connecticut's local governments do not currently have the flexibility that they need in order to best harness the tax. If they had the power to tax vehicles at a different rate than real property, or to stop levying the vehicle tax altogether, they would be in a better position to create an optimal mix of taxes and services for their residents.

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the Connecticut Supreme Court has held that municipal property taxes are “a local matter, concerning which home rule charter provisions are controlling.” *Caulfield v. Noble*, 178 Conn. 81, 86-87, 90 (1979). The Home Rule Act is codified in CONN. GEN. STAT. § 7-187 to 7-201.

## Appendix A: Tax List of 1648

Lands, all types	20 shillings per acre
Houses	Special ratings based upon rental value <sup>315</sup>
Cows, 4+ years old	5 pounds
Heifers and Steers, 3+ years old	4 pounds
Heifers and Steers, 2 years old	50 shillings
Heifers and Steers, 1 year old	30 shillings
Oxen and bulls, 4+ years old	6 pounds
Horses 3+ years old	10 pounds
Mares 3+ years old	12 pounds
Horses and Mares, 2 years old	5 pounds 10 shillings
Yew Sheep 1+ year old	30 shillings
Weather Sheep or Rams 1+year	16 shillings
Goats 1+ year old	8 shillings
Swine 1+ year old	20 shillings
Asses 1+ year old	40 shillings
Merchants, Professionals, Artisans	Taxed according to their gains
All males above the age of 16	20 pence per head, flat tax (not rated, taxed as a

<sup>315</sup> Houses were to be “vallewed at a moderate rent” RCNH I, 502, with two model assessments of houses in New Haven to serve as a guide. There was much debate as to whether or not houses should be taxed, and the law changed multiple times over the years. In 1664, Connecticut exempted houses, but in times of war often added the tax back. By 1796, Connecticut had settled on a tax based on the number of fireplaces in a house. The resulting levy, however, formed only a small part of the grand list.

<sup>316</sup> In 1672, however, polls were set into the list of ratable property and taxed along with lands and livestock. Potter, *supra* note 15, at 139.

**Appendix B: Annual Ad Valorem Motor Vehicle Taxes by State (Sorted by Current Levy, then by Collection Method)**

State	Levied in 1957? <sup>317</sup>	Currently Levies a Vehicle Tax?	Who Collects?	Who Sets Rate?	Code Section	Comments
Delaware	N	N				
Florida	N	N				
Idaho	N	N				
Illinois	Gen Prop Tax	N				
Maryland	N	N				
New Jersey	N	N				
New Mexico	N	N				
New York	N	N				
North Dakota	N	N				
Ohio	N	N				
Oklahoma	N	N				
Oregon	N	N				
Pennsylvania	N	N				
South Dakota	N	N				
Tennessee	Gen Prop Tax	N				
Vermont	N	N				
Washington	State Collection, State rate	N				Revoked in 1999
Wisconsin	N	N				
Alaska	not yet a state	Optional	Local	Local	ALASKA STAT. § 28.10.431	Most jurisdictions have none. Can be Based on age or value
Hawaii	not yet a state	Optional	Local	Local	HAW. REV. STAT. § 249-2	Taxed by weight, not value
Louisiana	N	Optional	Local	Local	LA. REV. STAT. § 33:2621	Enacted in 2004
Texas	Gen Prop Tax	Optional	Local	Local	TEX. TRANSP. CODE § 502.172	Approximately 4% of localities impose this tax

<sup>317</sup> Taken from Bird, *supra* note 6.

Alabama	Gen Prop Tax	Y	Local	Local	ALA. CODE § 40-12-253	-
Arkansas	Gen Prop Tax	Y	Local	Local	ARK. CODE § 26-1-101	
Connecticut	Gen Prop Tax	Y	Local	Local	CONN. GEN. STAT. § 12-71	
Georgia	Gen Prop Tax	Y	Local	Local	GA. CODE § 48-5-471	-
Kansas	Gen Prop Tax	Y	Local	County	KAN. STAT. ANN. § 79-5105	Rate varies by county based on average tax rate of all taxing jurisdictions in that county
Kentucky	Gen Prop Tax	Y	Local	Local	KY REV. STAT. ANN. § 132.487	Both local and state taxes levied
Mississippi	Gen Prop Tax	Y	Local	Local	MISS. CODE ANN. § 27-51	
Missouri	Gen Prop Tax	Y	Local	Local	MO. REV. STAT. §§137.010; 137.116	-
North Carolina	Gen Prop Tax	Y	Local	Local	N.C. GEN. STAT. § 105-187.2	
Rhode Island	Gen Prop Tax	Y	Local	Local	R.I. GEN. LAWS § 44-34-1	
South Carolina	Gen Prop Tax	Y	Local	Local	S.C. CODE ANN. § 12-37-2610	
Virginia	Gen Prop Tax	Y	Local	Local	VA. CODE ANN. § 58.1-3500	State now reimburses localities for a portion of the tax, but does so based on rates as they were in 1997
West Virginia	Gen Prop Tax	Y	Local	Local	W. VA. CODE § 17A-3-3a	
Maine	State rate, local collection	Y	Local	State	ME. REV. STAT. ANN. tit 36, § 1482	
Massachusetts	State rate, local collection	Y	Local	State	MASS. GEN. LAWS, CH. 60A, § 2	
Montana	Gen Prop Tax	Y	Local	State	MONT. CODE ANN. § 61-3-537	local option vehicle tax, up to .7% of value
Nebraska	Gen Prop Tax	Y	Local	State	NEB. CODE, §§ 60-3, 184-3, 60-3, 188	-
New Hampshire	State rate, local	Y	Local	State	N.H. REV. STAT. ANN. § 261:153	-

	collection					
Utah	Gen Prop Tax	Y	Local	State	UTAH CODE ANN. § 59-2-405	
Wyoming	State rate, local collection	Y	Local (counties)	State	WYO. CONST., art. XV, § 16	
Arizona	State rate, local collection	Y	State	State	ARIZ. REV. STAT. § 28-5801; ARIZ. CONST., art IX, § II	
California	State Collection, State rate	Y	State	State	CAL. REV. & TAX CODE § 10754; Executive Order S-1- 03, 11/17/03	
Colorado	State rate, local collection	Y	State	State	COLO. REV. STAT. § 42-3-107	State keeps revenue generated
Indiana	Gen Prop Tax	Y	State	State	IND. CODE §§ 6-6-5-1 to 6-6- 5-10	
Iowa	N	Y	State	State	IOWA CODE §§ 321. 109; 321. 113	
Michigan	N	Y	State	State	MICH. COMP. LAWS § 257. 801	State keeps revenue generated
Minnesota	N	Y	State	State	MINN. STAT. ANN. § 168. 013	State keeps revenue generated
Nevada	Gen Prop Tax	Y	State (local option)	State	NEV. REV. STAT. §§ 371. 030 – 371. 060; local option at 371.045	State keeps revenue generated. Counties can add 1% to finance highways if they vote to by referendum