Section 6 – Ad Valorem Special Assessments

AD VALOREM SPECIAL ASSESSMENTS IN MICHIGAN

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Summary

Historically, general property taxes have been levied by units of local government to finance a vast array of governmental services and programs. By contrast, special assessments historically have had but a single principal purpose: to finance the construction and maintenance of local public improvements, such as streets, street lighting, and sewers.

While there are several specific characteristics that distinguish general property taxes from traditional special assessments, the Legislature has undermined these distinctions over time by authorizing units of local government to impose a hybrid category of special assessments, that use property values as the base, which are virtually indistinguishable from general property taxes. However, because the majority of the authorizing statutes refer to "special assessments" rather than "taxes," these impositions escape the constitutional and statutory restrictions which govern general property taxes. In effect, through clever use of nomenclature, the Legislature has accorded some units of local government a revenue-raising authority that is essentially unfettered by the state Constitution.

Ad valorem special assessments became a major legislative issue during 1996 after the state Attorney General concluded that they must be levied on state-equalized value rather the taxable value. That ruling was significant because, in March of 1994, voters amended the state Constitution to limit annual increases in taxable value (but not state-equalized value) to the lesser of five percent or inflation. While the issue addressed by the Attorney General is an important one, the more pressing policy question is whether unit-wide, ad valorem special assessments are an appropriate means to finance basic municipal services or are simply a means of circumventing constitutional and statutory property tax limitations.

The full extent of the problem posed by unit-wide, ad valorem special assessments is extremely difficult to ascertain due to three interrelated factors:

(1) inadequate or inaccurate reporting by units of local government which impose them;

(2) the considerable number of authorizing statutes, many of which overlap either as to the type of public improvement permitted to be financed by special assessment, or the type of unit of local government permitted to impose them, or both; and

(3) the general difficulty which, not only taxpayers, but many local officials encounter when attempting to distinguish such special assessments from ad valorem taxes.

Notwithstanding these difficulties, data filed for the 1995 tax year with the State Tax Commission for revenue sharing purposes revealed 147 unit-wide, ad valorem special assessment districts. These districts contained property with an aggregate state-equalized valuation of $15.4 billion and generated $55.5 million in revenues.

There are a number of remedies to the abuses which result from unit-wide, ad valorem special assessments. These remedies include:

– requiring that such special assessments be levied on taxable value, which was the option favored by the Legislature during 1996;

– eliminating statutory authorization for such special assessments;

– treating such special assessments as taxes by subjecting them to the same constitutional and statutory restrictions which apply to ad valorem property taxes;

– authorizing townships to establish separate authorities to provide police and fire protection, since the majority of unit-wide, ad valorem special assessments are levied by townships for either or both of those purposes.

AD VALOREM SPECIAL ASSESSMENTS IN MICHIGAN

Introduction

The longstanding method by which units of local government in Michigan have financed basic municipal services is through taxation, principally general property taxation. The rationale underlying this traditional approach is that the cost of those municipal services which provide a general benefit to all residents of a unit of local government, such as police and fire protection, should be borne through taxation imposed upon the general public.

On the other hand, units of local government often have financed the construction and maintenance of public improvements by means of special assessment. Special assessments have been justified on the grounds that it was inappropriate to use general revenues to finance those improvements that did not benefit an entire unit of local government. Rather, it was considered more equitable to finance such improvements by special assessments and to limit their imposition to that property which received a special benefit.

There are several specific characteristics that distinguish general property taxes from traditional special assessments:

– general property taxes are levied upon both real and tangible personal property not otherwise exempt by law, while traditional special assessments are levied only upon land and premises. Real property which is exempt from taxation is not exempt from special assessment unless the statute authorizing the special assessment so provides.

– general property taxes are levied throughout an entire unit of local government, while traditional special assessments are levied only within a special assessment district comprised of the land and premises especially benefited by the public improvement being financed.

– general property taxes are levied on a modified acquisition value basis (taxable value) until there is a transfer in ownership, while traditional special assessments are levied upon the basis of proportionate front footage or land area.

– general property taxes support basic municipal services, while traditional special assessments are essentially a form of debt used to finance physical improvements to infrastructure.

– general property taxes are subject to numerous restrictions imposed under the state Constitution. These include: uniformity and equalization requirements, limitations on the rate and duration of millage, millage rollback provisions, voter approval requirements, and a cap on annual property tax increases which voters adopted in 1994. In addition, general property taxes are subject to statutory requirements such as truth in taxation and truth in assessment. By contrast, traditional special assessments are not subject to these constitutional and statutory requirements.

Over time, the Legislature has undermined the foregoing distinctions. Increasingly, units of local government have been authorized by statute to impose a hybrid category of special assessments which are virtually indistinguishable from general property taxes. However, because the statutes characterize these impositions as "special assessments" rather than "taxes," they escape the constitutional and statutory restrictions which govern general property taxes. In effect, through clever use of nomenclature, the Legislature has accorded some units of local government a revenue-raising authority that is essentially unfettered by the state Constitution.

For example, the Legislature has authorized townships and villages to levy special assessments for a variety of purposes within special assessment districts consisting of the entire geographic area of the unit of local government. In most instances, these unit-wide special assessments are used to finance not improvements to infrastructure but basic municipal services, such as police and fire protection, that historically have been financed from general taxes. Furthermore, even though basic municipal services by definition benefit all property generally, authorizing statutes usually refer to specially benefited property. In reality, unit-wide special assessments are simply levied, as are property taxes, on the value of all real property within the unit of local government.

The full extent of the problem posed by unit-wide, ad valorem special assessments is difficult to ascertain due to general confusion and inadequate reporting by units of local government. However, data filed for the 1995 tax year with the State Tax Commission for revenue sharing purposes revealed 147 unit-wide, ad valorem special assessment districts. These districts contained property with an aggregate state-equalized valuation of $15.4 billion and generated $55.5 million in revenues.

Ad valorem special assessments became a major legislative issue during 1996 after the state Attorney General concluded that they must be levied on state-equalized value rather the taxable value. However, the basis on which ad valorem special assessments should be levied is simply the most recent, not the most significant, question. The more pressing policy question is whether unit-wide ad valorem special assessments are an appropriate means to finance basic municipal services or are simply a means of circumventing constitutional and statutory property tax limitations. Because the Legislature adjourned at the end of 1996 without resolving the issue raised by the Attorney General, the opportunity now exists to address the broader question in a comprehensive fashion.

I. Distinctions Between General Property Taxes and Special Assessments

Broadly speaking, general property taxes and special assessments are similar in that both constitute a charge upon property imposed by a unit of local government. Traditionally, however, the two approaches also have been marked by significant differences, both legal and practical.

A. Legal Distinctions

The courts long have recognized important legal distinctions between property taxes and special assessments. In *City of Lansing* v *Jenison*, (201 Mich 491, 497; 1918), the Michigan Supreme Court noted that

> [i]t is the settled law, that special assessments may be sustained upon the theory that property assessed receives some special benefit from the improvement differing from the benefit that the general public enjoys. This is the foundation of the right to levy special assessments and without such foundation the right must fail.

However, it was in *Blake v Metropolitan Chain Stores*, (247 Mich 73, 77; 1929), that the Supreme Court recited the classic characterization of these legal distinctions:

> While the word "tax" in its broad meaning includes both general taxes and special assessments, and in a general sense a tax is an assessment, and an assessment is a tax, yet there is a recognized distinction between them in that assessment is confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed. The differences between a special assessment and a tax are that (1) a special assessment can be levied only on land; (2) a special assessment cannot (at least in most States) be made a personal liability of the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality. The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not a special assessment, although the purpose is to make a local improvement on a street or highway. A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax.

B. Practical Distinctions

In addition to the legal distinctions just described, there are a number of practical characteristics that distinguish taxes from special assessments. Historically, general property taxes have been levied to finance a vast array of governmental services and programs. By contrast, traditional special assessments historically have had but a single principal purpose: to finance the construction and maintenance of local public improvements, such as streets, street lighting, and sewers.

Special assessments have been utilized in Michigan since territorial times. However, it was during two periods in particular that the Legislature greatly expanded the number of statutes authorizing units of local governments to impose them. The first period, from the 1890s to early 1930s, coincided with the migration of residents from rural to urban areas of the state. The second period was during the 1950s to mid-1960s, as the population again migrated, this time from urban to suburban areas.

C. Erosion of the "Public Improvement" Purpose

Simultaneously with its expansion of the number of authorizing statutes, the Legislature also broadened, beyond construction and maintenance of public improvements, the purposes for which special assessments could be imposed. Increasingly, the Legislature authorized special assessments for basic governmental services. This legislative action had the effect of eroding the connection between special assessments and public improvements which, in turn, undermined the distinction between special assessments and general taxes. The consequences of this action continue to be problematic.

The historical connection between special assessments and public improvements afforded taxpayers a simple, but effective, means of performing an essential function: distinguishing between special assessments and general taxes. For it is no accident that the people of Michigan often have sought (even to the point of amending the state Constitution) to limit general property taxes, while all but ignoring special assessments. Because the former were imposed to finance basic governmental operations, citizens understood that there was no natural point beyond which the burden of general taxes might not extend. After all, basic governmental operations might be viewed as co-extensive in scope with the nature of government itself. Absent constitutional restrictions, the only limitation upon the level of general property taxes might be the ingenuity of the tax collector.

By contrast, special assessments were limited by the nature of what they financed. A section of sidewalk, or street lights installed within a portion of a community, were tangible improvements which the person assessed readily could discern. Indeed, the very term *special* assessment conveyed, not the open-ended commitment of general taxation, but rather a limited financial obligation not exceeding the cost of the improvement to infrastructure being financed. However, the statutes authorizing unit-wide, ad valorem special assessments do not honor this historical connection between special assessments and public improvements.

The majority of unit-wide, ad valorem special assessments are imposed to finance police or fire protection. While no one would deny that such protection is important, the level of that importance does not transform it into a public improvement. Notwithstanding statutory suggestions to the contrary, police and fire protection are basic services.

When all basic services provided by a unit of local government are financed from general tax revenues, local officials are required to balance various priorities against the availability of those revenues. This allocation of limited resources among competing demands is the essence of the budgetary process. However, the use of unit-wide, ad valorem special assessments to finance basic services can relieve local officials of the obligation to make difficult budgetary decisions. In effect, financing services by special assessments allows local officials to divert to other purposes general tax revenues which otherwise would have financed those services. Thus, units of local government are permitted to live beyond their normal means by maintaining a level of spending which their general property tax might not support.

The fact that some units of local government generate substantial amounts of revenue from ad valorem special assessments is illustrated by **Table 1** on the following page. For example, during 1995, Clinton Township in Macomb County levied less than a mill in general property taxes, but a total of nine mills for two unit-wide, ad valorem special assessments. These special assessment levies generated $14 million, an amount nearly ten times the $1.5 million generated from general property taxes.

Similarly, Royal Oak Township in Oakland County levied 6.5 mills in general property taxes, but over 20 mills for five ad valorem special assessments. It is unclear whether the local officials or taxpayers in either township would have been willing to spend as much for those services financed by special assessments had those services, together with the other township governmental services, been financed solely from general revenues.

Table 1

Comparison of 1995 Ad Valorem Operating Property Taxes and Unit-Wide, Ad Valorem Special Assessments in Selected Units of Local Government

	Ad Valorem Property Taxes			Ad Valorem Special Assessments		
	Millage Rate	Taxable Value[1]	Levy	Millage Rate	Taxable Value[1]	Levy
Macomb County						
Clinton Township	0.8739	$1,684,483,446	$1,472,070	4.0000 (Fire)	$1,557,727,064	$6,230,908
				5.0000 (Police)	$1,557,727,064	$7,788,635
Total	0.8739	$1,684,483,446	$1,472,070	9.0000	$1,557,727,064	$14,019,544
Shelby Township[2]	1.5000	$1,353,384,656	$2,030,077	4.1373 (Fire)	$1,249,401,315	$5,169,148
				4.7032 (Police)	$1,249,401,315	$5,876,184
Total	1.5000	$1,353,384,656	$2,030,077	8.8405	$1,249,401,315	$11,045,332
Oakland County						
Brandon Township	5.0981	$234,638,771	$1,196,212	4.3905 (Fire)	$226,722,021	$995,423
Total	5.0981	$234,638,771	$1,196,212	4.3905	$226,722,021	$995,423
Royal Oak Township[2]	6.5000	$47,547,720	$309,060	8.0000 (Fire)	$40,250,170	$322,001
				8.0000 (Police)	$40,250,170	$322,001
				2.3010 (D.P.W.)	$40,250,170	$92,616
				1.0000 (Lights)	$40,250,170	$40,250
				1.0000 (Parks)	$40,250,170	$40,250
Total	6.5000	$47,547,720	$309,060	20.3010	$40,250,170	$817,119

[1] Taxable value for property tax includes real and tangible personal; taxable value for special assessments includes real only.

[2] Special assessments in Shelby Township and Royal Oak Township were levied on state-equalized valuation. The data which Shelby Township reported to Macomb County, and which the county in turn reported to the state, double counted 8.8405 mills as both property tax mills and as special assessment mills. This error resulted in a reported property tax rate for operating purposes of 10.3405 mills; that rate should have been reported as 1.5000 mills.

Source: State Tax Commission, 1995 County Apportionment Reports and 1995 Ad Valorem Special Assessment Reports; CRC calculation.

D. Statutory Requirements

1. The Intended Administration of Special Assessments

Statutes which authorize units of local government to levy special assessments generally pay homage to the characteristics which distinguish them from property taxes. Thus, for example, the statutes typically require local officials to establish a budget, calculate the amount of the special assessment levy (the cost of the improvement), to identify what property will be specially benefited thereby, and to apportion the levy by specifying the base and rate of the special assessment.

The Base. The base of a special assessment consists of the lands and premises receiving a special benefit from the public improvement being financed. Such property, in the aggregate, constitutes the special assessment district. A determination of what property receives a special benefit is essential because the courts have held that in the absence of a showing of special benefit there is no legal authority on the part of a unit of local government to levy a special assessment.

Furthermore, property which is exempt from the general property tax, such as religious, charitable, or educational property, is not exempt from the base of special assessments (since they are not legally taxes) unless the statute authorizing the special assessment so provides. To ensure that tax-exempt property does not escape

special assessment, local officials typically are required under the authorizing statute to record special assessment levies either in a special column on the general ad valorem property tax roll or on a separate special assessment roll.

The Rate. Most statutes which authorize special assessments generally do not specify a maximum rate that may be imposed nor, in many instances, the maximum duration of the levy. Units of local government are, therefore, granted unlimited and open-ended revenue-raising authority.

The rate of a special assessment is calculated by dividing the cost of the public improvement to be financed by the base against which that cost is to be apportioned. In turn, apportionment can be based upon land area, front footage, or value. For example, if the cost of installing 1,000 feet of sidewalk at a cost of $7,000 were apportioned on the basis of front footage, the levy would be $7 per foot of property abutting the sidewalk. In the case of two parcels abutting the sidewalk -- the one by 50 feet and the other by 100 feet -- the owner of the latter parcel would be assessed an amount equal to twice that assessed the former. In the alternative, if the cost were apportioned on the basis of value, the rate would be expressed either in mills or the amount of the special assessment per $1,000 of property value. Special assessment statutes follow no single pattern regarding how the levy is to be apportioned.

2. The Actual Administration of Special Assessments

Statutory requirements such as those just described were intended to ensure that special assessments be administered in a manner consistent with the legal attributes which distinguish them from property taxes. As a practical matter, however, special assessments often are levied and collected in a manner which renders them and general property taxes indistinguishable. Public Act 33 of 1951 illustrates the extent to which theory and practice often diverge where special assessments are concerned. That statute authorizes townships, and certain cities and villages, to defray the cost of fire and, since 1989, police protection by special assessment.

The Base. Act 33 refers to lands and premises to be "benefited," or "especially benefited" as the base for special assessment purposes. Such references are to be expected given the legal requirement that property subject to special assessment must receive a benefit which distinguishes it from other property generally. Therefore, the statute implies that property within a unit of local government is to be treated as two distinct groups: that property which receives a special benefit from the public improvement and that property which does not receive a special benefit.

In reality, however, a special assessment district for purposes of Act 33 may consist of an entire unit of local government. Since the geographic boundaries of the special assessment district are identical to those of the unit of local government, it is nonsensical to suggest that some property (that within the special assessment district) receives a special benefit not received by other property (that outside the special assessment district but within the same unit of local government). As a result, the special benefit principle, which courts repeatedly have held is the foundation on which rests the right to levy special assessments, is reduced to a practical illusion.[1]

Furthermore, property which is exempt from the general property tax is not exempt from the base of special assessments unless the statute authorizing the special assessment so provides. Act 33 contains no such provision. Nevertheless, it appears that in most instances units of local government levy Act 33 special assessments only on that property which is subject to the property tax. The statute permits special assessments to be recorded either "in a special assessment roll or in a column provided in the regular tax roll." However, tax-exempt property, given its status, often does not appear on the regular tax roll.

In the absence of explicit statutory authorization, ex-

[1] It might be argued that when a municipal service is provided within a unit-wide special assessment district, benefit to a given parcel should be measured by the extent to which the value of the parcel is enhanced once the service is made available. Such an argument misses an essential point. While *some* benefit to property naturally would be expected from the availability of municipal services, what the courts have required is that there be a *special* benefit, meaning one that differs from the benefit that the general public enjoys.

cluding tax-exempt property from special assessment levies is contrary to law. Furthermore, such a practice has the practical effect of reducing the property base over which a special assessment is apportioned. As a result, those property owners who are subject to the special assessment shoulder a greater share of the levy than intended by the Legislature.

The Rate. As noted previously, a special assessment rate is calculated by dividing the cost of the public improvement by the base against which that cost is to be apportioned. Apportionment can be based on land area, front footage, or value. While Act 33 does not specify the method of apportionment, units of local government levy such special assessments on an ad valorem basis. This practice often leads to confusion in distinguishing them from property taxes which are levied on the same basis.

In addition, just as levying a special assessment throughout an entire unit of local government completely undermines any notion of special benefit, so it is with levying a special assessment on an ad valorem basis to finance basic municipal services. The ad valorem value of property bears no consistent relationship to the benefits received from basic governmental services. For example, it cannot persuasively be argued that the owner of a $200,000 house receives four times the benefit from police protection as that received by the owner of a $50,000 house located in the same special assessment district. Nevertheless, that is the inference that must be drawn to maintain the illusion that an Act 33 special assessment is levied in relationship to benefit.

The *St. Joseph Township* Decision

The Michigan Supreme Court has upheld a unit-wide special assessment district established pursuant to Public Act 33 of 1951. *St. Joseph Township* v *Municipal Finance Commission*, (351 Mich 524; 1958). The Court did so on grounds of implied legislative authorization. The Court noted that the statute which Act 33 repealed had provided that "[n]o township board shall organize all of the land located therein into 1 special assessment district under the provisions of this act." Because Act 33 repealed this limitation, the Court reasoned that the Legislature no longer intended to prohibit unit-wide special assessment districts.

The Court also rejected the argument that the special assessment at issue, which was imposed on the basis of value, was in fact an ad valorem tax. Plaintiffs had based their argument on the statement in *Blake v Metropolitan Chain Stores* (quoted on Page 2) that "[t]he imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not a special assessment, although the purpose is to make a local improvement on a street or highway." The Court responded by noting that "[w]e accept the above as good authority. But it is clear that we do not deal here with 'the imposition of a charge on all property, real and personal, in a prescribed area.' The personal property in this township is omitted from the special assessment."

The reasoning of the Court, that the special assessment at issue was not a tax because it applied only to real property, was not terribly persuasive. It ignored the fact that the tangible personal property of residences also is not subject to the general property tax. Indeed, the reasoning of the Court, if taken to its logical conclusion, suggests that the general property tax might be converted into a special assessment simply by repealing that portion of the property tax which is levied on nonresidential tangible personal property.

II. Constitutional and Statutory Restrictions to Which Ad Valorem Property Taxes, But Not Unit-Wide Ad Valorem Special Assessments, Are Subject

A. Constitutional Provisions

Article 9 of the state Constitution contains numerous provisions which the people of Michigan have adopted to protect themselves against unlimited property taxation. These provisions govern the manner in which property taxes can be imposed, limit overall levels of taxation, and require prior voter approval. However, as a result of case law and Attorney General opinions, none of these constitutional provisions applies to special

assessments. In most instances, these legal authorities simply recite those characteristics which supposedly distinguish special assessments from taxes.

1. Uniformity, Assessment, and Equalization

Section 3 of Article 9 imposes three requirements on the Legislature regarding how ad valorem property taxes are to be assessed and levied on real and tangible personal property: property taxes must be levied uniformly across various property classifications; property must be uniformly assessed at no more than 50 percent of its true cash value; and the Legislature must provide a system for the equalization of assessments.

Uniformity. Ad valorem property taxes, except those levied for school operating purposes, must be levied uniformly across various classes of property. This requirement prevents the Legislature from classifying property into different categories in order to impose different levels of ad valorem taxation on each class. (Proposal A, approved by voters in March of 1994, authorized a limited exception from uniformity; for school operating purposes, homestead and nonhomestead property are taxed at different rates.)

Uniformity of Assessment. Property not exempt by law must be uniformly assessed at the same proportion of true cash value. The Legislature has provided that property be assessed at 50 percent of its true cash value, known as state-equalized value or SEV. In 1994, voters amended Section 3 of Article 9 to require that property taxes be levied not on SEV but on a different basis known as taxable value, until a parcel is sold. The taxable value concept is described later in this section.

Equalization. The Legislature is required to provide for a system of equalization of assessments. The purpose of equalization is to correct for systematic under assessment or over assessment within assessing jurisdictions. Given the large number of assessing jurisdictions in Michigan (approximately 1,500) equalization is essential to ensure that taxable property is uniformly assessed within each county as well as among the counties.

2. Fifteen, Eighteen, and Fifty Mill Limitations

Section 6 of Article 9 limits to 15 mills the rate of ad valorem taxation that may be imposed on a parcel of property. This millage is allocated to applicable units of local government on an annual basis by county tax allocation boards. As an alternative, the voters of a county may adopt a separate, fixed allocation of up to 18 mills. The 15 and 18 mill limitations apply only to operating millage levied by unchartered counties and unchartered townships. (Prior to 1994, these limitations also applied to operating millage levied by school districts. However, in 1994, the Legislature reduced these limitations in each county by the number of mills allocated to school districts in 1993. School districts no longer receive allocated millage. In effect, this millage was reallocated to a statewide six-mill education tax.)

Voters may increase either the 15 or 18 mill limitations to a maximum of 50 mills for up to 20 years at any one time. None of these limitations applies to debt millage, nor to millage levied by units of local government such as cities, villages, or authorities the millage limitations of which are established by charter or general law.

The *Graham* Decision. In *Graham* v *City of Saginaw*, (317 Mich 427; 1947), the Michigan Supreme Court held, although the issue was not before it, that special assessments were not subject to the 15 mill limit. Subsequently, the *Graham* decision was strongly criticized, although not overruled, by the Court. *Lockwood* v *Commissioner of Revenue*, (357 Mich 517; 1959). The following passage from *Lockwood* is significant because it reveals that a portion of the state Supreme Court was willing to recognize that whatever the technical, legal differences between taxes and special assessments, there are no practical differences:

> They [the *Graham* Court] then proceeded to tell the people that by their [15 mill] amendment they had succeeded only in protecting themselves from higher *general* taxes; that the amendment did not include "special" assessments within its protective scope, and that the respective legislative bodies of the State remained free to levy, without limit and without regard for the constitutional limitation, all kinds of "special" assessments....
>
> Now it has always been clear to us that special assessments are "taxes" and that ordinary people by common understanding of their Con-

stitution had an amendment which protected them from additional property taxation, no matter the brand name which any legislative act or judicial decision might stamp on the particular impost or levy against such property. One's home can be lost just as quickly and finally for nonpayment of "special" assessments as for nonpayment of "general" taxes. (357 Mich at 570-571); emphasis in original.

3. Headlee Rollbacks

In 1978, voters adopted a tax limitation amendment (popularly known as the "Headlee" Amendment) which amended Section 6 of Article 9 of the state Constitution and added Sections 25 through 34 to Article 9. A portion of Section 31 provides that, if the existing property tax base of a unit of local government increases faster than the rate of inflation, the maximum authorized property tax rate must be reduced or "rolled back" by a commensurate amount. The purpose of this provision is to limit, to no more than inflation, increases in local government revenues resulting from growth in the property tax base. Under Section 31, any increase in revenues beyond inflation requires a vote of the people.

In 1979, the Attorney General concluded that ad valorem special assessments were not subject to provisions of the Headlee Amendment. (OAG 1979-80, No. 5562). This conclusion was based on the fact that "[a] charge imposed only on property owners benefited has been held to be a special assessment and not a tax." The opinion cited as authority the case of *Blake v Metropolitan Chain Stores* quoted earlier on Page 2.

Despite the Attorney General's opinion, reports filed with the State Tax Commission reveal instances in which units of local government do roll back ad valorem special assessment millages, perhaps because many local officials are no more able to distinguish special assessments from property taxes than are taxpayers.[2] Although special assessment millage rollbacks benefit property owners subject to them, by reducing the special assessment levies, the practice further undermines any remaining differences between special assessments and property taxes.

4. Taxable Value Limitation

In March of 1994, voters amended Section 3 of Article 9 of the state Constitution to limit, for taxation purposes, annual increases in property values on a parcel by parcel basis to the lesser of five percent or inflation. This limitation is referred to as "taxable value." The purpose of the limitation is reminiscent of the other Article 9 provisions discussed thus far: to limit the overall level of property taxes. In the case of the taxable value limitation, this purpose is achieved by restricting the taxable growth of the property tax base.

The longstanding requirement that property be *assessed* at 50 percent of true cash value (state-equalized value) remains in effect. However, property now is *taxed* not on its state-equalized value, but rather on its taxable value, until there is a change in ownership. When a transfer occurs, the property tax base for that parcel becomes its state-equalized value, the taxable growth of which is then restricted by the taxable value limitation until there is another transfer.

The taxable value limitation, by its own terms, applies only to taxes. Indeed, the first three words of the amendatory language that added the taxable value limitation to Section 3 of Article 9 are, "[f]or *taxes* levied...." (Emphasis supplied.) Nevertheless, it is doubtful that the voters who ratified the constitutional amendment commonly understood that it would not apply to special assessments. Yet, that was the predictable consequence given existing case law. In April of 1996, the Attorney General confirmed this by concluding that the taxable value limitation applied only to general ad valorem property taxes. (OAG 1995-96, N0. 6896).

Because the taxable value limitation applies only to taxes, the Attorney General also concluded that ad valorem special assessments (imposed for police and fire protection pursuant to Public Act 33 of 1951) must be levied on state-equalized value and not taxable value. By definition, the basis of apportioning an ad valorem special assessment must be the value of the property subject to it. However, as the Attorney General noted:

> Taxable value, as determined under the mandate

[2] Because special assessment statutes generally do not specify a maximum authorized rate, presumably what is being rolled back is the rate actually levied.

> of Section 3 of Article 9 of the state Constitution, has no consistent rational relationship to the true cash value of the property to which it applies. It is a mathematical exercise, which is designed to limit the growth of a property's tax bill. With the passage of time, absent a transfer of the property, any correlation that taxable value has with the true cash value of the property is lost.

The Attorney General opinion will have little practical effect in a financial sense. In the majority of instances (108 of the 147 special assessment districts listed in **Appendix A**), units of local government already were levying ad valorem special assessments on state-equalized value rather than taxable value. In essence, the opinion merely gave legal sanction to current practice.

This practice will be more difficult to correct politically with the passage of time as the dollar differential between taxable value and state equalized value increases. Moreover, this fact may create an incentive for units of local government to adopt ad valorem special assessments in order to take advantage of the growth in state-equalized values which is not limited by Proposal A, thereby making legislative correction even more difficult to achieve. On the other hand, a requirement that ad valorem special assessments be levied on the lesser basis of taxable value would not necessarily reduce such special assessment levies. Because most special assessment statutes do not specify a maximum rate, the governing bodies of units of local government could adjust for any reduction in the base simply by levying a higher rate.

B. Statutory Provisions

In addition to the constitutional provisions just described, there also are several statutory provisions which govern property taxes but not special assessments. Principal among these statutes are those specifically intended to pinpoint responsibility for property tax increases by requiring truth in taxation and truth in assessment. Although the state is responsible for administering the property tax, local legislative bodies are responsible for assessing property and for determining, within voter-authorized limits, property tax millage rates. The willingness of some local officials to blame state or county equalization for property tax increases (while quietly accepting the increased revenue) rather than to accept responsibility for local decisions greatly contributed to the adoption of such statutes.

1. Truth in Taxation

Public Act 5 of 1982, which amended the general property tax act, requires any taxing jurisdiction which levied more than one mill in the prior year to annually roll back its property tax rate to offset any increases in the value of existing property. Act 5 is similar, but not identical, to the Headlee rollback provision of the state Constitution.

Headlee rollbacks reduce the maximum *authorized* rate and are triggered by property value increases in excess of inflation. By contrast, truth-in-taxation rollbacks reduce the rate *actually* levied and are triggered by *any* increase in existing property values, whether or not they exceed inflation. The purpose of the truth-in-taxation law is to inform taxpayers that annual property tax increases do not result solely from increases in property values, but also from the tax rate imposed by local governing bodies.

2. Truth In Assessment

Public Act 213 of 1981, which also amended the general property tax act, requires any city or township, in which the state-equalized value exceeds local-assessed value, to reduce its maximum authorized rate so that the levy on state-equalized value does not exceed that which would have been collected had the rate been applied to local-assessed value. Act 213 was designed to prevent assessing jurisdictions (cities and townships) from increasing property tax levies solely as a result of the equalization process. In effect, if an assessing jurisdiction does not assess taxable property at 50 percent of its true cash value, the assessing jurisdiction is penalized by having its maximum authorized rate reduced.

III. Remedies

The full extent of the problem posed by unit-wide ad valorem special assessments is extremely difficult to ascertain due to three interrelated factors: (1) inadequate or inaccurate reporting by units of local government which impose them; (2) the considerable number of authorizing statutes, many of which overlap either as to the type of public improvement permitted to be financed by special assessment, or the type of unit of local government permitted to impose them, or both; and (3) the general difficulty which, not only taxpayers, but many local officials encounter when attempting to distinguish such special assessments from ad valorem taxes.

Data filed for the 1995 tax year with the State Tax Commission for revenue sharing purposes, and summarized in **Appendix A**, revealed 147 unit-wide, ad valorem special assessment districts. These districts contained property with an aggregate state-equalized valuation of $15.4 billion and generated $55.5 million in revenues. Given the factors just noted, it can be assumed these data understate the magnitude of the problem. However, the only means by which a complete list of all ad valorem special assessments could be compiled would be to examine the underlying documentation for every levy – special assessment *and* tax – imposed upon property by every unit of local government in order to trace authorization for each levy back to a specific statute. Such a task would not be practical to say the least; furthermore, in some instances the authorizing statutes themselves are not sufficiently precise.

There are a number of remedies to the abuses which result from unit-wide ad valorem special assessments. These remedies are examined below.

A. Levy Special Assessments on Taxable Value

Throughout the latter part of 1996, the Legislature sought a solution to the issue raised by the Attorney General in April of that year, namely that ad valorem special assessments must be levied on state-equalized value. (Actually, the opinion stated, apparently unintentionally, that such special assessments were to be levied on true cash value which by law is equal to twice state-equalized value.)

The preferred legislative alternative was to amend several statutes which authorize such special assessments to require that they be levied on taxable value. Although the Legislature adjourned at the end of 1996 without resolving the issue, the approach which the Legislature pursued would have amounted to an incomplete remedy for two reasons.

First, there is the issue of whether the Legislature may require units of local government to do something that, in the opinion of the Attorney General, the state Constitution prohibits. While some state policymakers accurately noted that the *authorizing statutes* did not require that ad valorem special assessments had to be levied on state-equalized value, the real issue was, and remains, whether the state *Constitution* so requires. The Attorney General concluded that it does.

Although opinions of the Attorney General command the allegiance of state agencies and officers, they do not have the force of law. Therefore, such opinions are not binding on the courts. Presumably, for the same reason they also are not binding on the Legislature. However, the Attorney General opinion at issue was not directed at the Legislature but at units of local government that levy ad valorem special assessments. Had the Legislature amended various authorizing statutes to require that ad valorem special assessments be levied on taxable value, units of local government would have been confronted by a dilemma: they could have levied such special assessments on taxable value as required by the revised authorizing statutes, but risked violating the state Constitution, or levied them on state-equalized value as directed by the Attorney General and violated the revised authorizing statutes.

Second, whether ad valorem special assessments should be levied on state-equalized value or taxable value was but the most recent issue regarding ad valorem special assessments. Focusing attention on that issue obscured the numerous other concerns which have made such special assessments problematic for decades. Legislative preoccupation with the issue of taxable value can be explained, to some extent, by a desire to convince voters that they were not misled into adopting the concept in the first place. After all, the concept of tax-

able value originated with the Legislature. Voters might not have been disposed to approve the proposal which placed that concept in the Constitution had they known that it would limit annual increases in ad valorem property taxes but not other levies (special assessments) which were ad valorem property taxes in all but name. Because the Legislature adjourned at the end of 1996 without resolving the issue raised by the Attorney General, the opportunity now exists to address the valorem special assessment problem in a comprehensive fashion.

B. Eliminate All Ad Valorem Special Assessments

There is no question that traditional special assessments – those levied on a non ad valorem basis in a limited geographic area to finance improvements to infrastructure – have served a useful purpose in Michigan since territorial times. Nevertheless, the benefit derived from traditional special assessments must be balanced against the considerable harm done by their illegitimate brethren. After all, the entanglement of ad valorem special assessments and ad valorem property taxes was made possible only because the former could masquerade as traditional special assessments. However, to eliminate statutory authorization for all special assessments would be impractical.

A more appropriate remedy would be to eliminate statutory authorization for all ad valorem special assessments. Such levies could be replaced to the extent permissible with ad valorem property taxes. In particular instances, this likely would require a reduction in existing service levels because some units of local government either do not have sufficient millage capacity, or could not secure voter approval, to levy enough property taxes to fully replace their special assessment revenue. However, this consideration should not be dispositive because no unit of local government should enjoy a perpetual right to levy unlimited taxes.

C. Treat Ad Valorem Special Assessments as Taxes

If unit-wide, ad valorem special assessments are permitted to continue, at a minimum the Legislature should consider subjecting them to the same constitutional and statutory restrictions which apply to general ad valorem property taxes.[3] Since none of the characteristics traditionally cited by courts to distinguish special assessments from taxes are found in the state Constitution, such a modification could be achieved by statute.

However, given the widespread reliance upon ad valorem special assessments, and the general confusion surrounding them, simply amending the authorizing statutes in the manner suggested likely would not be sufficient. An enforcement mechanism also would seem to be in order, such as extending to the administration of special assessments the authority that the State Tax Commission has over the administration of the property tax. Treating ad valorem special assessments as ad valorem property taxes for purposes of constitutional and statutory restrictions would afford taxpayers the measure of protection that these provisions were intended to provide.

D. Establish Police and Fire Authorities

Available data (See **Appendix A**) suggest that the majority of unit-wide, ad valorem special assessments are levied by townships to finance police services, or fire services, or both. Thus, the Legislature could authorize townships, individually or in combination, to provide such service through authorities in lieu of ad valorem special assessments. (Special consideration might be necessary, however, in those instances where town-

[3] It should be noted that the Legislature already has declared, for revenue sharing purposes, that unit-wide, ad valorem special assessments are local taxes. Public Act 140 of 1971, as amended, authorizes the sharing of state revenues with cities, villages, and townships. In 1987, Section 4 of the act was amended to include within the definition of "local taxes" special assessments which meet both of the following criteria:

> (a) the assessment district is the entire city, village, or township and (b) the assessment is levied on an ad valorem basis against all real property in the city, village, or township.

Because Act 140 requires that unit-wide, ad valorem special assessments must be levied on *all* real property, presumably such a special assessment which is not levied on tax-exempt property cannot be counted as a local tax for revenue sharing purposes.

ships contain incorporated villages.) Units of local government have been authorized to establish authorities for numerous purposes.[3] Such an approach would have two advantages, but also a disadvantage.

First, the millage imposed by such authorities would be an ad valorem tax and, as such, subject to the constitutional and statutory requirements which do not apply to special assessments. Second, because such a local tax would be newly authorized, it could not be levied without voter approval, pursuant to Section 31 of Article 9 of the state Constitution. This would afford taxpayers a measure of oversight which they presently lack with regard to ad valorem special assessments. Furthermore, authorizing townships to act in concert to provide police and fire services might reduce existing duplication and promote economies of scale to a greater extent than now possible under existing law.

The disadvantage of this approach is that the millage levied by an authority is not subject to the 15, 18, or 50 mill limitations because the second paragraph of Section 6 of Article 9 (the nonapplication of limitation clause) of the state Constitution provides in part that

> [t]he foregoing limitations shall not apply to taxes imposed for the payment principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for the payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or, subject to the provisions of Sections 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, *charter authority or other authority*, the tax limitations of which are provided by charter or by general law. (Emphasis supplied.)

However, in order for the nonapplication of limitation clause to apply to authority millage, the authorizing statute must do more than simply declare that the authority is such for purposes of Section 6 of Article 9. According to the Attorney General, the authorizing statute must vest the entity with "the indicia of an 'authority' as that term appears within the context of Section 6 of Article 9 of the state Constitution." (OAG 1979-80, No. 5506 at 200). At a minimum, the authorizing statute must contain a millage limitation which substitutes for the constitutional limitations. Other indicia include those which an authority customarily would be expected to possess, such as the right to sue and be sued in its own name, the right to levy taxes, and the right to hold property.

The Issue of Federal Deductibility

Section 164(c)(1) of the Internal Revenue Code provides that special assessments which benefit property (that is, traditional special assessments imposed to finance public improvements such as sidewalks and street lighting) are not deductible. (Special assessments imposed for purposes of maintenance or repair, or to retire interest charges are deductible.) While Section 164(c)(1) is silent on the matter, presumably unit-wide ad valorem special assessments, which provide no special benefit because they finance basic governmental services, should be deductible to the same extent as are property taxes.

The fact that ad valorem property taxes and special assessments are difficult to distinguish may mean that many taxpayers claim both types of levies as deductions for federal income tax purposes even though the latter, in many instances, are not deductible. Taxpayer confusion may be heightened by the fact that special assessments generally are collected at the same time and in the same manner as are property taxes.

[3] For example, see Public Act 147 of 1939, the Huron-Clinton metropolitan authority act; Public Act 24 of 1989, the district library establishment act; and Public Act 292 of 1989, the metropolitan council act.

Section 7 – Quiz

CHAPTER 13

QUIZ

1. Special assessments are used only in the United States. Page 1

   True False

2. Special assessments appeared as early as 1691. Page 1

   True False

3. The streets of Detroit were originally paved through special assessments. Page 2

   True False

4. In townships a special assessment project can take place with no input from the taxpayers of the township. Page 3

   True False

5. When public hearings are held, notice of the hearings must be given to all of the taxpayers of a city or township. Page 3

   True False

6. In villages and cities a special assessment district is adopted by council resolution. Page 4

   True False

7. If a member of the council or a relative of a council member wants to do the work for a special assessment project, s/he has first chance before bids are “let-out” for the work. Page 4

   True False

8. A hearing is scheduled to hear objections regarding whether or not a property was accurately assessed in relation to the benefits received. Page 5

   True False

9. The council or board may order the assessing officer to revise a special assessment roll with regard to the method of spreading the special assessment cost. Page 5

   True False

10. Appeals of special assessments are taken directly to the Michigan Tax Tribunal; there is no local appeal process. Page 5

    True False

11. The example of a special assessment for maintenance of municipal parking lots takes into consideration the distance each building is from a parking lot. Page 21

    True False

12. A 10-day notice is required before each special assessment public hearing. Page 22

    True False

13. A proposed special assessment roll is made available in the assessor's office for public inspection prior to the council meeting to adopt the special assessment roll. Page 22

    True False

14. Special assessments are a tax. Page 39

    True False

15. Since 1996, special assessments are levied on taxable value rather than state equalized value. Page 39

    True False

16. Unit-wide special assessments are not permitted, because if a project is unit-wide it constitutes a tax, not a special assessment project. Pages 40-41

    True False

17. Special assessments are levied upon real and tangible personal property, not otherwise exempt from taxation. Page 40

    True False

18. A specific characteristic of general property taxes is that they are levied throughout an entire unit of local government. Page 40

    True False

19. A specific characteristic of traditional special assessments is that they are levied only within a special assessment district comprised of land and premises especially benefited by the public improvement being financed. Page 40

    True False

20. Statutes which authorize special assessments specify a maximum rate that may be imposed and the duration of the levy. Page 42

    True False

21. Property that is exempt from property tax is also exempt from special assessments.

Page 40

True False

CHAPTER 13

QUIZ – ANSWERS

1. Special assessments are used only in the United States. Page 1
   False
2. Special assessments appeared as early as 1691. Page 1
   True
3. The streets of Detroit were originally paved through special assessments. Page 2
   True
4. In townships a special assessment project can take place with no input from the taxpayers of the township. Page 3
   False
5. When public hearings are held, notice of the hearings must be given to all of the taxpayers of a city or township. Page 3
   False – Only to the owners and interested parties of properties to be assessed.
6. In villages and cities a special assessment district is adopted by council resolution. Page 4
   True
7. If a member of the council or a relative of a council member wants to do the work for a special assessment project, s/he has first chance before bids are "let-out" for the work. Page 4
   False – If the township, village or city wants to do the work, it may; if it does not want to do the work itself, construction bids are "let-out."
8. A hearing is scheduled to hear objections regarding whether or not a property was accurately assessed in relation to the benefits received. Page 5
   True
9. The council or board may order the assessing officer to revise a special assessment roll with regard to the method of spreading the special assessment cost. Page 5
   True

10. Appeals of special assessments are taken directly to the Michigan Tax Tribunal; there is no local appeal process. Page 5

    False – Special assessments are appealed to the township board or the city council. Appellants whose appeal is denied by the township board or city council may appeal in writing to the Michigan Tax Tribunal within 30 days of confirmation of the special assessment roll.

11. The example of a special assessment for maintenance of municipal parking lots takes into consideration the distance each building is from a parking lot. Page 21

    True

12. A 10-day notice is required before each special assessment public hearing. Page 22

    False – A 15-day notice is required before each special assessment public hearing.

13. A proposed special assessment roll is made available in the assessor's office for public inspection prior to the council meeting to adopt the special assessment roll. Page 22

    False – The special assessment roll is made available in the clerk's office for public inspection.

14. Special assessments are a tax. Page 39

    False – The Supreme Court found that although a special assessment resembles a tax, a special assessment is not a tax. A special assessment is imposed to defray the costs of a specific local improvement rather than to raise revenue for general governmental purposes.

15. Since 1996, special assessments are levied on taxable value rather than state equalized value. Page 39

    False – Special assessments are levied on state equalized value, not taxable value.

16. Unit-wide special assessments are not permitted, because if a project is unit-wide it constitutes a tax, not a special assessment project. Pages 40-41

    False – For the 1995 tax year the State Tax Commission revealed 147 unit-wide ad valorem special assessment districts.

17. Special assessments are levied upon real and tangible personal property, not otherwise exempt from taxation. Page 40

    False – Special assessments are levied only upon land and premises. Real property which is exempt from taxation is not exempt from special assessments.

18. A specific characteristic of general property taxes is that they are levied throughout an entire unit of local government. Page 40

    True

19. A specific characteristic of traditional special assessments is that they are levied only within a special assessment district comprised of land and premises especially benefited by the public improvement being financed. Page 40

    True

20. Statutes which authorize special assessments specify a maximum rate that may be imposed and the duration of the levy. Page 42

    False – Statutes pertaining to special assessments have granted an unlimited and open-ended revenue-raising authority to units of local government.

21. Property that is exempt from property tax is also exempt from special assessments. Page 40

    False