

A PROPOSAL FOR THE
TAXATION OF POSSESSORY INTERESTS IN FEDERAL AND STATE
PROPERTY IN NEW YORK STATE



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FOREWORD

This report examines in detail the taxation of possessory interests in tax exempt government owned real property. The report reviews the subject from a national and historical perspective before focusing on New York. The potential for taxation of possessory interests is affirmed and two taxation methods are discussed.

We wish to acknowledge the cooperation of Mr. Thomas Mahoney, Mr. William Ginsberg, Mr. Thomas Nabozny, and Mr. Richard Nicewonger of the New York State Department of Audit and Control. Data and assistance were supplied by the Federal Departments of Energy, Interior, Army and Defense, as well as the General Services Administration, the Postal Service, the Department of Housing and Urban Development, the Niagara Falls Bridge Commission and the St. Lawrence Seaway Authority. Also, contacts at numerous State public authorities helped in preparation of this report by providing data, guidance and comments. Assistance in property valuation was provided by staff of the Bureau of Property Valuation of the New York State Division of Equalization and Assessment, including Mr. Raymond Redner and Mr. Joseph Moorman. The legal history and analysis were prepared by the Division's Office of Legal Services.

EXECUTIVE SUMMARY

The Proposal

The report recommends that the following proposal be enacted into law.

- o Possessory interests in state and federal property should be made taxable whenever the holder of the interest is a non-exempt entity;
- o Privately operated concessions on government property which is generally available to the public should continue to be exempt, e.g., at public airports, marinas, subways, etc;
- o Eligible possessory interests should be taxed on a property tax basis;
- o If current contractual agreements do not take into account the possibility of taxation, existing possessory interests could be phased into full tax liability in annual increments of 20%, achieving full taxation in five years. The phase-in would be interrupted and full taxation immediately established if the possessory interest contract or lease were renegotiated or renewed during the five years.

Introduction

A possessory interest involves a property use agreement between the owner of real property and the user of that property. The agreement allows the user a degree of exclusive possession and use of the property. Typically, the agreement presupposes a financial transaction between the user and the owner for the use of the property.

This report presents the results of an extensive research effort into the potential for the taxation of possessory interests in federal and state property in New York State. Based upon the findings of this research, a picture emerges which makes it clear that such taxation is not only feasible, but equitable. Possessory interest taxation would not disrupt the State's economic structure, nor create any unbearable or unjustifiable tax burdens for any particular sector. Taxation would, rather, correct an inequitable situation in which certain holders of possessory interests enjoy a competitive edge simply because their landlords are

tax exempt governments. Taxation would also provide local governments with a sorely needed additional revenue source.

Pros and Cons, Historical and Current

The potential for the taxation of possessory interests in state and federal property has not received a great deal of attention in New York. In 1973 a bill, statewide in effect but with a specific facility in mind, was vetoed by Governor Rockefeller. The veto rationale and other historical opposition centered around the idea that the economic ramifications of possessory interests taxation on the State's economy had not been adequately researched. In particular, in 1973, several State public authorities felt that their financial dealings with lessees and contractors would be seriously jeopardized. Federal officials claimed that taxation could cause the relocation (to other states) of several federal installations and that New York's bargaining power for future federal contracts (especially from the Department of Defense) would be significantly reduced.

New York's proponents of possessory interest taxation have pointed to precedent-setting U.S. Supreme Court cases and taxation legislation in several other states. This report reviews this legal and legislative history, paying especial attention to possessory interest taxation in California, where a property tax method of valuation and collection has been used since the mid-1800's, and Washington, where an excise tax has been in place since 1976. Threats of relocation or reduction of federal contracts are insubstantial. None of the states researched reported any instances of relocation or reduction. Also, the federal government has become accustomed to bearing a property tax expense via several mechanisms: rent, payments-in-lieu-of-taxes, service charges, receipt sharing and impact aid.*

* Advisory Commission on Intergovernmental Relations, Payments in Lieu of Taxes on Federal Real Property, Washington, D.C., Sept. 1981.

The taxation of possessory interests would also serve to right a subtle, but definite inequity. Holders of possessory interests in state and federal property in New York generally enjoy a competitive advantage by virtue of not having a property tax expense. As lessees, their rents can be accordingly lower and as contractors, their fees can be higher. If every other self-interested holder or owner of real property in a taxing jurisdiction is required to pay for local government services, there is no rationale for exempting the self-interested possessors of interests in government property. Other exempt owners (religious, educational, etc.) generally lose their exemptions on property used by non-exempt parties or for non-exempt purposes.

Conditions for Taxation

Court decisions have determined that the taxation of possessory interests in government property must preserve the exempt status of both the owner and the property. The tax may be levied only on the value of the possessory interest, which may be determined in a number of ways. Furthermore, no lien can be placed against the property; the tax becomes an unsecured debt between the holder of the interest and the taxing authority. Another condition for taxation is that the tax must not be discriminatory, e.g., making only federal possessory interests taxable.

The United States Supreme Court has concluded that, with very few exceptions, all possessory interests in exempt property can be taxed. These exceptions are very limited - only those who actually "...stand in the government's shoes..."* in performing a governmental function qualify for the exemption. Taxation can therefore include government contractors, who perform for a fee, as well as lessees, who pay rent.

* U.S. vs. Boyd, 378 U.S. 39, 84 S. Ct. 1518, 12 L. Ed. 2d 713 (1964)

Taxation Methods

The two taxation methods discussed in the report are: 1) the property tax, and 2) the excise tax, as currently implemented in the State of Washington. In Washington, the tax is calculated as a percentage of the rent (or fee) and goes directly to the State which then splits the monies with the localities. Of the two methods, the property tax is deemed preferable because:

- o it represents a time-tested, traditional way of taxing those who benefit from the services provided by local government;
- o the administrative mechanisms for levying and collecting taxes are already in place and are accepted as institutions by the public;
- o all tax revenues go directly to the local governments and other taxing units providing the services;
- o revenues are regular and predictable;
- o methods for valuing all kinds of possessory interests on a property tax basis have already been established in other states (California has published a booklet on possessory interests) and current methods for valuing other types of property (especially commercial) are easily applicable to possessory interests; and
- o the property tax is obviously based on tangible property, the value of which can easily be ascertained.

Fiscal Impact Analysis

A comprehensive data search revealed a wide array of potentially taxable possessory interests in New York; from an agricultural lease of one acre (for ten dollars annually) to the operational contract of a large 78 million dollar research facility (involving a fee of three million dollars annually). New York's local governments are currently denied the right to tap this significant and widespread revenue resource.

The report estimates that if all possessory interests in state and federal property were currently taxed, the total annual revenues would be between 55 and 65 million dollars.

However, as many properties already have payments made on them and it is expected that concessions in public places would be exempted, the currently untapped revenue created by possessory interest taxation would amount to between 13 and 14 million dollars. This difference is due mainly to the fact that the Port Authority of New York and New Jersey is now making payments-in-lieu-of-taxes of approximately 44 million dollars annually. In this respect, the Port Authority is an example of a government entity which acknowledges and compensates for the local service burden created by exempt government properties in private use.

The 13-14 million dollars in untapped revenue would come from possessory interests in:

Federal property (not including \$50,000 from concessions)	\$7,500,000
State Public Authority property (not including \$100,000 from concessions)	\$5,500,000
State Agency property (not including \$350,000 from concessions)	\$ 421,000

Possessory interest taxation would not cause an economic crisis in any of the public or private sectors involved. Individual increases (for either owners or users) could be adjusted to with a minimum of strain, especially if the proposed phase-in is incorporated. None of the property users would be forced out of a possessory interest and none of the owners would have to relocate facilities or cancel contracts. Yet the tax dollars generated could make a considerable difference to those local governments and taxpayers who have had to bear the uncompensated cost of providing services to these properties.

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A PROPOSAL FOR THE
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I. Introduction, History and Conceptual Background

Introduction

The focus of this report is the potential for the taxation of possessory interests in state and federal real property in New York State. A possessory interest involves a property use agreement between the owner of real property and the user of that property. The agreement allows the user a degree of exclusive possession and use of the property. Typically, the agreement presupposes a financial transaction between the user and the owner for the use of the property.

This report will be restricted to the taxation of possessory interests when the property is otherwise tax exempt as a result of the owner being a government agency or entity, and when the user is a private, non-exempt corporation, organization or individual.

In principle, all private possessory interests in otherwise exempt real property should be liable for taxation, with certain exceptions. The rationale for taxation originates in the basis for exempting any property. Exemptions are justified by either ownership and/or use of property. If either one of these factors changes, then the question of potential taxation can be raised. In the case of a possessory interest, the use of the property changes. As a rule, if the property is used for a purpose substantially unrelated to the basis for exemption and that use is intended to provide a non-exempt user with profit or pleasure, then the possessory interest should be considered taxable.

To illustrate, a taxable possessory interest would occur when a private manufacturing firm leases a government owned plant and produces a product which the firm sells for its own profit. A non-taxable possessory interest would be created if a private firm, acting as "... an agency or instrumentality so closely connected to the Government that the two

cannot realistically be viewed as separate entities..."* is provided with the use of a government owned plant and produces a product solely for the government's use. While these examples are somewhat generalized, they begin to indicate the circumstances necessary to justify taxation.

This report will first provide a brief legal history of possessory interest taxation. Various types of taxable possessory interests are then discussed, as well as several potential methods of taxation and valuation, based upon the experience in other states. The report then turns to the situation in New York, providing history, data, and an analysis of the effects possessory interest taxation would have in New York. The report concludes with proposed legislation and a recommendation that it be enacted.

Legal Background and Constitutionality

The purpose of the proposal recommended by this report is to subject to real property taxation the possessory interest of a non-exempt private lessee or contractor which uses real property owned by the United States or the State of New York.

It is well established that unless it consents, the federal government is immune from state and local taxation (McCulloch v. Maryland, 4 Wheat. 316, 4 L.Ed. 579 (1819)). This principle has been codified in New York by section 400 of the Real Property Tax Law, which provides an exemption from taxation for real property owned by the United States. However, this doctrine of "sovereign immunity" is not absolute.

Many states have enacted legislation which requires lessees of government property to pay real property taxes on property used for pecuniary purposes. The constitutionality of this type of legislation, properly drawn, has been upheld in extensive litigation. Thus, a rare opportunity to expand local tax bases is available in New York. Indeed, it can be argued that the failure to impose a tax on such interests is unfair to private landlords (competing

* U.S. v. New Mexico 455 U.S. 720, 102 S. Ct. 1373 at 1382, 71 L. Ed. 2d 580 (1982).

for the same business tenants), since they must either pass along the cost of real property taxes to their tenants or absorb the expense.

A 1982 decision of the United States Supreme Court, entitled U.S. v. New Mexico (455 U.S. 720, 102 S. Ct. 1373, 71 L.Ed. 2d 580 (1982)), reiterated that the concept of sovereign immunity does not extend to federal contractors except under very limited conditions. Explaining that the doctrine of sovereign immunity from taxation "has been marked from the beginning by inconsistent decisions and excessively delicate distinctions" (102 S. Ct. at 1380), the Court traced its line of prior cases and "concluded that the confusing nature of our precedents counsels a return to the underlying constitutional principle. The one constant here, of course, is simple enough to express: a State may not, consistent with the Supremacy Clause, U.S. Const., Art. VI, cl. 2, lay a tax 'directly upon the United States' (citation omitted)" (id., at 1382). The Court set forth the relevant principles as follows: (id., at 1382-1384, citations omitted):

[T]he limits on the immunity doctrine are, for present purposes, as significant as the rule itself. Thus, immunity may not be conferred simply because the tax has an effect on the United States, or even because the federal Government shoulders the entire economic burden of the levy.

Similarly, immunity cannot be conferred simply because the state tax falls on the earnings of a contractor providing services to the Government... And where a use tax is involved, immunity cannot be conferred simply because the State is levying the tax on the use of federal property in private hands.... Indeed, immunity cannot be conferred simply because the tax is paid with Government funds...

What the Court's cases leave room for, then, is the conclusion that tax immunity is appropriate in only one circumstance: When the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities...

Thus, a finding of constitutional tax immunity requires something more than the invocation of traditional agency notions: to resist the State's taxing power, a private taxpayer must actually 'stand in the Government's shoes'...

If the immunity of federal contractors is to be expanded beyond its narrow constitutional limits, it is Congress that must take responsibility for the decision, by so expressly providing as respects contracts in a particular form, or contracts under particular programs.... But absent congressional action, we have emphasized that the States' power to tax can be denied only under 'the clearest constitutional mandate'.

The proposal recommended by this report has been designed to avoid possible constitutional pitfalls. The language makes it clear that the tax would be levied directly upon the non-exempt lessee or contractor for the privilege of using the property for private purposes; it would not become a lien upon the leased property. Additionally, the tax would not discriminate against real property owned by the federal government, because it would treat federally and state-owned property similarly and would make such property subject to the same rule currently applicable to other exempt real property.

In addition to federal law, such a tax in New York must satisfy the New York State Constitution. Article XVI, section 3, of the New York State Constitution prohibits ad valorem taxation of intangible personal property. Although under state law, a leasehold interest in real property is considered to be personal property, it is deemed tangible rather than intangible (Ampeco Printing-Adv. Off. Corp. v. City of New York, 14 N.Y.2d 11, 197 N.E.2d 285, 247 N.Y.S.2d 865 (1964)). As such, a possessory interest could be defined to be real property for purposes of taxation and taxed accordingly.

Possessory Interest Taxation in Other States

CALIFORNIA

The prime state in the field of possessory interest taxation is California, where possessory interests have been taxed to some extent for the past hundred years or so. A publication from the California State Board of Equalization entitled The Appraisal of Possessory Interests, claims that:

"Such interests are not new in California. In the early days of the 1850's and 1860's titles to much of California land had not been perfected, and the settlers had attained right of possession and control through settlement, possession and use of property. The assessment rolls in many counties in those early days consisted in very large part of possessory interests."

Despite these historical claims, the major legislation and most of the crucial court cases in California have occurred since 1950. In 1955, the California State Board of Equalization published the first edition of The Appraisal of Possessory Interests. A quote from the 1974 edition of this handbook clarifies California's definition of a taxable possessory interest:

"...includes either the possession or the right to possession of real estate whose fee title is held by a tax exempt public agency."

The fee owner must be an exempt governmental entity or agency. No mention is made of possessory interests in property owned by private, tax exempt organizations (religious, educational, etc.). In California, as in New York, a private, tax exempt owner becomes directly liable for property taxes, if, via a lease or other agreement, the owner allows the exempt property to be used for a purpose other than that for which the exemption was granted. The issue of possessory interest taxation in New York does not, therefore, enter the question of tax liability when the exempt owner is a private individual or organization.

The California handbook also claims that, "Possessory interests in California constitute many thousands of items of property. Their assessments run into many millions

of dollars and amount to a substantial part of the property tax base for our counties, cities and school districts." The handbook lists "typical" possessory interests as being:

1. Forest Service permits, residential and commercial, including ski lifts, resorts, stores, and cabins.
2. Harbor leases, residential, commercial, and industrial.
3. Downtown auto parking leases.
4. Possession and use of residences owned by public agencies.
5. Employee housing on tax-exempt land.
6. Airport permits, including parking and garage leases.
7. Grazing land permits.
8. Indian land leases.
9. The right to cut and remove standing timber on public lands.
10. Gas, petroleum, or other hydrocarbon rights in public lands.
11. Unpatented mining claims.
12. The possession of public property at harbors, factories, airports, golf courses, marinas, recreation areas, parks, stadiums, and government facilities.
13. Possession and use of government-owned fixed equipment.
14. Air rights over public lands or freeways.

The above represents the most comprehensive list of taxable possessory interests found in any of the state publications studied. California localities have been gaining tax revenues from these sources for years without any serious repercussions. There have been a few significant court challenges, however. One important case (De Luz Homes vs. San Diego County, 1955)¹ which was heard by the California Supreme Court did not question the right to tax, but rather the methods used to value the possessory interest.

The degree and method of valuing possessory interests are two of the most complicated aspects of this discussion. Most states which tax possessory interests require

¹ DeLuz Homes, Inc. vs. San Diego County, 45 Cal. 2d 546, 290 P.2d 544 (1955).

that possessory interests be valued in a manner similar to other real property and taxed at the same proportion of value as other real property in the same taxing jurisdiction. As in some business assessments, however, the assessor may have to make some estimates of the present worth of future income. Most possessory interests involve a lease or other agreement which defines the term of possession and the degree of exclusive use and/or restrictions placed upon such use. These issues involve methods of valuation and could be determined administratively should New York decide to tax possessory interests.

WASHINGTON

While California has the oldest, most sophisticated system of possessory interest taxation, several other states have enacted appropriate legislation within the last few decades. Washington took a few pages from California's book (they reprinted portions of California's appraisal manual) and began taxing possessory interests on a property tax basis in the early 1970's. As in California, taxation is limited to interests in publicly owned property, provided that the lessee is not tax exempt.

In 1976, however, Washington significantly amended its possessory interest statutes. The new laws provide for a 12% leasehold excise tax on the cost or privilege of occupying or using publicly owned real or personal property through a leasehold interest. The measure of the tax is "taxable rent" which is usually the contract rent plus expenditures by the lessee to protect the lessor's interest plus expenditures for improvements which become property of the lessor. In several ways the excise tax is patterned after the general retail sales tax; i.e., the lessor is responsible for collecting the tax and for remitting it to the State, and the tax must be stated separately from the rent on any bills or documents.

Another interesting facet of Washington's system is that the State shares the tax revenues with the local government on a 50/50 basis. An official at the Washington State Department of Revenue stated that the State was realizing about 6 million dollars per year from the tax, while local governments received an equal amount.

Washington's law also contains a section which specifies that the tax must be levied on the maximum rent attainable by bidding or negotiation, even if the lessor chooses to charge a lower rent. The Department of Revenue has developed a method of computing the potential maximum rent.

Certain leaseholds are exempt from the tax, such as those with rents of less than \$250 per year and those where possession is for less than 30 consecutive days. For longstanding leaseholds, the terms of which had not been renegotiated in the 6 years prior to the law's effective date, the law provided a phase-in, increasing the tax by 20% annually for five years until full liability was reached.

OTHER STATES

Numerous other states allow possessory interests to be taxed. A series of three 1958 U.S. Supreme Court cases originating in Michigan, all decided in favor of possessory interest taxation, established a firm foundation and precedent for subsequent legislation and court cases. In two of the cases, the United States Government challenged the constitutionality of a Michigan statute (Public Act 189 of 1953) authorizing the taxation of possessory interests in exempt federal property. The statute, which withstood the challenge and has been accordingly used as a model for other states' legislation, is reproduced in Appendix D.

In Oregon, eligible interests in property of the United States are assessed and taxed for the full true cash value, with deductions only allowed for restrictions on use. Oregon's valuation procedure involves factoring in sales data as well as the capitalized rent paid to the government. Adjustments are also made for improvements and to bring the assessed value to the current market level for the assessment year involved.

Utah levies a privilege tax on users of exempt realty or personalty, though the assessment and collection process is the same as for the property tax. The Utah statute clearly states that property exempt for any reason is covered, though specific exceptions are made for concessions in public airports, parks, etc., and when the exempt owner is a

religious, charitable, or educational organization. Mineral or grazing leases and easements are also not taxed unless they allow the lessee exclusive use of the property. The Utah law, which went into effect on December 31, 1959, provides that:

"The tax imposed on such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor were the owner thereof; provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of any payments which are made in lieu of taxes."

Utah's statute raises the issue of payments-in-lieu-of-taxes to localities to compensate for the presence of federal or state property. Many states currently make similar payments (New York State will pay approximately 39 million dollars in direct property taxes in fiscal year 1983-84). The federal government has, via a complicated patchwork of approximately 57 different programs, paid up to 2 billion dollars per year in payments-in-lieu-of-taxes to local governments nationwide.²

None of the 57 federal programs directly acknowledges the role of the federal government as a taxpayer. Most of the programs use indirect payment modes, such as receipt sharing from park revenues or service charges. One of the programs, impact aid to education, involves a potential possessory interest situation. The impact aid is primarily provided to school districts which contain large exempt federal housing developments tenanted by federal employees. However, this aid has been cut drastically in recent years. New York could make federal employees occupying exempt housing liable for taxes on their possessory interest in the housing. Though such taxes would probably be passed back to the government (either by rent reductions or salary increases), nonetheless, the local taxpayers would not have to bear the unmitigated cost of educating hundreds of children of federal employees.

In Nevada, Mineral County, with a population of only 6,000, recently managed to add a possessory interest assessment of 37.5 million dollars to its taxable base. Estimated tax

² See Advisory Commission on Intergovernmental Relations, Payments in Lieu of Taxes on Federal Real Property, Washington, D.C., September 1981.

revenues for the first three years are in the neighborhood of three million dollars. The federal government had, in 1980, contracted out to a private corporation the operation of a large (150,000 acres) federal ammunition dump near Hawthorne, Nevada. The private operator is paid a fee (plus costs) to operate the dump, but is still liable for its possessory interest in the property.

The Nevada statutes, which are very similar to Michigan's (see Appendix D), had already been tested in court. As a result, the appraisal and assessment process for the ammunition dump was completed smoothly via a four way consultation among the Army, the contractor, the county, and the Nevada State Tax Commission.

The Nevada example is noteworthy in that:

1. the taxation of the possessory interest was accomplished with a minimum of resistance, and
2. the contractor's interest was taxable even though the contractor was being paid a fee to hold the interest.

As previously cited, United States Supreme Court case (U.S. vs. New Mexico, 1982)³ decided longstanding possessory interest related litigation. New Mexico has a gross receipts tax, very similar to a sales tax, which it attempted to levy, in the early 1970's, on the receipts of contractors managing an atomic research lab in New Mexico. The case focused on the issue of whether and when a private contractor is immune from state and local taxation as an agent or instrumentality of the U.S. government, and held that immunity applies only in very limited circumstances.

To continue with detailed descriptions of other states' possessory interest taxation arrangements runs the risk of repetition. Suffice it to say that several other states, in addition to those mentioned so far, presently allow some degree of taxation. Among these are: Minnesota, Colorado, Georgia, North Dakota, Alaska, Tennessee, and Indiana.

³ U.S. vs. New Mexico, 455 U.S. 720, 102 S. Ct. 1373, 71 L.Ed.2d 580 (1982).

For more detail on this case, see the previous section entitled "Legal Background and Constitutionality," page 2-4.

Summary of Legal and Conceptual Findings

The preceding legal and conceptual background and descriptions of other states' experiences uncovered the primary rules determining justifiable taxation of possessory interests in exempt government property. As a convenient reminder, here are those rules in list form:

1. A justifiable tax does not attempt to tax the property itself, but rather segregates and taxes the value of the possessory interest in that property.
2. The holder of the possessory interest is made liable for the tax, not the fee owner of the property.
3. No lien may be placed against the property.
4. The government's tax immunity does not shield possessory interests from taxation, even though the ultimate burden of the tax may fall upon the government.
5. The fact that the tax may be measured by the value of the property does not mean that it is just another way to tax the property.
6. Any tax levied upon possessory interests must avoid any discriminatory effect.
7. If the holder of a possessory interest in government property is able to prove conclusively that it is a true agent or instrumentality of the government (so closely connected that the two cannot be viewed as separate entities) then the possessory interest is not taxable.
8. A formal lease is not necessary to establish a legally recognized possessory interest; evidence of exclusive use is sufficient.
9. A possessory interest is taxable even though it is held by a contractor who is being paid a fee by the government (the reverse of the usual leasing arrangement).

Since most of the precedent decisions examined were from the U.S. Supreme Court, we can assume that the above rules and conditions, if incorporated into law, would withstand legal challenge and would cover the taxation of possessory interests in federal and state government property in New York State.

II. Current and Historical Perspectives on Possessory Interests in New York

Possessory Interests in New York

New York does not have a possessory interest taxation statute, despite the obvious advantages and despite the current and potential inequities. These inequities are strong evidence in favor of possessory interest taxation. Frequently, the lessee of an exempt property enjoys an unjustifiable competitive advantage due to reduced rent. Of course, it may be that if a tax were levied on the user, the exempt owner could compensate by lowering rents. However, this would only result in lower revenues for the exempt owner, while maintaining the inequity. To repeat an earlier point, a non-exempt organization or individual utilizing real property in a community should pay an appropriate tax to the community's government for services provided.

In some instances, it could be argued that the lessor has already discounted the tax exemption advantage into the rent charged for the possessory interest. In such situations, the exempt owner is being doubly advantaged, i.e., by the exemption and the increased revenue — and the local government providing services to the possessory interest is being deprived of an otherwise legitimate source of revenue. In sum, such rental contracts should be renegotiated in the interest of equity if possessory interests become taxable.

Also, an inequity is established when the property of other exempt owners (religious, charitable, educational, etc.) becomes taxable when the use of the property changes due to a possessory interest. Meanwhile, the state and federal governments can lease or contract out their property in New York to anyone for virtually any purpose and incur no tax liability for either themselves or the holder of the possessory interest.

Another major point in the pro-taxation argument is that property tax bases everywhere are endangered by increasing exemptions, which shift the property tax burden onto fewer and fewer taxpayers. Any law which would add possessory interests to the taxable rolls will be viewed with favor by local governments, school districts and currently taxable property owners.

1973 Legislative Proposal

There was possessory interest legislation which passed the Legislature in 1973 but was vetoed by Governor Rockefeller. This proposal, Senate 1732-A, introduced by Senator Douglas Hudson, would have amended existing section 402 of the Real Property Tax Law. Section 402 provides for taxation of possessory interests in federal or state property only when the holder of the interest has been given a right to eventually acquire the property or at least the right to first refusal to purchase. Senate 1732-A would have removed this qualifier and would have made all possessory interests in state or federal property taxable. Section 402, if amended by S.1732-A, would have read:

1. "Whenever the legal title of real property is in the United States, or in the State of New York, but the use, occupation or possession thereof is in a person, partnership, association or corporation or his or its successor in interest, in connection with property used for business under a lease contract of sale or other agreement except where the use is by way of a concession in or relative to the use of a public airport, park, market, fairground, road, pier, marina, railroad, busline, subway, or similar property which is available to the use of general public, his or its interest in such real property shall be assessed and taxed in the same amount and to the same extent as though the user or lessee were the owner of such real property and shall be entered in the assessment roll in the same manner as if such person, partnership, association or corporation held the legal title to such property, except for the addition to the description of the words 'interest under contract', 'interest under option', or other appropriate words descriptive of the interest in the property so assessed.
2. Taxes shall be assessed to the users or lessees of such real property and collected in the same manner as taxes assessed to owners of real property, except that taxes shall not become a lien against the real property. When due, such taxes shall constitute a debt due and owing from the user or lessee to the municipal corporation or special district for which the taxes were levied and shall be recoverable by action in supreme court."

A comparison between the 1973 bill and the landmark Michigan law (see Appendix D) reveals many similarities. However, the Michigan statute does differ in that it 1) covers property exempt for any reason and 2) makes provisions for adjustments due to existing payments-in-lieu-of-taxes.

Regarding this first point, New York does not need an all-encompassing statute because various sections of the New York Real Property Tax Law currently provide for

taxation of several other types of exempt property (municipal, special district, etc.) when that property is leased to a private person or entity for a non-exempt use. In these cases, however, the property loses its exemption due to the change in use and the owner, not the lessee, is liable for the taxes.

If a possessory interest tax were to be levied where the state or federal government is already making payments, then the possessory interest tax could take precedence. In other words, because the same property can't be the source of two payments, the governmental owners could be relieved of their liability. As mentioned earlier, New York State pays over 39 million dollars annually in property or school taxes on approximately 87% of its holdings. The federal government also makes significant payments-in-lieu-of-taxes to local governments.

The June 1973 veto message (#161) of Senate 1732-A read as follows:

"The bill would subject to real property taxes the leasehold interests of persons leasing real property from the State or from the United States for business purposes.

The bill's provisions would obviously affect existing economic and legal relationships in the State and could have a major impact upon those relationships, the nature and extent of which have not been adequately analyzed. In addition to imposing a new tax on some private businesses, the bill would also eliminate the tax exemption upon which are predicated many agreements entered into by public authorities. Moreover, the bill contains a number of uncertain, difficult to apply exemptions.

A bill such as this should be enacted only after a careful study of all its ramifications. In the absence of such a study demonstrating that such legislation is necessary and desirable, I cannot approve this bill.

The bill is disapproved."

(signed) NELSON A. ROCKEFELLER

The veto jacket for veto #161 clarifies many of the objections mentioned in the veto message. What is interesting, however, is that the number of responses filed in favor of the bill or without objection to it was far greater than those opposed. For example:

- 1) The state Attorney General, citing the numerous U.S. Supreme Court precedents, saw no legal objections to the bill.

- 2) The Comptroller's Office had no objections.
- 3) The Division of the Budget listed several pros and cons:

PROS

- a) Significant addition to tax bases.
- b) Recompense for services provided by affected local governments.
- c) Would help compensate for the anticipated loss in federal impact aid.

CONS

- a) The final cost or burden may fall upon the State when state property is involved. The total burden was estimated at only \$20,000, however.
- b) The Atomic Energy Commission believed that possessory interests in its property would not be taxable.
- c) The impact aid PRO-point is diluted in that the tax may not cause ineligibility for the impact aid (citing pertinent Michigan court cases).

Of course, this last impact aid issue is moot now with the extensive federal cutbacks. In a way, the cutbacks provide even more incentive for taxation of possessory interests in federal property. The Budget report estimated that the statewide property tax revenue increase would amount to approximately one million dollars. The report concluded with a recommendation for approval.

- 4) The New York State Division of Equalization and Assessment voiced no objection to the bill.

The Division felt the bill would "... provide the necessary authority to levy a tax in a proper situation. The bill would not discriminate against federal property and would probably be constitutionally correct."

- 5) The Office for Local Government had no objection to Senate 1732-A, though it raised the issue of whether AEC contractors could be considered agents of the government.
- 6) A considerable number of local government administrators and school officials also strongly supported the bill.

There were only three opinions filed in opposition to the bill and all three centered around the issue of how exempt public authority property would be treated.

- 1) The Department of Commerce claimed that the taxation of possessory interests in exempt public authority property was potentially unconstitutional in that it might be construed as an impairment of contract.

Many public authorities apparently utilize private contractors and corporations to operate or occupy their facilities. The public authorities openly use their tax exempt advantage in attracting and negotiating with said contractors and lessees. If these contractors, etc. were made liable for taxation on their possessory interests, the potential adverse impact could be at least twofold:

- a) The public authorities and/or their clients could initiate extensive and expensive legal challenges based on the impairment of contract argument.
- b) The contractors and lessees could also simply threaten to pull out of their agreements with the public authorities, using the justification that the contracts were rendered invalid by the additional tax burden.

The Department of Commerce went on to point out that many public authorities are already making payments-in-lieu-of-taxes to local governments. Commerce also felt that a possessory interest statute would create a competitive disadvantage for New York in negotiating for federal contracts.

- 2 & 3) Both the Thruway Authority and the Manhattan Transit Authority filed negative comments on the proposed legislation. Both authorities felt that their tax exempt status would be superseded or threatened. Both claimed that their financial dealings would be seriously impaired.

Potential Resolution of Objections

The tax exempt status of the authorities (or any government owner) would not be destroyed by possessory interest taxation. The rule established by the courts for justifiable taxation is that only the interest can be taxed, not the property or the fee owner. However, public authorities could continue to offer their contractors and lessees attractive deals by simply (as the federal government does) including a contract clause which would allow the property users to "pass-back" the tax expense to the authorities. These increased costs could, if necessary, be offset by slight increases in the charges the authorities make for their services. The public utilizing these services would bear the ultimate burden, but another segment of the public - to some degree a coincident segment - would benefit from the increased local government tax base.

Even if the user of the property were to bear either part or all of the tax, it is unlikely that this single additional cost would tip the balance into the range where the contractor or lessee would no longer be making a profit. Businesses in other states where possessory interests are taxed should not be assumed to be more adroit at calculating and turning a profit than New York businesses. The proposed phase-in would further soften the fiscal impact for many possessory interests.

None of the other states contacted concerning the impact of possessory interest taxation reported having any significant problems with public authorities. It may be that public authorities in New York are allowed greater autonomy and wield more power than elsewhere, but these factors do not mean that equitable, reasonable taxation could not be accomplished within the New York context.

The argument that New York would lose negotiating power in terms of gaining federal contracts, carries much less importance now. The federal government is by now accustomed to paying for possessory interest taxation in other states and there is some indication that such potential costs are routinely calculated into cost estimates (e.g., the Hawthorne Ammunition Depot in Nevada). A report by the Advisory Commission on Intergovernmental Relations⁵ mentions that:

"... a recent GAO (General Accounting Office) report⁶, which examined alternative methods of financing federal building space acquisitions has recommended that federal cost analysis include real estate taxes 'as an imputed cost of government ownership under the rationale that other federal support may be required to compensate the state and/or local governments for real estate revenues lost'."

Ordinary federal contracts now contain a tax "pass-back" clause because any state could enact legislation after a facility was in place. Finally, there are several other factors which would have greater importance in a federal decision to locate a facility: energy and

⁵ Advisory Commission on Intergovernmental Relations, "Payments in Lieu of Taxes on Federal Property," Washington, D.C., September 1981, p. 87.

⁶ U.S. General Accounting Office, "Costs and Budgetary Impact of the General Services Administrations Purchase Contract Program, LCD-80-7," Washington, D.C., U.S. Government Printing Office, 1979, p.2.

transportation costs, and other considerations, strategic location and certainly political factors.

Another sizeable group of opinion does not favor possessory interest taxation maintains that the federal government would relocate existing facilities rather than pay taxes (via the contractual pass-back clause). James Pontius, a former General Electric employee and former Niskayuna Board of Education member, has tried for years to get the possessory interests in the General Electric operated Knolls Atomic Power Laboratory in the town of Niskayuna in Schenectady County made taxable. His lobbying efforts at both the local and state level have convinced many concerned parties that possessory interest taxation is not only equitable, but also would not create undesirable effects such as the relocation of federal facilities. In 1982, the Niskayuna town government expressed some concern over the relocation threat and the potential resultant loss of 1,300 to 1,500 jobs. However, in both 1982 and 1983, the Town Board, at Mr. Pontius' urging, adopted resolutions supporting taxation legislation.

Whether the threat of relocation is substantial or merely a ploy is a crucial question. It may be assumed that the threat is not likely to become reality. Contacts with other states currently allowing taxation of possessory interests have not provided any pertinent examples of relocation. In fact, as this report has shown, the federal government has indicated an increasing willingness to assume tax liability for its property. If taxes are paid on federal possessory interests in other states and in the forms of rent on federally leased property, service charges, payments-in-lieu-of-taxes, receipt sharing and impact aid, why would the line be drawn at possessory interests in New York?

In the specific case of the Knolls lab, the relocation threat seems especially remote. Not only does the plant employ 1,200 people whose lives would be uprooted, but the very nature of nuclear research makes relocation complicated. Existing reactors would have to be shut down and radioactive material disposed of appropriately. To establish a new site in these days of public sensitivity to the danger of nuclear power would probably require endless negotiations. The capital investment necessary would equal many years' taxes on

the possessory interest in the existing plant. Current full value assessments for the Knolls lab and a sister laboratory in West Milton, N.Y. together total over 150 million dollars, which is probably significantly less than replacement costs. Moreover, the idea that the work could be transferred to another existing lab is also unlikely. Another laboratory in Pennsylvania, operated by Westinghouse, has payments-in-lieu-of-taxes made on it by the federal government, according to local officials. If tax shelter is the purpose of the threatened relocation, this "potential" site is probably not feasible. The West Milton facility (Kesselring Atomic Power Laboratory) would also have to be moved, making any transfer effort twice as complicated and expensive. Both New York facilities have been established for decades, have been accepted by the respective communities, are doing valuable research work (not easily interrupted), and represent large capital investments. To repeat, the costs of relocation would equal many years of possessory interests taxes. The possibility of relocation should not be considered as a serious deterrent to taxation.

Another issue raised by the veto message to S.1732-A is that the bill contained several "difficult to apply exemptions." This refers to the exclusion from taxation of concessions in locations "available to the use of the general public." Whether these exemptions would be difficult to apply seems to depend more upon attitude than reality. Most of the other states with possessory interest taxation have similar exemptions contained in their statutes. In this matter, they have followed the lead of Michigan, whose 1953 law was repeatedly validated by the U.S. Supreme Court. While there is evidence that some debate has occurred in certain unusual circumstances (e.g., is a warehouse on public airport grounds exempt?) the application of the exemption is apparently otherwise clear and straightforward.

The rationale for exempting the concessions is that they are provided primarily to benefit the public. There is, however, a possibility that concessions need not be exempted. It would appear that Michigan's precedent statute has, in several states, been copied without critical scrutiny simply because it has been courtroom-tested. California taxes the possession of public property even if the site or facility is generally available to the public.

III. Discussion of Taxation Methodology

Taxation Methods

The remainder of this report will deal with the potential for possessory interest taxation in New York. The section below provides capsule versions of two possible means of taxing possessory interests: the property tax method and the excise tax method.

The property tax method of possessory interest taxation includes the following features:

- o it uses the value of the property and/or possessory interest to determine the tax,
- o the locality assumes responsibility for assessment, levying and collection.
- o the revenues all go to localities.

The excise tax method, as used in the State of Washington, contains these features:

- o the amount paid to the owner in rent or by the owner in contract fees determines the tax,
- o the property owner is responsible for the collection of the tax and for remitting it to the State, and
- o revenues are divided between the State and localities.

Comparisons of Taxation Methods

The Property Tax

The majority of states that tax possessory interests do so on a property tax basis. Some value is ascribed to the interest (either directly or by valuing the property involved) and the tax rates are applied to this value. There are several advantages in using a property tax in New York State for the taxation of possessory interests:

- o the property tax represents a time-tested, traditional way of taxing those who benefit from the services provided by local government;
- o the administrative mechanisms for levying and collecting taxes are already in place and are accepted as institutions by the public;
- o all tax revenues go directly to the local governments and other taxing units, which are providing services to the possessory interests;

- o revenues are regular and predictable;
- o methods for valuing all kinds of possessory interests have already been established in other states (California has published a booklet on possessory interests) and current methods for valuing other types of property (especially commercial) are easily applicable to possessory interests; and
- o the property tax is obviously based on tangible property, the value of which cannot easily be concealed by the taxpayer.

Possible disadvantages associated with the use of the property tax are:

- o although methods have been established elsewhere, valuing a possessory interest is usually relatively complicated. Several extra factors (term of possession, restriction on use, etc.) must be taken into account; and
- o because a lien cannot be placed on the property held by a possessory interest, the tax becomes an unsecured debt between the taxpayer and the local government. This lack of imminent penalty could encourage the taxpayer to delay payment, though legislation approved in 1983 (Chapter 541) provides a variable penalty interest rate which would discourage willful delays in tax payments in order to obtain higher investment yields.

The Excise Tax

Washington is the only state currently known to be using an excise tax on possessory interests. Washington initially used a property tax, but switched to an excise tax after a few years. Advantages recommending the use of an excise tax are:

- o valuation is easy as the tax is a simple percentage of the financial transaction necessary to hold the possessory interest;
- o the property owner is responsible for collection of the tax (not liable), which is paid at the same time as the rent or fee. The tax, would, in effect, be negotiated as part of the transaction between the owner and the user, probably meaning fewer payment delays or defaults; and
- o an excise tax would not require a new legal definition of real property.

There are several disadvantages attendant upon the use of an excise tax:

- o an entirely new administrative section would have to be created at either the local or state level to receive the taxes and distribute the revenues;
- o it would be difficult to guarantee that possessory interest financial transactions (rents or fees) reflected true value. Owners could record one rent for taxation purposes while collecting greater amounts "under the table"; and
- o it would be difficult for local governments to predict tax revenues as the rental and contract market is constantly changing.

IV. A Proposal for the Taxation of Possessory Interests in State and Federal Property in New York State

The Proposal

All the major points of the following proposal have been discussed in the preceding sections. The proposal elements are presented below in a cohesive form.

- o Possessory interests in state and federal property should be made taxable whenever the holder of the interest is a non-exempt entity;
- o Privately operated concessions on government property which is generally available to the public should continue to be exempt, e.g., at public airports, marinas, subways, etc.;
- o Eligible possessory interests should be taxed on a property tax basis;
- o If existing contractual agreements do not take into account the possibility of taxation, possessory interests could be phased into full tax liability in annual increments of 20%, achieving full taxation in five years. The phase-in would be interrupted and full taxation immediately established if the possessory interest contract or lease were renegotiated during the five years.

Fiscal Impact Analysis

Due to several factors, it is difficult to precisely estimate the potential fiscal effects of possessory interest taxation in New York State. Although the data gathered for this report is the most comprehensive compilation currently available, it is anticipated that there are significant other possessory interests yet to be discovered. Some of the data, especially that received from the largest public authorities, represents only generalized, aggregate overviews. Also, several of the properties held by possessory interests currently have payments-in-lieu-of-taxes made on them; the exact extent and amount of these payments are frequently undefined.

We estimate that if all possessory interests in state and federal property in New York were currently taxed, the total annual statewide revenues would be between 55 and 65 million dollars. If current estimated payments-in-lieu-of-taxes are deducted and the

assumption is made that concessions in public places will be exempted, additional revenue sources would provide 13-14 million dollars. This difference is due primarily to the fact that the Port Authority of New York and New Jersey is currently paying 44 million dollars annually to the localities in which its properties are located. In this respect, the Port Authority is an example of a government entity which acknowledges and compensates for the local service burden created by exempt government properties in private use.

The 13-14 million dollars in additional property tax revenue would come from possessory interests in:

Federal property (not including \$50,000 from concessions)	\$7,500,000
State Public Authority property (not including \$100,000 from concessions)	\$5,500,000
State Agency property (not including \$350,000 from concessions)	\$ 421,000

Because its standard contracts usually contain a tax pass-back clause, the federal government itself would have to bear the tax burden caused by its possessory interests. However, the installations which would have the greatest tax liability have all been established for years if not decades -- years of tax exempt existence during which the property users and the government have benefited and profited from local government services. Meanwhile, the federal government has been paying taxes on its property and possessory interests in other states and locales. There is no reason to expect that the relatively small cost increase of 7 1/2 million dollars in New York will create any serious problems. This increase seems especially insignificant when contrasted with the annual cost (over \$138 million in fiscal year 1980-81) of operating just one federal installation -- the Knolls Atomic Power Laboratory in Niskayuna.

Tax liability on possessory interests in public authority property will probably vary from specific situation to specific situation, depending on individual contracts. Several of

the authorities (especially the Metropolitan Transportation Authority) may have pre-established agreements with their local governments which would preclude the payment of property taxes. If taxation legislation were to include a clause allowing long standing possessory interests to be phased into full tax liability over a period of years, tax assumption would be made easier. Some contracts could, no doubt, also be renegotiated to further avoid a sudden large increase in costs for either the authority or the lessee. Anyway, Table 4, Appendix C, indicates that many public authority lessees may be enjoying lower than market rents due to the lack of a property tax expense. Taxation of these possessory interests would merely establish equity relative to other taxpaying private concerns.

Possessory interests in state agency property are the least significant of the three categories. The net revenue estimate of \$400 to \$450 thousand annually (assuming that public concessions are exempted) would probably be somewhat offset by current tax payments. The State presently pays either full or partial property taxes on 87% of its real property (primarily land) statewide. Several of the possessory interests listed in Table 3, Appendix B are on state property that is traditionally taxable (e.g. forest product leases on reforestation land and oil and gas leases on park land). A sample of several hundred state agency contracts, provided by the Department of Audit and Control, generally proved that state lessees pay less than market level rents. Though nearly all these leases and licenses are offered on a bid basis, the bidders realize that there usually isn't a property tax to be paid. Meanwhile, taxpayers in the community are experiencing higher taxes to pay for the services provided these properties. An exemption for state owned land is sometimes justifiable, but there is no justification for exempting possessory interests in state property used for private, non-exempt purposes. Whether the State or the lessee would bear the burden of possessory interest taxation would depend on contract negotiations.

Table 1, on the next few pages lists, by locality, the potentially taxable possessory interests in federal and public authority property. Detailed descriptions of data collection and estimate methodologies are to be found in Appendices A and C. State agency property

is not included because, although the associated potential tax revenues are relatively small, the number of state revenue contracts is unmanageably large. It was only possible to gather state agency data by general category of possessory interests (see Table 3, Appendix B). Suffice it to say that possessory interests in state agency property are as numerous, diverse and as widely distributed as state property itself.

Table 1. Possessory Interests in Federal and State Public Authority Real Property by Location, 1982.

<u>Location</u>	<u>Owner</u>	<u>Lessee/Contractor</u>	<u>Estimated Potential Tax</u>
Albany County City of Albany	Albany Port Commission	Various	\$ 94,000 (split with Rensselaer)
Broome County Johnson City	U.S. Air Force	General Electric	215,600
Clinton County Keesville	U.S. Post Office	Northern Insurance	470
Erie County Buffalo Buffalo Cheektowaga	U.S. Air Force Niagara Frontier Transp. Authority Niagara Frontier Transp. Authority	Curtiss-Wright Various Various	85,800 139,000 999,900
Jefferson County Alexandria Bay Wilma and Champion	Thousand Island Bridge Authority U.S. Army	Various Niagara Mohawk	164,750 260
New York City All boroughs and surrounding counties Manhattan and several boroughs Manhattan Manhattan Manhattan Brooklyn	Metropolitan Transp. Authority Port Authority of N. Y. and N. J. Thruway Authority N. Y. S. Teacher's Retirement System U.S. Post Office Waterfront Commission of N. Y. (sublease of Port Authority property)	Various Various N/A Fisher-Park Lane Co. Kinney Parking System John W. McGrath Corp.	4,500,000* 44,000,000* 11,000 688,000* 1,100 3,300
Monroe County Rochester	U.S. Navy	Eastman Kodak	198,000
Nassau County Bethpage	U.S. Navy	Grumman Aircraft	999,000

* Indicates that either full or partial payments-in-lieu-of-taxes are being made.

Table 1. Possessory Interests in Federal and State Public Authority Real Property by Location, 1982.

<u>Location</u>	<u>Owner</u>	<u>Lessee/Contractor</u>	<u>Estimated Potential Tax</u>
Niagara County	U.S. Air Force	Iroquois Telephone	\$ 150
Cambria	Niagara Falls Bridge Commission	Various	1,890
Niagara Falls	N.Y.S. Power Authority	Moore Business Forms	5,000
Niagara Falls	Niagara Falls Bridge Commission	Various	1,890
Lewiston	U.S. Air Force	Bell Aerospace	82,500
Porter	Niagara Frontier Transp. Authority	Various	8,000
Niagara & Wheatfield			
Oneida County	Central N.Y. Market Authority	Various	15,000
Utica	U.S. Air Force	Edward Hjorst	220
Verona			
Onondaga County	N.Y.S. Teacher's Retirement System	General Electric	110,000*
Dewitt	Central N.Y. Market Authority	Various	27,000
Syracuse	Central N.Y. Transportation Authority	N/A	700
Syracuse	Industrial Exhibit Authority	Various	53,000
Syracuse	U.S. Air Force	N.Y. Telephone	5,800
Orange County	U.S. Army	Various	5,560
West Point			
Oswego County	Port of Oswego Authority	Various	15,280
Oswego	Port of Oswego Authority	Various	3,630
Scriba			
Rensselaer County	Albany Port Commission	Various	94,000
Rensselaer	U.S. Post Office	Tri City Manpower	(split with Albany) 400
Troy			

* Indicates that either full or partial payments-in-lieu-of-taxes are being made.

Table 1. Possessory Interests in Federal and State Public Authority Real Property by Location, 1982.

<u>Location</u>	<u>Owner</u>	<u>Lessee/Contractor</u>	<u>Estimated Potential Tax</u>
St. Lawrence County			
Lisbon	N.Y.S. Power Authority	Various	250
Louisville	N.Y.S. Power Authority	Various	23,200
Massena	St. Lawrence Seaway Authority	Various	8,600
Ogdensburg	Ogdensburg Bridge & Port Authority	Various	160,500
Russell	N.Y.S. Power Authority	Phillip Tabakaru	30
Waddington	N.Y.S. Power Authority	Twin Brooks Golf Club	150
Saratoga County			
Malta	N.Y.S. Energy Research & Dev. Auth.	Various	50,000
Milton	U.S. Dept. of Energy	General Electric	1,760,000
Schenectady			
Niskayuna	U.S. Dept. of Energy	General Electric	2,640,000
Suffolk County			
Brookhaven	U.S. Dept. of Energy	Various	8,800
Calverton	U.S. Navy	Grumman Aircraft	1,419,000
Sayville	Federal Aviation Agency	N/A	22,000
Ulster County			
Galeville	U.S. Army	Various	320
Westchester County			
Cortlandt	N.Y.S. Energy Research & Development Authority	Con-Edison	30,000

* Indicates that either full or partial payments-in-lieu-of-taxes are being made.

Summary

While the subject of possessory interest taxation is perhaps too esoteric or complex for general consumption, the principles that make taxation feasible and justifiable are very basic. From an objective viewpoint, it is clear that when a non-exempt entity utilizes exempt real property, a tax should be due the locality in which that property is located. The issue of exempt ownership is immaterial in such circumstances. The advantages of taxation are obvious and the objections have been either refuted or successfully mitigated in this report.

The report's proposal has been designed to answer all the questions raised previously concerning the taxation of possessory interests. It also anticipates several issues which could become stumbling blocks to legislation. The report itself has provided a comprehensive background to the subject and has attempted to assemble the most complete data base possible.

The federal government will probably see an increase in costs as they are generally contractually bound to assume tax liability. New York State government may bear some of the burden, depending upon leasing agreements, but this will be offset somewhat by current taxes paid. The tax need not, as some have claimed, disrupt any of the economic structure of the State, nor create hardships for particular sectors (i.e., public authorities).

Whichever way New York chooses to deal with the potential for the taxation of possessory interests, this report has established that there are no realistic objections which cannot be effectively dealt with; the way has been paved for New York to right an inequity in its tax system and to significantly bolster the tax bases of many local governments.

APPENDIX A

Federal Property in New York

New York ranks near the bottom (only Connecticut, Iowa and Maine are lower) in terms of federal property as a percentage of total state acreage. The U.S. government owns only 8/10 of one percent of the land in New York, compared with 91% of Alaska, 86% of Nevada, 63% of Utah and 46% of California. In total, 32.7% of all acreage in the United States is owned by the federal government.

The 0.8% of New York which is federally owned was, in 1979, composed of 0.2 million acres of land and 99.1 million square feet of buildings. The total acreage was divided between 202,482 rural acres and 43,433 urban acres. There were 1,094 installations with 9,347 buildings on these acres*.

The federally owned acres and buildings are relatively valuable, however, as New York ranks fifth (preceded only by California, Texas, Virginia and Washington) in federal property value as measured by the Advisory Commission on Intergovernmental Relations (ACIR).** The ACIR estimates the total value of federal property in New York to be 8.6 billion dollars. The General Services Administration (GSA) uses a cost estimate (which is essentially based on original cost and therefore more conservative) but still ranks New York as 14th with a total cost of 2.5 billion dollars.

In volume 2 of its 1975 report, the Temporary State Commission on State and Local Finances commented extensively on possessory interests in federal property in New York. After a fairly detailed discussion of the legal background and a brief analysis of the economic implications, the Commission recommended that:

* U.S. General Services Administration, "Summary Report on Real Property Owned by the United States throughout the World as of September 30, 1979", Washington, D.C.

** Advisory Commission on Intergovernmental Relations, "Payments in Lieu of Taxes on Federal Real Property", Washington, D.C., September, 1981.

"The State acting as the coordinating agency with local governments, should determine the impact of leased federally-owned properties on both the local tax base and the State economy. The State should then act to develop with the federal government acceptable arrangements to address the particular impact of these properties on the local tax base."*

The Commission's comments drew upon the veto message to S.1732-A as a source and raised several of the objections discussed in this report. In a sense, this report represents a result of and a response to the Commission's analysis and recommendation.

An appendix to the Commission's report listed on several pages federal properties contracted out to or leased by the private sector. Using that listing as a basis for further research, this report contains a more comprehensive listing. Virtually every federal agency with an office in New York was contacted, though, of course, not all had jurisdiction over property. Table 2, following, details the results of those contacts. Responses varied, though a standardized data request was used. The quality of property descriptions varied widely, but the contract fee or rent paid was always obtained. Valuation methods varied from property to property; whenever possible, a local recent appraisal or market value estimate was used, but several properties were valued using the income, cost or leasehold value methods. No deduction from value was made for the owner's remainder interest. The appropriate local 1979-80 full value tax rates were then applied to both direct and derived values and the result increased by 10% to reflect the effect of inflation since 1980.

No value is shown for concessions in federal parks and historic sites as the expectation is that these will remain exempt. Table 2 may be realistically considered only a partial listing, due both to the quality of some data responses and to the fact that the federal government has been encouraging an active out-lease program for unused property.

Mr. Alan Greenberg of the New York office of the GSA commented in a phone conversation that the federal government is now making a strong effort to lease as much of

* "The Real Property Tax", Report of the Temporary State Commission on State and Local Finances, Volume 2, page 99, Albany, 1975.

its vacant property as possible in an effort to generate sorely needed revenues. The obvious conclusion is that possessory interest taxation involving federal property in New York would probably significantly increase many tax bases statewide immediately and that these effects would increase over time.

Table 2. Federal Property in New York Contracted Out to or Leased to the Private Sector in 1982, by Agency.

Owner Agency, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
DEFENSE DEPARTMENT					
<u>Navy</u>					
Calverton, Suffolk County	Grumman Aircraft	Naval Industrial Reserve Plant	N/A	46 million	\$1,419,000
Bethpage, Nassau County	Grumman Aircraft	Naval Industrial Reserve Plant	N/A	25 million	999,000
Rochester, Monroe County	Eastman Kodak	Naval Industrial Reserve Ordnance Plant	N/A	5.2 million	198,000
<u>Army</u>					
Fort Drum, Jefferson County Towns of Wilma & Champton	Niagara Mohawk	Dam & Power Supply 64 acres	\$ 64	9,600	260
Galeville Training Site Ulster County	Frank Kosteczko	Agricultural 17 acres	211	12,750	310
Galeville Training Site Ulster County	Central Hudson Gas & Electric	Easement 0.24 acre	N/A	250	10
West Point, Orange County	Day Line Inc. & Hudson River Tours	Portion of a Pier	1,625	10,000	360
West Point, Orange County	Orange and Rockland	Easement 110 acres	N/A	110,000	4,000
West Point, Orange County	Westshore Railroad	Right of Way 34 acres	N/A	34,000	1,200

Table 2. Federal Property in New York Contracted Out to or Leased to the Private Sector in 1982, by Agency.

Owner Agency, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
<u>Air Force</u>					
Griffiss Air Force Base Verona, Oneida County	Edward Hjorst	Christmas Tree Plantation 33.9 acres	\$ 170	\$ 7,600	\$ 220
Hancock Field Syracuse, Onondaga County	New York Telephone	Communication Office 10,354 sq. ft.	26,938	150,000	5,800
Lockport Air Force Base Cambria, Niagara County	Iroquois Telephone	Concrete Bldg., one story, 900 sq. ft.	145	6,500	150
Plattsburgh Air Force Base Plattsburgh, Clinton County	N.Y.S. Electric and Gas Company	Power Line Easement .28 acres	940	85	-
Watertown Air Force Base Watertown, Jefferson County	New York Telephone	Right of Way .225 acres	23	35	-
Air Force Plant #38 Porter, Niagara County	Bell Aerospace	Defense Contracts	Free use in exchange for lower prices	3,788,000	82,500
Air Force Plant #39 Buffalo, Erie County	Curtis-Wright	Airplane Parts	Maintenance work for rent	2,200,000	85,800
Air Force Plant #59 Johnson City, Broome County	General Electric	Parts Manufacture	453,500	5,700,000	215,600

Table 2. Federal Property in New York Contracted Out to or Leased to the Private Sector in 1982, by Agency.

Owner Agency, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
DEPARTMENT OF ENERGY					
Brookhaven Laboratory Suffolk County	Paul Lindsay	Service Station	\$8,400-16,200	\$ 200,000	\$ 6,600
Brookhaven Laboratory Suffolk County	Barclay's Bank	Bank Bldg.	17,550	75,000	2,200
Knolls Atomic Power Lab Niskayuna, Schenectady County	General Electric	Atomic Research	3 million	78 million	2,640,000
Kesselring Atomic Power Lab Milton, Saratoga County	General Electric	Atomic Research	486,000	76 million	1,760,000
FEDERAL AVIATION AGENCY					
Sayville, Suffolk County	Farmer	Agricultural	1,800	497,000	22,000

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

HUD owns a number (approximately 20) of apartment buildings and complexes in New York, the majority of which are in the greater New York City area. Together these locations contain over 2,000 residential units and several commercial spaces. All buildings and complexes are managed by private contractors who take a percentage of the rents as their fee. However, HUD claims that property taxes are paid directly to localities from HUD's main office in Washington. Further details may be obtained by contacting HUD in New York City at (212) 264-4127.

Table 2. Federal Property in New York Contracted Out to or Leased to the Private Sector in 1982, by Agency.

Owner Agency, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
DEPARTMENT OF THE INTERIOR					
NATIONAL PARK SERVICE					
<p>The Park Service operates a number of historical sites and parks in New York. In the Manhattan area, the Park Service supervises the Castle Clinton, Federal Hall, General Grant and Hamilton Orange National Monuments, as well as Theodore Roosevelt's Birthplace and the Statue of Liberty. Elsewhere in the State are the Fire Island National Seashore, Fort Stanwix National Monument (Rome), Gateway National Recreation Area (Brooklyn), Franklin D. Roosevelt Home (Hyde Park), Martin Van Buren Historic Site (Kinderhook), Sagamore Hill Historic Site (Oyster Bay), Saratoga National Park (Stillwater), Theodore Roosevelt Inaugural Site (Buffalo), Vanderbilt Mansion (Hyde Park) and the Eleanor Roosevelt Historic Site (Hyde Park).</p> <p>It is likely that several of these locations would have possessory interests in the form of concessions, campgrounds, etc. Due to the expectation that these possessory interests would be exempt, detailed data was not obtained. It is, however, estimated that, if taxed, these concessions could generate approximately \$50,000 in tax revenues annually.</p>					
NIAGARA FALLS BRIDGE COMMISSION					
Rainbow Bridge Niagara Falls, Niagara County	C. J. Tower and Sons, Inc.	Customs Broker Office 150 sq. ft.	\$1,080 minimum	\$ 4,000	\$ 150
Whirlpool Rapids Bridge Niagara Falls, Niagara County	F. W. Myers & Co.	Customs Broker Office 150 sq. ft.	1,080 minimum	4,000	150
Whirlpool Rapids Bridge Niagara Falls, Niagara County	C. J. Towers & Co.	Customs Broker Office 150 sq. ft.	900	3,600	140
Whirlpool Rapids Bridge Niagara Falls, Niagara County	C. J. Towers & Co.	Customs Broker Office 1,880 sq. ft.	7,520	34,500	1,300
Whirlpool Rapids Bridge Niagara Falls, Niagara County	Wm. Neal, Inc.	Customs Broker Office 150 sq. ft.	1,080 minimum	4,000	150

Table 2. Federal Property in New York Contracted Out to or Leased to the Private Sector in 1982, by Agency.

Owner Agency, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
Lewiston — Queenston Bridge Lewiston, Niagara County	Buffalo Custom-house Brokers	Customs Broker Office 45 sq. ft.	\$1,080 minimum	\$ 1,500	\$ 60
Lewiston — Queenston Bridge Lewiston, Niagara County	C.J.Towers & Co.	Customs Broker Office 765 sq. ft.	6,885	26,000	1,000
Lewiston — Queenston Bridge Lewiston, Niagara County	E.C. McAfee	Customs Broker Office 50 sq. ft.	1,080 minimum	1,700	70
Lewiston — Queenston Bridge Lewiston, Niagara County	John Carr, Inc.	Customs Broker Office 60 sq. ft.	1,080 minimum	2,000	80
Lewiston — Queenston Bridge Lewiston, Niagara County	F.W. Myers Co.	Customs Broker Office 330 sq. ft.	3,630	11,200	430
Lewiston — Queenston Bridge Lewiston, Niagara County	W.R. Filbin Co.	Customs Broker Office 45 sq. ft.	1,080 minimum	1,500	60
Lewiston — Queenston Bridge Lewiston, Niagara County	Wm. Neal, Inc.	Customs Broker Office 151 sq. ft.	1,661	5,100	190
POST OFFICE					
400 Broadway Troy, Rensselaer County	Tri-City Manpower	Office 200 sq. ft.	2,340	8,500	400
7 Main Street Keeseville, Clinton County	Northern Insurance Co.	Office 1,100 sq. ft.	2,550	15,000	470
Corner Canal St. and Church St. New York City, (Manhattan)	Kinney Parking System	Parking Lot 2,500 sq. ft.	6,000	25,000	1,100

Table 2. Federal Property in New York Contracted Out to or Leased to the Private Sector in 1982, by Agency.

Owner Agency, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
ST. LAWRENCE SEAWAY AUTHORITY					
Massena, St. Lawrence County	Ammex Warehouse	Duty Free Liquor store 30' x 30' Bldg. on 16.9 acres	\$ 85,000	\$ 330,000	\$ 6,600
Massena, St. Lawrence County	Vista House	Tourist Shop	27,000	100,000	2,000

APPENDIX B

Possessory Interests in State Agency Property

The tables in Appendices B and C, following, represent the only known listings of possessory interests in state owned property. Data for Table 3 in Appendix B was extracted from the statewide Revenue Contract Report, prepared by the Department of Audit and Control. Unfortunately, the Revenue Contract Report does not provide information on property location. Such specifics can be obtained from the individual contracts (several thousand). As mentioned in the report, the State currently pays taxes on over 87% of its agency property. Such payments should be deducted appropriately from potential possessory tax revenues. No attempt was made to determine which properties currently have payments made on them, though several types (forest product leases in reforestation areas and oil and gas leases in parks) are on land that is typically taxable.

Aggregate financial data on concessions was included as it was impossible to determine, without location data, which ones were publicly accessible. Publicly accessible concessions would not be subject to possessory interest taxation under this proposal. It can be roughly estimated that this would reduce the total potential tax revenue by \$350,000.

All possessory interests in Table 3 were valued by a leasehold value method, the details of which are in a footnote to the table. No deduction from value was made for the owner's remainder interest.

Table 3. Summary of Real Property Owned by New York State Agencies and Leased or Licensed to the Private Sector 1981-82¹ by Property Type.

<u>Property Type</u>	<u>Annual Rent or License Fee</u>	<u>Estimated Property Value²</u>	<u>Estimated Potential Annual Property Tax³</u>
1. <u>Small Concessions</u> (including food, ski, and golf shops, boat tours, riding stables, State Exposition booth rentals, etc.)	\$ 3,078,000	\$ 11,666,000	\$350,000
2. <u>Restaurants, Large Food Concessions and Commercial rentals</u> (including institutional food service, banks, parking lots, various retail stores, gas stations, etc.)	2,397,000	9,085,000	273,000
3. <u>Land (including easements) and Building (total and partial) Rentals</u>	822,000	3,115,000	93,000
4. <u>Oil and Gas Leases</u> (exploration, pipeline, and storage)	426,000	1,751,000	53,000
5. <u>Entertainment (at State Expo)</u>	310,000	282,000 ⁴	9,000
6. <u>Forest Products (sale of standing timber)</u>	270,000	246,000 ⁴	7,000
7. <u>Miscellaneous (including space for vending machines, TV's, phone booths, silver recovery from X-Rays and park lodge operations)</u>	314,000	1,190,000	36,000
TOTALS	\$ 7,653,000	\$ 27,335,000	\$821,000

¹Data Source - Contract Revenue Report, N.Y.S Dept. of Audit & Control, March 1982.

²Calculated on a leasehold value basis, assuming a 5 year lease and a 10% discount rate.

³Calculated assuming a 3% average full value tax rate

⁴Short term lease means lower leasehold value.

APPENDIX C

Possessory Interests in State Public Authority Property

Data for Table 4, following, was gathered via a standard data request letter sent to large public authorities, commissions and other state franchised organizations. Responses varied from the extremely detailed to the general overview. For several authorities (especially the Thruway, Port of New York and Metropolitan Transportation Authorities) the work required to prepare comprehensive data on their leased holdings was too time consuming and expensive. For such cases, only an aggregate value figure and an indication of the types of property use were required.

Surprisingly, very few of the forty plus public authorities, commissions, corporations, etc. contacted evinced any opposition to the concept of possessory interest taxation. The letter sent to them requesting data contained several questions designed to provide them the opportunity to estimate effects and make their position on the issue clear. Among those that did respond to the questions:

1. The Industrial Exhibit Authority felt that the burden of any tax would fall upon the Authority itself.
2. The Energy Research and Development Authority stated that, "Possessory interest taxation below 50% of the applicable real property tax, in our judgement, would not have a material adverse effect on the conduct of these businesses."
3. The Waterfront Commission of New York Harbor claimed that, "Any taxation policy that increases costs in the Port of New York would definitely have an adverse effect on our Port." Apparently the Commission felt that other ports on the Atlantic and South Gulf coasts would gain a competitive advantage.
4. The Battery Park City Authority maintained that, "The entire development of Battery Park City would be imperiled if a tax on the possessory interest of the developers were to be imposed. Such a possessory interest tax would also reduce the income (and therefore the security) available for the repayment of BPCA's moral obligation bonds." (See Table 3, page C.3.)

Aside from these comments, the authorities, etc. voiced no opposition to the idea of possessory interest taxation. In fact, as a group, their replies to the data

request were generally prompt and detailed and their attitude cooperative. Only one authority (the N.Y. Job Development Authority) failed to provide reasonably complete data. However, the quality of the property descriptions varied widely, though the contract rent was always listed. Valuation methods varied from property to property; whenever possible, a local recent appraisal or market value estimate was used, but several properties were valued using the income, cost or leasehold value methods. No deduction was made for the owner's remainder interest. The appropriate local 1979-80 full value tax rates were then applied to both direct and derived values and the results increased by 10% to reflect the effect of inflation since 1980.

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
ALBANY PORT DISTRICT COMMISSION					
Albany and Rensselaer	Thirty plus, including: Albany Asphalt Alco Equipment Anvil Fence Capitol Bag & Waste CIBRO Petroleum Goodyear Industrial Molasses Pacific Molasses Seaboard Allied Sonny's Truck Repairs United Brands Worldwide Volkswagen	Various	\$ 525,000	\$ 2,000,000	\$ 94,000

BATTERY PARK CITY AUTHORITY

Manhattan

The BPCA has been coordinating the development of a landfill site near the World Trade Center. The Authority is currently, and will be, utilizing several sub-lessees to create a commercial and residential complex. The sub-lessees are required to make tax equivalency payments to BPCA, though it is unclear whether these payments are then transferred to the city government or used to pay off BPCA's bond obligations.

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
BUFFALO & FORT ERIE PUBLIC BRIDGE AUTHORITY The Peace Bridge, Buffalo Niagara County	None Indicated				
The Authority claims that it is not truly tax exempt due to legislation which requires payment to the City of Buffalo of an amount equal to taxes paid to the Town of Port Erie by the Canadian government. Most recent annual payment was \$130,000					
CENTRAL N.Y. REGIONAL MARKET AUTHORITY					
The Authority operates two markets, one in Syracuse which it owns and one in Utica, where it rents the land from the city for \$1 per year. The Authority pays over \$10,000 in water and sewer taxes on the Syracuse Market.					
Syracuse Market Onondaga County		Buildings & land (including wholesalers, bank, office, restaurant and permanent farmer's market)	\$240,000	\$ 700,000	\$27,000
Utica Market Oneida County		Buildings (including wholesale houses, farmer's market and restaurant)	29,000	300,000	15,000
CENTRAL N.Y. REGIONAL TRANSPORTATION AUTHORITY Office Building - 614 S. Salina Syracuse Onondaga County	Insurance Company	Office Space 500 sq. ft.	4,800	17,000	700

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
METROPOLITAN TRANSPORTATION AUTHORITY (MTA)					
New York City (all 5 boroughs) Plus, Nassau, Suffolk, Westchester, Putnam, and Dutchess Counties	Various		Approx. 20-25 million	100 million	\$4,500,000
<p>The MTA consists of several smaller agencies, including the Long Island Railroad and the Triboro Bridge Authority. Most of these agencies already share toll and fare revenues with the appropriate local governments. A detailed study of all the leases and contractual clauses of the MTA is currently beyond the scope of this report. Also, the property occupied by the New York City Transit Authority is owned by New York City, which is the only taxing authority which might possibly levy a possessory interest tax.</p>					
NIAGARA FRONTIER TRANSPORTATION AUTHORITY					
Greater Buffalo International Airport County of Erie Town of Cheektowaga	Various	Various (Includes land, building space rentals, food and beverage concessions, parking lots, airline landing fees, advertising space rentals, general aviation, and auto rental concessions.)	\$ 7,927,600	35 million	\$990,000
Niagara Falls International Airport Niagara County Towns of Niagara & Wheatfield	Various	Various (Includes land, building space rental, auto rentals, and aircraft parking.)	74,100	280,000	8,000

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
Port of Buffalo County of Erie City of Buffalo	Various (Includes dockage and wharf use, building space rentals, and advertising.)	Various	\$ 697,300	\$ 2,600,000	\$100,000
Metropolitan Transportation Center County of Erie City of Buffalo	Various (Includes building space rentals, food and beverage concessions.)	Various	264,000	1,000,000	39,000
N.Y.S. ENERGY RESEARCH & DEVELOPMENT AUTHORITY					
Saratoga Research & Development					
Malta - Saratoga County					
Parcel A	Mechanical Technologies	Energy Research & Development	98,700	500,000	15,000
Parcel B	Wright-Malta	Energy Research & Development	90,000	250,000	7,000
Parcel C	Power Technology	Energy Research & Development	55,000	195,000	6,000
Parcel D	General Electric	Energy Research & Development	75,000	730,000	22,000

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
Indian Point Outfall Structure Town of Cortlandt Westchester County	Con-Edison	Structure for Cooling Water used in Nuclear Reactor	\$ 172,491	\$ 600,000	\$ 30,000
Various Spent Fuel Storage Pools	Various Utility Companies	Lease arrangements currently under negotiation			
N. Y. S. INDUSTRIAL EXHIBIT AUTHORITY					
Syracuse, Onondaga County	Various	Restaurant, Exhibits, etc.	During State Fair (8/28-9/1) \$504,000 During rest of year \$277,000	458,000 1,050,000	16,000 37,000
N. Y. S. POWER AUTHORITY					
Niagara Falls, Niagara County	Moore Business Forms	Parking Lot 1.5 acres	5,000	128,000	5,000
Louisville, St. Lawrence County	Massena Country Club	Golf Course 202 acres	2,000	903,000	22,000
Waddington, St. Lawrence County	Twin Brooks Golf Club	Golf Course 22 acres	150	5,500	150
Louisville, St. Lawrence County	St. Lawrence Yacht Club	Yacht Club 2.5 acres	100	50,000	1,200
Russell St. Lawrence County	Phillip Tabakaru	Agriculture 10 acres	20	1,250	30

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
Lisbon, St. Lawrence County	Willard & Willis LaLone	Agriculture 1.24 acres	\$ 10	\$ 930	\$ 30
Lisbon, St. Lawrence County	Kathryn Kennedy	Agriculture 1 acre	10	750	20
Lisbon, St. Lawrence County	Mahton T. Clements	Agriculture 10 acres	30	7,500	200
N.Y.S. TEACHERS RETIREMENT SYSTEM					
Land under 299 Park Avenue New York City	Fisher-Park Lane Company	N/A	1,378,000	15,311,000	688,000 Tenant pays property taxes now
Buildings 5 and 5A General Electric Plant Dewitt, Onondaga County	General Electric	N/A	256,800	3,033,000	110,000 Tenant pays property taxes now
N.Y.S. THRUWAY AUTHORITY					
Various	Various (garden plots, concessions, etc.)	The Thruway claims that its leased properties are too diverse, numerous, and widespread to readily catalog into a list.			
Parking Space New York City	N/A	Equipment parking 5.1 acres	66,450	250,000	11,000

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
N. Y.S. URBAN DEVELOPMENT CORPORATION (U.D.C.)					
<p>U.D.C. was originally organized to finance low to middle income housing projects, but during the financial hard times of the mid 70's, U.D.C. became primarily concerned with the economic development of industrial/commercial projects. U.D.C. does not go into a project unless requested by the local government. All approved projects involving U.D.C.-owned property have payments-in-lieu-of-taxes arrangements with the local governments.</p>					
THE PORT AUTHORITY OF N.Y. and N.J.					
<p>The Port Authority currently makes payments in-lieu-of-taxes to and also shares revenues with N.Y. City. The 1982 budget for these payments amounted to \$43,960,000.</p>					
LaGuardia Airport	Various	Various	\$71,308,070	\$270,000,000	12,100,000
John F. Kennedy International Airport	(including food & beverage concessions, parking lots, airline rentals, oil companies, etc.)	Various	147,513,700	556,000,000	25,036,000
	Various	Helicopter Operations	33,288	125,000	5,600
30th St. Heliport	Various	Helicopter Operations	142,493	540,000	24,200
Downtown Manhattan Heliport	Various	Helicopter Operations	124,896	470,000	21,100
Columbia St. Marine Terminal	Various	Dockage, Office and Warehouse space			

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
THE PORT AUTHORITY OF N.Y. and N.J. (continued)					
Brooklyn Marine Terminal	Various (including dockage, wharf usage, exclusive use tenants and machine services)	Various	4,316,303	16,000,000	71,500
N.Y.C. Passenger Ship Terminal	Various (including parking lots, dockage, wharf usage, etc.)	Various	3,939,329	15,000,000	671,000
N.Y. Union Motor Truck Terminal	Various Commercial tenants and platform leases	Commercial tenants and platform leases	710,971	2,700,000	121,000
Port Authority Bus Terminal	Various (including general consumer services, parking, commercial tenants and share of ticket sales)	Various	17,186,621	65,000,000	2,915,000
George Washington Bridge Bus Terminal	Various (including general consumer services, parking lots, depart fees and ticket sales)	Various	868,907	3,300,000	148,500
World Trade Center	Various (including general consumer service food concessions, freight brokers, manufacturers, banks and commodities brokers)	Various	89,681,700	34,000,000	1,529,000

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
OGDENSBURG BRIDGE AND PORT AUTHORITY					
Ogdensburg St. Lawrence County	Mitel Corp.	Manufacturing	114,124	1,180,000	40,700
	C-Tech	Sonar Equipment	26,650	400,000	13,900
	High-Tech	Electronic Assembly	5,000		
	Consolidated Computer	Data Entry Systems	19,875	600,000	20,800
	Tech-5	Electronic Assembly	12,450		
	Mitel Training Ctr.	Electronic Assembly	70,000	800,000	27,700
	Compas & Epitech	Electronic Assembly	87,000	900,000	31,100
	Clinton AEW Corporation	Commercial Airline	3,800	14,000	500
	St. Lawrence Aviation	Commercial Airline	1,200	4,500	150
	Mitel Corp.	Corporate Hanger	18,000	155,000	5,400

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
OGDENSBURG BRIDGE AND PORT AUTHORITY (continued)					
	Dontar Packaging	Storage	36,000	135,000	4,600
	St. Lawrence Railroad	Railroad Lines	5,000	20,000	700
	E. Dillingham Inc.	Office 1,962 sq. ft.	10,200	38,000	1,300
	A.N. Deringer, Inc.	Office 746 sq. ft.	3,566	13,000	450
	Ammex, Inc.	Export Sales 3,000 sq. ft.	100,000	380,000	13,200
PORT OF OSWEGO AUTHORITY					
Cement Distribution Facility Oswego, Oswego County	Independent Cement Corp.	Cement Distribution 19,194 sq. ft.	at least 24,000	125,000	4,500
Petroleum Distribution Facility Oswego, Oswego County	Metropolitan Petroleum Co.	Petroleum Distribution 43,526 sq. ft.	16,000	85,000	3,100
Oswego Marina Oswego, Oswego County	Oswego Marina, Inc.	Marina 100,000 sq. ft.	15,000	80,000	2,900
Admiral Woolsey's Restaurant Oswego, Oswego County	August Vona	Restaurant 10,000 sq. ft.	22,000	115,000	4,200

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
Warehouse Scriba, Oswego County	Alcan Aluminum Corporation	Warehouse 228,000 sq. ft.	17,000	95,000	3,000
House and lot Scriba, Oswego County	Frederick DeLong	Residence 20,000 sq. ft.	900	20,000	630
Schuler Coal Company Oswego, Oswego County	Joseph Barrett	Coalyard 20,000 sq. ft.	720	16,000	580
THOUSAND ISLAND BRIDGE AUTHORITY The authority currently pays \$82,000 in-lieu-of-taxes, though not necessarily on the property held by possessory interests.					
Alexandria Bay Jefferson County	Ammex Store	Duty free	380,000	1,400,000	55,000
	Boldt Castle Concession	Fast Food	30,000	110,000	4,400
	Authority Employees	Residences (2)	5,400	40,000	450
	Authority	Mobile Home	2,100	10,000	4,000
	Customs Brokers	Offices 2,496 sq. ft.	17,500	100,000	39,600
	Anchor Motor Freight	Parking Lot	7,200	27,000	1,100
	Various	Boat Storage	1,400	6,000	200

Table 4. Public Authority Property in New York Leased to the Private Sector in 1982, by Owner.

Owner, Property Name and Location	Lessee/ Contractor	Property Type and Size	1982 Annual Rent or Fee	Estimated Property Value	Estimated Potential Annual Property Tax
WATERFRONT COMMISSION OF N.Y.					
100 Columbia Street Brooklyn	John W. McGrath Corp.	Building 4,446 sq. ft. Open space 11,476 sq. ft.	18,000	75,000	3,300

(Is sublet of property leased from Port Authority)

APPENDIX D

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

211.181 Taxation of lessees or users of tax-exempt property; exceptions; concessions.

Sec. 1. (1) When any real property which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a private individual, association or corporation in connection with a business conducted for profit, except where the use is by way of a concession in or relative to the use of a public airport, park, market, fairground or similar property which is available to the use of the general public, that lessees or users thereof shall be subject to taxation in the same amount and the same extent although the lessee or user were the owner of such property. The foregoing shall not apply to federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed or property of any state-supported educational institution, enumerated in Section 4 of Article 8 of the constitution.

(2) In counties of over 1,000,000 in order to determine whether a lessee or user at an airport is a concessionaire within the provisions of this act, and whether the use of real property used in connection with the concession operation is essential to the concession operation so as to come within the exception contained in this act, it is required that the following basic tests be met:

(a) It shall have the exclusive right and duty to render a necessary or customary service, based on a contract entered into requiring that it render goods or services either to the grantor or to the general public on behalf of the grantor;

(b) The service rendered must be available to the general public on a nondiscriminatory basis;

(c) Use of real property in connection with a service concession must be a necessary and integral part of the concession operation.

211.182 Assessment and collection; action of assumpsit.

Sec. 2. Taxes shall be assessed to such lessees or users of real property and collected in the same manner as taxes assessed to owners of real property, except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee or user to the township, city, village, county and school district for which the taxes were assessed and shall be recoverable by direct action of assumpsit.

APPENDIX E

Model Possessory Interest Taxation Bill

AN ACT to amend the real property tax law,
in relation to assessment and
taxation of lessees and users of
certain tax exempt property

The People of the State of New York, represented in the Senate and Assembly,
do enact as follows:

Section 1. The real property tax law is amended by adding a new paragraph i to subdivision twelve of section one hundred two to read as follows:

(i) The possessory interest of a private lessee or contractor which uses real property owned by the United States or the state of New York where the property would be subject to real property taxation if owned by such lessee or contractor, except where the use is by way of a concession which is available for the use of the general public and is located in or adjacent to a public airport, park, market, fairground, road, pier, marina, railroad, busline, subway or similar property which is available for the use of the general public.

§2. The section heading and subdivision one of section four hundred two of such law are amended to read as follows:

§402. United States or state property held under lease or contract [of sale].
1. Whenever the legal title of real property is in the United States, or in the state of New York, but the use, occupation or possession thereof is in a person, partnership, association or corporation, or his or its successor in interest, under a lease, contract [of sale], option or other agreement [whereby a right to acquire the premises through an option, a first privilege or a first refusal is granted, or whereby upon one or more payments the legal title thereto is to be or may be acquired by such person, partnership, association or corporation], such that the interest is a possessory interest

described in paragraph (i) of subdivision twelve of section one hundred two of this chapter, his or its interest in such real property shall be assessed and taxed [as] in the same amount and to the same extent as though the lessee, contractor or user were the owner of such real property and shall be entered in the assessment roll in the same manner as if such person, partnership, association or corporation held the legal title to such property, except for the addition to the description of the property of the name of the owner and of the words "interest under lease", "interest under contract", "interest under option", or other appropriate words descriptive of the interest in the property so assessed. [Such assessment shall be at the full value of such interest.]

§3. Subdivision two of section four hundred two of such law is amended to read as follows:

2. [The assessors shall add to the assessment roll opposite the description of any such interest a notation stating that the real property itself so owned by the United States, or by the state, is not to be taxed. Every notice of sale or other process and every conveyance or other instrument affecting the title to any such property, consequent upon the non-payment of any such tax, shall contain a statement that such legal title is not sold or to be sold or affected.] Taxes shall be assessed to the lessees, contractors or users of such real property and collected in the same manner as taxes assessed to owners of real property, except that such taxes shall not become a lien against the real property of the United States or of the state of New York. When due, such taxes shall constitute a debt due and owing from the lessee, contractor or user to the municipal corporation or special district for which the taxes were levied and shall be recoverable by action in supreme court.

§4. Possessory interests in existence on the effective date of this act shall be partially exempt from taxation for the next succeeding four years in accordance with

this section; provided, however, that 1) if the lease, contract, option or other agreement is renegotiated or renewed and such renegotiation or renewal becomes effective during those four years, the partial exemption shall not be available subsequent to the effective date of the new agreement, and 2) if the lease, contract, option or other agreement contains any provision assigning liability between the parties in the event that real property taxes are imposed, the partial exemption shall not be available to possessory interests created thereunder. Except in the instances set forth above, for the first taxable status date occurring subsequent to the effective date of paragraph (i) of subdivision twelve of section one hundred two, as added by this act, possessory interests shall be exempt from taxation by any municipal corporation in which located to the extent of eighty percent of the assessed value; for the second taxable status date, to the extent of sixty percent; for the third taxable status date, to the extent of forty percent; and for the fourth taxable status date, to the extent of twenty percent.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Underlined material is to be added;
Material in brackets is to be omitted.