21st Century Taxes for a 19th Century Government

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> "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it."
> *New Jersey State Constitution, Article I Section 2a.*

The proposal by the New Jersey Legislature to convene a constitutional convention to cut property taxes is proof that the lawmakers have raised the white flag of surrender in the war on property taxes. It would be wrong, however, to accuse the legislature of lacking the political courage to deal with the issue (assuming political courage is measured by raising taxes) it would be more accurate to say that New Jersey's political leaders have run out of ammunition fighting the wrong enemy.

The legislature's strategy to control property taxes for the past two generations has been to raise new revenue from broad based state taxes and then slavishly transfer those resources to local governments. For example, in 1966 the legislature passed a 3% sales tax. In 1970 the sales tax was increased to 5%. In 1976 the first General Income Tax (GIT) was passed with a top rate of 2.5% and a "constitutional guarantee" that its revenue would be dedicated to property tax relief. In 1982 the sales tax was increased to 6% and the top GIT rate was increased to 3.5%. Finally, in 1990 Governor Florio increased the sales tax to 7% and the top rate for the GIT to 7%. This tax increase triggered a tax revolt which ultimately cost the Democrat party both houses of the legislature in 1991 and Governor Florio his reelection bid in 1993. The new Republican legislature reduced the sales tax to 6% in 1992 and then Governor Whitman instituted her income tax cut which reduced the top rate to 6.39% in 1994. However, despite these tax cuts revenue flowed into the state treasury during the booming 1990's providing unprecedented state aid to local government. By Fiscal Year 2000 the GIT generated over $7 billion in revenue, and the sales tax over $5.5 billion.

Regardless of how much revenue was generated by these state taxes, however, property taxes continue to grow relentlessly. In 1983, the year after the legislature raised both the sales tax and the GIT, local governments collected just under $5 billion in property taxes. Ten years later property taxes had more then doubled to almost $11 billion. By 1997 gubernatorial candidate Jim McGreevey came within one percentage point of beating Governor Whitman by hammering away on the issue of out-of-control property taxes. However, when Governor McGreevey was elected in 2001 he inherited a slowing economy that caused a decline in GIT revenue. McGreevey dealt with this challenge by freezing state aid to local government, and demanding that local governments tighten their belts. Property taxes soared. Statewide the average 2002 property tax bill increased almost 7% in a year when the consumer price index increased only 1.2%.

Unfortunately, New Jersey relies on the property tax more than any other state in the nation with 47% of our state and local revenue coming from property taxes compared to the national average of 32%. New Jersey pays the highest per capita property taxes in the country and the second highest percentage of our income in property taxes behind only New Hampshire which has no income or sales tax. New Jersey must face the political reality that our revenue transfer plan has failed. New Jersey must identify and deal with the root cause of out-of-control property taxes. Specifically, there are simply too many levels of local government in New Jersey funded with property taxes.

Local government is the essence of New Jersey's political identity. New Jersey is a state of small towns with a political culture defined by a concept known as "Home Rule." Home Rule means that we, as citizens, want to control who our neighbors are, how our towns are run, how our kids are educated and we do not tolerate interference from the state. Unfortunately, while Home Rule has a cozy "pure democracy" sound to it, it is a fiscal disaster. Early in the 19th century New Jersey had 13 counties and about 100 municipalities. For a variety of reasons New Jersey local government balkanized into absurdly small units that require taxpayers to fund 566 municipalities, 611 school districts, 21 counties and hundreds of local authorities and independent fire districts. All of these units of local government rely on the property tax as their principal source of revenue. Florida, for example, which has twice the population of New Jersey, has a third fewer municipalities. Maryland has only 25 school districts. Massachusetts, Connecticut and Rhode Island have eliminated their county governments. New Jersey's property taxes are so high because we are paying for bureaucratic redundancy that is unprecedented anywhere else in the country. The legislature's previous attempts to reduce New Jersey's reliance on property taxes have only managed to subsidize a local government infrastructure that is no longer sustainable. Like some math formula gone awry even a small percentage increase in a property tax bill costs a property owner a tremendous sum of money because the denominator is so high and increasing every year. However, any politician who challenges the institution of Home Rule confronts the essence of New Jersey's political identity and a political infrastructure designed to defend and justify their cash cow.

Every government since time began has wrestled with the problem of what taxes generate sufficient revenue to fund government in the fairest and least offensive way. The problem with the property tax is that it is a regressive tax meaning that poor people pay a higher percentage of their income in property taxes then a rich person. The property tax is also different because a person who owns property cannot avoid the tax even if the property owner has no income or is living on a fixed income. Unlike an income tax that is not due without income, or a sales tax that is not due without a sale, the ownership of property triggers the tax. If a property owner is unable to pay the tax, the government has the power to force the sale of the property in order to satisfy the tax. Unfortunately, this can have a devastating effect on a community that suffers an economic collapse. Drastic revenue reductions can trigger a vicious cycle of ever decreasing services like police and fire protection which can threaten the stability of an entire neighborhood ultimately resulting in property abandonment. Entire neighborhoods in Newark, Camden and Asbury Park are heartbreaking examples. Finally, it is not just property owners who pay the tax. Renters pay their proportional share of the landlord's property tax and businesses reflect their property taxes in the cost of doing business in New Jersey.

The property tax does have some advantages, however. For one, it is a relatively simple tax to administer. All taxpayers in a given community are treated relatively fairly and assuming that a higher income person would live in a more valuable home then the tax is somewhat progressive. The property tax is also a stable source of revenue because, as noted above, a property owner must pay the tax regardless of their ability to pay. Assuming that a community does not suffer an economic collapse then even during an economic slowdown the property tax can be a reliable revenue source for essential services. Perhaps, however, the most attractive aspect of the property tax, especially in New Jersey, is that it allows a local government, in a Home Rule environment, to articulate a vision for how a specific community wants to govern itself. Specific examples would include zoning decisions like residential density or financial reliance on industrial and commercial ratables and local services decisions like educational programs and recreation opportunities. The taxpayer in turn has the opportunity to support or alter the local vision through the political process, or in the alternative, to find a community more in line with the desires of the taxpayer. Indeed with 566 municipalities and 611 school districts it would seem there are plenty of possibilities. This, of course, is a gross oversimplification. Many communities, particularly New Jersey's urban and rural communities, do not have the tax base to fund vital services, and virtually every community in New Jersey already has property taxes significantly above the national average making even our low tax communities expensive. However, as a general rule, the more locally the property tax is raised and spent the more consistent it is with New Jersey's Home Rule tradition.

The public policy of New Jersey must be to reduce our over reliance on the regressive property tax. Reducing property taxes will keep home ownership affordable for people living on a fixed income, bring home ownership into reach for people who are renting and relieve businesses, especially small businesses, of a significant expense. This political reasoning is, obviously, the motivation behind the constitutional convention proposal. However, the glaring problem with the convention proposal is that it maintains the status quo of New Jersey's insatiable local government infrastructure. A convention may reduce our over reliance on property taxes by increasing other taxes, but the legislature is so concerned about convention delegates rewriting other portions of the constitution that they have demanded ground rules to restrict the potential outcomes of a convention to tax issues exclusively. The legislature literally wants to have their cake and eat it too. They want to avoid the politically dangerous decision of how to fund local government, but they want to maintain the perks and patronage that local government provides. A constitutional convention is a bad idea until New Jersey modernizes the way local services are delivered. Therefore, the public policy of New Jersey must be to not only reduce our over reliance on the property tax, but to reform our local government infrastructure by eliminating the expense of bureaucratic redundancy.

The historic strategy of subsidizing local government is a proven failure as demonstrated by the 2002 property tax bills. The state has, however, on at least two occasions accomplished real property tax relief. Specifically, the state cut the county portion of a homeowner's property tax bill by taking over the complete funding of both the County Welfare Program and the County Court system. A third property tax relief idea has been proposed with legislation introduced by Senate Co-President Dick Codey (D-Essex) to have the state take over the funding of the County Prosecutor's Offices. These efforts are the most successful form of property tax relief because they permanently remove programs from the property tax rolls instead of subsidizing them. Unfortunately, these tax relief strategies do not go far enough because while they remove programs from the property tax rolls they leave an antiquated infrastructure in place. The economic cancer of inefficient government spending is only transferred to the state budget not reformed. Therefore, instead of merely transferring the cost of a local program to the state budget New Jersey must cut overall government spending by eliminating units of local government entirely.

The place to begin this reform is county government. New Jersey should follow the examples of Massachusetts, Connecticut and Rhode Island and eliminate county government as the first step in solving the problem of excessive property taxes in the Garden State. This is not to suggest that New Jersey should not reform municipal government or deal with the excessive administrative expenses that are inherent in 611 independent school districts in the future, but county government represents the clearest opportunity for New Jersey to begin the process of property tax reform because any useful role for county government has long since past.

The transition to irrelevance for county government in New Jersey can be traced to the U.S. Supreme Court's "one man one vote" decision in Reynolds v. Sims in 1964. That decision held that the old "21 Club" of one New Jersey State Senator for each county was unconstitutional because it violated the one man one vote ideal because Bergen County received the same number of senators as Salem County. The 21 Club was replaced by 40 senators elected from districts that do not follow county borders but do respect municipal borders. Once that reapportionment took place county government as a service delivery system became disconnected from the New Jersey Legislature. County government's value to taxpayers has been further eroded by modern communication and computer technology. There is literally no program that county government runs that could not be more effectively or efficiently run by either a municipal government or the state. Indeed, the inertia that maintains the county infrastructure is inconsistent with New Jersey's Home Rule tradition, and encourages fiscal inefficiency and voter confusion through programmatic redundancy. However, the most important reason that county government should be eliminated is that because of the disparity in county populations and demographics there are intolerable and unconstitutional disparities between similarly situated taxpayers.

County government in New Jersey is literally an artifact of history, a relic of the 19th century. Unfortunately, it is an expensive relic. New Jersey taxpayers spend $4.56 billion a year on county government. Sixty four percent or $2.92 billion a year comes from property taxes or about 20% of the average homeowner's annual property tax bill. In most states county government either functions as the municipal authority for land that is not incorporated into a municipality or as a regional government delivering municipal services across multiple communities that have proportionally diminished political power. County government in New Jersey is redundant because every acre is already incorporated into a municipality and, given New Jersey's history of Home Rule there is minimal regionalization of services. New Jersey counties are primarily responsible for delivering programs that ultimately are state responsibilities like public safety, including the county prosecutor, sheriff's department and prison system, or federal programs like welfare and job training programs. Counties give the appearance of regionalization through programs like the vocational high schools, county colleges, county road departments and parks and recreation programs, but the proportion of county budgets dedicated to these programs are relatively insignificant. For example, Camden County spends 46.9% of their budget on public safety, health and welfare programs, but only 11.6% of their budget on public works, recreation and education programs combined.

County government has a weak claim to New Jersey's Home Rule tradition because most taxpayers are unaware of what services are funded with property tax dollars at the county level. In contrast, most people strongly identify with their home towns and their children's schools and the activities sponsored by those schools. Most New Jersey communities have a local paper which focuses on local people and events for both the town and the schools so that the policies of municipal officials and school boards are known to the voters. This is the essence of Home Rule. Property taxes that are spent by town councils and local school boards are subject to intense local review and discussion. In contrast, it is doubtful that many voters know how many freeholders sit on their county freeholder board let alone what a freeholder does. This isolation is compounded by the phenomenon of how few counties are politically competitive because most county governments are dominated by one political party. Instead of a budget being crafted to meet a coherent set of local priorities the county budget becomes nothing more than the politically wish list of the dominant political party of the county. New Jersey could potentially realize superior property tax savings by eliminating municipal government and regionalizing all local government services at the county level, like many other states, but this would be a complete abandonment of the Home Rule tradition. Therefore, the elimination county government makes more sense in view of New Jersey's Home Rule tradition.

Programmatic redundancy is epitomized by the county road department. The 13 original counties were incorporated by The New Jersey Legislature in 1798 for the sole purpose of bridge repair. Today New Jersey taxpayers are funding three separate road departments; a local public works department, the county department of roads and bridges and the State Department of Transportation. That requires three separate bureaucracies to accomplish similar goals. The Union County Department of Roads and Bridges is responsible for the maintenance of 170 miles of roads. The Township of Westfield, which is one of 21 Union County municipalities, has a Department of Public Works which maintains 110 miles of road. Cutting through the center of Westfield is State Highway 28. These roads, whether state, county or municipal, must be plowed when it snows. However, it is inefficient to have three levels of government contracting with three different snowplow companies in order to clear the streets of one town, and it is inappropriate for property taxes to be the funding source to pay for both the county and municipal roads leaving the general fund of the state of New Jersey to pay for one secondary highway.

Programmatic redundancy also leads to public confusion as to who is responsible for government services that are ineffective or inefficient. In the example above, how many Westfield citizens know that depending where they are on a local street, such as North Avenue, the responsibility to plow the road could belong to either the county or the state but not the town? Most likely the mayor will get any complaints because no reasonable person can tell when a municipal road turns into a county or a state road.

A similar problem exists with major programs. The federal welfare program, Temporary Assistance to Needy Families (TANF) which replaced the Aid to Families with Dependent Children (AFDC), required state legislation in order to be implemented. Once the enabling statute and regulations were passed the new program was turned over to county governments to run with state funding. Some counties did a poor job administering the new program. How would a voter know who to hold responsible? Did the state statute or regulations fail to deal with local challenges or did the fault lie with a County Department of Human Services whose loyalty was to an elected Board of Freeholders with a different political agenda than the governor? Before Reynolds v. Sims the legislature and the public would have had a much clearer line of communication with each state senator being politically responsible for their home county. Now that senator's represent multiple counties it is impossible to expect each individual senator to understand the nuances of multiple county delivery systems.

Other county programs are so obscure that most taxpayers do not even know that they exist. The County Superintendent of Schools is an excellent example. The Ocean County Superintendent of Schools has a budget of $256,000 funded through property taxes and a mandate to "review school district budgets to ensure that resources are directed to guaranteeing students a thorough and efficient education." Assuming that this office is necessary why wouldn't the state Department of Education fund it? Why do property tax payers have to pay for their local superintendent of schools and then pay additional property taxes for another superintendent to monitor the local superintendent on behalf of the State Department of Education? These idiosyncrasies of county government confuse the public and waste money. Elimination of the county level of government will help to clarify for taxpayers which level of government is responsible for the delivery of specific services and eliminate waste.

County government in New Jersey is also fundamentally unfair because certain taxpayers, based on the vagaries of where a county line is drawn, must bear a disproportional share of the cost of New Jersey's social problems. There is no better example of this than the ongoing effort of the Township of Millburn to secede from Essex County to join Morris County. Essex County has a population of 794,000 people while Morris County's population is 470,000. The cost of County government in Essex County is $716 per person compared to $493 per person in Morris County. Of course, per person analysis does not take into account the number of Essex County residents who live in subsidized housing and do not pay property taxes. However, even proceeding on a per person basis it is clear that Essex County taxpayers are treated unfairly. Public safety funding is the most egregious example. The Essex County Prosecutor's Budget is $28 million compared to Morris County's $9.4 million. The Essex County Sheriff's Budget, reduced by locally collected revenue, is $31.5 million compared to Morris County's Sheriff's Budget of $8.4 million. Finally the Essex County Jail and Youth House combine for a budget, less state and federal revenue, of $56.6 million compared to Morris County's budget of $13 million. The total public safety budget including the above line items and adding items like the county medical examiner, emergency management and police communications comes to $119 million for Essex County compared to $33 million for Morris County. This works out to $150 per person for each Essex County resident compared to $71 per person in Morris County. If Millburn Township could leave Essex County and join Morris County at a minimum their public safety taxes would be cut by more then half.

Rural counties suffer a similar economic fate because they do not have the population to fund the various county offices in an efficient manner. Cape May County is an excellent example. Cape May has a population of only 102,000 people, but a county budget of $100 million or $979 per person. Middlesex County has a population of 750,000 people and a budget of $286 million or $381 per person. If you consider only the property tax burden Cape May County's per person tax rate is $669 compared to Middlesex County's $274. One example of how a small county like Salem County suffers is the cost of the county jail. Salem County's prison budget is $8.3 million including federal and state revenue. This works out to an astonishing burden of $128 per person for Salem County's 64,000 residents far in excess of even Essex County's prison cost of $71 per person. Morris County's prison budget, by comparison, is $27 per person and for Middlesex County, after nearly $10 million in state and federal aid is factored in, $24 per person. These disparities in tax burdens foster cynicism in New Jersey taxpayers and beg the question if it is even appropriate to fund county jails with property taxes? County jails are not populated by inmates who violated county ordinances.

Another example of the inherent unfairness of county government is the disparity in resources that the various counties have available to spend on quality of life programs. As stated earlier Camden County spends 46.9% of their budget on public safety, health and welfare. Camden County then spends only 7.3% of their budget on education, 2.5% on public works and 1.8% on recreation. Essex County similarly spends 49.5% of their budget on public safety, health and welfare leaving only 3.15% for education, 2.6% for public works and 1.9% for recreation. Ocean County, in contrast, only has to devote 24.5% of their budget to public safety, health and welfare leaving 17.96% of their budget for education, public works and recreation. Hunterdon County is in even stronger shape having to devote only 23.6% to public safety, health and welfare leaving 9% of the budget for education, 9.9% to public works and 2.6% for recreation. Using per person analysis, Essex County spends $42 per person on quality of life expenditures compared to $111 for each Hunterdon County resident.

If New Jersey has the political courage to eliminate county government and take over those programs, how would the state manage those former county programs? Immediately, the elimination of county government would create an unprecedented opportunity for the state to reorganize and reengineer a 21st century strategy for service delivery for both state and local government. Priority should be given to making certain that reasonably informed citizens know who is responsible for any specific program and make sure that services are provided in a cost effective and efficient manner. While each specific program currently run by county government undoubtedly has specific nuances beyond the scope of this article it would be appropriate, nonetheless, to articulate a general vision for the basic delivery of these services.

Delivery of state government programs should be accomplished by dividing the state into administrative districts with every department conforming to these districts. If the state was to reorganize itself into eight districts of approximately 1 million people per district tremendous economies of scale could be achieved. In essence, the state would create eight Bergen County's which on a per person basis has the most cost effective county government. Specifically, Bergen County has a population of nearly 900,000 people and a budget of $334 million, equating to only $378 per person. One example of the potential cost savings through the economies of scale provided by administrative districts is the county prosecutor's offices. Today there are 21 county prosecutors, each nominated by the governor and confirmed by the state senate. Each prosecutor is paid the same salary despite the fact that the Essex County Prosecutor's budget of over $28 million dollars is 10 times larger then the Hunterdon County Prosecutor's budget of $2.8 million. If the state were to replace the 21 county prosecutors with eight district attorneys the savings, just in administrative overhead alone, leaving all the current individual attorney's who actually prosecute cases in place, would provide immediate tax relief. Critical services like roads and bridges should be the domain of the State Department of Transportation conforming to the same administrative districts significantly reducing the bureaucratic overhead of the old 21 county road departments. County Clerks could also be reduced to eight under the supervision of the Department of State and still maintain the states vital records. The administrative districts should be consistent with state legislative districts and redrawn when the state redistricts after the census. Both New Jersey legislators and voters would then be in a stronger position to determine the success or failure of specific programs instead of being confused by the demographic and economic differences of the 21 county governments.

The benefit to New Jersey taxpayers would be significant tax relief. By transferring the expense of county government to the state the average property tax bill would decline by 20%. The issue then becomes; can the state budget absorb these costs without a major tax increase? County government spends $4.56 billion a year, but $1.6 billion of that comes from local non-property tax revenue including state or federal aid. That leaves $2.9 billion dollars to be transferred from the property tax roles to the state's general fund. One billion dollars could be eliminated by cutting redundant administrative overhead such as county boards of freeholders, county executives, county administrators, county treasurers and auditors, purchasing departments, county counsels, board clerks, county adjusters, human resource departments and county building departments and motor pools. Additional resources would be saved through the consolidation of 21 road departments, engineering departments, welfare departments, county clerks and similar programs into the administrative districts previously proposed. This would require the state to absorb approximately $2 billion or less then 10% of the state budget. If the transition were spread out over a three-year span the legislature would have to budget less than $700 million a year. This becomes a matter of budget priorities and could be funded through current levels of state taxes. If, however, the budget could not absorb the additional expenses, taxpayers would most likely support an increase in a broad based general tax such as the GIT if an entire line on their property tax bill was cut.

If the state did eliminate county government then the citizens of New Jersey would have a new property tax relief strategy to evaluate. Instead of having the state merely subsidize local government the state would now have a history of providing property tax relief through the financial takeover of local government expenses. If the elimination of county government was successful then new areas of opportunity may become feasible such as the transfer of certain education expenses from local property tax roles to the state budget. Examples might include a state takeover of the cost of disabled student's education, or the state consolidation of local government functions like purchasing or payroll services to reduce local budget pressures without undermining the essence of New Jersey's Home Rule tradition. New Jersey could also expand existing programs like the Regional Efficiency Aid Program (REAP) and Regional Efficiency Development Incentive (REDI) which are designed to encourage regionalization of local government, but are inadequately funded to accomplish anything.

In conclusion the final issue to consider is perhaps the most important. Is it politically possible to eliminate county government? Inertia is a powerful force in both physics and politics. County government has existed for about as long as there has been a New Jersey and powerful county political organizations of both parties have been built on a foundation of county political patronage perfected by Frank Hague and Hap Farley. The issue is made more complex by the necessity of moving legislation to put a public referendum on the ballot through a legislature dominated by politicians who owe their political careers to those county political machines. Obviously, the task is difficult, but the New Jersey voter is disgusted by crushing property taxes, especially in a slowing economy. If a constitutional convention is convened these issues will boil over. If a convention is avoided the legislature will pray that Governor McGreevey's Corporate Business Tax (CBT) increase will feed the insatiable local government appetite for another couple of election cycles. This is no solution. New Jersey deserves better. New Jersey needs a new political agenda that will deliver a real solution to the property tax problem that has plagued this state for generations. The New Jersey Constitution clearly empowers the citizens of this state to reform state government to meet modern realities. It is time for New Jersey to break away from the inertia of the 19th century and reorganize our government for the 21st century. It is time to endcountygovernmentnow.