



PROBLEM ON THE ASSESSMENT OF ANNUAL FEE AS THE  
TAX BASE OF BUILDING AND LAND TAX  
IN THAILAND

BY  
MS. PARICHAT RUEANGLOYKUM

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL  
FULFILLMENT OF THE REQUIREMENT FOR  
THE DEGREE OF MASTER OF LAWS  
(TAXATION LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

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Independent Study Title : Problem on the Assessment of Annual Fee  
as the Tax Base of Building and Land Tax in  
Thailand


Author : Ms. Parichat Rueangloykum

Major : Master of Laws (Taxation Law)


Advisor : Mr. Prapas Kong-ied


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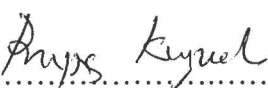
Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree of Master of Laws.

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## ABSTRACT

The overall objective of this research is to focus on Problem on the Assessment of Annual Fee as the Tax Base of Building and Land Tax in Thailand.

According to Building and Land Tax B.E. 2475 section 8, section 18 and the Notification of Ministry of Interior about Annual Fee Assessment on 30 March 1992 determine that levy tax from the property by calculating from the annual fee (rental fee leaser may derive from lessee). If rental fee is appropriately the number shall be deemed that the rental fee is the annual fee, however, if tax officers considered that the rental fee is not appropriately the number or in case the owner of the property and operated for own business that cannot assess following actual annual rental value, they are empowered to correct or to reassess such amount regardless of rental fee actually derived by comparing with the annual fee of the leased property within the same local authority which has similar characteristic, area, location, and infrastructure services.

Nowadays, Thailand's Building and Land Tax are levied from assessment and theirs annual fees provided in the Building and Land Tax Act B.E. 2475 (1932) which states that by giving the officers authorities to assessing annual fee; abuse power, tax drain, and ambiguity might occurs.

This means that tax base of land and building tax is still uncertain and unclear for taxpayers.



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# Chapter 1

## Introduction

### A. Background and General Statement of the Problems

Taxable property under the Building and Land tax comprise houses not occupied by owner, industrial and commercial buildings and the land appurtenant thereto. Structural additions to taxable property also become subject to taxation.

Owners of buildings and other structures and land appurtenant thereto are liable to pay the buildings and land tax. Where the land and the buildings thereon belong to different owners, the owners of the buildings are liable for the whole amount of the tax. Property owned by the Government and religious property are exempted, as are, importantly, buildings occupied by owners and unoccupied (for 12 months or longer).

Local authorities are responsible for calculating the tax base on annual rental value, actual or imputed, of the taxable property. These values are supposed to be declared annually by owners. The actual or imputed rental income from building and land utilized for all purposes, except for owner-occupied residences which is taxable under the house and buildings tax. However, some classes of property are not rented and in these cases it is usual for the Ministry of Interior to direct the annual value which shall be a prescribed percentage of the capital value of the property. That is, to assist the authorities in tax collection. The tax prescribes as an “annual rate” is defined as the sum for which the property might be expected to lease from year to year. Owners can appeal to local authorities if dissatisfied with their assessments.

The Buildings and Land tax is a proportional tax, specified at the rate of 12.5 percent of the annual value. In addition, to encourage manufacturing investment the Act also provides a reduction for factories and dwellings in which machinery has been attached to one-third of their annual value.

According to section 8, Building and Land Tax Act B.E. 2475 (1932), it is uncertain for tax base to do so as the assessor can decide about the tax base of annual fee on their own, which therefore would be unfair for taxpayers.

## **B. Hypothesis of the Study**

Nowadays, Thailand's Building and Land Tax are levied from assessment and their annual fees provided in the Building and Land Tax Act B.E. 2475 (1932) which states that by giving the officers authorities to assessing annual fee; abuse power, tax drain, and ambiguity might occurs.

This means that tax base of land and building tax is still uncertain and unclear for taxpayers. The solution to this problem is to amend Building and Land Tax in order to obtain stable land and building tax base, which shall bring justice to the society

## **C. Objectives of the Study**

1. To study the structure of Building and Land Tax to, furthermore, to accomplish its characteristics of how the system operates.
2. To study the tax base for calculation in Building and Land Tax.
3. To study the legal problems in terms of the determination for tax base of Building and Land Tax
4. To find the solution of problems for fairness to taxpayer.

## **D. Study Methodology**

This research paper will be analyzed and researched by utilizing documentary research i.e. Building and Land Tax Act B.E. 2475 (1932) and the property tax of United States of America including text books, articles, documents and electronic information regarding Building and Land Tax in problem of tax base.

## **E. Scope of the Study**

This research paper involves the study of Building and Land Tax regarding the problems of the tax base for assessment of the annual fee of the property according to Building and Land Tax Act B.E. 2475. It analyze and compares the tax base and use



of assessment between Thailand and foreign law to conclude a certainly and fair regulations for taxpayer, including the study of decisions of foreign courts.

## **F. Expectation of the Study**

1. To acknowledge the tax collection of Local Administrative Authorities on local tax, and the structure of Building and Land tax and to know its characteristics of how the system operates.
2. To acknowledge tax base and certain calculation regarding the Building and Land Tax.
3. To acknowledge the legal opinion of different laws including foreign legislation.
4. To find solutions to the problems for fairness to taxpayer.



## **Chapter 2**

### **Principles of Land and Building Tax in Thailand**

#### **A. Introduction**

Thailand is organized in 76 provinces and 811 districts. Each province is administered by an appointed governor (except Bangkok, where the governor is elected). In addition, there are almost 8,000 local governments, including provincial administrative organizations (PAO), municipalities, sub-district (tambon) administrative organizations (TAO), Bangkok Metropolitan Administration, and Pattaya City. PAOs consist of elected councils, which in turn choose executive committees. Most urban areas are organized in municipalities, consisting of 20 metropolitan areas (apart from Bangkok and Pattaya), with a population of 50,000, 86 cities, average population, 10,000 and 1,023 towns. Finally there are 6,746 tambons (TAOs) organized in five categories: most are small rural communities, but some are larger than some municipalities. Both municipalities and TAOs have elected councils.

Under current law, Bangkok Metropolitan Administrative, City of Pattaya, Municipalities, and Tambon (Village) Administrative organizations are in charge of the Building and Land Tax and Local Development Tax in their respective areas of jurisdiction. The civil engineering department of the local authority is responsible for identifying the property that subject to taxation by conducting survey of every statutory taxpayer within their district to obtain data needed to administer the tax. After the survey is compiled it is submitted to the district local revenue department to assess tax collection and enforcement. However, it is too expensive for local authority itself to keep a good record of property identification data.

The tax collection process begins by self-declaration of property owners to local authority who assesses the self-declared values and identifications of the property whether it matches or is closest to data they have. As a rule, local officials are more comfortable with an ad hoc approach to assessing property values. The great weakness in administering this tax is the highly manual nature of the administrative system: listing, filing, assessing, and billing. To make things worse, due to taxpayers' complaints and government policy easing tax burden, present tax base for the Local Development Tax is still restricted to 1977 levels as base for calculating for tax revenue.

## B. Local Administrative Authorities

Local levied tax is the revenue directly administrated and collected by the local administration. This source of local revenue can be classified into two groups namely:

1. Local levied taxes imposed by the Municipality (Tessaban), Tambon Administrative Organizations (TAOs), Bangkok Metropolitan Administration (BMA) and Pattaya City <sup>1</sup>

a. Land and Building Tax

This tax is collected from an owner who let buildings, other constructions, and land be uses for industrial or commercial purposes. The 12.5 percent tax rate is levied on the annual value, which is calculated as the sum of the responsibly expected price of the property to be let in one year.

b. Land Development Tax

This tax is collected from owners of land or persons in possession of land (a vacant land not owned by another). Tax rates ranging between 0.25 – 0.50 percent of official land valuation are applied. However, there are exemptions such as land which is used for residence, farming, or cultivation purposes. Exemptions depend upon current local administration's regulations.

c. Signboard Tax

This tax is annually collected from owners of signs or billboards displaying words, trademarks, and/or products in any form displayed on any material for the purpose of advertising. Tax rate depends on the language used on the signboard. The use of the Thai language is 3 baht per 500 sq.cm and foreign language is 40 baht per 500 sq.cm of signboard. Furthermore, the minimum tax liability is 200 baht in all cases.

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<sup>1</sup> Somchai Sujjapongse, Tax Policy and Reform in Asian Countries: Thailand's Prespective A Publication for the Journal of Asian Economics, available at <http://www.econ.hit-u.ac.jp/~kokyo/sympojuly05/papers/july05-Thailand.pdf>. (last visited 8 August, 2008).



d. Slaughter Tax

Slaughter tax is levied on a butcher who slaughters cattle, goat, sheep, pig, chicken, ducks, or geese. Tax rate is between 10-30 baht per animal.

e. Fee, Fine and License

Garbage collection fee, construction permission fee, and others

2. Local levied collected by Provincial Administrative Organizations (PAOs)

a. Hotel Tax

A PAO can impose a tax on hotel guests of up to 3 percent of the room fare.

b. Petrol Stations Tax

A PAO can impose petrol station tax on retail fuel including gasoline, diesel oil, and petroleum gas. Tax rate is up to 0.05 baht per liter of fuel.

c. Retail Tobacco Tax

This tax is imposed on retail shops that sell tobacco. The tax rate is up to 0.05 baht per cigarette.

### C. Structures of Land and Building Tax<sup>2</sup>

The Building and Land Tax evolved from Market Tax or House-Boat tax, and then it is levied subject to the matters of The Building and Land Tax Act B.E. 2475 (1932). Its beginning was enforced in areas of Bangkok Provincial and Thonburi Provincial, and expanded to others provinces.

In the past, building and land tax had been collected by responsibility of Revenue Department of Ministry of Financial, before Local Revenue Act B.E. 2497 was denounced. Therefore, the building and land tax was transferred from the Revenue Department to Local Administration.

Building and land tax is levied with owners of building, other structures and land appurtenant thereto being rented or being used as commercial structures. Taxable

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<sup>2</sup> Montree Tangtanachai, "Problems on Local Tax Collection from the Private Higher Educational Institutions in Thailand: case study on Building and Land Tax Collection," (LL.M. Independent Study, Graduate School, Assumption University, 2007), p. 10.

property under the Building and Land Tax Act B.E. 2475 includes the building unoccupied by the owner, industrial and commercial buildings and land used in connection therewith. The tax rate is 12.5% of the assessed annual value of the property.

#### 1. Taxpayer

A building and land tax is imposed on the owners of a house, building structure or land appurtenant<sup>3</sup> thereto, which is rented or otherwise put to commercial use. Owners of buildings and other structures and land appurtenant thereto are liable to pay the building and land tax. The tax rate is 12.5 percent of actual or assessed annual rental value of the property. Where the land and the buildings thereon belong to different owners, the owner of the buildings is liable for the whole amount of the tax.

By the way, although you are not the owner of a house you might be liable to pay tax together with another. There is in case of selling any buildings which remain an arrear to pay building and land Tax, so the seller will be charged as a joint debtor with the buyer. Therefore, the seller should have thoroughly verified the tax burden of such building.

The date for filing building and land tax returns must be announced annually within the first four months of the calendar year. A tax return must be filed within 30 days of the assessed taxpayer date, at the municipal or district office of the provincial administrative organization where the buildings and land are located. A penalty of 2.5% of the tax liability is payable when the tax is paid during the first month after the due date for payment, 5% for the second month, 7.5% for the third month and 10% for the fourth month.

#### 2. Tax base

Local administrative authorities are responsible of assessing the tax base on annual rental value, actual or imputed, of the taxable property. These values are supposed to be declared annually by owners. The actual or imputed rental income from building and land utilized for all purposes, except for owner-occupied residences, which

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<sup>3</sup> Montree Tangtanachai, Problems on Local Tax Collection from the Private Higher Educational Institutions in Thailand: case study on Building and Land Tax Collection, p. 10.

is taxable under the building and land tax. However, some classes of property are not rented and in these cases it is usual for the Ministry of Interior to direct that the annual value shall be a prescribed percentage of the capital value of the property. That is, to assist the authorities in tax collection, the tax prescribes an “annual rate” which is defined as the sum for which the property might be expected to lease from year to year. Owners can appeal to local authorities if dissatisfied with the assessment.

a. Taxable Property and Non-Taxable Property

Taxable property under the building and land tax comprise houses not occupied by owners, industrial and commercial buildings and the land appurtenant thereto. Structural additions to taxable property also become subject to taxation. (Section 6) Property is taxable as building and land Tax can be divided into 3 categories:

(1) “Building and other structures”, buildings are such as commercial building, house, shop, office, company, bank, hotel, theatre, hospital, school, apartment, condominium, warehouse, etc. While the meaning of other structures are port, bridge, reservoir, Pagoda, statue, oil tank, etc;

(2) “Land constructed buildings or other structures”, that is supposed that Mr. A constructs a building onto land, so both are taxable properties ; and

(3) “Land appurtenant of land constructed buildings or other structures”, there is consecutive land extending from land constructed buildings or other structures (in part b), it is supposed that the house of Mr. A includes footpath, field, garden or swimming pool, these are provided to be land appurtenant thereto.

Property is non-taxable according to the House and Land Tax Act B.E. 2475 section 9 and the following get exemptions:

(4) Royal Palaces owned by the Crown property regardless of personal property of His Majesty; (Section 9(1))

(5) Property of government which is utilized the purposes of government or for public such as buildings located the a Ministry or any Department, public bridge, public port, public hall, etc; (Section 9 (2))

(6) Property of public hospitals and school not operated for deriving own profits and exclusively utilized under the purpose of health care and education; (Section 9 (3))



(7) Religious bodies' property and exclusively utilized under religious' purpose or in residence of priest (Section 9 (4)) such as temple, church, mosque, etc;

(8) Building unoccupied for period of 12 months or more, and the owner or others person does not occupy except occupied by guard who honestly is not dweller.( Section 9 (5)) For an example, Mr. A owns 2 buildings; a building for residence and another building unoccupied. The second one should be exempted by the law;

(9) Building of National Housing Authority which hire-purchaser dwells without utilized for warehouse or industrial activities; and (Section 9 (6))

(10) Building occupied by the owner or dweller, and not utilized for warehouse or industrial activities.(Section 10)

### 3. Tax rate

The rate of building and land tax is a proportional tax, specified at the rate of 12.5% of the actual or imputed annual rental value of property on owners of buildings or land, used for any purpose, with the exception of owner occupied residences. (Section 8) If buildings on the land are owned by a person other than the owner of the land, the owner of the building is liable for the tax.

“Annual Rental Value” means rental fee leaser may derive from lessee. For example, Mr. A had derived rental fee annually 10,000 baht so he must be taxed 1,250 Baht. Even if tax officers considered that the rental fee is not appropriately the number, they are empowered to correct or to reassess such amount regardless of rental fee actually derived.<sup>4</sup>

In the case of a house, if it was residence and operated for own business that cannot assess following actual annual rental value, the taxable amount which is imputed annual rental fee might be rented and assumed in the rate of 12.5% annually.

Otherwise, annual rental value in previous years have been considered upon the computation of taxable amount consecutively, nevertheless such previous taxable amount does not work as well as the assessed taxable amount.

Due to different understanding for interpretation in the matter of Building and Land Tax Act B.E. 2475, Cabinet may have passed a resolution (called as ‘Cabinet Resolution’) about building and land tax collection provided by the Ministry of the Interior which can enact a ‘Ministry of the Interior Notification’, including a ‘Document

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<sup>4</sup> The decision of Supreme Court 185/2502.

of the Ministry of the Interior' in order to provide the moderate standard rental value bath per square metre for assessment of tax official.<sup>5</sup>

#### 4. Reduction

In addition, to encourage manufacturing investment the Act also provides reductions, so annual rental fee should be reduced in the following cases:

a. Buildings or factories in which machinery had installed fundamental producing parts e.g. machine, producing machine or others machine to operate industrial such as factory, mill, sawmill, etc. These should reduce the annual rental fee in rate on one-third of annual rental fee. For example, a mill has installed a machine that has the annual rental fee of 30,000 baht, it is reduced to 10,000 baht, therefore upon the House and Land Tax, 12.5% of the 10,000 baht has to be paid.

b. Reductions are also made, pro rata, where buildings become unoccupied during the year;

c. Similarly, if a building has just been carried out, this annual rental fee is reduced to subject valuation proportional of unavailable time periods. For example, Mr. A constructs a house and occupies it in the beginning of July, the annual rental fee should be reduced proportionally, pro rata, in rate on a half of the annual rental fee; and

d. Damaged buildings are reduced to subject valuation proportional to the extent of damage.

#### 5. Exemption

Government and religious property are exempted, as are, importantly, buildings occupied by owners and unoccupied (for 12 months or longer). Properties which get tax exemptions are non-taxable property (in part 2) according to Section 9 of Building and Land Tax Act B.E. 2475 as the following:

- (1) Royal Palaces owned by the Crown property ;
- (2) Property of government;
- (3) Property of public hospitals and educational institutions;
- (4) Religious property;
- (5) Building unoccupied for more than 12 months; and

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<sup>5</sup> Montree Tangtanachai, Problems on Local Tax Collection from the Private Higher Educational Institutions in Thailand: case study on Building and Land Tax Collection, p. 14.

- (6) Building occupied by the owner or dweller.

One of the main weaknesses of this tax is its exemption on owner-occupied residential buildings. This exemption does not only encourage the wealthy to build larger houses but it also creates serious administrative problems in determining whether or not buildings are really used for residential purposes. Similarly, the exemption for vacant buildings is difficult to verify, as is, more generally, the veracity of the self-declared rental values even for taxable property.

#### 6. Tax Procedure

Building and land tax should be paid annually through Local Administrative Authorities (City of Bangkok Metropolis, City of Pattaya, Municipality and District Administration Authorities unless Provincial Administration Authorities). Those are starting with announcement of such Local Authorities, which taxpayers have received, namely 'P.R.D.2' Form. Building and land tax filing form shall be noticed within February of every year. Additionally, such announcement shall be noticed in the Government Gazette and published in newspaper or at office of the Local Authorities.

Meanwhile, the taxpayers have to file the P.R.D.2 Form within the period of time and even fulfill the items in the forms. Then, they are delivered to the local tax assessment officer who will compute taxable amounts, and give notice to the taxpayers so that such payment can be done within 30 days after notification. Even if the taxpayers have not paid the tax within the period of time, they are liable for surcharges.

A penalty of 2.5% of the tax liability is payable when the tax is paid during the first month after the date due for payment, 5% for the second month, 7.5% for the third and 10% for the fourth month.

#### **D. Structure of Bill of Land and Building Tax Act B.E.....**

The bill contains 9 categories and 79 transitory provisions. The background of engrossment began in first Chuan's administration since cabinet sustained and judicial council examined. Eventually government changed to Thaksin Shinawatra's administration whereas they also adopted the principle and particulars in March 28, 2004 and also carried forward the bill of land and building tax declared in January 1, 2005. Progressively, this bill has been already confirmed by judicial council. The Ministry of Finance proposed it to the



secretary of the parliament in order to contain in agenda. The enforcement will be run in the next two years.<sup>6</sup> The proposal of bill is to bring the principle of levy according to its law substituting for previous Building and Land Tax Act B.E. 2475 and Local Development Tax Act B.E. 2508 due to levy according to their two laws were obsolete and improper for current days. Building and land tax are calculated from rent instead of value of the property. By giving the officers authorities to assessing rent, it caused corruption, tax drain, and ambiguity. Matter of substance regarding the bill of land and building tax

### 1. Law Enforcement

Law of building and land taxation and law of local development taxation which is abrogated by this is act still effective for collecting delinquent tax or already paid or tax rebate before the act is enforcement. In case of abrogation of building and land taxation and law of local development taxation by this act, tax payers who do not fulfill the property and land's requirement, nor pay completely or not pay at all can permit the tax form to the following minister of ministry of the interior declaration within 180 days since the enforcement date; and have to pay for the taxes in number of assessment within 30 days since the informed assessment date. In case of delinquent tax, tax payer can pay their taxes within 30 days since they have filed for it. One will obtain the exemption for more and of misdemeanor and have the right to have tax installment regarding to the law of building and land taxation and law of local development taxation.

### 2. Taxpayer

Including natural person and juristic person who are the owners of land or buildings, posses land or buildings for utilizing which is a public property. Nevertheless, also deputy of taxpayers has to pay taxes, being an agent does not generate right in other law.

### 3. Authority for levy

Law authorized organization of local administration to levy tax from land and building under their administration. Tax which collected is income in their administrative district as well as building and land tax and local development tax.

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<sup>6</sup> Dailyworldtoday 9<sup>th</sup> year, No.2345 on Tuesday 5<sup>th</sup> August 2008, available at [http://www.dailyworldtoday.com/columblank.php?colum\\_id=11153](http://www.dailyworldtoday.com/columblank.php?colum_id=11153). (last visited 17 October 2008).

#### 4. Tax Base

Nowadays' law uses prices fixing the capital assets assessment (land, building, and apartment). In other words, to change from rental value to capital value, this is properly more regarded to the theory of collecting property tax.

Price fixing for capital assets of assessment can be listed as following

- a. land without building using the price for land assessment as tax base
- b. land with building using price for land assessment plus the price for building assessment as tax base
- c. apartment using the price for apartment assessment as tax base

#### 5. Tax Rate

Tax Rate can be divided into 3 rates<sup>7</sup> as following

- a. land and general buildings are not more than 0.5% of the tax base
- b. land and building for habitation; non commercial activities are not more than 0.1% of the tax base
- c. land for agriculture is not more than 0.05% of tax base.

#### 6. Tax Deduction

Cancellation of tax deduction originates the house-owner obligation to pay tax, particularly unoccupied or uncultivated land according to its condition will collect double one of payment. As a result building tax payer has less tax burden; local development tax payers have more tax burden conversely.

#### 7. Exempted Property

- a. Public property according to organization of crown property law
- b. Non beneficial crown property according to organization of crown property law
- c. Non beneficial government property utilizing in governmental or public affair
- d. State enterprise property utilizing in public utility according to royal decree

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<sup>7</sup> From the Bill of Land and Building Tax Acts B.E.... before the improvement of the tax rate to be 3 rates as mentioned, there was one rate which is the tax rate that not over than 0.1 percentage of the tax base according to section 24 in the acts of land and building tax.

- e. United nations and other international organization property where Thailand has obligation to exempt tax according to any convention or agreement
- f. Chancery or consulate according to compromising agreement
- g. Red cross property
- h. Non beneficial church property or shrine, utilizing in either religious or public activities
  - i. Non beneficial public graveyard or crematory
  - j. Private property or State enterprise property which is allowed in public or civil utility and the owner cannot make use or gain benefit from that property
  - k. Non beneficial public charity property according to royal decree
  - l. Property according to royal decree

#### **E. Structure of Land Development Tax<sup>8</sup>**

This tax is based on the value of the land, excluding improvements, and ranges from between 0.25% and 0.95% annually. Assessments are calculated on the area of the land and on the median value of land as assessed by district authority. Taxable property includes land, mountains and water basins. Land used for the personal residence of the owner is exempt from the local development land tax. Cultivated land in excess of the exempt area is subject to only one half of the statutory rate. Idle land is subject to twice the statutory rate.

##### **1. Tax Base and Taxpayer**

All persons or groups of persons, individual or corporate, who own land or are in possession of land not owned by other individuals, are liable to pay the tax. The tax is assessed on the land value of the property, no account being taken of any improvements thereon or of any crops. This land value is the product of the area of the property and the “median value” of land within the tax district or part of the tax district in which the particular property is situated. The median value is computed by a local

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<sup>8</sup> Montree Tangtanachai, Problems on Local Tax Collection from the Private Higher Educational Institutions in Thailand: case study on Building and Land Tax Collection, p. 18.



committee from at least three recent sale prices of land located in the district without account being taken of improvement, value of structures or crops which may be included in such sale prices. Once determined, the median price of land for a given district is used for a period of four years. This median price is made known to the general public and if dissatisfied, landowners can appeal for its revision. In this case, however, appeal is to the provincial governor. If no transactions of land occurred in the area, the median value would be calculated by reference to the closest neighboring areas which have similar land conditions and usage. The provincial governor has authority to appoint an appraisal committee for each jurisdiction. Members of the committee vary with different types of local authority.

Taxable property comprises all land, including mountains and water basins. Again, government and religious land is excluded, as is land used for personal residence, or (subject to maximum areas, which vary by location) land used for cultivation.

## 2. Tax Rates

The Ministry of Interior sets the tax rate schedule for use by all local authority tax administrations. The rate of this tax is progressive with the size of land holding but the rate itself is low when compared to the median value of land on which this tax rate is based. The assessed value once determined will be used for a period of four years. The tax is imposed as a fixed amount per rai (1600 square meters) on a progressive scale increasing with the “median price” of the land, with many brackets. The implicit rates are regressive, ranging from about 0.25% to 0.5%. Idle land is supposed to be charged at twice the normal rate and land used for annual crops at half the rate, with landowners doing their own farming subject to a low maximum rate.

The local development land tax shall be collected from the possession of the landowner on land only in accordance with the Local Development Tax Act B.E. 2508 (1965) as follows:

The land owner who possesses a land at the 1st of January of each year shall have the duty to pay the local development land tax at the rate computed on the median value of the land of the year concerned, according to the rate prescribed by the government agency pursuant to the law.

The median value of the land is appraised at the last purchase price in good faith of lands which is in the same area of not less than the 3 previous purchases within the period not exceeding 1 year before the date of appraisal. This shall then be averaged to obtain the median value of the land without taking into account the value of the building and structure.

Owners of land and/or buildings in designated areas may be subject to annual taxes levied by the local authority. Under the Local Development Tax Act B.E. 2508, rates per unit vary upon the appraised value of the land. However, land for personal residence of an owner, animal husbandry, or land cultivation is exempted from this Act. For land taxable under the House and Land Tax Act B.E. 2475, based on the value of the land and buildings or any other improvements, annual tax is levied at the rate of 12.5 percent of the assessed assumed rental value of the property, and only owner-occupied residences are exempted.

### 3. Exemptions

According to Section 8 of Local Development Tax Act B.E. 2508, The following categories of land are exempted from the local development land tax collection:

- a. Land owned by government agencies;
- b. Land on which royal palaces are located;
- c. Land on which public health, education or public charitable are located;
- d. Land owned by religious bodies or for religious use;
- e. Land utilized by non-profit cemeteries;
- f. Land subject to building and land tax;
- g. Land which is privately owned but used by the government for public purposes; and
- h. Land on which embassies, consulates or offices of international agencies are located.

### 4. Tax Procedure

Landowners are required to file tax returns at the district office where the land is located if outside a municipality, or at the municipal office of the department if the land is located within the municipality. Returns must be filed in January of every year and tax is to be paid within April of every year or within 30 days of assessment if it is notified after March.

## **F. The Land and Building Tax Assessment From Annual Fee**

According to Building and Land Tax B.E. 2475 section 8 determine that levy tax from the property by calculating from the annual fee (rental fee leaser may derive from lessee). If rental fee is appropriately the number shall be deemed that the rental fee is the annual fee, however, if tax officers considered that the rental fee is not appropriately the number or in case the owner of the property and operated for own business that cannot assess following actual annual rental value, they are empowered to correct or to reassess such amount regardless of rental fee actually derived. Under the Notification of Ministry of Interior about Annual Fee Assessment on 30 March 1992, which is authorized by Section 7 and 8 of Building and Land Tax Act B.E. 2475, whereas it is amended by the Building and Land Tax Act (8th amendment) B.E. 2534, an officer authority is granted to assess the annual fee by comparing with the annual fee of leased property located in the same local authority which has similar characteristic, area, location, and infrastructure services<sup>9</sup>.

The Notification of the Ministry of Interior does only states general rule which grant the officer authority to assess the annual fee by comparing with the annual fee of the leased property within the same local authority which has similar characteristic, area, location, and infrastructure services. However it does not states rules on how to assess appropriate amount of the annual fee of such leased property which shall be compared with the concerned property.

The tax assessment is divided into 2 methods. First, the tax assessment by officer in which the authority, which has duty to collect tax, is the one who do the tax assessment. Second, the tax assessment by tax payer in which the tax payer has duty to do the tax assessment by himself.<sup>10</sup>

1. Taxpayer Passive System is the method that requires tax payer to submit tax form to the authority which has duty to collect tax. The authority shall assess the amount of tax paid by the tax payer. In this regard, an officer shall have the duty to arrange the information of property which must be taxed, to make tax payer registration,

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<sup>9</sup> Regulations of Annual Fee Assessment on 30 March 1992 declared by minister of the Ministry of Interior.

<sup>10</sup> Supalak Pinitpuvadol, Explanation on Local Tax (Bangkok: Winyuchon Publication House) 330 (3<sup>rd</sup> ed. 2007).



to assess tax burden according to the rule and rate set forth by legislation, and to inform the tax payer to pay tax within the specific time.

2. Taxpayer Active System is the method that requires tax payer to assess his or her own tax and pay such amount of tax to the officer. This is similar to the method to calculate income tax under rules and conditions set forth by law. In this respect, the officer must check for the correctness of the tax assessment by tax payer.

## **G. The Method of Land and Building Tax Assessment by Officer**

### **1. The Scope of Officer's Authority<sup>11</sup>**

According to paragraph 3 of Section 8, in case the property is leased, the amount of rental fee shall be regarded as the amount of annual fee. However, in case where there is a reasonable circumstance which make an officer consider that it is not an appropriate amount of money for rent, or in cases where there is no rental fee because the owner possess his own land and building or because of other circumstances, an officer has an authority to assess the annual fee by considering the characteristics of property, area, location and infrastructure services given to such property according to the Notification of Ministry of Interior. However, such declaration has no certain rule to specify what is regarded as "reasonable rental fee", therefore, it is necessary to interpret legislation which may be viewed differently. The interpretation must be done within the scope of law and must be followed by the actual economic status.

### **2. The Property Annual Fee Assessment by Characteristic of Building<sup>12</sup>**

Besides assessment under annual rental value, the Building and Land Tax Act B.E. 2475 was amended by the Building and Land Tax Act (Edition 4) B.E. 2534 and Ministry of the Interior Notification on Criteria for Annual Rental Value Assessment dated on March 30, B.E. 2535, provided criteria widely for assessment in annual rental value of taxable property without details. So, local administrative authorities need to provide their own criteria as the same standard. For example, In Bangkok by the Governor of Bangkok enacted BMA Notification no. 63/2538 which provides official

<sup>11</sup> Ibid.,p.245.

<sup>12</sup> Supalak Pinitpuvadol, Explanation on Local Tax, p. 256.

treats following the regulation for building and land tax assessment; this can be concluded in brief as:

a. Tax assessment for general property can be divided into 2 categories, they are first-assessed property and assessed property; and

b. Tax assessment for specific property, tax official would be assessed property that criteria provided only in the notification and consideration to emphasize at business activities and properties' character, regardless, of the property of activities whereas an allowed licenses by the government has to be set up, such as, gas station, stadium, mall, theatre, hotel, factory, hospital, bank, gas storage, etc.

The Tax Assessment by Characteristic of building can be divided as follow;

(1) In case where the building is leased, we have to consider whether there is a reasonable amount of rental fee or not by relying on the characteristic, size, area, location or surroundings of building, and after that to undertake tax assessment. However, if it is found that the rental fee is not an appropriate amount; the tax assessment can be done by comparing with the rental fee of other buildings which has similar condition, size, area, and location.

(2) To consider characteristic of building, building materials are needed to be examined under presumption that high quality of materials shall raise higher rate of rental fee than the house which is constructed by low quality of materials.

(3) For size and area, the house which is larger must raise higher rate of rental fee than the smaller house.

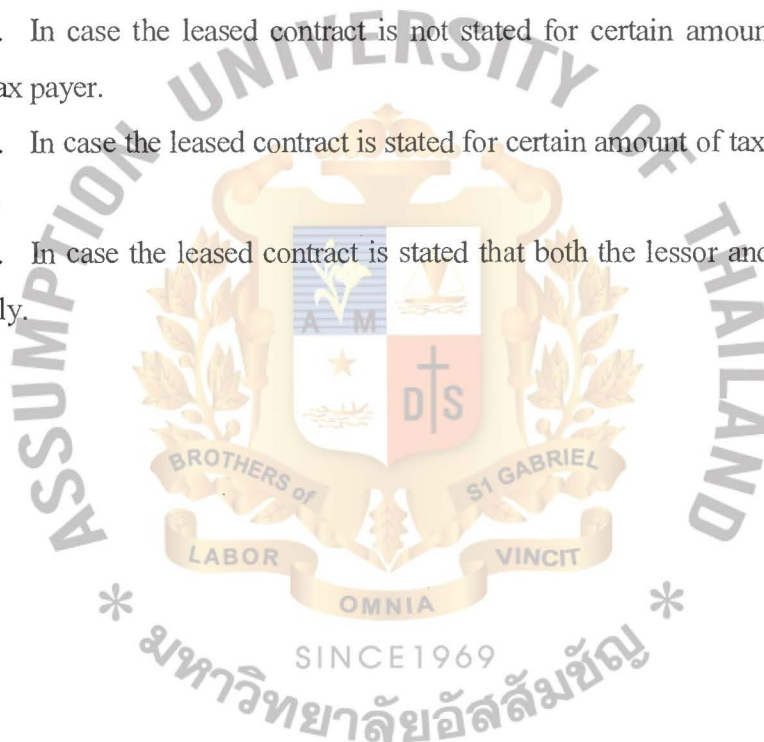
(4) For location and surroundings, if the house is located in the community area, it shall raise higher rate of rental fee than the house located in the rural area or the area which has insufficient infrastructure services.

In addition, it is necessary to consider whether the house is let wholly or partly; that is, if it is let partly, the annual fee shall be determined by an amount of rental fee get such as those houses which are let in part. Nevertheless, if the officer considers that such rental fee is not an appropriate amount, he can edit such amount by comparing with the characteristic of house, size, area, including location and other surroundings as afore-mentioned.

### 3. Tax Assessment by House Lease Contract<sup>13</sup>

In certain cases, there is a leased agreement between the lessor and the lessee of the house which has to fulfill requirement to be taxed. The leased contract may result in uncertainty in the amount of tax specifying. This is because tax assessment officer must rely on his or her own discretion in the assessment which may result in different way of practice. For example, In Bangkok, there is a rule for tax assessment officer to follow, this is called KorTor. 607/7898. Under this rule, the tax assessment officer shall rely on the amount of rental fee actually collected from leased contract only (in case there is a rental fee in the contract only) and may divide the method of assessment as follows;

1. In case the leased contract is not stated for certain amount of tax and the lessor is the tax payer.
2. In case the leased contract is stated for certain amount of tax and the lessee is the tax payer.
3. In case the leased contract is stated that both the lessor and the lessee must pay tax equally.



<sup>13</sup> Supalak Pinitpuvadol, Explanation on Local Tax, p. 274.



## Chapter 3

### Principles of Land and Building Tax in Foreign Countries

#### A. Property Tax in the United States

##### 1. Introduction

In the United States, property tax on real estate is usually assessed by local authority, at the municipal or county level. A very important benefit of a tax on property over a tax on income is that the revenue always equals the tax levy, unlike income or sales taxes, which can result in shortfalls producing budget deficits. The property tax always produces the required revenue for municipalities' tax levies. The assessment is made up of two components, the improvement or building value, and the land or site value. In some states, personal property is also taxed. A tax assessor is a public official who determines the value of real property for the purpose of apportioning the tax levy. An appraiser may work for government or private industry and may determine the value of real property for any purpose.

Tax assessor offices maintain inventory information about improvements to real estate. They also create and maintain tax maps. This is accomplished with the help of surveyors. On tax maps, individual properties are shown and given unique parcel identifiers. The tax maps help to ensure that no properties are omitted from the tax rolls and that no properties are taxed more than once. Real property taxes are usually collected by an official other than the assessor. Examples of a proposed reform to a property tax on real estate to one that falls more heavily on the land portion is provided at the following sites as sponsored by The Henry George Foundation. Maryland, King County, Washington, Indiana, New Jersey, New York.

The assessment of an individual piece of real estate may be according to one or more of the normally accepted methods of valuation (i.e. income approach, market value or replacement cost). Assessments may be given at 100 percent of value or at some lesser percentage. In most if not all assessment jurisdictions, the determination of value made by the assessor is subject to some sort of administrative or judicial review, if the appeal is instituted by the property owner.

Ad valorem (of value) property taxes are based on fair market property values of individual estates. A local tax assessor then applies an established assessment rate to the fair

market value. By multiplying the tax rate  $\times$  against the assessed value of the property, a tax due is calculated.

Property taxes are imposed by counties, municipalities, and school districts, where the millage rate is usually determined by county commissioners, city council members, and school board members, respectively. The taxes fund budgets for schools, police, fire stations, hospitals, garbage disposal, sewers, road and sidewalk maintenance, parks, libraries, and miscellaneous expenditures.

Relatively recently, US property tax rates increased well above similar rates in other countries, and exceeded 5% in some US states, thus becoming the main dwelling expense after construction.

Property taxes were once a major source of revenue at the state level, particularly prior to 1900, which was before states switched to relying upon income tax and sales tax as their main sources of revenue.

After determining a budget at the municipal level, a legislative appropriation determines how the monies will be collected and distributed. After that, a tax authority levies the tax. An appeal is permitted. Equalization is then considered by a board of equalizers to assure fair treatment. Then a tax rate is determined by dividing the municipal budget by the assessment role of that municipality. Multiplying tax rate by the assessed value of one's property determines one's tax rate.

Some jurisdictions have both ad valorem and non-ad valorem property taxes (better known as special assessments). The latter come in the form of a fixed charge (regardless of the value of the underlying property) for items such as street lighting and storm sewer control.

In the United States, another form of property tax is the personal property tax, which can target

- a) automobiles, boats, aircraft and other vehicles;
- b) other valuable durable goods such as works of art (most household goods and personal effects are usually exempt);
- c) business inventory;
- d) intangible assets such as stocks and bonds.

In some states, it is permissible to separate the real estate tax into two separate taxes - one the land value and one on the building value.

Personal property taxes can be assessed at almost any level of government, though they are perhaps most commonly assessed by states.

## 2. Structure of Property Tax in United State

Property Taxes <sup>14</sup> (Real Property) are taxes on land and the buildings on it are the biggest source of revenue for local authority. They are not imposed by states but by the tens of thousands of cities, townships, counties, school districts and other assessing jurisdictions.

The state's role is to specify the maximum rate on the market value of the property, or a percentage of it, as the legal standard for the local assessors to follow. The local assessor determines the value to be taxed. You can't escape property taxes in any state. But you can find significantly low rates in certain parts of the country.

Most states give residents over a certain age a break on their property taxes. With some taxes, you'll need a relatively low income to qualify. Forty states provide either property tax credits or homestead exemptions that limit the value of assessed property subject to tax.

There may be other tax breaks available, depending on where you live. All 50 states offer some type of property tax relief program, such as freezes that will lock in the assessed value of your property once you reach a certain age, or deferral of taxes until the homeowner moves or dies. They ultimately have to be paid. In addition, counties and municipalities often have their own property tax relief plans.

Retirees with low incomes and high housing costs may face property tax bills that are higher than they can manage. Some states target property tax relief to those homeowners bearing the greatest burden. Property tax reform that takes into account a homeowner's ability to pay, such as a so-called "property tax circuit breaker," can better protect low-income homeowners from rising property taxes that accompany rising property values. Targeted property tax relief avoids sharp reductions in funding for locally provided public services and inequities based solely on date of purchase.

1. A property tax circuit breaker prevents property taxes from "overloading" a taxpayer. Under a typical circuit breaker, the state sets a maximum percentage of

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<sup>14</sup> Taxes by State, Property Taxes, available at <http://www.retirementliving.com/RLtaxes.html>. (last visited 17 September 2008).



income that an eligible family can be expected to pay in property taxes. If property taxes exceed this limit, the state then provides a rebate or credit to the taxpayer.

2. Currently, of the 31 states and the District of Columbia with circuit breakers for homeowners, only six and the District of Columbia permit all households to participate in the program without regard to age.

Other property tax relief strategies that may be used to target property tax relief include homestead exemptions which exempt a certain amount of a home's value from taxation, credits to rebate a certain percentage of taxes paid, and deferral programs to allow low-income elderly homeowners to defer payment of property taxes until property is sold.

More and more states are cutting property taxes in exchange for increases in sales or other taxes. Idaho, New Jersey, South Carolina and Texas took this step in 2006. In New Jersey the state increased the sales tax by 1 cent with half of it designated for property tax relief in 2006 and possibly the full amount in future years. Voters in Idaho also approved a 1 cent sales tax increase that reduces property taxes by \$260 million. South Carolina's Republican governor, Mark Sanford, signed a measure that promises to cut average property taxes by 60% and makes up the revenue by increasing the sales tax by 1 cent. The revenue will be used to support the Homestead Exemption Fund. In Texas the state lowered property taxes by increasing the taxes on cigarettes and some business activity.

Best and Worst States:<sup>15</sup> The analysis of real estate taxes across states is complicated by the fact multiple local jurisdictions follow different assessment, administration, and reporting procedures. In addition, 37 states also collect property taxes at the state level. The Northeast part of the country has the highest property taxes, along with pockets elsewhere, such as Wisconsin, Texas and Illinois. This based on data from the Census Bureau's 2006 American Community Survey and Tax Foundation calculations. The top five states (in order) based on median real estate taxes paid are: New Jersey (\$5,772), New Hampshire (\$4,136), Connecticut (\$4,049), New York (\$3,031), and Massachusetts (\$3,195). The bottom five states are;

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<sup>15</sup> Taxes by State, Property Taxes, available at <http://www.retirementliving.com/RLtaxes.html>. (last visited 17 September 2008).

Arkansas (\$469), Mississippi (\$437), West Virginia (\$422), Alabama (\$328), and Louisiana (\$179).

## **B. Structure of Property Tax in New York State<sup>16</sup>**

In New York State, the real property tax is a tax based on the value of real property. Counties, cities, towns, villages, school districts, and special districts each raise money through the real property tax. The money funds schools, pays for police and fire protection, maintains roads, and funds other municipal services enjoyed by residents.

In New York State, there is no personal property tax, which is a tax on personal items, such as cars and jewelry.

The amount of a particular property's tax bill is determined by two things: the property's taxable assessment and the tax rates of the taxing jurisdictions in which the property is located. The tax rate is determined by the amount of the tax levy to be raised from all, or part, of an assessing unit, and the unit's total taxable assessed value. The assessment is determined by the assessor and should be based on the value of the property less any applicable property tax exemptions.

Every parcel of real property in an assessing unit, no matter how big or how small, is assessed. Real property is defined as land and any permanent structures attached to it. Examples of real property are houses, gas stations, office buildings, vacant land, shopping centers, saleable natural resources (e.g. oil, gas, timber), farms, apartments, factories, restaurants, and, in most instances, mobile homes.

Though all real property in an assessing unit is assessed, not all of it is taxable. Some, such as religious or government owned property are completely exempt from paying property taxes. Others are partially exempt, such as veterans who qualify for an exemption on part of the property tax on their homes, and homeowners who are eligible for the School Tax Relief (STAR) program.

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<sup>16</sup> Office of Real Property Service, Property Tax in New York States, available at <http://www.orps.state.ny.us/pamphlet/taxworks.htm>. (last visited 20 September 2008).

## 1. Tax Base

A property's assessment is based on its market value. Market value is how much a property would sell for under normal conditions. Assessments are determined by the assessor, an elected or appointed local official who independently estimates the value of real property in an assessing unit. Assessing units follow municipal boundaries - county, city, town, or village.

The assessor can estimate the market value of property based on the sale prices of similar properties. A property can also be valued based on the depreciated cost of materials and labor required to replace it. Commercial property may be valued on its potential to produce rental income for its owners. In other words, the assessor can use whatever approach provides the best estimate of a property's market value; they must be assessed at their current-use value.

Once the assessor estimates the value of a property, its total assessment is calculated by multiplying the market value by the uniform percentage for the municipality. New York State law provides that all property in a municipality be assessed at the same uniform percentage of value (except in Nassau County and NYC where class assessing is authorized). That percentage can be five percent, ten percent, 50 percent, or any other percentage not exceeding 100 percent. It does not matter what percentage is used. What is important is that every property is assessed at the same uniform percentage within one assessing unit.

After a property's total assessment is determined, its taxable assessed value is computed. The taxable assessed value is the total assessment minus any applicable property tax exemptions. Exemptions are typically either whole or partial, that is either an exemption from paying any property tax or an exemption from paying part of a property tax bill.

## 2. Tax Rate<sup>17</sup>

The tax rate is determined by the amount of the tax levy. There are several steps involved in determining the tax levy. First, the taxing jurisdiction (a school district, town, county, etc.) develops and adopts a budget. Revenue from all sources other than the property tax (state aid, sales tax revenue, user fees, etc.) is determined.

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<sup>17</sup> Office of Real Property Service, What Determines the Tax Rate?, available at <http://www.orps.state.ny.us/pamphlet/taxworks.htm>. (last visited 23 September 2008).



These revenues are subtracted from the original budget and the remainder becomes the tax levy. It is the amount of the tax levy that is raised through the property tax.

Remember that the real property tax is an ad valorem tax, or a tax based on the value of property. Two owners of real property of equal value should pay the same amount in property taxes. Also, the owner of more valuable property should pay more in taxes than the owner of less valuable property.

The property tax differs from the income tax and the sales tax because it does not depend on how much money you earn or on how much you spend. It is based totally on how much the property you own is worth.

For example<sup>18</sup>, if an assessor assesses property at 15 percent of value, a house and land with a market value of \$100,000 would have an assessment of \$15,000. With no exemptions, this is the property's taxable assessed value. This \$15,000 is not the tax bill. The tax bill for this house depends on the municipality's tax rate.

The tax rate is determined by dividing the total amount of money that has to be raised from the property tax (the tax levy) by the taxable assessed value of taxable real property in a municipality. If, for example, a town levy is \$2,000,000, and the town has a taxable assessed value (the sum of the assessments of all taxable properties) of \$40,000,000, the tax rate would be \$50 for each \$1,000 of taxable assessed value.

$$\$2,000,000 / \$40,000,000 = .050 \times \$1,000 = \$50 \text{ (tax rate)}$$

The town tax bill for this house with an assessment of \$15,000 would be \$750. The \$750 results from dividing the assessment of \$15,000 by \$1,000 to get \$15 (because the tax rate is based on each \$1,000 of assessed value). Then, the \$15 is multiplied by the tax rate to get the tax bill of \$750.

$$\$15,000 / \$1,000 = \$15 \times \$50 = \$750 \text{ (tax bill)}$$

The size of the tax bill depends on both the assessment and the tax rate, which is based on the tax levy.

In communities assessing property at 100 percent of market value, the assessment should equal roughly the price for which you could sell your property. In

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<sup>18</sup> Office of Real Property Service, How Is My Tax Bill Figured?, in <http://www.orps.state.ny.us/pamphlet/taxworks.htm>. (last visited 20 September 2008).

communities assessing at a percentage of market value, the estimated market value of each property is listed on the tentative assessment roll. All property owners should check the tentative roll each year. (In most communities, the tentative roll is filed on May 1, but you should check with your assessor for the specific date for your community.)

In addition, it is helpful for taxpayers to bring any questions about assessments to the assessor before the tentative roll is established. In an informal setting the assessor can explain how the assessment was determined and the rationale behind it.

The Property Taxpayer's Bill of Rights requires that the property tax bill show the full value of the property, the assessed value, and the uniform percentage at which properties in your assessing unit are assessed. With those three items, and knowledge of what property is worth, taxpayer can determine if his property is being treated fairly.

It is the assessor's job to ensure that properties are assessed fairly. If the assessment is correct and tax bill still seems too high, the assessor cannot change that. Complaints to the assessor should concern the assessment of the property, not the amount of tax bill

### 3. Taxpayer

New York State Law requires all properties in your municipality (except in New York City and Nassau County) to be assessed at a uniform percentage of market value each year. This means that all taxable properties in your city, town or village must be assessed at market value or all at the same uniform percentage of market value each year. State Law also requires your assessor to include the estimate of the market value for each property, the assessment for each property and the uniform percentage for all taxable property on the tentative assessment roll. Then the owner of the property should pay property tax.

Assessments are determined by the assessor, an elected or appointed local official, who independently estimates the market value of real property in your community. Market value is how much your property would sell for under normal conditions. Once the assessor estimates the market value of your property, the assessment is calculated.



As mentioned above, New York State law requires all properties to be assessed at a uniform percentage of value within your community. Your assessment is a percentage of market value. That percentage of market or full value at which properties are assessed within a community is called the Level of Assessment (LOA). For example, a LOA of 50 percent would indicate that assessments are at half of the market value; whereas, an LOA of 100 percent represents a community that is assessing at full value.<sup>19</sup>

Your taxing jurisdiction (school district, town, county, etc.) is responsible for developing and adopting a budget. There are several steps involved in this process. Revenue from all sources other than the property tax is determined. These revenues are subtracted from the budget to arrive at the tax levy – the total amount to be raised through the property tax.

The tax rate for properties in your community is then determined by dividing the tax levy by the total taxable assessed value of taxable real property in your community (tax levy, total assessed value = tax rate).

#### 4. Valuing & Assessing Real Property<sup>20</sup>

In New York State, almost all property is assessed locally by assessors who are appointed or elected at the municipal level. The assessor's first step in assessing property is to determine the market value of the property. Market value is the price most people would pay for a property in its current condition. Information regarding the methods for determining market value is available in the Job of the Assessor.

The assessor is a local authority official who estimates the value of real property within a city, town, or village's boundaries. This value is converted into an assessment, which is one component in the computation of real property tax bills.

All real property, commonly known as real estate, is assessed. Real property is defined as land and any permanent structures attached to it. Some examples of real property are houses, gas stations, office buildings, vacant land, motels, shopping

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<sup>19</sup> Office of Real Property Service, FAIR ASSESSMENTS - A Guide For Property Owners, available at <http://www.orps.state.ny.us/pamphlet/fairassessments.htm>. (last visited 23 September 2008).

<sup>20</sup> Office of Real Property Service, Tax Policy & Exemptions, available at [http://www.orps.state.ny.us/home/tpe\\_index.cfm](http://www.orps.state.ny.us/home/tpe_index.cfm). (last visited 25 September 2008).



centers, saleable natural resources (oil, gas, timber), farms, apartment buildings, factories, restaurants, and, in most instances, mobile homes.

Before assessing any parcel of property, the assessor estimates its market value. Market value is how much a property would sell for, in an open market, under normal conditions. To estimate market values, the assessor must be familiar with all aspects of the local real estate market.

A property's value can be estimated in three different ways. First, property is compared to others similar to it that have sold recently, using only sales where the buyer and seller both acted without undue pressure. This method is called the market approach and is normally used to value residential, vacant, and farm properties.

The second way is to calculate the cost, using today's labor and material prices, to replace the structure with a similar one. If the structure is not new, the assessor determines the depreciation since it was built. The resulting value is added to an estimate of the market value of the land. This method, called the cost approach, is used to value special purpose and utility properties.

The third way is to analyze how much income a property (like an apartment building, store, or factory) will produce if rented. Operating expenses, insurance, maintenance costs, financing terms, and how much money expected to be earned are considered. This method is called the income approach.

Properties in sub optimal uses generally may not be assessed at market value; they must be assessed at their current-use value.

Assessors with computers can estimate values more efficiently than by hand. Computer Assisted Mass Appraisal (CAMA) techniques are used to analyze sales and estimate values for many properties at once.

Once the assessor estimates the market value of a property, its assessment is calculated. New York State law provides that all property within a municipality be assessed at a uniform percent of market value. The level of assessment can be five percent, 20 percent, 50 percent, or any other fraction, up to 100 percent. Everyone pays his or her fair share of taxes as long as every property in a locality is assessed at the same percent of value.

For example, a house with a market value of \$100,000 located in a town that assesses at 15 percent of value would have an assessment of \$15,000. The

assessment is multiplied by the tax rate for each taxing jurisdiction - city, town, village, school district, etc. - to determine the tax bills.

Assessors must obtain basic certification by New York State within three years of taking office. This requires the successful completion of orientation, three assessment administration course components, and five appraisal components, including farm appraisal for certain agricultural communities. The New York State Office of Real Property Services (ORPS) prescribes the components.

Assessors in Nassau County, Albany, Buffalo, Rochester, Syracuse, and Yonkers are not required to obtain basic certification.

Each year, appointed assessors must complete an average of 24 hours of continuing education. Both elected and appointed assessors may attain any of three advanced designations awarded by ORPS: State Certified Assessor-Advanced, State Certified Assessor-Professional, and State Certified Assessor-National.

5. The difference between the market value and assessed value of property

The market value of the property is generally defined as what the property would sell for under normal conditions. For residential properties, the assessor generally determines market values by comparing a property with similar properties that have sold in similar neighborhoods, giving consideration to other factors possibly affecting market value.

In many communities, where assessments are maintained at a uniform percentage of 100, the assessment is market value. In other words, your assessed value would equal market value. If the community is assessing at a fractional percentage of market value, the assessment should be based upon the percentage being used throughout the community. For instance, if the market value of your home is \$100,000, and your community is assessing at 30 percent of market value, your assessment should be \$30,000.

More than 250 municipalities across New York are now enjoying the benefits of consistent market value assessments. Aside from State Aid now totaling more than \$4.8 million each year, the benefits include:<sup>21</sup>

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<sup>21</sup> Office of Real Property Service, Annual Assessment Approval Process - Taxable State Land, available at <http://www.orps.state.ny.us/sas/sol/index.htm>. (last visited 25 September 2008).

(1) Assessment Equity for Taxpayers - The longer it has been since a municipality has updated assessments, the more likely it is that some taxpayers are paying more than their fair share in taxes. Up-to-date assessments eliminate unfair assessments and the “sticker shock” that taxpayers experience when assessments are adjusted after years of neglect.

(2) Local Control over the Equalization Rate – By maintaining assessments at market value each year, municipalities can consistently receive an equalization rate of 100. This eliminates shifts in school and county tax apportionment due to fluctuating equalization rates.

(3) Improved Bond Ratings – In addition to State Aid, many municipalities are receiving improved bond ratings as a result of their efforts to keep assessments current. These municipalities are saving tens of thousand of dollars each year (and, in some cases, much more than that).

(4) Fewer Court Challenges to Assessments - By keeping assessments up-to-date, municipalities are likely to have fewer tax certiorari cases.

(5) Increased State Land Assessments – Because State land assessments are frozen at the year of the last municipal-wide reassessment, annual assessments allow municipalities to make changes in market value that they could not otherwise capture.



## Chapter 4

### **Analysis of the Problem on the Assessment of Annual Fee as the Tax Base of Building and Land Tax in Thailand**

#### **A. Analysis of the problem in terms of the determination for tax base according to the Building and Land Tax Act B.E. 2475**

The building and land tax is levy from the owner of the building and land according to the acts of the Building and Land Tax B.E. 2475, section 40 which requires the owner of building and land to pay for taxes but if it occurs that other building and land or other constructions has different owners then, the owner of such construction has the responsibility to pay all of that. As a result of the property tax, it requires the taxpayer to pay when the official has assessed the tax, in other word, a duty to pay will occur when the assessment result was informed<sup>22</sup>.

Moreover, the Building and Land Tax B.E. 2475 has established the tax assessment method for the buildings, land and other construction as well as established the rate of tax collecting at 12.5 percentage of the annual fee. By this, the responsibilities of the official will be to categorize the property types that the law required to pay for tax and calculate the annual fee of the property which has to be paid according to in section 24<sup>23</sup>. Those provisions need to be carefully established. It

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<sup>22</sup> Polprasit Ritaksa, The Law of the Local Tax Collecting, the Local Management, the Office Management of Private and Public Sector (Bangkok: Nakornluang Publication), 416 (2544).

<sup>23</sup> Section 24 “When there was an investigated, it is a responsibility of the official to establish the following

- (a) property type according to section 6
- (b) property annual fee
- (c) the tax cost to pay

required the conformity with the basic rationale of the tax law which consists of the legitimacy of tax law and the equality of theory and other general law enforcement. The tax assessment criteria according to the tax base of Building and Land Tax B.E 2475 have set the annual fee and tax cost to calculate under the criteria framework according to section 8<sup>24</sup> and 18.<sup>25</sup>

When considering the criteria in respect of section 8 and 18, it can be seen that the law only required the assessed person to pay the taxes once a year according to the annual fee of the property. Other constructions and land that have been used continually with the building or other construction are in the percentage of 12.5 of the annual fee. Annual fee means the amount of money that the property can be let rented in a year. The calculation can only be done when the buildings and other constructions have completely fulfilled as a criteria of a year calculation. By the annual fee passed will be a criteria for the calculating of next year tax only in general requirements of the tax assessment.

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The official should inform the list as required to the tax collecting officer for them to in from the assessment list to the property assessed officer in their local to know as soon as possible.”

<sup>24</sup> Section 8 “To let the tax assessment payer pay the annual fee of the property once a year is building or other constructions and land that continually used with the building and other construction in 12.5 percentage of the annual fee.

For the usefulness of this section, the annual fee means the amount of money that the property can be rented in a year.

In case of the property for rent, the rent cost is the annual fee but in case there is a suitable event for the official to see that it is not an appropriate amount to rent or it cannot find the money to pay rent as the property owner work for themselves or other, then the officer has the authority to evaluate the annual fee by considering the characteristic of the property such as size, area, location and public services that the property get benefit. Thus, it will be according to the criteria that the Minister of the Ministry of Interior established on the gazette.”

<sup>25</sup> Section 18 “The annual fee of the year passed is the criteria for the next year tax pay calculation.”

The provision of section 8 does not provide any processes, assessment methods or a clear meaning of the annual fee, so there are still problems which haven't been solved yet. Thus, the management department did establish a Notification of Ministry of Interior to set the Regulations of Annual Fee Assessment which were applied since 30 March 1992.

The Notification of Ministry of Interior on the Regulation of annual fee assessment is required to fulfill requirements in section 7 and 8 of the act of tax base according to the Building and Land Tax B.E. 2475 which were added and re-content by the act of tax base of Building and Land Tax (issue 4) B.E. 2534. The Minister of the Ministry of Interior has announced as follow.

The assessment of the annual fee for a property has a rental fee; however officer might consider that the rental fee is unreasonable for rent due to the property owner operated by themselves or other reasons.

It can be concluded that main idea and the exception in the annual fee assessment according to section 8 of the acts of tax base according to Building and Land Tax B.E.2475 and the Notification of the Ministry of Interior on the Regulations of Annual Fee Assessment on 30 March 1992 as follow.

In case the property is for rent and the rent cost is an amount that appropriate it status, therefore they set an annual fee. However, there are exceptions in certain cases whereas the officials see that the rent cost is not appropriate for rent or cannot find the exact rent rate due to property owners operate on themselves or other reasons. Then, the official will have the authority to evaluate the annual fee by considering the characteristic of the leased property such as size, location and the public services it gained. Thus, this is according to the Notification of Ministry of Interior announced in the government gazette.

From the analysis of the Notification on 30<sup>th</sup> March 1992, a problem still occurred in cases where it was unable to specify the annual fee, because there weren't any property with the same characteristics of leased property in the same area to be compared with.

This provision gives the official the power to set the regulation of assessment of annual fee which is the amount of the money that the property can be rented in a year. Nevertheless, it has to consider the characteristic, size, location and infrastructure of that property and bring the regulation to establish on the gazette.



The author analyzed that the building and land tax Act B.E. 2475, has a main purpose calculating tax base from the annual fee. The official will have to consider whether the rental is unreasonable or not, and then calculate what the appropriate rental would be. Therefore, to set the amount of reasonable rental, it has to use the method of assessment of annual fee and the regulation which is enacted in the section 8 paragraph 3 of building and land tax Act B.E. 2475 have to be used. In other words, it has to consider the characteristic, size, location and infrastructure of that property. If we study the scope of the regulation which is enacted in the section 8 paragraph 3 of building and land tax Act B.E. 2475, we will know that aforementioned regulation is the same direction as the principle of Income Approach which is provided in the universal principle relating the assessment of property price.

The basis principles of the assessment of property price are divided into 3 categories as follows;

1. Replacement Cost Approach is a consideration whether the property should have the same value as the cost of replacement or the cost in procurement of substitute property at present, while existing property, which remains in the same condition but is not in use, shall be deducted the appropriate depreciated value. After that the substitute property shall be added to the true value of existing product and the value of land which is total to the overall value of property.

2. Income Capitalization Approach is the assessment from income of property which has the regulation that “the value of property is equal to the present value of expected income from the usage of property in the future”. The present value of expected income from the usage of property in the future can be defined as the total of income from the leased property in the future which is calculated back to the present value... The assessment must consider along with other factors which cannot be calculated as money. By this, it is necessary to additionally consider the advantages and disadvantages of location aspect, facility aspect and other aspects which affect the increasing and decreasing of property value. The fundamental of assessment depends on the estimate true value of future income which conforms to the notion that the assessor should indicate the reasonable expected income per year. In practice, the assessor always rely on the past income and present income to assess the true value of future income.

3. Market Approach is the value assessment which is assessed from the price selling and buying in the market at the time of assessment. However, if the buying and selling price of property in the market is not appeared at the time of assessment, the assessment of such property must be assessed from the property which has the same or similar characteristics. This is because the market value is required to be used in comparison; therefore, the inquiry of value information is important. Besides, the factors which must be used in the assessment are still comprised of the site, location, nature of land and building consideration, along with lifetime of property. The property assessment, which is done by comparing with market value, is necessary to bring all of this information in the indication. By this, there must be the calculation of depreciated value of property in order to be deducted from the value of property itself.

The provision of the building and land tax Act B.E. 2475 defined that the tax payer has to pay taxes once per year according to the annual fee of property same as the building or other structure and land constructed buildings or other structures. The rate of 12 % of the annual fees means bringing the principle of Income Approach which is one of the principles of the assessment of property price and defines a reasonable annual fee of the property.

Many judgments of the Supreme Court resulted as a guideline for the authorized official to evaluate the annual fee and to seize the criteria that announce by the Ministry of interior, especially to bring the past annual fee to be the criteria to calculate. For example, the supreme court judgments' number 6904/2544.<sup>26</sup> The acts of tax base of Building and Land Tax B.E. 2475 section 18 does not forced past annual fee to directly be used as the next annual fee, it only tends to be the criteria to calculate, since the annual fee can be raised or reduce according to the real behavioral. In case there is an appropriate event, the official has an authority to evaluate the annual fee by considering on the characteristics such as size, location and the public services the property gained in each year as stated in section 8.

Though the law intention requires to set an annual fee as an assumption value, since the property has set a rent, the officer might see that the cost are inappropriate or the rent cannot be paid as the property owner operated on their own or others. Then the

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<sup>26</sup> Supalak Pinitpuvadol, Explanation on Local Tax, p. 215.



officer will has the authority to evaluate the cost by considering the characteristic of size, location and public services gained by the property according to the Notification of Ministry of Interior announced in the government gazette. The mentioned judgment should be considered in details and in action so that the annual fee evaluates the rent cost presented to the officer. As there were no investigations on the building and land which caused the problems, some property in the area might not be asked to pay the tax, which is an inequality toward other tax payers. Same characteristics persons living under same conditions of the tax system have to pay equal taxes. It is the duty of the local organization to use judgments on evaluating the cost whereas they have no standard fixed upon the rent cost. There was a problem in official judgment which lacked certainty, though there were attempts to limit the framework for the official judgment by the Notification of the Ministry of Interior on the Regulations of Annual Fee Assessment on 30 March 1992 according to section 8, paragraph 3. Other characteristics of property might benefits in saving time to co-calculate in the annual fee set. When bringing section 18 to analyze, it requires the comparing to the past annual fee which makes it difficult to create equality. It should be noticed that those criteria lack clearness, it is always up to the judgment not the real property assessment because the officer will use the past rent as a rent base instead of consideration on the rent as the partial of the property values set.<sup>27</sup>

It can be seen that when considering upon the law, it provided the authority of the official to evaluate the annual fee to calculate the tax payment because there aren't any strict criteria set up. However, it provides general criteria for official to consider on annual fees which may lead to instability and unfairness. By this, it can be seen that in Thailand the building and land tax still has an instability tax collecting system whereas the tax base and the annual fee come from the judgment of the local officer. The law has not established specific requirements for units or organizations to evaluate annual fee, giving the authority to the local officer to judge for the set of annual fee is the amount of money that the property should be rent in one year.

An analysis of the differences of the tax base that are used for the property assessment to pay tax between Building and Land Tax in Thailand and New York States of United State.

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<sup>27</sup> Supalak Pinitpuvadol, Explanation on Local Tax, p.218.



In New York States, A property's assessment is based on its market value. Market value is how much a property would sell for under normal conditions. Assessments are determined by the assessor, an elected or appointed local official who independently estimates the value of real property in an assessing unit. Assessing units follow municipal boundaries - county, city, town, or village.

The assessor can estimate the market value of property based on the sale prices of similar properties. A property can also be valued based on the depreciated cost of materials and labor required to replace it. Commercial property may be valued on its potential to produce rental income for its owners. In other words, the assessor can use whatever approach provides the best estimate of a property's market value; they must be assessed at their current-use value.

The assessor is a local authority official who estimates the value of real property within a city, town, or village's boundaries. This value is converted into an assessment, which is one component in the computation of real property tax bills. It can be seen in the criteria of property assessment in New York States which used the market price that means using the real property assessment as the base of property tax collecting by having the unit to assess the property value and consist of the officials that have specific knowledge in the property assessment. As in New York States, assessor must passed the training according to the criteria of The New York State Office of Real Property Services (ORPS) is that the assessors must obtain basic certification by New York State within three years of taking office\*. This requires the successful completion of orientation, three assessment administration course components, and five appraisal components, including farm appraisal for certain agricultural communities. The New York State Office of Real Property Services (ORPS) prescribes the components.

Assessors in Nassau County, Albany, Buffalo, Rochester, Syracuse, and Yonkers are not required to obtain basic certification.

Each year, appointed assessors must complete an average of 24 hours of continuing education. Both elected and appointed assessors may attain any of three

advanced designations awarded by ORPS: State Certified Assessor-Advanced, State Certified Assessor-Professional, and State Certified Assessor-National.<sup>28</sup>

The assessor is obligated by New York State law to maintain assessments at a uniform percentage of market value each year. The assessor signs an oath to this effect when certifying the tentative assessment roll -- the document containing each property assessment. The physical description (or inventory) and value estimate of every parcel is required to be kept current. In order to maintain a uniform roll, each year your assessor will need to analyze all of the properties in the municipality to determine which assessments need to be changed.

Where assessments need to be changed, in some cases, your assessor will be able to increase or decrease the assessments of a neighborhood or group of properties by applying real estate market trends to those properties. This is possible only when the assessments to be changed are at a uniform level other than the municipality's stated level of assessment. In other cases, the assessor will need to conduct physical re-inspections for reappraisals of properties. Every assessing unit should be keeping all assessments at a fair and uniform level every year.

The assessment roll shows assessments and appropriate exemptions. Every year the roll, with preliminary or tentative assessments, is made available for public inspection. After the Board of Assessment Review (BAR) has acted on assessment complaints and ordered any changes, the tentative assessment roll is made final.

Beside, in the property assessment in New York States also employed the effective tools such as the tax map that is used for the pinpoint and certainty in the property assessment as well. When analyzed, it can be seen that the property value assessment according to the market price in New York States has the certainty and equality as well as the fairness since the assessment price will change in respective of the economic situation. In addition, the assessment also has the specialist in the property value assessment.

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<sup>28</sup> Office of Real Property Service, What Training Does the Assessor Have To Take, available at <http://www.orps.state.ny.us/pamphlet/assessjo.htm>. (last visited 30 September 2008).



In Thailand the collecting of building and land tax is still using the tax base which is annual fee and means the amount of the money that appropriate for the one year rent. And according to tax base of Building and Land Tax Act B.E.2475 which only set the authority to assess the annual fee by the local officer and those officers who may have no specific command or specific knowledge in the property assessment but only act according to the Notification of the Ministry of Interior on Regulations of Annual Fee Assessment on 30 March 1992. And in Thailand the assessment of the property used tax base is the annual fee which is more difficult than the assessment by assessed from real value of property or market price. So it is necessary that the assessor should have specific knowledge in the property assessment for certainty correction and fairness in taxation.

Beside, the property tax rate in New York States is not strict. In one year, they may collect in different rates depending on the amount of tax needed and the property value that can be assessed. Whether the tax rate will be high or low depend on the yearly budget set. The tax rate level that was collected from those properties beside the consideration on the income rate, are also considered economically and due to the situation of the society. Otherwise, the set tax rate may abnormally be high. There is a setting of high tax rate which ease the tax to become lower and therefore helps to raise the effectiveness of the property value assessment of the official.

In Thailand, the Building and Land Tax has established the strict rate at 12.5% of the annual fee. The local authority has no authority to change the tax rate to conform to each local need<sup>29</sup>.

## **B. An Analysis of Bill of Land and Building Tax Act B.E....**

Previously, building and land taxation keep annual fee in rate of 12.5% relied upon assessing officer's discretion. By using this approach, it is ambiguity and easy drain additionally; this high rate induces tax avoidance. New bills of land and building taxation

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<sup>29</sup> Nichnant Changkachitta, "Promblems of Building and Land Tax, and Local Improvement Tax : A suggested Answer," (M.E.Thesis, Dhurakijpundit University, 1994), p. 9.



contain some provisions involving constraint of personal right and freedom which is mentioned in section 29<sup>30</sup>, section 35<sup>31</sup>, and section 48<sup>32</sup> according to the Thai Constitution. Relied upon law authorities, matter of substantial is to assess tax base on all values of land and building and levy by organization of local administration including all implementation of collecting tax compatible with decentralization to local administration according to Thai Constitution in 1997, it gives authority to organization of local administration to be tax collector.

No matter if province, sub district or municipalities all have authority to collect tax in order to bring the revenue to develop their administrative district instead of depending on

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<sup>30</sup> Constitution of the Kingdom of Thailand B.E. 2540 (1997), section 29 “The restriction of such rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment shall also be mentioned therein.

The provisions of paragraph one and paragraph two shall apply mutatis mutandis to rules or regulations issued by virtue of the provisions of the law.”

<sup>31</sup> Constitution of the Kingdom of Thailand B.E.2540 (1997), section 35 “A person shall enjoy the liberty of dwelling.

A person is protected for his or her peaceful habitation in and for possession of his or her dwelling place.

The entry into a dwelling place without consent of its possessor or the search thereof shall not be made except by virtue of the law.”

<sup>32</sup> Constitution of the Kingdom of Thailand B.E. 2540 (1997), section 48 “The property right of a person is protected.

The extent and the restriction of such right shall be in accordance with the provisions of the law.

The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.”

annual government expenditure which allocates more than 100,000 millions baht. There are more opportunities where the government can bring previously collected budget from local to other utilization or decrease excess burden of tax. Moreover it will stimulate people to look after things for good local governance, transparency and effective tax collecting. The bill of land tax and the building as mentioned have been used for about 10 years to push up. The reason to consider the bill of this law for ten years is the change in politic and other units related that gave notices and opinions to object in wide areas. Since, it is the law that is important and may impact to the collecting of taxes in the overall country, this bill will in place of the acts of building and land tax and the acts of the local development tax that use in present under the rationale and reason to collect the tax according to the real as used in overall countries. As well as to improve and design the new tax to be easier understood and become more convenience to the payment receivers and payers which differs from the Building and Land Tax and the Local Development Tax that is collecting in the present.

The building and land tax that is collected in the present is based on the rent collecting which is very strange, but might be explained due to the past, Thailand never had an assessment price as the medium price. The government at that time used the collecting method of the rent collecting instead of the value of the land and construction. Actually, it is because the rent price are dramatically cheaper than the real prices of asset and that made the government needs to collect the tax in a higher rate of rent to 12.5% to replace the assessment price<sup>33</sup>. One of the similarity under both 2 tax laws are that there are no punishment for land profit forecaster or fining people who own pure land but do not use it appropriately. If it is this bill of land and building act, it will have the tax collecting base from the assessment according to today facts which can set the lower tax rate by not creating the burden to the population. The new rate of land and building tax will have 3 rates, Commercial or general land and building included the empty land which is not over 0.5% of tax base, Land and building for habitation; non commercial activities is not more than 0.1% of tax base, The agricultural land, the tax will collect not more than 0.05% of tax base. Beside, there is no limitation of the land size but it will calculate from the land value which follows the tax base price assessment from the overall value of the

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<sup>33</sup> Group of Economic News, "Government reform Land and Building Tax levy," Thai-rat (1 September 2008): 8.



land or building of Treasure Department that are announced every 4 years. For the empty land with no use there will be collecting taxes not more than 0.5% but within 3 years if there is still no use on it, the tax will increase to twice as much for example, the first year rate is 0.1%, in the next 3 years, it will increase to 0.2% and in the following next 3 years, it will increase to 0.4% but the highest rate to collect taxes will not be higher than 2% of the tax base or three assessment prices.

For the set of tax base, the law required to set up a committee which set the land tax base. The under-secretary of the Ministry of Finance will be the president and the committee will come from the related units such as the Treasury Department, the Ministry of Interior, the Pattaya municipality and Bangkok (BKK.) etc. as well as agreed to let the local administrator issue local provisions and have the right to increased the tax rate which already had been set up by the committee, nevertheless, it has to be within the capacity of the law, and only in cases where their really are necessity to develop their localization<sup>34</sup>.

According to the Bill, tax is collected from real value of property; therefore, the method of property assessment, which is comprised of Replacement Approach, Income Approach, and Market Comparison, can be applied as the guidance in assessment of property value in order to achieve the clear and better standard.

The new law enforces people who own houses, land including condominium to pay for their taxes yearly and such taxes will evaluate from the price value in the present. But the amount of money to pay for the taxes will be low as the government will give support and does not want it to be an additional living cost for most people of the population. Even though the tax rate has been set very high, nevertheless it is believed that the actual collecting tax isn't as high as estimated. The central committee will have the under-secretary of the Ministry of Finance as president who will then consider about lowering the tax rate such as 0.05% or 0.1% etc. Again, there is an arguing that the new rate of tax should not be lower than the old rate to protect the locals from suffering from decreased income.

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<sup>34</sup> News about new Law of Land and Building, available at <http://news.mumuu.com/economic/cat5/news20265/>. (last visited 17 October 2008).



Besides, if this law passes the consideration of the parliament, it will play a provisional role because it will be enforced for the next 2 years to relent load person that has to pay for the highest tax rate and to be gradually accepted by not loading on the population. Thus, the first year of enforcement will require payment of taxes for only 50% of the increased tax money, in the second year, it will increase to 75% and from the third year onward, it will be paid in full rate or 100%. This conditions will help people to adapt themselves as it is the gradually tax increased. For example: people who have a house and land calculated to a value of one million baht if paying tax in the rate of 0.05%, they will pay for the land and building tax only 500 baht per year. For the middle class people which have home and land on the average value of 2-5 million baht will pay the land tax as approximately 1,000-2,500 baht per year. There is still an exceptional reduce in tax as the house depreciation value where the law agrees to let the house owner obtain the maintenance cost to deduct not over 10% of the value. By the new home built in, the first year can bring deduction in payment cost for 1%, the second year can deduct 2% and the third year can deduct 3% until year ten that can cut off 10%. Houses built over 20 years can cut off the maintenance cost at the highest rate which is 10%.<sup>35</sup>

This act is a tax collecting depending on the amount of asset ones owns not on how much incomes he earns, both poor and rich people at the same time, it is stated to prevent impacts and put a slowdown into the economical field in advance. The rate improvement is set to be every 4 years. The central committee still has the power to set the asset value. The law also supports the poor people by reducing their tax and in some cases if the value of the assets is low they don't have to pay for any taxes such as if the asset value is 50,000 baht there is no need to pay for tax etc.

However, the law enforcement needs to be prepared to set the root that is strong enough for local authority to handle the collecting processes and assess the property values by themselves which should be accepted that it is not ready for now. Therefore in the period of 2 years after this bill passed the parliament before enforcement, the Ministry of Finance will have to prepare every unit to be ready. For the local authority, the Ministry of Finance will send the tax collecting unit to train them and

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<sup>35</sup> Group of Economic News, "Government reform Land and Building Tax levy," *Thai-rat* (1 September 2008): 8.

try to serve knowledge with most people of population in the country. At the same time, they will prompt for the land price assessment by having the Department of lands use the assessment price of the Treasury Department. Recently it has assessed the land by deed around 5 million plots from 30 million plots and there are 25 million plots left. This is expecting to spend 2 years to finish the assessment on time based on law enforcement. The main objective is to build strength to local authority systems and stimulating cooperation of groups in society, which will directly be paid to their local. This may cause awareness and lead to duty of investigating or be a part of the local government which will result to a better local management and therefore be effectively used. The local population will gain knowledge about how the money is used in local management, whether it is faithfully or not. If someone does a wrongful act, he might not be chosen the next time. Tax payer should select a decent person to take care of the money and managing their local. When the local can collect the income systematically, they will have enough income to build the infrastructure and public benefit for the population, while the central government provides the supporting money for the highest benefit.

In Thailand, out of 100 baht of the country income budget, local development tax and building tax collect only 8 baht; the rest (92 baht) will be kept by the central government as supporting money. When it was improved to be the new acts, in the first year, the local may increase the income by collecting more tax to 9 baht or 10 baht and continue increase until it collected at a rate of 40-50 baht before reaching the highest rate at 80 baht. When the local get more income, the development of countryside in the aspect of infrastructure and others will increase from the past in overall local management. The country has incomes of only 18,000 million per year. The office of economic of Ministry of Finance set up an aim within the next 10 or 15 years, whereas they are estimating the local should have an increase in income to 90,000 million baht per year. At that time, the central government will save a budget up to 70,000-80,000 million baht and from local support over 100,000 million baht in each year. A decrease of 20,000-30,000 million baht for the government will bring the

tax money to invest in infrastructure or build the basic infrastructure that still has lacked the majority of population and can take care more on the far local areas.<sup>36</sup>

According to the analysis statement above, it can be seen that the land and building tax used in present still have problem in several aspects especially, the uncertainty and clearness of the annual fee assessment for taxpaying. The Ministry of Finance then has proposed the bill of the acts of land and building B.E....to solve those problems in the land and building tax collection in present. However, when analyzing this act, it can be seen that it can help better coping with the uncertainty and unclear problems of the assessment because there is tax collection from the real value of property which use the Regulation according to the general assessment of the property value; there are 3 methods as follows;

1. Replacement Cost Approach
2. Income Approach
3. Market Approach

Nevertheless, the standard of the assessment of the property value should be guaranteed by enacting the law of assessment of property value and setting the responsible unit for the property assessment which is alike to New York State law.

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<sup>36</sup> Group of Economic News, "Government reform Land and Building Tax levy," Thai-rat (1 September 2008): 8.



## **Chapter 5**

### **Conclusion and Recommendation**

#### **A. Conclusion**

In present, the law of building and land tax of Thailand is still not effectively enough as it lack uncertainty to set the annual fee. The Building and Land Tax Act B.E 2475. does not set the certain criteria of the annual fee, but it gives the authority to the official to use their judgment according to the annual fee and the Building and Land Tax Act B.E. 2475 section 6, 8 and 18. We will find that the objectives of the building and land law targets to collect taxes from the body of the property (in the category of building or other constructions and the land that used continually with the building and other constructions). By ones who assessed to pay must pay annually in the percentage of 12.5 % of the annual fee and all of the annual fee means the amount of the money that the property is suited to rent for one year.

The law also set methods for assessment officials and annual fee appropriately, according to the statement in section 8, last paragraph where the method stated the differences in 2 cases.

1. In case of property for rent and the official agrees that the rent cost is appropriate for the rent, this will considered to be the appropriate annual fee.
2. In case of a not for rent property or a rent cost cannot be decided or even if there is a rent cost but the officer find such rent not appropriate. Then, the officer should assess the annual fee by considering the size, location and the public services that the property gained benefit. Thus, this will follow the criteria the Minister of the Ministry of Interior announced in the government gazette.

Though, the law of building and land and the Notification of Ministry of interior on the Regulations of Annual Fee Assessment on 30 March 1992 have set the regulation and the guideline for officers who have the assessment authority. It is only the authority given for the local official and that authority may bring the uncertainty, inequality and unfairness into the tax aspect.

According the problems mentioned above whereas occurrence of uncertainty of the present Building and Land Tax appears; the Bill of Land and Building Tax Act

B.E.... has been proposed to improve and solve the approach of tax collecting. This Bill of provision will be a guide for the Building and Land Act and the Local Development Tax. This Bill of Land and Building Act, will have a tax collecting base from the assessment according to real value of property which can set the lower tax base by not creating burdens to the population. The new rate of land and building tax will have 3 rates, Commercial or general land and building including the empty land which is not more than 0.5% of tax base, Land and building for habitation; non commercial activities is not more than 0.1% of the tax base, The agricultural land, will collect taxes not more than 0.05% of tax base. Beside, there is no limitation of the land size but it will calculate from the land value which follows the tax base price assessment from the overall value of the land of Treasury Department. This is announced every 4 year. For the empty land with no use there will be collecting taxes not more than 0.5% but within 3 years if there is no use on it, the tax will increase twice as high for example, the first year rate is 0.1%, in the next 3 years, it will increase to 0.2% and in the following 3 years, it will increase to 0.4% but the highest rate to collect tax is not more than 2% of the tax base or the assessment price.

For the set of tax base, the law requires to set up a committee which is the one concerning about the land tax base. The under-secretary of the Ministry of Finance will be the president and the committee will come from the related units such as the Treasury Department, the Ministry of Interior, the Pattaya municipality and Bangkok (BKK.) etc. as well as agree to let the local administrator launch the local provision to increase tax rate from the one set by the committee but not over than the rate that the law has limited, only in cases where there is a reason or the necessity to develop their localization.

According to the analysis statement above, it can be seen that the land and building tax used in present still have problem in several aspects especially, the uncertainty and clearness of the annual fee assessment for taxpaying. The Ministry of Finance then has proposed the Bill of Land and Building B.E....to solve those problems in the land and building tax collection in present. However, when analyzing this act, it can be seen that it can help resolve the problem about uncertainty and unclearness of the assessment as it used the assessment cost from the Treasury Department which has been improved in every 4 years. But, for the building's value assessment, it still has uncertainty aspect since the bill has not been set a clearly



criteria to assess the real value of the building but it is only set to assess by the present value assessment criteria.

## **B. Recommendation**

According to the present problems of the uncertainty and unclearness in tax collection based on the annual fee that arisen from the acts of Building and Land Tax B.E. 2475 by giving officer the authority to consider in annual fee assessment which result in abuse power, leakage of tax and uncertainty as well as unclearness. The officer uses only the criteria and comparing methods according to the Building and Land Tax Act B.E.2475 section 8 and 18 which consist of the announcement from the Ministry of Interior on the criteria setting for annual property assessment dated 30 March B.E. 2535. These criteria set the wide scope of regulation and grant too much power to officer. So I would like to recommend 2 cases:

### **1. In case of using the Building and Land Tax Act B.E. 2475**

The Notification of Ministry of Interior should be amended by the Minister of the Ministry of Finance by virtue of Section 8 of Building and Land Tax Act B.E. 2475 to set the regulation of assessment of annual fee of property to be more obvious by requiring the local authority of each province to set up the committee to assess the annual fee together in every year. Also, setting a guideline for assessment of how the annual fee shall be in each year according to the economic and social situation of each area. The criteria can be set as follow;

(1) Setting the characteristic of the asset according to the type of use clearly such as use for agricultural, industrial or accommodation.

(2) Setting the size of area, how big the asset area are going to be and how much of the annual fee shall be and will be differ from the size of the area.

(3) Setting the location of the property that on where the property is located, whether it has the benefit income or not and how much benefits of the annual fee should be collected.

(4) Considering of the infrastructure or the public services that the asset has gained or what kind of public services is needed in each area and how much it contributes to be benefit.



According to the Section 8 of Building and Land Tax Act B.E. 2475, the assessment of annual fee of property does not have rental fee because the property owner operates on themselves or other reasons. It uses the compared method by comparing the leased property which has the same characteristics and location in the same area.

Nonetheless, in case where there are no similar characteristics of leased property in the same area, it cannot use the compared method. Therefore, in this case, the assessment of annual fee can be done by giving the power to use discretion of the assessment of annual fee to official according to the regulation which is provided in The Notification of Ministry of Interior by comparing the rental fee with the leased property which has similar characteristics.

From the above criteria, the asset annual fee assessment shall be brought to co-consideration in every requirement for the certainty, clearly and fairly to the tax payer as well. The committee that will co-consideration shall include the related government central unit such as Ministry of finance and the Treasury Department that send the staff to attend for assess annual fee with the local committee. However, the committee set up from the local unit could be difficult to invite all committee from all units as there will be too much committees therefore, there should be a consideration and the fraction set up in the committee setting and considering on the unit that relate to the annual fee assessment directly and appropriately.

## 2. In case there is an announcement of the Bill of Land and Building B.E....

Today, there is a proposed of the Bill of Land and Building B.E... to solve with the problem of uncertainty and unclearly of the present land and building tax collection; partly is that this bill has changes the tax base from the annual fee to be the tax based on the asset value. In part of land assessment, it uses the land assessment value of Treasury Department which is amended every four years. However, in part of building assessment, it is assessed by the assessment of property price comprised of Replacement Cost Approach, Income Capitalization Approach, and Market Approach. For guarantee the standard of property assessment, should be issuing ministry regulation by virtue of Section 6 of the Bill. It should set the sole unit, the National Property Assessment Department which is responsible for the land assessment value including building. The Local Authority should be specified to use the National Property Assessment Department's information in property value for tax calculating

according to the National Property Assessment Department which can balance the power with the local authority.



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