

**MISSING THE FOREST FOR THE TREES:
THE ILLUSORY HALF-POLICY OF SENIOR
CITIZEN PROPERTY TAX RELIEF**

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Senior citizen tax relief programs are often hailed by politicians as a solution to the economic woes faced by many elderly homeowners. But the reality behind the political spin suggests that these programs are imperfect in both their conception and execution. In this note, Mr. Christopherson examines the demand that has yielded these programs and the policies that have resulted. In analyzing the various types of relief which are available, Mr. Christopherson brings to light the various shortcomings of these programs and the potential means of remedying these problems. Mr. Christopherson concludes that if senior citizen tax relief programs are viewed in an honest light, then the failures of these programs can be remedied and a more comprehensive array of relief can be provided.

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I. Introduction

A popular conception of the elderly is one of reasonably well-off individuals and couples who, upon retirement, relocate to Florida, Arizona, or some other warm weather location and spend their days relaxing, chatting about their grandchildren, and hitting the golf links. While this conception is true in some regards, it is largely a myth.¹ Although many seniors do indeed head for Palm Beach, Florida, or Sun City, Arizona,² a majority of seniors remain in the communities where they have lived the majority of their lives³ and have no desire to leave their existing home.⁴ Closeness to friends and family, involvement in churches and other organizations, as well as a sense of well-being and comfort in their existing communities, are all reasons why seniors choose not to relocate.⁵

However, for many seniors, staying put can prove difficult.⁶ Although nearly eighty percent of the elderly have ownership of their own homes,⁷ retirement often brings a sharp drop in income⁸ and the

1. "It is a myth that seniors, in large numbers, voluntarily plan to leave the state and region where they spent their working and family-rearing years to retire somewhere else." Patricia Salkin, *Where Will the Baby Boomers Go? Planning and Zoning for an Aging Population*, 32 REAL EST. L.J. 181, 183 (2003).

2. Sun City, Arizona, emerged from a large-scale retirement community built by the Del Webb Corporation also known as Sun City. See <http://www.delwebb.com/About/> (last visited Oct. 11, 2004). It is a bellwether for similar types of retirement communities around the nation which promote "active adult lifestyles" and combine residential housing with a wide variety of amenities including shopping, in-home medical care, golf courses, and extensive social opportunities. See <http://www.delwebb.com/lifestyle/amenities.aspx> (last visited Oct. 11, 2004).

3. More than four in five Americans say that they strongly agree or somewhat agree that they want to stay in their residence as they grow older. See AM. ASS'N OF RETIRED PERS., *THESE FOUR WALLS . . . AMERICANS 45+ TALK ABOUT HOME AND COMMUNITY* (2003), available at http://research.aarp.org/il/four_walls.html [hereinafter *THESE FOUR WALLS*].

4. According to the American Association of Retired Persons, eighty-five percent of senior citizens said they wanted to "stay where they are and never leave." Salkin, *supra* note 1, at 183.

5. See generally *THESE FOUR WALLS*, *supra* note 3.

6. See EVELYN HOWARD ET AL., *HDR AFFORDABLE SENIORS HOUSING HANDBOOK* § 1:6 (2003) (discussing financial hardships faced by elderly homeowners).

7. *Id.* Of elderly homeowners, "twenty percent have a mortgage, while eighty percent own their home free and clear."

8. See Salkin, *supra* note 1, at 185-86. Seniors are often said to be property rich but cash poor. "[T]here is no doubt that many seniors live their 'golden years' in retirement on a fixed income," but it should be noted that the average value of homes owned by active adults is nearly \$200,000. *Id.*

costs of maintaining a home can be a significant financial burden.⁹ In some cases, despite the preference of elderly homeowners to remain in their current residence, costs associated with owning a home may force them to sell and seek less desirable housing elsewhere.¹⁰

The payment of property taxes is one of the major costs of maintaining a home, especially in markets where home prices and property tax rates are rising quickly, and in areas that lack commercial or other tax-generating development, thus requiring the majority of community services to be paid out of residential property taxes.¹¹ For many elderly, the property tax burden is a critical factor in determining the feasibility of remaining in their current residence.¹² Growing concerns over escalating property taxes have spurred senior citizens and government officials to lobby for property tax relief,¹³ so that elderly homeowners can remain in their current residences.¹⁴

A wide variety of property tax relief programs are aimed at senior citizens, and eligibility requirements and benefits vary from state

9. See JOAN M. KRAUSKOPF ET AL., *ELDER LAW: ADVOCACY FOR THE AGING* § 22.12 (2d ed. 1993). “Owning a home can create financial hardship on older persons with fixed incomes that do not provide funds for unforeseen expenses such as special assessments, major repairs, and increased taxes.” *Id.* Even routine expenses such as mortgage payments, insurance and utilities can become a burden when on a fixed income. *Id.*

10. See *id.*

11. For example, in New York, “taxes were growing two and three times inflation, literally taxing senior citizens out of their homes.” Bruce Lambert, *Millions in Property Tax Relief, but Critics, Too*, N.Y. TIMES, June 27, 1999, at 14LI.

12. See KRAUSKOPF ET AL., *supra* note 9. Because the property tax is imposed irrespective of the taxpayer’s liquidity, a retiree living on a fixed income whose home appreciates significantly in value and whose property tax obligation rises commensurately will find it increasingly difficult to afford living in their own home. Edward A. Zelinsky, *The Once and Future Property Tax: A Dialogue with My Younger Self*, 23 CARDOZO L. REV. 2199, 2201–02 (2002).

13. See, e.g., Kirk Stark & Jonathan Zasloff, *Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?*, 50 UCLA L. REV. 801 (2003). One of the most celebrated examples of seniors lobbying for relief from rising property taxes is the passage of Proposition 13 in California, which froze assessed values of certain property and capped property tax rate increases. *Id.* Voters’ approval of Proposition 13 was animated by a confluence of factors, including senior citizens’ fears of being priced out their home by soaring tax bills. *Id.* at 830.

14. Forty-four states and the District of Columbia have at least one type of property tax relief program that gives the elderly preferential treatment. Tracey A. Kaye, *Show Me the Money: Congressional Limitations on State Tax Sovereignty*, 35 HARV. J. ON LEGIS. 149, 176 (1998). The nationwide expansion of these programs are in response to taxpayers’ complaints about the local property levy and “answer some of the most politically urgent outcries about the tax.” Zelinsky, *supra* note 12, at 2210.

to state and community to community.¹⁵ For seniors, the motivation behind the effort to secure tax relief is practical: without relief many seniors arguably could not remain in their homes.¹⁶ For state and local government officials, the motivation is more varied and complex. Although compassion toward the concerns of constituents certainly plays a role, government officials who support property tax relief programs are often responding to pressure from seniors or senior advocacy groups.¹⁷ Government officials also support senior tax relief because of the secondary benefits such relief can create.¹⁸ One of the more interesting secondary benefits attributed to property tax relief is the ability of a community to keep more seniors in place.¹⁹ A stable population of elderly homeowners prevents younger families with children from moving into the community, thus limiting an influx of school-age children, which would necessitate an increase in the community's educational expenditures.²⁰ The school-funding issue has proven controversial in some communities, pitting the interests of the elderly against the interests of families with children.²¹

This note will examine property tax relief programs for the elderly, explore the reasons for the existence of these programs, and consider whether the creation and administration of these programs is sound public policy. Part II will examine seniors' preference for stay-

15. Examples of senior property tax relief include property tax exemptions, property tax deferrals, income tax credits, property assessment freezes, and so-called circuit-breakers. WILLIAM D. VALENTE ET AL., *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 533-46 (5th ed. 2001); see also Jeffrey G. Abrandt, *Housing Issues for the Elderly: Programs Available to the Elderly of Modest Means or Less*, in REPRESENTING THE ELDERLY CLIENT 1990, at 331-32 (PLI Tax Law & Estate Planning Course, Handbook Series No. 196, 1990).

16. See KRAUSKOPF ET AL., *supra* note 9.

17. See PETER SCHRAG, *PARADISE LOST* 129-87 (1998) (discussing in depth the political pressure and compassion for taxpayers, including the elderly, that led to passage of Proposition 13 in California). "[N]ight after night, the evening news on Los Angeles television stations, with their millions of viewers, was filled with pictures of tearful old ladies whose assessments had in fact more than doubled and who told interviewers they saw no alternative but to sell their homes." *Id.* at 150.

18. See Laura Mansnerus, *Great Haven for Families but Don't Bring Children*, N.Y. TIMES, Aug. 13, 2003, at A1; Iver Peterson, *As Taxes Rise, Suburbs Work to Keep Elderly*, N.Y. TIMES, Feb. 27, 2001, at A1.

19. See Peterson, *supra* note 18, at A1.

20. "Some communities that may not want to increase their school-age population can embrace the elderly. That is socially acceptable, and because the federal Fair Housing Act allows senior-citizen developments to prohibit younger residents it is legally acceptable." Mansnerus, *supra* note 18, at A1; Peterson, *supra* note 18, at A1.

21. See Mansnerus, *supra* note 18.

ing in their own homes as they grow older. Part III will explain the various types of relief available. Part IV will consider property tax relief from a public policy perspective, concluding that while the programs provide obvious benefits to certain seniors, there are several drawbacks. First, senior citizen property tax relief can be manipulated by government officials to obtain other than altruistic goals. Furthermore, the promulgation of property tax relief programs for the elderly has largely ignored the housing affordability issues faced by minorities and renters, and has failed to address important differences among homeowners. Moreover, policy makers have, in some instances, failed to address the sustainability of property tax relief programs in light of a rapidly increasing elderly population. Finally, there has been a failure to admit that, in some respects, relief programs are not needed and that there are other ways for senior citizens to relieve themselves of increasing financial burdens due to rising property taxes. Part V will attempt to offer a solution to the senior property tax conundrum, one that is faithful to the needs of senior homeowners, but does not ignore the reality that property tax relief programs can have consequences for the larger community.

II. The Increasing Elderly Population and Their Preference for Aging in Place

The number of senior citizens in the United States is growing rapidly.²² As the baby-boom generation ages, the elderly population is due to increase significantly.²³ According to the 2000 census, there were nearly thirty-six million people aged sixty-five or older, representing a twelve-percent increase from a decade earlier.²⁴ By the year 2030, the number of people aged sixty-five or older is estimated to rise to seventy million, which will exceed the number of people under the age of fifteen.²⁵ Senior citizens will comprise twenty percent of the U.S. population by 2030, compared to approximately thirteen percent currently.²⁶ Increasing advances in medicine and health care mean

22. Salkin, *supra* note 1, at 181.

23. *Id.*

24. ADMIN. ON AGING, U.S. DEPT. OF HEALTH AND HUMAN SERVS., A PROFILE OF OLDER AMERICANS: 2002, at http://www.aoa.gov/prof/statistics/profile/2_pf.asp (last visited Feb. 1, 2005) [hereinafter A PROFILE OF OLDER AMERICANS].

25. Salkin, *supra* note 1, at 181.

26. *Id.* at 181–82.

people are living longer, healthier, and more independently,²⁷ and within this context, housing for the elderly is an increasingly important and salient issue.²⁸

Although some elderly retirees choose to sell their homes and move to other communities, there is a preference among the elderly to grow old in the homes and communities where they currently reside, the places where they raised their children and lived a large part of their adult lives.²⁹ Homeownership, the desire to be near friends, family, and grandchildren, and a desire to remain active in the community are reasons behind this preference,³⁰ which is commonly referred to as “aging in place.”³¹ When many elderly “age in place” within the same community, the result is what is referred to as a “naturally occurring retirement community” (NORC).³² The term “naturally occurring retirement community” has come to mean any neighborhood or building where more than half of the residents are over sixty years old or where there are simply a disproportionate number of residents over the age of sixty.³³ According to an American Association of Re-

27. *Id.* at 183.

28. “[H]ousing affordability is the greatest problem facing elderly households.” *Id.* at 185.

29. Between eighty-five and ninety percent of seniors say they want to retain their current housing situation as long as possible. ADA-HELEN BAYER & LEON HARPER, AARP FIXING TO STAY: A NATIONAL SURVEY ON HOUSING AND HOME MODIFICATION ISSUES 4 (2000), available at http://research.aarp.org/il/home_mod.pdf.

30. See THESE FOUR WALLS, *supra* note 3, at 31, 8, 36.

31. “Aging in place” is a “bit of sociology-speak” that means a person continues to live in their current residence as they grow old rather than moving to, for example, a seniors’ residence, nursing home, or a child’s basement. See Paul McFedries, *The Word Spy* (June 5, 2002), at <http://www.wordspy.com/words/NORC.asp>; see also Blount County, TN, *Aging in Place* (Oct. 11, 2004), at http://www.blountweb.com/seniors/housing_options/aging_in_place.htm.

32. NORCs are “naturally occurring” because they are not specifically planned or designed for older people. Michael E. Hunt & Gail Gunter-Hunt, *Naturally Occurring Retirement Communities*, 3 J. HOUSING FOR THE ELDERLY 3, 4 (1985). They result from non-seniors remaining in their homes and communities, and over time, the older people outnumber the younger residents. *Id.* NORCs can consist of an entire city or suburban neighborhood with a preponderance of older people or a single apartment building. *Id.* In some cities such as New York and Chicago, NORC is an official designation, and these communities receive funding for nursing visits, social activities, transportation, and other senior services. See McFedries, *supra* note 31.

33. See NAT’L RES. CTR. ON SUPPORTIVE HOUS. & HOME MODIFICATION, THE SUPPORTIVE HOUSING CONNECTION: A TECHNICAL ASSISTANCE QUARTERLY FROM THE NATIONAL RESOURCE AND POLICY CENTER ON HOUSING AND LONG-TERM CARE (1995), available at <http://www.homemods.org/library/pages/aaa.htm> [hereinafter SUPPORTIVE HOUSING CONNECTION]. The phrase “naturally occurring

tired Persons (AARP) survey, thirty percent of older people live in a building or a neighborhood that can be described as a naturally occurring retirement community.³⁴ Aging in place and naturally occurring retirement communities are important ideas in the context of elderly tax relief programs. Concentrations of seniors who prefer to remain in their current residence spur demand for tax relief, bring visibility to the issue, and exacerbate the problems associated with property tax relief programs.³⁵

While many senior citizens want to remain in their own homes, a familiar complaint is that the burden of property tax makes it difficult or impossible to do so.³⁶ In some areas, property taxes have risen at two or three times the rate of inflation,³⁷ causing seniors to protest that they simply do not have the income necessary to maintain property tax payments.³⁸ For example, an elderly Massachusetts resident saw the assessed value of her home rise from \$173,000 in 1996 to \$289,000 in 2003.³⁹ With only \$12,000 in annual income from Social Security and her late husband's pension, she struggled to pay property taxes, which increased from \$2200 to \$3500 during the same period.⁴⁰ These situations stir up strong emotions among the elderly and motivate seniors to voice their objections to increasing property tax burdens.⁴¹

In eight out of the twenty years the U.S. Advisory Commission of Intergovernmental Relations conducted surveys on opinions towards common taxes, elderly respondents chose the local property tax as the most unfair.⁴² Not only seen as unpopular, property tax is often

retirement community" was coined in the 1980's by Michael Hunt and colleagues at the University of Wisconsin-Madison. *Id.*

34. *Id.*; see also Joellen Perry, *For Most, There's No Place Like Home*, U.S. NEWS & WORLD REP., June 4, 2001, at 66 (estimating that one in four retirees lives in a place where at least half the residents are older than sixty years of age).

35. The concentration and increased visibility also creates opportunities for economies of scale such as targeting services such as transportation and outreach, and can influence decisions to locate medical, social, and other services within the community. See SUPPORTIVE HOUSING CONNECTION, *supra* note 33. However, some naturally occurring retirement communities face problems caused by a high percentage of elderly persons living alone, a high percentage of elderly persons with low incomes, and communities with deteriorating housing. *Id.*

36. See Yilu Zhao, *Taxes Driving Some Elderly from Their Homes*, N.Y. TIMES, Apr. 12, 2003, at A7.

37. Lambert, *supra* note 11.

38. Zhao, *supra* note 36.

39. *Id.*

40. *Id.*

41. *Id.*; see also SCHRAG, *supra* note 17, at 129-87.

42. DAVID BAER, AM. ASSOC. OF RETIRED PERS., AWARENESS AND POPULARITY OF PROPERTY TAX RELIEF PROGRAMS 1 (1998), available at <http://research.aarp.org/>

thought to be regressive, and it can be the most burdensome tax for low-income persons and the elderly.⁴³ Due to the desire of the elderly to age in a place despite increasing property tax burdens, many seniors have urged state and local governments to provide property tax relief.⁴⁴

III. Property Tax Relief Programs for the Elderly

Property tax relief programs for the elderly vary considerably.⁴⁵ Some are the result of direct intervention by the state, while others are provided by governmental subunits including cities, towns, and counties.⁴⁶ Governmental subunits may provide these programs independently,⁴⁷ but the provision of the programs is sometimes contingent on the state enacting enabling legislation.⁴⁸ For example, the State of New York authorizes cities, towns, and other municipalities to grant tax exemptions to homeowners age sixty-five and older.⁴⁹ Several common varieties of property tax relief programs are in place,⁵⁰ including homestead exemptions, income tax credits, “circuit breaker” programs, and property assessment freezes.⁵¹ Programs of the same variety function in the same manner, although eligibility requirements, scope of benefits, and administration specifics may vary.⁵²

econ/9803_tax.pdf. The three other types of common taxes discussed in the survey were the federal income tax, the state income tax, and the state sales tax. *Id.*

43. *Id.*

44. See Zhao, *supra* note 36.

45. See Abrandt, *supra* note 15, at 331–32.

46. See, e.g., KY. REV. STAT. ANN. § 132.810(s)(a) (Michie 2001) (providing a homestead exemption for persons sixty-five or older); Barton W. Bloom & Robert DiCarlo, *Senior Citizen Real Property Tax Exemption*, 68 N.Y. ST. B.J. 16, 16 (1996).

47. Bloom & DiCarlo, *supra* note 46, at 16. Although no local government is completely independent because local governments are, by their very nature, creations of state government, cities and towns that are “home rule” jurisdictions are free, in large measure, to enact laws as they choose, as long as there is no conflict with relevant state and federal law. See VALENTE ET AL., *supra* note 15, at 265–68.

48. Bloom & DiCarlo, *supra* note 46, at 16. For example, New York state authorizes local governments and school districts by local law, ordinance, or resolution to provide income-based tax exemptions for real property owned by persons sixty-five or older. *Id.*; see also N.Y. REAL PROP. TAX LAW § 467(a) (Consol. 1999).

49. See N.Y. REAL PROP. TAX LAW § 467(a).

50. Abrandt, *supra* note 15, at 332–33 (discussing various categories of relief).

51. *Id.* at 331–33.

52. See generally *id.*

A. Homestead Exemptions

Among the best-known property tax relief programs for the elderly are homestead exemptions.⁵³ “Homestead exemptions are reductions in the amount of assessed property value subject to taxation for owner-occupied housing.”⁵⁴ These exemptions have the effect of immunizing from taxation a portion of the value of each taxpayer’s residence.⁵⁵ The reduction in assessment value causes a corresponding reduction in the property tax obligation.⁵⁶ For example, the Illinois Senior Citizens Homestead Exemption reduces the assessed property value by a maximum of \$2000 throughout the state, and a maximum of \$2500 in Cook County, specifically.⁵⁷ The property tax savings resulting from a \$2500 reduction in assessment amounts to approximately \$500.⁵⁸ Most states have homestead exemption programs for all homeowners, while a smaller group of states have separate laws or provisions which target relief towards the elderly and disabled.⁵⁹ Some states allow senior citizens to take advantage of both the general homestead exemption as well as the exemption targeted specifically to the elderly.⁶⁰

The eligibility requirements for senior homestead exemptions vary, but all programs have a minimum age requirement.⁶¹ Additionally, most programs have a maximum income threshold so that only certain seniors are eligible to receive the exemption.⁶² How income is calculated can substantially affect the number of seniors eligible to take advantage of a particular program. For example, New York City’s program has a qualifying income of \$17,500 per household per

53. Zelinsky, *supra* note 12, at 2210.

54. BAER, *supra* note 42.

55. Zelinsky, *supra* note 12, at 2210.

56. *See id.*

57. Nina H. Tamburo, *The Illinois Property Tax System: An Overview*, 10 LOY. CONSUMER L. REV. 186, 191–92 (1998).

58. *Id.*

59. Examples of senior homestead exemption statutes include 35 ILL. COMP. STAT. ANN. 200/15-170 (West 2004); KY. REV. STAT. ANN. § 132.810 (Banks-Baldwin 2004); and S.C. CODE ANN. § 12-37-250 (Law. Co-op. 2003).

60. For example, in Illinois, senior citizens can take advantage of both the Senior Citizens Homestead Exemption, 35 ILL. COMP. STAT. ANN. 200/15-170 (West 2004), and the General Homestead Exemption, 35 ILL. COMP. STAT. ANN. 200/15-175 (West 2004). *See* Tamburo, *supra* note 57, at 191–92.

61. *See* Abrandt, *supra* note 15, at 333.

62. For example, Illinois’s Senior Citizens Assessment Freeze Homestead Exemption is restricted to households with a total income of \$45,000 or less. 35 ILL. COMP. STAT. ANN. 200/15-172(c)(ii) (West 2004).

year.⁶³ Income includes all sums derived from salary or earnings and Social Security or pension benefits,⁶⁴ a calculation which is consistent with the definition of gross income as defined in the Internal Revenue Code.⁶⁵ In contrast, the Florida enabling statute that gives local governments the authority to provide a senior citizen homestead exemption⁶⁶ generally does not include Social Security benefits as part of income calculations.⁶⁷ Because the Florida legislation was passed for the purpose of assisting low-income seniors, the exclusion of Social Security benefits in the determination of qualifying income has been controversial.⁶⁸ As one critic noted, “[I]t is difficult to imagine that the public intended to provide this tax break for a couple earning up to \$43,999 per year and to single seniors earning \$32,000 per year when the Constitution specifically provides a \$20,000 threshold.”⁶⁹

Although income is usually a criterion for eligibility, the dollar amount of homestead exemptions is not necessarily related to income level.⁷⁰ Some states provide the same reduction in assessed value for all eligible households.⁷¹ Nebraska, North Dakota, Ohio, and Washington phase out exemptions as income increases.⁷²

B. Property Tax Credit Programs

Property tax credits relieve qualifying elderly taxpayers of a portion of their property tax bill by reducing the amount of the bill by the

63. INST. ON LAW & RIGHTS OF OLDER ADULTS, PRACTISING LAW INST., NEW YORK ELDER LAW HANDBOOK § 9:7.1, at 9–38 (2002) [hereinafter NEW YORK ELDER LAW HANDBOOK].

64. *Id.*

65. I.R.C. § 61 (2004).

66. FLA. STAT. ANN. § 196.075(2) (West 2004).

67. *Id.* § 196.012(10).

68. Pamela M. Dubov, *Circumventing the Florida Constitution: Property Taxes and Special Assessments, Today's Illusory Distinction*, 30 STETSON L. REV. 1469, 1482–83 (2001).

69. *Id.* at 1483–84.

70. BAER, *supra* note 42, at 2.

71. See, e.g., 35 ILL. COMP. STAT. ANN. 200/15-170 (West 2004); KY. REV. STAT. ANN. § 132.810 (Banks-Baldwin 2004); S.C. CODE ANN. § 12-37-250 (Law. Co-op. 2003).

72. See NEB. REV. STAT. § 77-3508 (2004); N.D. CENT. CODE § 57-02-08 (2003); OHIO REV. CODE ANN. § 4503.064 (West 2004); WASH. REV. CODE ANN. § 84.36.381 (West 2004).

amount of the credit.⁷³ Two types of property tax credit programs predominate: homestead tax credits⁷⁴ and “circuit breakers.”⁷⁵

Homestead tax credits give relief to homeowners, including the elderly, in the form of some portion of their tax liability to counties, school districts, or other entities.⁷⁶ Under a homestead credit program, the same reduction is offered to all eligible households.⁷⁷ For example, New Jersey homeowners age sixty-five and older are offered a ninety-dollar credit.⁷⁸ The state of Georgia authorizes government entities to grant tax relief through credits to homeowners and then reimburses those entities for lost revenue.⁷⁹ The program was instituted in the late 1990s when the State of Georgia had surplus funds that could be used to reimburse local governments and school districts.⁸⁰ In tighter economic times, this type of program may not be as workable if state governments do not have the necessary money to reimburse the local governments that grant the credit.⁸¹ Instead of lowering the amount of taxes to be paid, some states refund money directly to senior citizen homeowners who have already paid their tax bills.⁸²

While homestead tax credit programs provide the same reductions in property taxes to all eligible households, circuit-breaker programs generally provide a sliding scale of tax reductions so that tax

73. Abrandt, *supra* note 15, at 331.

74. See MICH. COMP. LAWS ANN. § 206.520(a) (West 2004) (providing that credits against state income taxes be granted for property paid on the taxpayers' homestead); see also R.I. GEN. LAWS § 44-33-5 (2004).

75. See D.C. CODE ANN. § 47-1806.6(a)(2), (3) (2004) (labeling income tax credits for property taxes paid as circuit breakers); see also OKLA. STAT. ANN. tit. 68, § 2802(9) (West 2005) (designating as a circuit breaker Oklahoma's property tax credit).

76. Vince Tilley, *Homeowner Tax Relief Grants: Provide for Homeowners Tax Relief Grants to Counties and Local School Districts; Require the Granting of Certain Credits Against County and School Ad Valorem Taxes as a Condition of Such Grants; Provide for Calculation of Credit Amounts to Homestead Owners and Grant Amounts to Counties and School Districts; Provide for Administration and the Adoption of Rules and Regulations by the Georgia Department of Revenue*, 16 GA. ST. U. L. REV. 177 (1999).

77. See MICH. COMP. LAWS ANN. § 206.520 (West 2004) (providing credits against state income taxes for federal property taxes that are paid on the taxpayers' homestead); R.I. GEN. LAWS § 44-33-5 (2004).

78. N.J. STAT. ANN. § 54:4-8:59(g)(1) (West 2002); BAER, *supra* note 42.

79. GA. CODE ANN. § 36-89-1 to -6 (2004); Tilley, *supra* note 76, at 179-80.

80. Tilley, *supra* note 76, at 179-80.

81. Under Georgia's program, state reimbursements to local governments for property tax credits are dependent on the state having adequate revenue and are thus not guaranteed. *Id.* at 177-78.

82. See NEW YORK ELDER LAW HANDBOOK, *supra* note 63, § 9:7:2.

credits decrease as income increases.⁸³ Circuit breakers relieve the property tax burdens of income-eligible senior citizens by setting property tax limits which cannot be exceeded.⁸⁴ If property taxes rise above the limit, the homeowner receives a property tax rebate.⁸⁵ About one-third of circuit breaker programs provide rebates through a reduction in the state income of the qualifying individual.⁸⁶ Thirty states and the District of Columbia have circuit breaker programs that utilize tax credits.⁸⁷

C. Property Assessment Freezes

In some states, seniors on fixed incomes can have the assessments of their property frozen.⁸⁸ Assessment freezes have the benefit of reducing seniors' overall tax burden while enabling senior homeowners to more easily engage in long-term financial planning, knowing that their property will not be subject to severe tax increases.⁸⁹ In Illinois, seniors can take advantage of an assessment freeze through the Senior Citizens Assessment Freeze Homestead Exemption.⁹⁰ To qualify, the individual seeking the freeze must: (1) be at least sixty-five years old; (2) own the subject property; (3) have an annual income of \$35,000 or less; and (4) file an application with an assessor.⁹¹ Seniors in Illinois can simultaneously take advantage of a property tax assessment freeze as well as the homestead exemption.⁹²

To illustrate how an assessment freeze works, consider the following example. A senior citizen lives in Illinois in a home valued at \$100,000. He or she would be taxed on an assessment of \$16,000 in Cook County or \$33,333 outside of Cook County in the first year.⁹³ During a reassessment year, the assessor increases the assessment by ten percent so that a \$100,000 home is now taxed on an assessment of

83. See BAER, *supra* note 42; see also D.C. CODE ANN. § 47-1806.06(a)(2), (3) (2004); OKLA. STAT. ANN. tit. 68, § 2802(9) (West 2005).

84. See BAER, *supra* note 42.

85. *Id.*

86. *Id.*

87. *Id.*

88. See 35 ILL. COMP. STAT. ANN. 200/15-172 (West 2004); see also Tamburo, *supra* note 57, at 192.

89. Tamburo, *supra* note 57, at 192.

90. 35 ILL. COMP. STAT. ANN. 200/15-172.

91. *Id.*; see also Tamburo, *supra* note 57, at 192.

92. Tamburo, *supra* note 57, at 192.

93. *Id.*

\$17,600 in Cook County and \$36,666 outside of Cook County.⁹⁴ A senior who qualified for the freeze exemption would still pay taxes based on the lower amount.⁹⁵

D. Property Tax Deferrals

Property tax deferrals allow senior citizens to defer payment of all or part of their property taxes until the sale of their property or death.⁹⁶ The deferred taxes then become a lien against the value of the home.⁹⁷ Most tax deferral programs require the benefit recipient to reapply each year in order to defer the tax bill for the upcoming years.⁹⁸ States which have enacted deferral programs include Alaska, California, Colorado, Florida, Georgia, Illinois, Iowa, Massachusetts, New Hampshire, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.⁹⁹ In most instances, deferral programs are relatively safe for the homeowner, but there is a risk, primarily in deteriorating housing markets, that the home will be difficult to sell when the owner dies, leaving the surviving family members with the tax burden.¹⁰⁰

E. Awareness of Property Tax Relief Programs

Although many tax relief programs are available to senior citizen homeowners, the number of seniors taking advantage of the programs is often lower than the number eligible.¹⁰¹ A survey conducted by the AARP revealed that only about two-thirds of eligible senior citizens who were surveyed were aware of property tax relief programs in their community.¹⁰²

Homestead exemption programs were by far the best known property tax relief programs.¹⁰³ Two-thirds of seniors were aware of their communities' homestead exemption programs.¹⁰⁴ In contrast,

94. *Id.*

95. *Id.*

96. *See* BAER, *supra* note 42.

97. *See id.*

98. *See id.*

99. Abrandt, *supra* note 15, at 332–33.

100. *See id.* at 332.

101. *See* BAER, *supra* note 42.

102. *Id.*

103. *Id.*

104. *Id.*

only thirty-one percent of seniors were aware of their communities' property tax credit programs, including circuit breakers and homestead credit tax programs,¹⁰⁵ and only twenty percent of seniors were aware of property tax deferral programs.¹⁰⁶ Seniors who are aware of the programs but choose not to participate cite several reasons for nonparticipation,¹⁰⁷ including the belief that they do not need assistance¹⁰⁸ and the belief that they would not meet a particular program's eligibility requirements.¹⁰⁹

IV. Analysis of Property Tax Relief Programs for the Elderly

At first glance, property tax relief programs for the elderly appear to be sound public policy, providing economic benefit to persons who are arguably in need. Without such programs, some senior citizens could be forced to leave their homes and communities.¹¹⁰ However, the genesis and implementation of these programs can in many ways be characterized as a half-policy. Although relief programs for the elderly may ease the financial burden resulting from increased housing costs and a corresponding decrease in income, those who support the programs often fail to consider the programs within larger contexts and seem blind to the increasing costs and problems of implementation in the future.¹¹¹ Furthermore, the focus of property tax relief programs is qualitatively and quantitatively incomplete. The push to enact relief programs often fails to consider important questions of sustainability in light of the rapidly increasing number of eld-

105. *Id.*

106. *Id.*

107. *Id.*

108. Forty-one percent of survey respondents stated that the belief that they did not need assistance was the reason for not participating in property tax relief programs. *Id.*

109. Fourteen percent of survey respondents stated that the belief that they did not qualify for property tax relief programs was the reason for not participating. *Id.*

110. See Zhao, *supra* note 36.

111. The increasing costs are directly related to the increasing elderly population. Charisse Jones, *Housing Doors Close on Parents*, USA TODAY, May 6, 2004, at 3A. Nearly four million Americans will turn fifty-five in 2005. *Id.* By the year 2030, the number of people aged sixty-five or older will rise to seventy million, which will exceed the number of people under the age of fifteen. Salkin, *supra* note 1, at 181-82. Senior citizens will comprise twenty percent of the United States population by 2030 compared to approximately thirteen percent currently. *Id.*

erly people in the United States.¹¹² Moreover, supporters of the programs are loathe to admit that as the programs target valuable resources to a particular set of homeowners,¹¹³ the full scope of elderly affordable housing problems is ignored.¹¹⁴ Political pressure is allowed to guide the implementation of relief programs, making the programs as much a product of political maneuvering and posturing as of the sincere desire to provide property tax relief.¹¹⁵

Given the variety of property tax relief programs, it is difficult to posit an all-encompassing argument against the programs, nor could such a broad-based indictment be accurate. In some circumstances, the programs are well-planned, administered efficiently, and have little negative impact on the community at large.¹¹⁶ However, while specific complaints have been levied against the promulgation of such programs,¹¹⁷ the literature and commentary regarding the programs have never expansively outlined the programs' faults, which are substantial. An analysis of the programs' faults is not intended to urge the programs' demise, but rather to place the programs in a larger context and examine how the programs might be reworked, refashioned, or in some cases repealed so that senior citizen property tax relief can be successful in the future. A substantive analysis of tax relief programs is imperative because the elderly population is increasing rapidly,¹¹⁸ as is seniors' awareness of the programs.¹¹⁹ Thus, an ever increasing number of elderly will be seeking to take advantage of property tax relief programs in the future.

112. See Salkin, *supra* note 1, at 181; A PROFILE OF OLDER AMERICANS, *supra* note 24.

113. Generally, property tax relief programs benefit seniors who own their homes. See Lambert, *supra* note 11.

114. What is ignored includes the fact that racial minorities and urban residents own homes in far lower numbers than their white, suburban counterparts. Richard Schragger, *Consuming Government*, 101 MICH. L. REV. 1824, 1837 (2003) (book review). Furthermore, property tax relief programs largely ignore the housing expense difficulties faced by renters. See Lambert, *supra* note 11.

115. See Schragger, *supra* note 114, at 1836-37.

116. One government official proclaimed in regards to a property tax relief program on Long Island, "I have not seen a more positive reaction to anything we've done" Lambert, *supra* note 11, at 13.

117. One such complaint is the exclusion of renters from property tax relief programs. *Id.*

118. By the year 2030, the number of people aged sixty-five or older will rise to seventy million which will exceed the number of people under the age of fifteen. See Salkin, *supra* note 1, at 181.

119. A survey conducted by the American Association of Retired Persons (AARP) revealed that nearly two-thirds of senior citizens are aware of property tax relief programs in their communities. See BAER, *supra* note 42, at 8 tbl.2.

Four important ideas are essential to an accurate and balanced critique of property tax relief programs for the elderly. First, property tax relief programs can be manipulated and used by communities for other than altruistic goals, with the result sometimes pitting the elderly against families with school-age children.¹²⁰ Second, property tax relief programs for the elderly represent incomplete state policies regarding affordable housing needs of senior citizens.¹²¹ In many instances, the programs do only a marginal job at targeting benefits to the full range of seniors who are truly in need of housing assistance.¹²² Whether unintentional or not, the programs assist far fewer minorities than nonminorities.¹²³ Furthermore, the fact that eligible seniors can in many instances benefit from multiple relief programs only widens the gap between the haves and the have-nots.¹²⁴ Third, the implementation of property tax relief programs for the elderly often results from the government's response to outrage over rising property taxes and taxation in general.¹²⁵ Such deference to political pressure is indicative of supporters' failure to consider these programs in the long term and accurately realize that any senior property tax relief program is simply one portion of a larger fiscal policy, whether state or local, which must account for a wide variety of needs and interests, often in the context of decreasing revenue streams.¹²⁶ Fourth, while there is seemingly no end to articles and reports mentioning rising property taxes as a severe burden on elderly homeowners, little evidence suggests that large numbers of seniors are actually forced to leave their homes because of rising property taxes.¹²⁷ Even in cases where property taxes cause severe financial hardship, other options are available to

120. Peterson, *supra* note 18, at A1.

121. See Lambert, *supra* note 11, at 13.

122. *Id.*

123. See Schragger, *supra* note 114, at 1837.

124. See Tamburo, *supra* note 57, at 191-92. For example, in Illinois, eligible seniors can take advantage of both the Senior Citizens Homestead Exemption, 35 ILL. COMP. STAT. ANN. 200/15-170 (West 2004), and the General Homestead Exemption, 35 ILL. COMP. STAT. ANN. 200/15-175 (West 2004).

125. See *supra* note 13 and accompanying text; see also SCHRAG, *supra* note 17, at 167-77 (discussing in-depth the political pressure and compassion for taxpayers, including the elderly, that led to passage of Proposition 13 in California). "[N]ight after night, the evening news on Los Angeles television, with their millions of viewers, were filled with pictures of tearful old ladies whose assessments had in fact more than doubled and who told interviewers they saw no alternative but to sell their homes." *Id.* at 150.

126. SCHRAG, *supra* note 17, at 167-77.

127. See *id.* at 152-77.

many seniors to ease the financial burden resulting from rising property taxes.¹²⁸

A. School Finance and Property Tax Relief

According to the National Association of Towns and Townships, state aid to cities and towns has decreased nearly thirty percent since 2001.¹²⁹ In light of the decrease in state funding, many communities are confronted with a fast and steady influx of families with school-age children whose presence requires the outlay of additional educational funds.¹³⁰ In some areas, the influx of families with school-age children can quickly outstrip the local tax base used to pay for putting those children through school.¹³¹ In many cases, the influx of children is so pronounced that new schools have to be built, which requires a substantial monetary commitment.¹³²

For example, in West Windsor, New Jersey, outside of Princeton, the average cost to send a child to public school has risen twenty-eight percent in five years.¹³³ The addition of just one school-age child into the community requires the equivalent of the property tax revenue from an average home.¹³⁴ The addition of two children presents the local school district with an education bill of approximately \$20,000.¹³⁵ In recent years, Windsor has seen public school enrollment increase from 5000 to 8500 students.¹³⁶ The quick growth has required two construction referendums which entailed total spending of approximately 115 million dollars on two new elementary schools and a new addition to the local middle school.¹³⁷

The growth in school enrollment and the corresponding growth in educational expenditures is not unique to West Windsor. School districts across the nation have been increasingly pressured to come

128. One option is a so-called reverse mortgage which allows seniors to borrow money against the equity of their homes and receive cash payments in periodic installments. See GEORGE LEFCOE, REAL ESTATE TRANSACTIONS 284 (3d ed. 1999). Reverse mortgages are a valid option for most seniors because eighty percent of seniors own their homes free and clear. See HOWARD ET AL., *supra* note 6.

129. See Zhao, *supra* note 36.

130. See Peterson, *supra* note 18.

131. *Id.*; see also Mansnerus, *supra* note 18.

132. See Peterson, *supra* note 18; see also Mansnerus, *supra* note 18.

133. See Peterson, *supra* note 18.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

up with more money for education as public school enrollments have skyrocketed.¹³⁸ Many communities have been unable to expand their tax base to keep pace with the influx of school-age children,¹³⁹ resulting in school funding shortfalls which are often remedied by eliminating faculty, reducing or eliminating extracurricular activities, or increasing school activity and user fees.¹⁴⁰

To prevent or curtail educational funding shortfalls, communities have employed a variety of strategies to limit the number of school-age children, such as amending zoning ordinances so that new housing is limited to units with two or fewer bedrooms¹⁴¹ or enacting ordinances which limit the times when children can be on public streets.¹⁴²

Yet, the most common strategy is enacting policies which encourage senior citizens to move to or remain in the community.¹⁴³ A major component of this strategy is the provision of property tax relief programs.¹⁴⁴ The presence of a substantial number of seniors, whether scattered throughout the community or concentrated in a naturally occurring retirement community,¹⁴⁵ provides a community with educational funding benefits.¹⁴⁶ The presence of a significant number of senior homeowners allows municipalities to collect property taxes from households consisting of fewer school-age children as compared to the same community with a lower percentage of elderly residents and a higher percentage of younger families.¹⁴⁷ Municipalities can

138. See Jones, *supra* note 111, at 3A.

139. *Id.*

140. See Gregory Roberts, *Divergent Views on School Funding: Administrators Breathe Sigh of Relief; Teachers Are Angry*, SEATTLE POST-INTELLIGENCER, June 18, 2003, at B1; see also Kate Folmar, *Schools Advocates Fear Funding Cut*, SAN JOSE MERCURY NEWS, Dec. 11, 2003, at 1C, available at <http://www.mercurynews.com/mld/mercurynews/news/politics/7466110.htm?1c>.

141. One government official deemed such zoning restrictions "vasectomy zoning." See Jones, *supra* note 111, at 3A.

142. See Mansnerus, *supra* note 18.

143. See Peterson, *supra* note 18.

144. *Id.*

145. A naturally occurring retirement community, or NORC, results from seniors remaining in their homes and communities, and thus over time, seniors outnumber younger residents. Hunt & Gunter-Hunt, *supra* note 32, at 4. NORCs are "naturally occurring" because they are not specifically planned or designed for older people. *Id.*

146. See Clayton P. Gillete, *Reconstructing Local Control of School Finance: A Cautionary Note*, 25 CAP. U. L. REV. 37, 41 (1996).

147. See Peterson, *supra* note 18. "Some housing advocates say the primary motivation" behind local officials' favoring senior citizen housing developments and implementing legal mechanisms such as property tax relief, which enable sen-

avoid a school-funding crisis by not having to face the crush of newly arriving young families to the same extent as if a high percentage of seniors were not present,¹⁴⁸ thus giving those municipalities a tax advantage over municipalities with proportionally younger populations.

To encourage the growth and stabilization of senior citizen populations, local officials often favor housing developments which limit the number of bedrooms per unit or restrict residency to persons fifty-five and older.¹⁴⁹ While the Fair Housing Act¹⁵⁰ generally prohibits discrimination against people with children,¹⁵¹ it is legally permissible to construct senior-only developments which prohibit younger residents.¹⁵² While the construction of senior-only housing encourages new senior arrivals, the provision of property tax relief programs encourages existing senior homeowners to stay put.

Providing property tax relief to the elderly allows municipalities to retain elderly residents who might otherwise leave the community due to increased property taxes.¹⁵³ When seniors decide to stay in the community, their decision effectively prevents a different would-be homeowner, often young families with school-age children, from moving in.¹⁵⁴ Even when property tax reductions or rebates are provided to the elderly, the cost of the reduction or rebate is exceeded by

iors to remain in place, “is to stem the number of school age children moving into communities that don’t want to pay for more teachers or build more schools.” See Jones, *supra* note 111, at 3A. However, city officials in Illinois, Massachusetts, and New Jersey “say they are amending zoning laws and offering incentives to developers so they can minimize traffic and preserve open space . . . not just to curb escalating education costs.” *Id.*

148. See Peterson, *supra* note 18; see also Jones, *supra* note 111, at 3A.

149. In Bergen and Essex counties in New Jersey, condominium developers submitted designs to community officials requesting that they be able to redesign planned two-bedroom condominiums and town homes because prospective buyers indicated a wish for three bedrooms. See Mansnerus, *supra* note 18. However, local officials refused to enact the zoning variance required to effectuate the change, and in other communities, a two-bedroom limit was placed on all new development. *Id.* In Rowley, Massachusetts, developers are allowed to build extra units if they construct townhouses with no more than two bedrooms. See Jones, *supra* note 111, at 3A. Rowley officials say one benefit of such housing is it limits the number of children moving in, thus preserving the town’s resources. *Id.* Likewise, in Naperville, Illinois, officials say housing for those fifty-five and older are a priority because they bring in property taxes but few, if any, schoolchildren. *Id.*

150. Fair Housing Act, 42 U.S.C. §§ 3601–3619 (2002).

151. 42 U.S.C. § 3604.

152. See Mansnerus, *supra* note 18.

153. *Id.*

154. *Id.*

the money saved from not having to pay for the education of additional school-age children.¹⁵⁵

Realizing the school-funding benefits resulting from senior citizen property tax relief programs, some communities have lobbied state governments for expansion of the programs. For example, community groups in New Jersey have attempted to persuade the legislature to ease the eligibility requirements for state programs that freeze property taxes for people over the age of sixty-five.¹⁵⁶

B. The Elderly Versus Families with Children

The efforts of municipalities to enable elderly residents to remain in their current residence by using restrictive zoning and property tax relief programs has, under certain circumstances, pitted the elderly against younger families.¹⁵⁷ Property tax incentives that allow the elderly to stay in their current residences restrict the housing options for families with children.¹⁵⁸ Moreover, property tax reductions which allow the elderly to age in place often have the secondary effect of creating a large, vocal elderly population that consistently votes down school funding and tax policies that would be favorable to families with children.¹⁵⁹ Because property tax relief enables large numbers of senior citizens to stay in their current residence, the housing available to families with children is limited and the proportion of elderly to nonelderly is skewed.¹⁶⁰ When community residents are asked to vote on a school funding referendum, the elderly overwhelmingly reject the funding proposals.¹⁶¹

In some counties, it is an oft-repeated ritual for voters to decide whether to accept or reject a school budget.¹⁶² For example, in Westchester County, Connecticut, the problem of property taxes versus school budgets is especially severe because taxes are already high and

155. *Id.*

156. Iver Peterson, *Suburbs Struggle to Keep Seniors, Many Communities Offer Incentives to Keep Retired People in Their Homes Longer*, S. FLA. SUN SENTINEL, Mar. 11, 2001, at 16 (stating that the New Jersey League of Municipalities sought an increase in the qualifying income for property tax relief to \$44,000 from \$22,000).

157. See Peterson, *supra* note 18; see also Mansnerus, *supra* note 18.

158. Peterson, *supra* note 18.

159. See Elsa Brenner, *Westchester Takes Second Place in School Budget Rejections*, N.Y. TIMES, June 27, 1999, at 14WC.

160. See Peterson, *supra* note 18.

161. See Brenner, *supra* note 159.

162. *Id.*

state aid is proportionately lower than in other counties.¹⁶³ At a time when state aid to local school districts is falling, the burden of school financing increasingly falls on property owners,¹⁶⁴ and the elderly have resisted funding the education of other people's children.¹⁶⁵ The parents of school-age children are frustrated with a senior citizen population that reflexively votes down school funding measures which would benefit school-age children.¹⁶⁶ The situation is arguably unfair because the senior citizens who benefit from property tax relief programs at one time had their own children's education paid for by households with no school-age children.¹⁶⁷ As one commentator noted,

[I]f the retiree sent his children to the local public schools, he was, for those years, effectively subsidized by the community's childless families and by the commercial and residential property owners, since in the short run, a homeowner's own property tax payments rarely cover the costs of educating his children. From this vantage point the retiree's current property taxes constitute delayed payment for the education services he received earlier.¹⁶⁸

Considering the dismal condition of many state budgets and the rapidly growing number of elderly Americans, it is difficult to imagine that state governments can continue to provide extensive tax relief for the elderly and at the same time keep school funding at an appropriate level.¹⁶⁹ In Maine, lawmakers failed to comply with a law that guaranteed the state would pay for fifty-five percent of educational costs.¹⁷⁰ Currently, the state covers only forty-two and a half percent of local educational expenses.¹⁷¹ Under these conditions, tax relief for the elderly is difficult to justify, and in some states, there has been a backlash against property tax relief programs for seniors.¹⁷² In Wis-

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. See Zelinsky, *supra* note 12, at 2207.

168. *Id.*

169. The state of Georgia links property tax relief and school funding through grants to local school districts. Tilley, *supra* note 76, at 179-80. The property tax for homeowners is reduced and the state makes up the reduction through grants to local school districts. *Id.* However, the program is dependent on there being enough money in the state budget. *Id.* at 180.

170. A. J. Higgins, *New MMA Chief Blasts Tax Plan*, BANGOR DAILY NEWS, Aug. 26, 2003, at 1.

171. *Id.*

172. See Lambert, *supra* note 11; see also N.J. POLICY PERSPECTIVE, NEW JERSEY'S PATCHWORK PROPERTY TAX RELIEF, at http://www.njpp.org/archives/cambria_intro.html.

consin, some public officials have suggested that one possible way to fix a 1.1 billion dollar state deficit is to eliminate property tax exemptions including those targeted to seniors.¹⁷³ Educational advocacy groups have realized the inherent tension between property tax relief and the need to improve already underfunded educational systems.¹⁷⁴

C. Targeted Relief

Property tax relief programs for the elderly, while assisting certain homeowners with increased housing costs, fail to address the housing cost difficulties facing the entire elderly community. Because relief programs are targeted at homeowners, whites benefit from the programs far more than blacks or Hispanics.¹⁷⁵ Home ownership is heavily correlated with race.¹⁷⁶ Seventy-five percent of non-Hispanic whites own their own homes, but only forty-seven percent of blacks and forty-eight percent of Hispanics own their own homes.¹⁷⁷ This does not mean that property tax relief programs are purposely discriminatory. After all, the programs are open to any homeowner, regardless of race, who meets the eligibility requirements of any specific program.¹⁷⁸ Yet, these programs were often created by state statutes¹⁷⁹ or constitutional provisions,¹⁸⁰ and although often administered via local governments, the programs represent substantive state policy regarding who is deserving of housing cost relief. Critics have charged that the programs have “unfair racial and social ramifications since the exemptions help some areas more than others, worsening the

173. See John Dipko, *Cities Join Forces to Fight Budget*, GREEN BAY PRESS-GAZETTE, Feb. 22, 2002 at 1, available at http://www.greenbaypressgazette.com/news/archive/local_2437708.shtml.

174. See GOOD SCHS. PA., GOOD SCHOOLS PENNSYLVANIA CHALLENGES “HISTORIC” LEGISLATION, at http://www.goodschoolspa.org/index.cfm?fuseaction=cms.viewPage§ion_id=71&page_id=656.

175. Schragger, *supra* note 114, at 1837.

176. *Id.*; see also Joseph P. Poduska, *Martinez Tells Banking Committee He Plans to Pursue Reforms, Homeownership, Smart Growth*, 28 No. CD-38 HDR CURRENT DEV. 1 (2001) (noting that there is a growing elderly population and that African American families still lag far behind in home ownership).

177. Schragger, *supra* note 114, at 1837.

178. For example, to qualify for the Illinois Senior Citizens Assessment Freeze Homestead Exemption, the individual seeking the freeze must be at least sixty-five years old; own the property; have an income of \$35,000 or less prior to taxable year 1999, \$40,000 or less in taxable years 1999 through 2003, and \$45,000 or less in taxable year 2004 and thereafter; and file an application with an assessor. 35 ILL. COMP. STAT. ANN. 200/15-172 (West 2004). Race is not a qualifying variable. *Id.*

179. See, e.g., N.Y. REAL PROP. TAX LAW § 467 (Consol. 2004).

180. See, e.g., FLA. CONST. art. VII. § 6(f).

financial gap between mostly white suburbs and cities that have large minority populations.”¹⁸¹

The gap is even more apparent in light of the fact that many elderly homeowners are eligible for more than one form of property tax relief.¹⁸² Homeowners eligible to take advantage of senior homestead exemptions are often able to take advantage of a state’s general homestead exemption.¹⁸³ In Illinois, seniors can simultaneously take advantage of a property tax assessment freeze as well as a homestead exemption.¹⁸⁴ Moreover, the basic homestead exemption, although not targeted to seniors, is a significant source of senior tax relief.¹⁸⁵ While the specifics of general homestead exemptions vary, the exemption is usually available to any person’s primary residence.¹⁸⁶ Therefore, even seniors who are not eligible for relief targeted specifically to the elderly, can readily take advantage of the basic homestead exemption.¹⁸⁷ Nonhomeowners cannot take advantage of either program.

Critics claim that “it’s all biased against tenants [and] everyone seems to forget there is a significant population of renters.”¹⁸⁸ Elderly renters, like homeowners, bear the burden of increasing housing costs while incomes remain stagnant.¹⁸⁹ However, while most elderly homeowners own their home free and clear, and thus have no mortgage payments,¹⁹⁰ elderly renters have to pay rent every month without the benefit of property tax reductions.¹⁹¹ Some municipalities do

181. Lambert, *supra* note 11.

182. Basic homestead exemptions are available to homeowners for their primary residence. See Tamburo, *supra* note 57, at 192. Additionally, forty-four states and the District of Columbia have at least one type of property tax relief program that gives the elderly preferential treatment. Tracey A. Kaye, *Show Me the Money: Congressional Limitations on State Tax Sovereignty*, 35 HARV. J. ON LEGIS. 149, 176 (1998).

183. Tamburo, *supra* note 57, at 192.

184. *Id.*

185. See Abrandt, *supra* note 15, at 331.

186. For example, in Illinois any taxpayer who owns residential property and uses the property as a principal place of dwelling can qualify for a general homestead exemption which reduces the equalized assessment by \$4,500 in Cook County and \$3,500 in the rest of Illinois. 35 ILL. COMP. STAT. ANN. 200/15-175 (West 2002).

187. *Id.*

188. See Lambert, *supra* note 11.

189. *Id.*

190. Of elderly homeowners, twenty percent have a mortgage, while eighty percent own their home free and clear. See HOWARD ET AL., *supra* note 6, § 1:6.

191. Although, some nonhomeowners can qualify for rent relief. See Abrandt, *supra* note 15, at 366; see also N.Y. CITY ADMIN. CODE § 26-601 (2003).

offer relief for elderly renters,¹⁹² but the eligibility requirements are usually stricter than the requirements for homeowner exemptions.¹⁹³

D. The Political Nature of Property Tax Relief

Government officials willing to provide property tax relief stand to gain politically. The mayor of one city, whose job approval rating was falling precipitously, promised city homeowners a rebate on their property taxes, and his ratings immediately improved.¹⁹⁴ A town tax assessor remarked, "It's a beautiful thing when you can reduce someone's tax bill."¹⁹⁵ The political dynamic behind property tax relief is real.¹⁹⁶ Legislators and voters have responded to taxpayers' loudest complaints about the local property tax by inducing a "nationwide expansion of devices which answer some of the most politically urgent outcries about the tax."¹⁹⁷ One answer to taxpayers' complaints are provisions which abate the local property taxes of particular kinds of taxpayers including the elderly.¹⁹⁸ The task of raising local revenues is complicated by a population that has made its antitax sentiments clear while simultaneously demanding increased services.¹⁹⁹ As one commentator noted, "[T]here has been an intellectual, political, and legal assault" on property taxes, and relief programs, including those for seniors, have been used exhaustively as a defense.²⁰⁰

192. In New York City, households that have at least one member who is sixty-two years of age can qualify for a Senior Citizen Rent Increase Exemption, which freezes rent prices or limits the ability of the landlord to raise rents for qualifying households. See Abrandt, *supra* note 15, at 366; see also N.Y. CITY ADMIN. CODE § 26-601.

193. New York's Senior Citizen Rent Increase Exemption is only available to households where the combined income of the occupants does not exceed \$15,025. See Abrandt, *supra* note 15, at 366; see also N.Y. CITY ADMIN. CODE § 26-601. The qualifying income for the senior citizen homestead exemption is \$25,900. See Bloom & DiCarlo, *supra* note 46, at 16; see also N.Y. REAL PROP. TAX LAW § 467 (Consol. 2004). Eligibility thresholds for rental relief vary by municipality. In Fairfax County, Virginia, for example, the gross income of the persons residing in a rental dwelling cannot exceed \$22,000. See Fairfax County, Va., *What Are the Qualifications to Receive a Rental Grant?*, at <http://www.co.fairfax.va.us/dta/tr%5Frental%5Ffaq.htm> (last visited Apr. 5, 2005).

194. Elizabeth Kolbert, *The Un-Communicator*, THE NEW YORKER, Mar. 1, 2004, at 38.

195. See Lambert, *supra* note 11, at 13.

196. Zelinsky, *supra* note 12, at 2200 n.2.

197. See *id.*

198. See Abrandt, *supra* note 15, at 332-33 (summarizing various programs that assist elderly homeowners with property taxes).

199. Dubov, *supra* note 68, at 1470.

200. Zelinsky, *supra* note 12, at 2200.

Because property tax relief programs for the elderly exist in a severely antitax environment,²⁰¹ it is important to question whether these programs have been carefully and intensely examined as a public policy matter. In many cases it appears as though local government officials and state politicians have rushed ahead with these programs to curry political favor and have failed to consider the programs' feasibility in both immediate and long term contexts.

In California, the passage of Proposition 13, which froze property assessment values and limited the annual increase in the property tax rate, was partly the result of vocal senior citizens who feared being priced out of their homes by soaring tax bills.²⁰² While Proposition 13 provided its promised relief, the result has been a decrease in school funding and a decrease in educational quality.²⁰³ Furthermore, because the provisions of Proposition 13 applied to existing homes inhabited by the current owner, and did not apply to newly purchased and newly constructed homes, some homeowners have been forced to pay property tax at up to five times the rate of their neighbor.²⁰⁴

One homeowner filed a lawsuit against the local government after she purchased a home in Los Angeles and watched her property assessment rise from \$121,500 two years prior to her purchase to \$170,100 when she purchased the home.²⁰⁵ She subsequently received a property tax bill for \$1701 and sued when she discovered that her neighbors, who lived in identical homes to her own, were paying between \$300 and \$400.²⁰⁶ Such gross inequities suggest that govern-

201. See Dubov, *supra* note 68, at 1470.

202. See Schragger, *supra* note 114, at 1843; see also SCHRAG, *supra* note 17, at 129–87.

203. The result of homeowners voting down property taxes via Proposition 13 has been an “overall decline in education outcomes in California, a product of the disastrous leveling-down.” Schragger, *supra* note 114, at 1843. “Prop 13 is typically viewed as the beginning of the end of California’s glory days. In public dialogue and policy debates, Prop 13 is often blamed for the ‘Mississippification’ of the Golden State.” Stark & Zasloff, *supra* note 13, at 806. “Commentators have charged Prop 13 with decimating California’s once vibrant public sector and dropping the state’s public schools down to the bottom of nearly every measure of education quality.” *Id.*

204. See SCHRAG, *supra* note 17, at 173–77.

205. *Id.* at 174.

206. *Id.* The case was eventually heard by the U.S. Supreme Court, which ruled that the homeowner, Stephanie Nordlinger, had not been denied equal protection due to the grossly unequal tax rates. *Id.* However, the Court did note that the difference in tax burden was “staggering.” *Id.*; see also Nordlinger v. Hahn, 505 U.S. 1 (1992).

ment officials have not properly weighed the social ramifications attributable to property tax relief.

Furthermore, some relief programs have been instituted without a guarantee of funding.²⁰⁷ In Colorado, state officials devised property tax relief programs for the elderly only to later deny the relief because of impending budget crisis.²⁰⁸ If, as many proponents argue, the purpose of relief programs is to prevent seniors from having to leave their homes, then it would benefit all parties if program administrators took the necessary steps to ensure that the programs are financially feasible.²⁰⁹ If Colorado currently cannot fund property tax relief programs, it is difficult to see how it, and other states, will be able to fund programs as the elderly population continues to rise unless the costs are inflicted on other segments of the community.²¹⁰

Beyond the issue of feasibility, there is the overriding question of fairness. An inherent problem with classification schemes that target property tax relief at specific categories of people, including the elderly,²¹¹ is that under such arrangements, “political pressure mounts both to create more categories and to manipulate the categorization of specific properties.”²¹² Classification schemes “violate the basic premise of the ad valorem property taxation, i.e., that tax burdens should be allocated in accordance with fair market value.”²¹³ Under the typical classification scheme, the nightmare of Proposition 13 becomes reality: two adjacent properties, with identical fair market values have significantly different tax obligations because they fall into different classifications.²¹⁴

207. See Tilley, *supra* note 76, at 180; ASSESSOR’S OFFICE, CITY AND COUNTY OF DENVER, NEW REAL PROPERTY VALUES IN 2005, at <http://www.denvergov.org/Assessor/23news.asp> (last visited Oct. 11, 2004) (discussing Colorado’s refusal to grant tax relief in the midst of a budget crisis).

208. ASSESSOR’S OFFICE, *supra* note 207 (discussing Colorado’s refusal to grant tax relief in the midst of a budget crisis).

209. See Salkin, *supra* note 1, at 181–83 (summarizing elderly demographic trends that show a large increase in the number and percentage of senior citizens in coming years).

210. *Id.*

211. See Zelinsky, *supra* note 12, at 2213.

212. *Id.* at 2212–13.

213. *Id.* at 2213.

214. *Id.*

E. Questioning the Necessity of Property Tax Relief Programs and Examining Alternatives

The purpose of criticizing property tax relief programs for the elderly is certainly not to diminish the fact that escalating property taxes actually do make it difficult for many elderly homeowners to remain in their homes.²¹⁵ However, accounts of empty nesters pressured to abandon their homes need not be the norm. The elderly have other options at their disposal to ease the financial burden of homeownership.

Chief among these options are so-called reverse mortgages, or Home Equity Conversion Mortgages (HECM).²¹⁶ Reverse mortgages can provide much needed income to elderly homeowners by allowing senior citizens to borrow money against the equity of their home and receive cash payments.²¹⁷ Because approximately eight of ten elderly homeowners own their homes outright,²¹⁸ reverse mortgages are an excellent, readily available option to ease the financial burden created or exacerbated by increasing property taxes.²¹⁹ For many seniors, their home is their biggest asset.²²⁰ Using home equity to pay for living expenses can empower “house rich, cash poor” seniors by giving them additional financial resources.²²¹

Approximately 13.2 million households are candidates for reverse mortgages.²²² To qualify for a reverse mortgage, the borrower must be at least sixty-two years old, own the subject property, and use

215. See Zhao, *supra* note 36.

216. Home Equity Conversion Mortgage (HECM) is the name generally associated with reverse mortgages handled by the U.S. Department of Housing and Urban Development. U.S. DEP'T OF HOUS. & URBAN DEV., ABOUT REVERSE MORTGAGES FOR SENIORS, at <http://www.hud.gov/offices/hsg/sfh/hecm/hecmabov.cfm> (last modified Jan. 12, 2005) [hereinafter ABOUT REVERSE MORTGAGES]. HECMs account for ninety percent of all reverse mortgages. *Reverse Mortgage Volume Up 112% from Year Ago, Group Says*, Apr. 14, 2004, at <http://www.seniorjournal.com/NEWS/ReverseMortgage/4-04-12.htm> [hereinafter *Reverse Mortgage Volume Up*].

217. See LEFCOE, *supra* note 128, at 284. Reverse mortgages are also known as home equity conversion mortgages and reverse annuity mortgages. *Id.*

218. See HOWARD ET AL., *supra* note 6, § 1:6. A home does not have to be owned free and clear to qualify for a reverse mortgage. See *Reverse Mortgage Volume Up*, *supra* note 216.

219. See *Reverse Mortgage Volume Up*, *supra* note 216.

220. Nat'l Council on the Aging, *Use Your Home to Stay at Home Program Study Shows That Reverse Mortgages Can Help Many with Long-Term Care Expenses*, Apr. 15, 2004, at <http://www.ncoa.org/content.cfm?sectionID=105&detail=576>.

221. *Id.*

222. *Id.*

the property as a primary residence.²²³ There are no income or credit qualifications and there is no repayment of the new loan as long as the property is used as a primary residence.²²⁴ The loan maximum, which varies by location, ranges from \$144,336 to \$261,609.²²⁵ In addition to owners of traditional homes, owners of condominiums, co-ops, and mobile homes are also eligible for reverse mortgages.²²⁶

Although fees are associated with reverse mortgages,²²⁷ steps have been taken to make these fees more affordable for eligible seniors.²²⁸ Furthermore, reverse mortgages are flexible and safe. Loan recipients can choose to receive a line of credit, have money distributed in a lump sum or through periodic payments, or receive a combination of a credit line and payments.²²⁹ Loans secured through the Department of Housing and Urban Development (HUD) are insured by the Federal Housing Authority.²³⁰ Holders of these loans are not subject to foreclosure, so they cannot be forced to vacate their homes because of missed mortgage payments.²³¹ Although reverse mortgage lenders recover the principal loan amount plus interest when the property is sold, the owner or estate can collect any excess.²³² Moreover, if sales proceeds are insufficient to pay the amount owed, HUD

223. ABOUT REVERSE MORTGAGES, *supra* note 216.

224. *Id.*

225. *Seniors Can Get Larger Reverse Mortgages Because of Higher Loan Limits*, Dec. 12, 2001, at <http://www.seniorjournal.com/NEWS/ReverseMortgage/12-12-1SeniorsGetMore.htm>.

226. ABOUT REVERSE MORTGAGES, *supra* note 216.

227. The loans generally come with a set of fees that can make them more expensive than a traditional mortgage. Gail Liberman & Alan Lavine, *Steep Fees Burden Reverse Mortgages*, SENIOR JOURNAL.COM, Aug. 24, 2004, at <http://www.seniorjournal.com/NEWS/ReverseMortgage/4-08-24Steep.htm>. Initial costs can run between five and six percent of property value. *Id.*

228. Seniors who refinance federally insured reverse mortgages (HECMs) must pay a mortgage insurance premium (MIP). *HUD Issues New Rule to Reduce Senior's Out-of-Pocket Expenses to Refinance Reverse Mortgages*, SENIOR JOURNAL.COM, Aug. 2, 2004, at <http://www.seniorjournal.com/NEWS/ReverseMortgage/4-03-29HUD.htm> [hereinafter *HUD Issues New Rule*]. Traditionally, the MIP was two percent of the property's assessed value. *Id.* But now the MIP is paid on the difference between the home value at the time of the original HECM and the appraised value at the time of refinancing. *Id.* For example, if the original value was \$200,000 and the newly appraised value is \$275,000, the MIP must be paid on \$75,000 instead of the full \$275,000. *Id.*

229. ABOUT REVERSE MORTGAGES, *supra* note 216.

230. *Reverse Mortgages Grow in Popularity for Senior Citizens*, SENIOR JOURNAL.COM, Aug. 2, 2004, at <http://www.seniorjournal.com/NEWS/ReverseMortgage/4-08-02Grow.htm> [hereinafter *Reverse Mortgages*].

231. *Id.*

232. ABOUT REVERSE MORTGAGES, *supra* note 216.

will pay the lender the amount of the shortfall, using the mortgage insurance premium it collects from all borrowers.²³³ Due to these benefits, reverse mortgages are becoming increasingly popular.²³⁴ An estimated \$953 billion could be available to senior households from reverse mortgages,²³⁵ and as the elderly population continues to grow, reverse mortgages should be promoted as a way for seniors to handle rising property taxes, as well as other living expenses.

One of the more creative solutions to ease senior citizens' property tax burden are senior tax work-off programs that allow senior taxpayers to defer property tax payments and then work part-time to pay off a portion of the tax deferred.²³⁶ In Colorado, Missouri, and Wisconsin, senior citizens can tutor school children in an effort to pay off part of their property tax bill.²³⁷ Although not an option for all seniors, tax work-off programs offer both a way to pay off property tax as well as a way for seniors to stay engaged in the community.²³⁸ The advantage of such programs over traditional employment is the benefit of tax deferral.²³⁹

Reverse mortgages and tax work-off programs may not be attractive options to financially burdened senior citizens. Because reverse mortgages entail relinquishing all or part of the equity in one's home, reverse mortgages will not be an attractive financial solution to homeowners who wish to pass their home to children or other family members.²⁴⁰ Similarly, homeowners who wish to eventually realize the full proceeds from the sale of their residence will find a reverse mortgage to be an unappealing way to ease the financial burden of homeownership.²⁴¹ Working to pay off property taxes likely will not appeal to senior homeowners wishing to remain retired.

233. *Id.*

234. *Reverse Mortgages*, *supra* note 230.

235. See NAT'L COUNCIL ON THE AGING, *supra* note 220.

236. See RITA KALCOS & JOSEPH BRIGGS, SENIOR TAX WORK-OFF PROGRAM, at http://www.town.dedham.ma.us/senior_tax_program.html (last visited Oct. 11, 2004).

237. Marnie Roberts, *Senior Citizens Tutoring at Schools to Offset Tax Increase*, EDUC. WEEK ON THE WEB, at <http://www.edweek.org/ew/vol-18/25.h18> (last visited Oct. 11, 2004).

238. TOWN OF CONCORD, *Senior Citizen Tax Work-Off Program*, at <http://www.concordnet.org/personnel/sr%20prog%20announce.html> (last visited Oct. 11, 2004).

239. See generally Roberts, *supra* note 237.

240. *HUD Issues New Rule*, *supra* note 228.

241. See LEFCOE, *supra* note 128, at 284–86.

However, the idea that elderly homeowners should be forced to deal with increasing property taxes with little or no assistance should at least be considered as part of a larger debate concerning property tax relief programs. There are extreme circumstances where property taxes rise quickly and unexpectedly,²⁴² but for the most part, seniors who have lived in the same homes and same communities for an extended length of time should be aware of the fact that property taxes are going to rise, and depending on where they live, may rise quickly.

Senior citizens seeking tax relief often argue that maintaining homeownership is virtually impossible without some form of property tax relief.²⁴³ While supporters of property tax relief programs are quick to discuss the difficulty of maintaining homeownership, supporters rarely frame the issue in terms of feasibility. Policy discussions are largely void of the question of whether it is logical to provide relief programs that encourage the maintenance of home ownership. A popular argument made by tax relief supporters is that but for property tax relief, senior homeowners would not be able to remain in their home.²⁴⁴

The idea that without special property tax entitlement programs, seniors will be forced from their homes is illusory. The financial burden facing many seniors is much deeper and represents a confluence of contributing factors including rising prescription drug prices and medical costs, the failure or inability of individuals to save for retirement, the death of a spouse, and low Social Security and other benefit payments.²⁴⁵ In this broader context, assigning property tax relief as the determinative factor in senior citizens' ability to maintain homeownership is erroneous and masks other social, political, and personal reasons why seniors face financial hardship.

V. Recommendation and Conclusion

Senior citizen property relief programs should be considered as part of a broad-based policy aimed at remedying the affordable housing difficulties faced by all senior citizens, not just homeowners. Senior citizen property tax relief programs should continue to exist in some capacity as the programs do provide valuable benefits to a cer-

242. See Zhao, *supra* note 36.

243. *Id.*

244. *Id.*

245. See generally KRAUSKOPF ET AL., *supra* note 9.

tain class of homeowners. However, the programs should only exist for those who are most in need of assistance.²⁴⁶ An elderly couple who owns a \$400,000 home free and clear, but has a low level of cash income should generally not be eligible for property tax relief. In such a situation, the homeowner can either utilize a reverse mortgage in order to remain in the residence,²⁴⁷ or sell the home and move into a smaller, less expensive residence and use the sale proceeds for living expenses.

From a policy standpoint, senior citizen property tax relief programs should not be implemented or expanded in order to encourage the formation of elderly enclaves with the intent of keeping families with children out.²⁴⁸ Although such a goal may be difficult to enforce, it should be noted that the programs can be manipulated in exactly this manner.²⁴⁹ An increasing number of children can be a burden to the school district,²⁵⁰ but it also is a natural part of any community's life cycle. If one community seeks to exclude school-age children, the burden of educating those children simply falls elsewhere. In this context, state governments should intervene to equalize spending and provide more direct money to school districts.²⁵¹

The creation and administration of senior tax relief programs must be forward-thinking and carefully consider the sustainability of the programs as the elderly population continues to grow.²⁵² State and local governments will find the challenge of funding property tax relief programs increasingly difficult as the population ages.²⁵³ Therefore, relief programs should not be guaranteed and should not be offered when municipalities are facing severe budget constraints.²⁵⁴

246. Income eligibility guidelines should be strict and qualifying income calculations should include benefits such as Social Security so that the relief is targeted to the most needy. See Dubov, *supra* note 68, at 1482–83 (discussing the importance of income determinations in targeting property tax relief to the elderly most in need).

247. See LEFCOE, *supra* note 128, at 284–88 (discussing reverse mortgages).

248. See Peterson, *supra* note 18.

249. *Id.*

250. *Id.*

251. See generally William Duncombe & John Yinger, *Alternative Paths to Property Tax Relief* (Mar. 2000) at http://www-cpr.maxwell.syr.edu/efap/Publications/alternative_paths_%20paper.pdf.

252. See Salkin, *supra* note 1, at 181–82 (discussing statistics which show the elderly population growing steadily in the coming decades).

253. *Id.* at 186.

254. See Tilley, *supra* note 76, at 179–81 (discussing Georgia's relief program which is reviewed annually and dependent on the health of the overall state budget).

In conclusion, senior citizens' desire to remain in the communities where they have lived for most of their lives and the desire to stay in their current residences has combined with a general societal malaise towards taxation to create a political climate that is often blindly supportive of property tax relief for the elderly. Supporters of property tax relief programs must be aware of the potential downsides that relief programs can create and should make sure to implement programs that are inclusive, fair, and ultimately sustainable.²⁵⁵ Property tax relief for the elderly, when considered as part of broad-based housing policy, has the potential to help many senior citizens live better, more enjoyable lives. However, a substantive understanding of how the programs impact the broader community is necessary to ensure the programs' success.

255. The State of Delaware seems to have carefully considered sustainability and the impact of property tax relief on the broader population in crafting its senior property tax relief program. The program is part of a combined education expense and senior tax relief fund which sets aside money from the state's general fund to reimburse local governments for education expenses based on, among other things, the number of households owned by people sixty-five and older. *See* DEL. CODE ANN. tit. 29, § 6102(q)(1), (2) (2003). Local school boards have flexibility in deciding whether to grant elderly homeowners property tax credits. *See id.* tit. 29, § 6102(q)(3).