

Land Value Capture in Mexico

Manuel Perló Cohen

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Abstract

This work constitutes an initial approach to the topic of taxes on property value appreciation in Mexico. These value capture taxes are imposed by public authorities on land value increments that result not from any action on the part of the landowner but from community efforts and/or investments.

My interest in this type of levy arose as a result of research into its application in Latin America, conducted at the Lincoln Institute of Land Policy. This important research by the Lincoln Institute seeks to shed light on the use of the levy and on the procedures and techniques used in calculating it, to examine the difficulties in its application, and evaluate its potential as a revenue source. The underlying idea of this research is that in a context of rapid urban growth, where accelerated land price increments are accompanied by intense speculation and existing property tax revenue mechanisms are inadequate, the capture of land value increments may be an effective way to promote the equity, efficiency, and sustainability of urban growth (Rojas and Smolka, 1998).

I began to document a case study of Mexico using the analyses done in Argentina (Clichevsky, 1996) and Colombia (Rojas and Smolka, 1998) as background information. However, an initial review of the scant literature on land value taxation in Mexico provides very little information on its use here. The only mention of a tax on land value increments was found in the work of José Antonio Zarzosa (1997, 8), who describes it as “a complex tax whose special characteristics link it closely to the work of the cadastre, since data generated by that body are necessary in order to determine the extent of land value increments derived from a particular public works project.” Zarzosa does not say much more about the levy and does not provide any additional information about specific cases of its implementation.

Thus, I undertook a preliminary exploration of the levy’s use in Mexico. The first task was to determine whether or not the tax was used in Mexico and, if so, how it was applied. Once it was determined that the levy was used in several states, I investigated the legal framework for its application. Next, I sought information on revenues generated by the levy; and, finally, I sought to document its use, including the difficulties encountered. The results of this research are presented in this document. The first section is a brief review of the legal and institutional framework regarding real property taxes in Mexico. The second section presents the results of research into the existence of a value capture tax throughout Mexico, locating instances of its application in the broader context of levies and taxes on real property in general.

We feel that this contextualization is useful in order to compare value capture with other types of taxes paid by owners of real property. The third section presents a detailed discussion of the regulatory framework for the levy’s application in places where it is used. Subsequent sections evaluate the fiscal significance of the value capture tax (section IV), review the most important observations drawn from the information obtained in this research (section V), and present some conclusions (section VI).

It is important to stress that this is a first approach to the topic. It is largely descriptive, so many questions remain unexplored. For example, I reviewed current municipal tax law in all the states (*Leyes de Hacienda Municipal*) and in the Federal District (the *Código Fiscal*), but was unable to examine the legislation of individual municipalities. It was also beyond the scope of this research to review legislation no longer in effect. Thus it was possible to research the tax on land value increments where it was currently in use, but not where it might have existed before being repealed. The exception was in Tamaulipas, where we do know that the levy was abolished in 1974.

More research should be done on the practical application of this tax. Although a survey was circulated among state and municipal tax officials where this tax is applied, results were modest due to the limited number of responses received. Without direct research into each particular case, which was definitely beyond the scope of this investigation, it would be extremely difficult to evaluate the evolution of this tax in practice. We feel this research should be conducted in the future.

About The Author

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Land Value Capture in Mexico

I. Legal and Institutional Framework for Property Taxes

The United Mexican States is a federal republic divided into three levels of government: federal, state, and municipal. Article 31, section 4 of the Mexican constitution stipulates that Mexican citizens are obligated to contribute financially to the expenses of these three levels of government. The 31 states are free and sovereign in the conduct of their internal affairs. The territory, political organization, and administration of each state are divided into free municipalities. Article 115 of the constitution stipulates that the free municipality is fully empowered to administer its public treasury, which encompasses all revenues derived from municipal property, as well as taxes, fees, and any other revenues established by its state legislature.

Paragraph 'a' of the same article stipulates that municipalities shall receive revenues as determined by the states on the basis of real property ownership, its division, subdivision, consolidation, transfer, improvement, or value appreciation. The General Law on Human Settlements, a regulatory framework for the application of Article 115 of the constitution (which defines the country's organization and territorial division), specifies the competencies of the three levels of government with regard to questions directly related to urban land. It regulates the uses of real property, the formation of territorial reserves, and the conversion of common lands and communal property to housing and urban development. However, it does not once mention the generation of land value increments and it does not regulate their appropriation.

Before a 1983 amendment of Article 115, municipalities left the management of their treasuries almost completely to the state governments. After the constitutional amendment, however, municipalities took on significantly greater financial responsibility. Even so, state congresses continue to exercise a strong influence over the municipalities. Paragraph 'c' of Article 115 stipulates that state legislatures must approve municipal legislation on revenues and must oversee the municipalities' public accounts.

Local levies on real property constitute the greatest share of municipal revenues in Mexico. The task of quantifying and administering these taxes is closely related to the work of the cadastre; their optimal productivity as revenue sources depends to a great extent on the efficiency of both tax administration and technical-cadastral functions.

Despite the fiscal importance that these taxes have always had, their productivity decreased during the 1980s. This stimulated municipal, state, and federal policies and actions intended to recover falling revenues, particularly revenues from taxes on the acquisition and ownership of real property. Among the most significant actions were the following:

- Land tax revenue was incorporated as a variable in the formula used to determine revenue sharing transfers by the Municipal Development Fund (*Fondo del Fomento Municipal*–FFM), a program of the federal system of *Participaciones* (federal transfers not earmarked for any specific use).

- Cadastral systems were modernized with the financial and technical support of the National Bank of Public Works and Services (Banco Nacional de Obras y Servicios Públicos – BANOBRAS) and the Secretariat of Social Development (*Secretaría de Desarrollo Social* - SEDESOL).
- Cadastral values were more frequently updated.
- An ongoing program was established and special events were organized for training and research on real property taxes and the cadastre.

These actions have led to significant progress, but much remains to be done. Local tax authorities continue to make outstanding efforts toward developing a fiscal regime based primarily on real property taxation that is adequate to provide increased and improved public services to the community.

II. Taxes and Fees Levied on Real Property

The states and their municipalities currently finance their urban development with a set of real property based revenue mechanisms in the form of taxes, assessments, and fees. There are real property taxes, levies on value increases, on the benefit received by private parties from public works projects by means of special improvement payments, on division or merging of lots and for construction rights, on use through the tax on residential use, and others. A systematic state-by-state review of relevant legislation is presented in table 1 on page 18.

The Property Tax

This is traditionally the principal tax levied on real property. In most Mexican states it is applied proportionally. In some cases it is applied at different rates depending on the category of land—urban, rural, or common land (*ejido*)—or according to the land’s authorized use (commercial, industrial, residential, etc.). In a new trend, the Federal District and seven states (Colima, Chihuahua, Sinaloa, Sonora, Tabasco, Tamaulipas, and Yucatán) have introduced a progressive tax mechanism (Zarzosa, 1997).

The property tax is a form of direct taxation on real property, including both land and any buildings. Treasury officials generally determine the tax basis and the tax. In the Federal District, however, it is the taxpayer who calculates both the tax basis and the tax.

The Real Estate Acquisition Tax

This tax is also known as the Real Estate Transfer Tax or the Tax on Transfer of Ownership. It is levied on the acquisition of real property through any legal mechanism. Property transfers are occasional in the sense that it is not possible to predict changes in property title holder or possession of a property.

The Value Capture Tax

This tax on value increments is levied on the appreciation of real property values resulting from the positive impact of completed public works. It is based on the idea that specific properties benefiting from certain public works projects experience land value increments or acquire “surplus value.”

The Special Assessment for Improvements

This tax, sometimes called the Public Works Tax, is imposed when municipal governments encounter unforeseen situations that require investments to meet community needs through the execution of public works whose costs were not included in original budget projections.

The Tax on the Division, Subdivision, or Merger of Properties

As its name indicates, this is a levy on any division of properties in keeping with state legislation, most commonly called the Law on Subdivisions. Any division, subdivision, or merger of real properties may form the basis for this tax.

In some states this mechanism is levied as a fee. However, it seems more appropriate to consider it a tax as long as its application is not necessarily associated with any public service provided by the municipality. The value of this tax or fee generally depends on the type of subdivision, its size, and the location of a property.

Most states require that ownership of a significant portion of land being subdivided into multiple parcels, usually between 10 percent and 20 percent, be transferred to the municipality without compensation. The purpose of this requirement is to provide the municipality with land for the construction of public service infrastructure.

Permitting fees for construction

This is an important revenue source, primarily due to the frequency and regularity of the actions that require permitting, including the expansion, reconstruction, and demolition of buildings. Tax legislation in some municipalities also stipulates fees for establishing street frontage and official street addresses for buildings, as well as for excavation, for the use of public ways to transport construction materials, and others.

Fees paid for one-time construction permits require municipal authorization. Once permitted activities are completed, this authorization automatically expires.

For most permitted activities, the fee is determined based on the area in square meters of the building to be constructed, reconstructed, or demolished. In some cases, however, the fee is determined by the lineal measurement of construction. Municipal tax legislation typically sets rates for these fees and specifies the variables used to calculate them.

The Occupancy Tax

This property tax is not common in our country. In fact, it is used only in the state of Mexico. It is a municipal tax, payable by those who permanently, continually, and customarily occupy buildings used for commercial or industrial purposes or for the provision of services. It is a relatively new tax, introduced for the first time on January 1, 1993. The occupancy tax supposes the consumption of public services (unspecified and considered in their aggregate) by the occupant of a property with the intention to engage in one of the activities indicated above. The tax is determined in relation to the level of development of each municipality and the existence, category, and magnitude of public services that are provided in the different areas into which municipalities are divided.

III. An Analysis of Legal Provisions Concerning the Value Capture or Land Value Appreciation Tax

A review of state tax provisions and tax provisions in the Federal District concerning real property indicates that the states of Aguascalientes, Coahuila, Michoacán, Morelos, Nuevo León, San Luis Potosí, and Sinaloa had a value capture tax and that the tax was discontinued in Tamaulipas in 1974. The principal characteristics of value capture tax legislation in each of these states are described below.

Aguascalientes

Chapter 3, section 1 of the Treasury Law of the Municipality of the City of Aguascalientes describes the levy as a tax “On Value Increments and Specific Property Improvements,” and Article 82 establishes that “the object of this tax is the value increment and improvement of real property resulting from [municipal] improvement projects.”

Article 83 establishes that the subjects of the tax shall be “those owners or possessors of land or buildings that benefit from improvement projects conducted by the municipality or by the municipality in coordination with another entity.”

In Article 84 the basis of the tax is defined as “the value of the benefit obtained, in proportion to the executed project, in conformity with the state’s Law on Planning and Urban Development.”

Finally, Article 85 establishes that the tax itself “will be applied and paid in conformity with the stipulations of the state’s Law on Planning and Urban Development.”

Coahuila

Section 2 of Coahuila’s state tax law establishes in Chapter 8, Article 397 that the basis of the “Value Capture Tax” is “the value increment and specific improvement of property deriving from the execution of public works by the federal, state, or municipal government.”

Article 398 establishes that “This shall be an objective tax and shall affect all properties within the area that benefit by the public works project, which area shall be defined by the Directorate of Municipal Public Works and approved by the council(s) of the municipality or municipalities affected by the project on the basis of technical and other studies.”

The calculation of the tax and the uses of tax revenues are established in Article 399: “When the public works in question are carried out by the municipality, the value capture tax, as determined according to the bases set forth in this chapter, shall be used exclusively to indemnify real property owners for properties expropriated in pursuance of the execution of the project in question and to pay the cost of the project itself. Interest and commission costs associated with contracting credits and loans for the financing of the public works project shall be included in the cost of the project. In addition, 15 percent of the revenue derived from this tax will be directed for organizational purposes to the department or directorate of Planning, Urban Development, and Public Works, or to the Municipal Neighborhood Council(s) (*Consejo/s de Colaboración Municipal*), depending on which of these bodies has proposed and administered the project. Prior to distribution, these revenues will be deposited in the Municipal Treasury pending their assignment as authorized by the municipal council.”

The law establishes a set of detailed parameters for calculating tax payments. It states that properties located “within the area of effective benefit” are subject to the tax. The following factors must be taken into account:

1. the surface area of each property
2. the length of the property’s street and/or plaza frontage
3. the distance of the property from the focal point of the project
4. the influence of the project on the property’s commercial profitability and value;
5. any other data that determine the improvement and value increment of the property subject to taxation.

Other articles of the same law (402, 403, 404, 405, 406, 407, 408, 409, 410, and 411) concern the application of the tax on specific public works projects according to specific variables of property location and payment procedures.

Michoacán

Article 152 of the section “On Special Assessments” in Title IV of Michoacán’s Municipal Treasury Law refers to the “Increased Value and Specific Improvement of Real Property,” to be subject to a levy on those properties that benefit from an urban development public works project, assuming that the execution and conclusion of that project will necessarily increase the value of those properties and that this value increment is not the result of any economic effort on the part of the properties’ owners or

possessors.”

Article 153 stipulates that when the owners of affected real properties can be identified, they will be subject to this assessment; when the ownership of affected properties is unknown or in doubt, the party or parties in possession of the property will be assessed. When the land and any appurtenant buildings have different owners, only the owner of the former will be subject to the assessment.

Article 154 establishes that if legal ownership is reserved, the prominent purchasers and acquirers will be jointly and severally responsible to pay this assessment. If the property is held in trust, the fiduciary institution will be responsible for payment.

Article 155 states that in no case will the total assessment levied with regard to a public works project exceed the cost of that project. Article 156 stipulates that for the purposes of quantifying assessments related to a public works project, the cost of that project to be apportioned among its beneficiaries will be defined as the sum of the following:

1. the cost of project planning and design
2. the total value of indemnifications
3. the cost of development project itself
4. the payment of interest and banking costs when financing is required
5. general expenditures necessary for project execution

Article 157 stipulates that for the purpose of apportioning assessments, the cost of public works projects as defined in the previous article will be reduced by the value of public appropriations and/or private contributions applied to those projects.

Article 160 stipulates that in order to calculate the assessment it will be necessary to first determine the area within which it will be imposed, taking into consideration the following factors:

1. the characteristics, size, and significance of the public works project
2. the estimated benefits that will derive from the project and the estimated benefits that will translate into a value increment for properties in the area or areas affected by the project, considering conditions previous and subsequent to project execution as well as the geographical reach of the benefits or value increments for contiguous and other nearby properties.

Article 165 establishes that a party assessed under the terms of this levy may challenge the payment of the levy if he or she determines that the assessment contains errors or inaccuracies, and may petition for a modification of the assessment through the administrative procedures contained in the Municipal Tax Code.

Morelos

In the state of Morelos the value capture tax falls under “Special Assessments for Planning Projects.” Article 386 stipulates that the special assessments established by this law are applied to properties that enjoy a specific economic improvement as a result of a planning project executed by the state of Morelos, by its municipalities, or by decentralized public bodies, and resulting in a collective benefit, even if the federal government or the private sector contribute to this project or if a public-private partnership is established for the purpose of carrying it out.

Article 387 stipulates that assessments may be assigned for the following categories of planning projects, as specified in the previous article:

1. construction of state highways and local thoroughfares, of bridges and tunnels, of irrigation, electrification, sewer, and drainage infrastructure, of stadiums and playing fields, and of transportation terminals
2. enlargement, straightening, and consolidation of the bed, basin, or channel of any lake, river, or water course, or similar earth moving projects associated with gorges or landslips, even if performed in a federal zone or on federal property
3. initial construction, lengthening, widening or straightening of an avenue, street, plaza, garden, or park, including when such work is required for the construction of a new population center, industrial center, or city
4. any other urban, municipal interurban, intermunicipal, regional, or state planning project meeting the definition of “planning” as described in relevant current legislation, and insofar as it generates a specific improvement as required by Article 386 of this law,

Article 389 stipulates that the assessments established by this law may be directed to any of the following entities:

1. the state of Morelos, with respect to work executed by its government or its decentralized bodies or by public-private partnerships in which it participates, even if the state has received project funding from the federal government, the municipalities, or the private sector
2. the municipalities of the state of Morelos, with respect to a project that they execute or that is executed by their component agencies or by an intermunicipal or public-private partnership in which they participate, even if the federal government, the state, or the private sector contribute to the project

Article 390 stipulates that the special levy established by the law will be assessed against the owners of real property located in an “assessment zone,” whose area for each public works project will be determined in keeping with the provisions of this law. If a property in the assessment zone has no known owner, if the property itself is not legally defined, or if a property owner has given possession of the property to a third party and committed

him or herself to a subsequent transfer of ownership, then the levy will be assessed against the party in possession of the property.

Article 393 establishes that the assessment must be paid for every real property located within an “assessment zone,” and that the assessment will be calculated according to the following formula:

$$A = \frac{(NC) HP}{S}$$

Where (A) is the assessment; (NC) the net cost of the planning project; (H) is the homogeneous area of the property in question; (P) is the planning index of the property, and (S) is the sum of the products obtained by multiplying the planning index of each property located within the assessment area by its respective homogeneous area.

Article 394 stipulates that the cost of a planning project shall be the sum of the following:

1. the total value of the project, including all project aspects to be executed according to approved project estimates
2. the price of all land areas that must be acquired or expropriated for project execution to go forward
3. the payment of compensation to third parties for any damages incurred by project execution
4. general project execution expenditures, including:
 - a. the cost of project consultancies, management, and on-site engineering services
 - b. the cost of project studies and drafts
 - c. expenditures for the legalization of property documents necessary for the acquisition or appropriation of properties and corresponding compensation
 - d. expenditures for demolitions and the removal of rubble
 - e. the payment of interest and incidental expenses associated with the project financing, as long as the project in question is not paid for before its inauguration
 - f. unforeseen expenses calculated at 20 percent over net project cost, as long as they are not quantified in sections of the project budget

- g. other direct and indirect expenditures occasioned by project planning, design, and execution, and not specifically considered in any other provision of this law.

Nuevo León

Chapter 8 of the Treasury Law for the municipalities of this state stipulates a tax on value increments and specific improvements to property. Article 41 bis clearly establishes the basis of the levy:

“This law establishes a Tax on Value Increments and Specific Improvements to Property, to be levied in reference to lands that benefit from an urban development project, considering that the execution and conclusion of that project will necessarily increase the value of such lands, and that the increased value of such lands is not the result of any economic effort on the part of their owners or possessors.” In accordance with Article 41 bis 10, the subjects of the tax are the land owners, or in the case that the land has no owner or the owner is not known, the party in possession of the land.

Where ownership rights are held in reserve, prominent purchasers and acquirers will be jointly and severally liable for the tax. If the property is held in trust, the financial institution and the party acquiring ownership rights will be jointly and severally liable; the financial institution will be responsible for the payment of the tax and will be reimbursed by the party instated as owner of the benefited property upon execution of the trust.

The basis for the tax is specified in Article 41 bis 11: “In no case may the total value of the tax for each urban development project exceed the cost of the project in question.” Article 41 bis 12 lists the components of the total cost of the urban development project:

1. The cost of project planning and design
2. The cost of indemnifications
3. The cost of project execution
4. The payment of interest and other bank costs when financing is required
5. General expenditures necessary for project execution

Significantly, Article 41 bis 13 stipulates that the overall total of the tax will be reduced by the amount that public authorities or private parties contribute to project costs as defined above.

Article 41 bis 16 stipulates the two factors used to determine the area within which the tax will apply:

1. The characteristics, size, and importance of the project

2. The estimated benefits to be derived from the project and the estimated benefits that will translate into land value increments in the zone or zones the project comprises, considering the conditions existing previous and subsequent to project execution and the geographical reach of project benefits or value increments with regard to properties contiguous to the project and to other nearby properties.

Article 41 bis 17 stipulates the criteria to be used in calculating the tax accruing to each property, which include the following:

1. the cost of project execution to be apportioned
2. the plan corresponding to the entire taxable area, considering the location and area of each property, its distance from the focal point of the improvement, and its individual characteristics such as its current and future importance within the zone where it is located, and the current and future proportionality of its value relative to the group of properties located on the same urban block, to the blocks in its zone, and to the other zones in the taxable area.

The importance of each property and the proportionality of tax assessment will be determined based on the topographic characteristics of each particular property and its use or enjoyment, either particular to each zone, sector, or municipality, or in conformity with the criteria established in the legislative decree approving application of the tax.

Subsequent sections of the law (19, 20, 21, 22, 23, 25, and 26) delimit the areas of project influence in keeping with the nature of the project (the construction of primary and secondary potable water and drainage systems), billing and payment procedures, dispute resolution procedures, and the designation of authorities responsible for administering the tax.

San Luis Potosí

Chapter 4 of the Treasury Law for the municipalities of San Luis Potosí includes a description of the value capture tax. Article 102 of the law indicates that “the object of this tax is the benefit accruing to owners of urban, suburban, and rural properties in the municipalities of this state due to the simple passage of time or to the effect of public or private development projects on properties within their areas of influence.”

Article 103 establishes that “it is an indispensable requirement for the collection of this tax that municipal cadastral authorities must not have reassessed the affected properties subsequent to the completion of the public works mentioned in the previous article and the date of the most recent assessment must not exceed two years.”

Article 104 indicates that the basis of the tax “shall be the difference between the cadastral value of the properties and their newly acquired commercial value as determined by expert assessments carried out by civil engineers or architects.”

Articles 105 and 106 specify the conditions and procedures for payment of the tax.

Sinaloa

Chapter 3 of the Municipal Treasury Law of the state of Sinaloa establishes the “Value Capture Tax for the Development of Population Centers.”

The goal of the tax is defined in Articles 34 and 36: “The value capture tax is established as a levy on the specific improvement and land value increment in order to establish a fund to pay the costs of the public works stipulated by this law. This tax applies to the value increments and specific improvements of real property resulting from the execution of the public works projects” (Art. 34) and “when value increments and specific improvements predominantly impact properties within a specific zone, with scant benefits accruing to the remainder of the population center, the tax will be applied to the properties within the zone where those benefits are experienced.”

The objects of the tax are described in Articles 35 and 37: “The owners, possessors, or persons who for any reason have authorized or unauthorized use or possession of real properties located in populated areas within which the development projects to which this chapter refers are executed shall be required to pay the tax established in the previous article” and “the tax burden shall be apportioned among the properties within an urban area or within a populated area where the public works project or projects are executed, or among properties in another area or population center if the projects produce a greater collective benefit to that area or population center than to the zone where the project was executed.”

Article 38 identifies those who will be responsible for identifying the area that benefits by the public works projects and the area within which the tax will be applied: “The respective municipal councils and municipal Commissions for the Development of Population Centers will be responsible for performing the technical and expert studies to determine the zones or areas benefiting by the projects, dividing these zones or areas into sections corresponding to several degrees of benefit, determining a corresponding tax rate per square meter in each zone or area and deciding when the tax should be applied to the zone contiguous to the project and benefiting directly from it or to properties in a more specific urban zone or to the entire population center, depending on the zonal or broader collective nature of the benefit. The corresponding municipal council will issue a ruling on these matters.”

Article 40 stipulates that “When a single property is located within two or more affected areas due to the execution of more than one project, tax will be due for each respective area.”

Article 41 indicates the use to be made of these tax revenues: “The tax shall be used to cover the total cost of the executed project, including corresponding expenditures for interest and commissions necessary to obtain credits or loans for the financing of the same project. If there are surplus funds after the project is completed, these funds will be dedicated to new development projects in the same population center.”

The technical bases for calculating the tax are established in Article 42a and include the following:

1. The surface area of each property
2. The length of street and plaza frontage
3. The distance of the property from the focal point of the project
4. The influence of the project in a given zone and the proportion of that zonal benefit to the benefit accruing to the larger population center
5. The influence of the project on the commercial value of the property or its earning potential
6. Any other factor that increases the value or improves the property subject to this tax.

Articles 42b, 42c, and 42d stipulate the manner in which the tax will be calculated corresponding to certain specific property characteristics. Articles 42i and 42j establish the administrative procedures for tax collection and payment. Article 42l deals with questions relating to dispute resolution.

IV. Significance of the Tax as a Revenue Source

How important is the value capture tax to municipal finances? Almost no information was available on this point. The public accounting records of various states were consulted but it was not possible to disaggregate the different categories of revenue in order to quantify the revenue from this source.

Table 2 (next page) provides information on municipal revenues provided by the Secretariat of the Treasury and Public Credit and compiled by the National Institute of Statistics, Geography, and Informatics (*Instituto Nacional de Estadística Geografía e Informática* – INEGI). Revenues from general property taxes and the land transfer tax are identified, but no information is provided on revenues from the value capture tax. This is not to say that such revenues do not exist, just that they are not recorded in the official data.

Nuevo León is the only case for which we have information. Eduardo Garza Valdez, the director of property tax collection for the municipality of Monterrey, told us that the total collected between 1994 and 1998 from the tax on value increments and specific improvements in the city of Monterrey was 7.4 million pesos. When this is compared with the 262 million pesos that the state of Nuevo León collected [from property taxes] in 1996 alone, it is clear that revenue from the value capture tax was very limited.

Table 2: Principal Revenues Based on Real Property in the Mexican Municipalities that Apply the Value Capture Tax

(1996, in thousands of pesos)

| | Aguascalientes | Coahuila | Michoacán | Morelos | Nuevo León | San Luis Potosí | Sinaloa |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Gross Municipal Revenues | 348,181 | 719,784 | 825,666 | 378,382 | 1,731,274 | 477,661 | 780,714 |
| Revenue from Property Taxes | 36,495 | 68,728 | 41,086 | 741 | 262,390 | 34,277 | 102,628 |
| Revenue from Property Transfer Taxes | ----- | 917 | 3,201 | ----- | 795 | 209 | ----- |
| Revenue from Assessments for Improvements | ----- | 5,651 | 6,313 | 1,762 | 21,777 | 1,090 | 5,805 |
| Revenue from Value Capture Taxes | Information Unavailable | Information Unavailable | Information Unavailable | Information Unavailable | Information Unavailable | Information Unavailable | Information Unavailable |

Source: *Finanzas Públicas Estatales y Municipales de México*, 1992-1996, (State and Municipal Public Finances in Mexico, 1992-1996) INEGI, 1998

V. Analysis of the Value Capture Tax

Extent of tax application nationally

After a review of tax law in the Federal District and each of the states (other than Chihuahua, Tabasco, and Yucatán, for which information was unavailable), we found provisions for a value capture tax in just seven out of the 28 states for which information was available. It can be concluded that the value capture tax is not widely used in Mexico. Nevertheless, several factors that qualify that conclusion should be mentioned.

First, this levy has such a limited presence in the literature on tax law and in expert opinion on the subject that it is easy to overlook. Personally, I was surprised to find seven cases. The use of the levy in seven states, however, illustrates the need of some state and municipal governments to recover some of their major investments in urban development through a tax directed at the owners of urban properties that benefit from those investments.

No correlation was found between the use of the value capture tax and specific variables of urban or economic development. For example, the tax is applied both in states like Nuevo León, which has high levels of urban concentration, and in others like San Luis Potosí, large parts of which are still rural. In addition, the tax is used in states like Nuevo León, with heavy concentrations of the industrial and service sectors, and in states like Sinaloa, where primary economic activities are more prevalent.

The goal of the tax

The goal of the tax seems to be the same in all of the states where it is used. A levy is assessed on the value appreciation of real property when the appreciation is the result of public works. In no case is it stated that the tax may be levied on value increments resulting from administrative acts (as it is in Colombia), such as land use authorizations, restrictions on housing density, or the conversion of agricultural land to urban uses. The only case open to this interpretation may be in San Luis Potosí, since the state tax law there stipulates that the value capture tax may be applied to value increments resulting from public works projects and “the passage of time.” Nor does it seem that the goal of the levy is to inhibit or tax urban land speculation.

The only state whose tax legislation refers to the allocation of revenues collected through the value capture tax is Sinaloa, where the law stipulates that these revenues will be invested in additional public works projects in new development areas.

Calculating the tax

There seems to be a consensus that value capture tax assessments should be based on the cost of the public works project benefiting affected properties. Again the exception is San Luis Potosí, where legislation indicates that the basis of the tax “shall be the difference between the cadastral value of the properties and their newly acquired commercial value as determined by expert assessments carried out by civil engineers or architects.”

It is not known why the levy is assessed this way. Perhaps it is easier to calculate assessments based on known costs than to calculate actual value increments. However, while this method of assessment may be practical, it distorts the goal of the value capture tax, which is to levy an assessment based on value increments resulting from public investment, not on the cost of public works projects. In fact, with this method of assessment, it would seem that the value capture tax duplicates existing assessments for public improvements.

Social, political, and technical obstacles to use of the tax

There seem to be several reasons why the value capture tax is not more widely used. One of these is that it has to “compete” with many other taxes already applied to real property. Each tax is different, of course, but their differences are not always clear to taxpayers, who therefore feel that any new tax is one more burden in addition to the many that are already imposed. This attitude undoubtedly affects authorities, who do not want to impose a tax that provokes strong negative reactions.

Another possible reason for the very limited adoption of the levy is that taxpayers may see it as a duplication of fees that they already pay for the execution of public works projects.

Municipal authorities in Monterrey told us that landowners with properties on the outer fringes of areas affected by public works projects were reluctant to accept the tax,

“sometimes arguing that even if the public benefits, they didn’t ask for the projects, and sometimes complaining that the tax is too high.”

Municipal officials in Monterrey also point out that the taxes do not always find their way to the municipal treasury: “There is no direct benefit to the municipality, since value capture tax revenues are sent to the trust administrator assigned to project management. This is what happened on the San Agustín-Valle Oriente-Monterrey Sur highway project.”

Closely related to the first set of obstacles, modern methods of land taxation and land market mechanisms are not well understood; cadastral systems are out of date and cadastral values are hard to keep current; tax collection mechanisms are poorly conceived and there is a lack of personnel adequately trained to manage the different stages of the process.

Finally, municipal officials in Monterrey stated that “the hard thing about this tax is that the formula set out in the law is very complicated. It is difficult to interpret and to apply. We need a specialized technical agency to quantify it.”

VI. Conclusions

Our knowledge about the value capture tax in Mexico is in its infancy. We do not know, for example, if it was used prior to the existence of current legislation, how long it has been in use, or if other states have used it previously. Most importantly, however, we are unfamiliar with the detailed and concrete characteristics of its application. This bears further research.

It seems that even in states where the levy is stipulated in tax law, its application has been very limited. This should be researched. Why was the tax written into the law? Was it a response to some specific needs? What were they? To what extent has the tax been applied in the different states? What have been the primary obstacles to its application? Have legal shelters been established to prevent its effective application? What is the popular perception of the tax?

Since municipalities are being given ever greater responsibility for urban development and the provision of associated public services, the health of their local budgets is increasingly important and the search for new and efficient means of revenue collection is crucial. The actual use of the value capture tax could be an important area for future research.

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TABLE 1. Taxes* Associated with Real Property in Mexico by State

| STATE | LAW | YEAR LAW WAS ESTABLISHED ¹ | TAXES | | | | FEES AND ASSESSMENTS | | | | | | |
|---------------------|--|---------------------------------------|------------------|------------------------------|---|---------------------------|------------------------------|--|------------------------------|---|--------------------------------------|----------------------|--|
| | | | LAND | TRANSFER OF OWNERSHIP | VALUE INCREMENTS | OTHER | WATER | GENERAL SANITATION | PUBLIC WORKS | SERVICES | LOT FRONTAGE | OTHER | |
| Aguascalientes | Municipal Treasury Law of Aguascalientes | 1986 | On real property | Acquisition of real property | On increased value and specific improvement | No | Yes | Yes | No | No | No | For sewer connection | |
| Baja California | Municipal Treasury | 1953 | Yes | Yes | No | No | No | No | Public works | No | No | No | |
| Baja California Sur | Municipal Treasuries | 1995 | Yes | Acquisition of real property | No | No | Insufficient data | Insufficient data | Insufficient data | Insufficient data | Insufficient data | Insufficient data | |
| Campeche | Municipal Treasuries | 1993 | Yes | Acquisition of real property | No | No | No | For street cleaning and garbage collection | Yes ² | No | No | No | |
| Chiapas | Municipal Treasury | 1987 | Yes | Yes | No | On noncode parking permit | No | No | Improvement fee | Fees ³ | No | No | |
| Coahuila | State Municipal Treasury Law | 1984 | Yes | Acquisition of real property | On value increments | No | For potable water and sewers | For street cleaning | Public Works | Construction and Urban Development Projects | Lot frontage and official numeration | Public lighting | |
| Colima | General Law on Municipal Treasuries | 1994 | Yes | Transmission by inheritance | No | No | No | No | Cooperation fee | No | No | Public lighting | |
| Chihuahua | Doc. unavailable | - | - | - | - | - | - | - | - | - | - | - | |
| Durango | Municipal Treasuries | 1988 | Yes | Transfers of real property | No | No | Yes | Sanitation services ⁴ | Yes | No | Yes | No | |
| Federal District | Financial Code | 1995 | Yes | Acquisition of real property | No | No | Yes | No | Assessment for improvements | No | Yes | Public lighting | |
| Guanajuato | Municipal Treasury | 1989 | Yes | Yes | No | Subdivision of properties | No | No | Public works assessment | Public services ² | No | No | |
| Guerrero | Municipal Treasury | 1995 | Yes | Acquisition of real property | No | No | No | No | Cooperation for public works | No | No | No | |

* Includes all taxes, fees, payments applicable to the owner or holder of real property

¹ All these laws were in effect in February 1998.

² As stipulated in the Treasury Law of the state of Campeche

³ Fees not specified, or whether to be paid by owner or party in possession

⁴ Unspecified as to who pays

| | | | TAXES | | | | FEES AND ASSESSMENTS | | | | | |
|--------------|----------------------|---------------------------------------|-------|--|--|-------------------------------------|----------------------------|-------------------------|--|---------------------------------|-------------------------------|---|
| STATE | LAW | YEAR LAW WAS ESTABLISHED ⁵ | LAND | TRANSFER OF OWNERSHIP | VALUE INCREMENTS | OTHER | WATER | GENERAL SANITATION | PUBLIC WORKS | SERVICES | LOT FRONTAGE | OTHER |
| Hidalgo | Municipal Treasury | 1984 | Yes | Transfer of ownership and other transactions | No | No | Yes | No | Special fee for cooperative works | No | Lot frontage and nomenclature | Sewers and drainage |
| Jalisco | Municipal Treasury | 1984 | Yes | Estate transfer | No | No | Water and sewers | No | No | No | No | No |
| Mexico | Municipal Treasury | 1991 | Yes | Yes | No | No | No | No | Assessments for improvements | For services rendered | No | No |
| Michoacán | Municipal Treasury | 1984 | Yes | Acquisition of real property | Special tax on value increments and special improvements | Unfenced barren land | Water supply and sewers | No | Assessments for improvements | For urban services ² | Yes | No |
| Morelos | Municipal Treasury | 1984 | Yes | Acquisition of real property | Special tax for urban planning projects | No | No | No | Cooperation with public works | No | No | No |
| Nayarit | Municipal Treasury | 1984 | Yes | Acquisition of real property | No | No | No | No | On urban planning projects ⁶ | No | No | No |
| Nuevo León | Municipal Treasuries | 1974 | Yes | Acquisition of real property | On value increments and specific property improvements | No | No | Cleaning of barren lots | Yes | No | No | No |
| Oaxaca | Municipal Treasury | 1990 | Yes | Yes | No | No | No | Public sanitation | No | Street services | No | Public lighting |
| Puebla | Municipal Treasury | 1987 | Yes | Acquisition of real property | No | No | Water and drainage | No | For the execution of public works ⁷ | No | No | No |
| Querétaro | State Treasury | 1998 | Yes | Transfer of ownership and other real property transactions | No | No | Potable water ⁸ | No | No | No | No | Road maintenance and repair services ⁷ |
| Quintana Roo | Municipal Treasury | 1982 | Yes | Yes | No | On unfenced lots without structures | No | No | Cooperation with municipal public works | No | No | No |

⁵ All these laws were in effect in February 1998.

⁶ As stipulated in the Treasury Law of the state of Nayarit

⁷ As stipulated in the 1993 Revenue Law for the municipalities of the state of Puebla

⁸ As stipulated in the Revenue Law of Querétaro municipality, Querétaro

| | | | TAXES | | | | FEES AND ASSESSMENTS | | | | | |
|-----------------|----------------------|---------------------------------------|-------|--|---|--------------------------------|--------------------------|--------------------|---|----------|--------------------------------------|-----------------------------------|
| STATE | LAW | YEAR LAW WAS ESTABLISHED ⁹ | LAND | TRANSFER OF OWNERSHIP | VALUE INCREMENTS | OTHER | WATER | GENERAL SANITATION | PUBLIC WORKS | SERVICES | LOT FRONTAGE | OTHER |
| San Luis Potosí | Municipal Treasury | 1996 | Yes | On acquisition and on transmission through inheritance | On value appreciation | No | Supply of potable water | No | Assessment for improvements | No | No | Obstacles on public thoroughfares |
| Sinaloa | Municipal Treasury | 1991 | Yes | Acquisition of real property | On value appreciation for the development of population centers | Demarcation of lots | No | No | Yes | No | No | No |
| Sonora | Municipal Treasury | 1984 | Yes | Yes | No | No | Potable water and sewers | No | Special assessment for improvements | No | No | Public lighting |
| Tabasco | Document not found | - | - | - | - | - | - | - | - | - | - | - |
| Tamaulipas | State Treasury | 1977 | Yes | Yes | No | No | No | No | Cooperation fees | No | No | No |
| Tlaxcala | Municipal Treasuries | 1984 | Yes | Property transfers | No | No | No | No | For the execution of public works ¹⁰ | No | Official numeration | No |
| Veracruz | Municipal Revenues | 1998 | Yes | Yes | No | No | Potable water | No | Assessment for improvements due to public works | No | Lot frontage and official numeration | Sewer connection |
| Yucatán | Document not found | - | - | - | - | - | - | - | - | - | - | - |
| Zacatecas | Municipal Treasury | 1985 | Yes | Real property transfers | No | For public works ¹¹ | No | No | Cooperation of private parties with public works ⁷ | No | No | No |

⁹ All these laws were in effect in February 1998.

¹⁰ As stipulated in the Treasury Law of the state of Tlaxcala

¹¹ As stipulated in the Treasury Law of the state of Zacatecas