

There is room for balance on 'dark store' tax issue

Local governments across Michigan say they are losing millions of dollars in taxes and facing cuts in services because big box retailers such as Target and Home Depot are arguing a "dark store" theory of retail property assessment before the Michigan Tax Tribunal to cut their costs.

To stop the retailers from seeking property tax relief, legislation has been introduced that would essentially determine how the tribunal, a board appointed by the governor, must specifically assess large retail properties.

It's understandable local communities are concerned about cuts in their revenue. But the legislation intended to fix the problem is unconstitutional and violates the rights of retailers to enter private, free contracts.

The tax tribunal is supposed to consider the three criteria for property tax assessments and assess value based on which criterion — the sales comparison/market approach, the cost less depreciation approach, or the income approach — is most applicable and appropriate.

Many of the big box retailers have had their assessments cut using the sales comparison approach, arguing that their tax rate shouldn't be any higher than a similar vacant building with no economic activity.

Municipalities argue a better approach is to consider the cost of construction minus depreciation.

Their first solution to the apparent problem, embodied in a Senate bill, attempts to define property tax law in such a way that big box stores specifically couldn't be assessed as a warehouse, regardless of what the market or owners have determined for the property.

But this would artificially hike assessments. It also amounts to a violation of the state constitution, which says property assessments must be based on true cash value, or essentially the reasonable selling price, regardless of other factors.

The true cash value of a property should not include the business activity inside the property. Other taxes levied on businesses deal with their sales and activity, and big box retailers no doubt pay hefty amounts to satisfy those requirements.

Certainly assessing all properties as warehouses, when some have legitimate business activity in them, isn't the wisest public policy. At the same time, as much as some municipalities might dislike it, enormous retail spaces do sometimes sit vacant for lack of interest or the right next fit.

The constitution requires tax assessments to be uniform. Legislation can't single out a particular type of building — or particular size of retailer — for a different kind of assessment. The proposed legislation attempts to do so.

A second bill in the House attempts to prevent big box retailers from putting deed restrictions on the sale of their property to other big box stores, which often devalues the building.

That blatantly violates their right to establish private contracts between the seller and buyer.

Local communities must be nimble enough to adjust budgets when businesses or their surrounding tax base changes. And retailers have a responsibility to seek honest assessments of their property that don't devalue current and future business activity.

It's up to the tribunal, not the Legislature, to make those calls.

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