



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1018/P2
EKL:amn

DOA:.....Quinn, BB0138 - Assessment of leased property

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

PROPERTY TAXATION

1. Dark property and leased property tax assessments

This bill requires that real property be assessed for property tax purposes at its highest and best use and provides that real property includes any leases, rights, and privileges pertaining to the property, including assets that are inextricably intertwined with it. The bill also requires that an assessor determine the value of leased property by considering the lease provisions and actual rent if the provisions and rent are the result of an arm's-length transaction. In so doing, the bill reverses a 2008 decision by the Wisconsin Supreme Court that held a property tax assessment of leased retail property using the income approach must be based on market rent, which is what a person would pay based on similar rentals, rather than the actual rent. See, *Walgreen Company v. City of Madison*, 2008 WI 80, 752 N.W.2d 689 (2008). The bill also requires an assessor, when determining the value of property using generally accepted appraisal methods, to consider property as comparable to the property being assessed if the properties have the same or similar highest and best use or share certain characteristics, such as age, condition, and location. Under the bill, a property is not comparable to the property being assessed if the property is dark property or if the seller has placed restrictions on its highest and best use or that

prohibit competition, and the property being assessed is not dark property or subject to similar restrictions. The bill defines “dark property” as property that is vacant or unoccupied beyond the normal period for property in the same real estate market segment.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 70.03 (1) of the statutes is amended to read:

70.03 (1) In chs. 70 to 76, 78, and 79, “real property,” “real estate,” and “land” include not only the land itself but all buildings and, fixtures, improvements thereon, and all fixtures and, leases, rights, and privileges appertaining thereto, including assets that cannot be taxed separately as real property, but are inextricably intertwined with the real property, enable the real property to achieve its highest and best use, and are transferable to future owners, except as provided in sub. (2) and except that for the purpose of time-share property, as defined in s. 707.02 (32), real property does not include recurrent exclusive use and occupancy on a periodic basis or other rights, including, but not limited to, membership rights, vacation services, and club memberships. In this subsection, “lease” means a right in real estate that is related primarily to the property and not to the labor, skill, or business acumen of the property owner or tenant. In this subsection, “highest and best use” has the meaning given in s. 70.32 (1).

SECTION 2. 70.32 (1) of the statutes is amended to read:

70.32 (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a) at its highest and best use from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor

at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed. In this subsection, "arm's-length sale" means a sale between a willing buyer and willing seller, neither being under compulsion to buy or sell and each being familiar with the attributes of the property sold. In this subsection, "highest and best use" means the specific use of the property as of the current assessment date or a higher use to which the property can be expected to be put before the next assessment date, if the use is legally permissible, physically possible, not highly speculative, and financially feasible and provides the highest net return. When the current use of a property is the highest and best use of that property, value in the current use equals full market value. In this subsection, "legally permissible" does not include a conditional use that has not been granted as of the assessment date.

SECTION 3. 70.32 (1b) of the statutes is created to read:

70.32 (1b) In determining the value of real property under sub. (1), the assessor shall consider, as part of the valuation under sub. (1), any lease provisions and actual rent pertaining to a property and affecting its value, including the lease provisions and rent associated with a sale and leaseback of the property, if all such lease provisions and rent are the result of an arm's-length transaction involving persons who are not related, as provided under section 267 of the Internal Revenue Code for the year of the transaction. In this subsection, an "arm's-length transaction" means

an agreement between willing parties, neither being under compulsion to act and each being familiar with the attributes of the property.

SECTION 4. 70.32 (1d) of the statutes is created to read:

70.32 **(1d)** (a) To determine the value of property using generally accepted appraisal methods, the assessor shall consider all of the following as comparable to the property being assessed:

1. Sales or rentals of properties exhibiting the same or a similar highest and best use, as defined in sub. (1), with placement in the same real estate market segment.

2. Sales or rentals of properties that are similar to the property being assessed with regard to age, condition, use, type of construction, location, design, physical features, and economic characteristics, including similarities in occupancy and the potential to generate rental income. For purposes of this subdivision, such properties may be found locally, regionally, or nationally.

(b) For purposes of par. (a), a property is not comparable if any of the following applies:

1. At or before the time of sale, the seller places any deed restriction on the property that changes the highest and best use, as defined in sub. (1), of the property, or prohibits competition, so that it no longer qualifies as a comparable property under par. (a) 1. or 2. and the property being assessed lacks such a restriction.

2. The property is dark property and the property being assessed is not dark property. In this subdivision, "dark property" means property that is vacant or unoccupied beyond the normal period for property in the same real estate market segment. For purposes of this subdivision, what is considered vacant or unoccupied beyond the normal period may vary depending on the property location.

(c) For purposes of par. (a), “real estate market segment” means a pool of potential buyers and sellers that typically buy or sell properties similar to the property being assessed, including potential buyers who are investors or owner-occupants. For purposes of this paragraph, and depending on the type of property being assessed, the pool of potential buyers and sellers may be found locally, regionally, nationally, or internationally.

(d) The department of revenue shall assist local assessors with implementing and applying this subsection.

SECTION 9337. Initial applicability; Revenue.

(1) REAL PROPERTY TAX ASSESSMENTS. The treatment of ss. 70.03 (1) and 70.32 (1), (1b), and (1d) first applies to the property tax assessments as of January 1, 2020.

(END)