Fred Nicely
Sr. Tax Counsel
(202) 484-5213
fnicely@cost.org

November 16, 2017

Board of Directors
International Association of Assessing Officers
{Sent via Email}

Re: Oppose Adoption of "Commercial Big-Box Retail" Position Paper

Dear International Association of Assessing Officers Board of Directors:

On behalf of the Council On State Taxation (COST), I am writing to inform you that COST continues to oppose and respectfully requests the International Association of Assessing Officers ("IAAO") Board of Directors not adopt the "Commercial Big-Box Retail: A Guide to Market-Based Valuation" position paper.

About COST

COST is a nonprofit trade association consisting of approximately 600 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. Property taxes are very important to COST's membership; in fiscal year 2016, businesses paid over $278 billion in property taxes. This represents 38.4% of the total state and local taxes paid by businesses and a 4.5% increase in property taxes paid by businesses from fiscal year 2015.[1] COST, in conjunction with the International Property Tax Institute, has also evaluated the states' and other countries' administrative property tax systems.[2]

Position Paper is Unwarranted and Unnecessary

COST submitted comments on the exposure draft of this position paper on June 30, 2017 (attached). COST reiterates its statements in that letter that the position paper is unwarranted because there is nothing unique about the valuation of retail stores with over 50,000 square feet. Similar to the exposure draft, this position paper still presents a fairly generic overview of how all commercial businesses should be valued, with the exception of several unwarranted limitations on appraisers' use of comparable sales if a comparable property is vacant or has deed restrictions.[3] Appraisers, representing either

[1] EY/COST Study, "Total State and Local Business Taxes," August 2017, available at: http://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/fy16-state-and-local-business-tax-burden-study.pdf.
[2] *See* COST/IPTI's latest "Best and Worst of International Tax Administration" Scorecard, available at: http://cost.org/WorkArea/DownloadAsset.aspx?id=88125.
[3] Given many states constitutions also have a uniformity clause, those states would be unable to have different and unique valuation standards for commercial stores with more than 50,000 square feet.

the government assessor or the property owner (within national appraiser guidelines, such as the Uniform Standards of Professional Appraisal Practice), should be able to make adjustments to comparable sales to address differences between comparable properties. However, the position paper takes a stance that vacant properties should be excluded from use as a comparable sale to determine market value of occupied properties (and takes the same approach with deed restricted properties). That is inequitable.

While not directly labeling retail stores over 50,000 square feet as "special purpose property," the paper also inappropriately attempts to value such property using a special purpose property standard of "value-in-use" instead of correctly using a "value-in-exchange" standard. It does this by suggesting these types of properties' market value cannot be fairly ascertained by reviewing what willing buyers would pay for comparable properties that are vacant. To avoid the inappropriate use of a "value-in-use" valuation standard, an appraiser should be able to use both vacant and occupied comparable properties.

Conclusion

COST appreciates the opportunity to comment on this position paper and is hopeful the IAAO Board of Directors will conclude it should not adopt this position paper. Please contact me if you have any questions or if you would like to discuss COST's comments further.

Sincerely,

Fred Nicely

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

Fred Nicely
Senior Tax Counsel
(202) 484-5213
fnicely@cost.org

June 30, 2017

Margie Cusack, Research Manager
International Association of Assessing Officers

Sent Via E-mail: cusack@iaao.org

Re: Comments on Big Box Task Force Exposure Draft

Dear Ms. Cusack:

On behalf of the Council On State Taxation ("COST"), I appreciate the International Association of Assessing Officers ("IAAO") providing the public with the opportunity to comment on its Big Box Task Force's Exposure Draft. COST submits comments to address two concerns.[1] First, COST believes a specific position paper on big box retail stores is unwarranted. Secondly, if the paper is ultimately issued, the inequitable bias against the use of some types of comparable sales should be corrected.

About COST

COST is a nonprofit trade association consisting of approximately 600 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST, in conjunction with the International Property Tax Institute ("IPTI"), has evaluated the states' and other countries' property tax administrative practices to promote fair and equitable property taxation.[2]

Fair and Equitable Property Tax System

The COST Board of Directors has adopted a formal policy statement on Fair and Equitable Property Tax Systems.[3] That policy statement position is:

> *State and local property tax systems must be fairly administered and tax burdens equitably distributed among taxpayers. A property tax system that is inefficient or that disproportionally falls upon business is not equitable and will negatively impact a state's business tax climate.*

---

[1] COST has not reviewed, and therefore takes no position on, the cases and their summaries in Appendix A.
[2] COST/IPTI's "Best and Worst of International Tax Administration" Scorecard is available at: http://cost.org/WorkArea/DownloadAsset.aspx?id=88125. A revised Scorecard is slated to be issued late this fall.
[3] COST's Policy Statements are available at: http://www.cost.org/Page.aspx?id=3140.

And specifically related to valuation methodology, the policy statement position is:

> *A statewide valuation methodology that is conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) and updated on a regular basis to factor in changes in value, including depreciation and all forms of obsolescence, should be utilized.*

COST is very concerned about legislation in several states that has unfairly targeted the use of comparable sales to prohibit appraisers, representing either side, from using normal and accepted appraisal practices to value business properties.

Position Paper Focused on "Big-Box" Retail Stores Unwarranted

The paper indicates its scope is limited to "big-box" retail stores, stores that range from 50,000 square feet to 200,000+ square feet. Confusingly, however, in the same paragraph (lines 14-15) it is noted the paper could be applied to any size retail store and to other property types. Most of the paper presents a fairly generic and benign overview of how business real property should be valued, which negates the need for a paper stating it is addressing "big-box" retail store issues. Further, many states have uniformity clause provisions in their state constitutions that prohibit their legislature or assessors from prescribing one special form of valuation for "big-box" retail stores as compared to other types of business properties. Therefore, COST strongly recommends the IAAO not adopt this paper.

Unfortunately, the paper as drafted is "hiding the ball." While it is full of references to valuation methods that apply to most business real properties, the real purpose of the paper appears to be to legitimize some government assessors' efforts to limit a comparable sales analysis for certain types of retail stores (*e.g.,* see lines 743 to 764 addressing deed-restricted properties and vacant properties).

The paper also incorrectly misstates the "highest and best use" is that with the current occupant of the property rather than what a willing buyer would be willing to pay for the property (*e.g.*, see lines 551-560). The assumption that the highest and best use of a property "is likely" the continued use of the property by the current owner improperly disregards obsolescence issues, *e.g.*, what market participants would purchase a property for on the open market.

Troubling Restrictions on Certain Comparable Sales

The paper starts off in its "Summary of Big Box Issues" with a bias against appraisers for retail stores by vastly overstating that they only seek to have big box retail stores "valued as-if-vacant." This is not a true statement and reflects poor terminology. In most states such properties are valued based on the highest and best legal use of a property using a value-in-exchange methodology, a valuation that does not depend on properties being vacant or occupied. If the IAAO still seeks to have this paper published, the use of "valued as-if-vacant" should be replaced with a "value-in-exchange" terminology.

It is understood that the beneficiaries of the property tax do not want to see their revenue source wither when property valuations in their community have a downturn; however, artificially keeping values higher than market value for certain retail stores is not the appropriate solution. Some of the valuation decreases, which include "big-box" retail stores, likely stem from the 2008 recession.[4] Nowhere is this addressed in the paper. Additionally, demand for commercial retail space is in flux, with consumers increasingly making purchases via internet sellers that do not need storefronts or even trends to pursue smaller format store sizes. And, it does not mention recent trends of retail store closures occurring across the country.[5] None of these issues are adequately addressed in the paper.

Instead, starting at line 743, an overly broad statement is made that deed-restricted comparable sales should not be used in ad valorem valuations. COST suggests that section be significantly rewritten to have the appraiser address the impact a deed-restricted comparable sale may have had on the property's sales price. A deed-restricted property should not automatically equate to a determination that such a sale should always be excluded from a comparable sale analysis. Following USPAP Standards (*e.g.*, Rule 1-5 and 1-6), appraisers representing both the property owner and the government need to have full use of nationally accepted appraisal practices when valuing property to accurately ascertain its market value for property tax purposes.

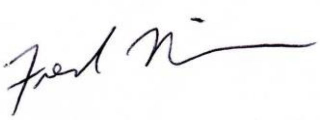
Beginning on line 754, the same holds true for the vacant property issue addressed in the paper. The paper suggests an appraiser should have no flexibility when reviewing comparable sales to similar properties if one is vacant and the other is occupied. The impact of an extended vacancy, along with other issues impacting a property's sales price, should appropriately be addressed in an appraisal; however, that does not mean appraisers should be inappropriately forced to exclude such properties from their appraisals.

Conclusion

COST recommends the IAAO not adopt this issue paper. If it proceeds, the portions of the paper indicating deed-restricted property and vacant property must be excluded. It should also be revised to allow their use with a caveat that the appraiser explain what, if any, valuation impact those issues have on a property being used as a comparable sale. The impact of a vacancy or a deed restriction on a comparable property are items that appraisers can address in an appraisal; thus, the IAAO should not adopt a paper that unfairly dictates such properties must be excluded from the comparable sales approach.

Please contact me with any questions regarding COST's position in this area.

Sincerely,



Fred Nicely

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

---

[4] *See* Lev Borodovsky, "A Turning Point for Commercial Property," Wall Street Journal, June 26, 2017 p. B10. A graph shows that from 2007 to 2009 there was a 40% drop in commercial real-estate prices.

[5] Forbes magazine reported that major retailers had already announced the closure of 3,591 stores nationwide in 2017, a trend that unfortunately is likely to continue. *See* Walter Loeb, "These 21 Retailers Are Closing 3,591 Stores – Who is Next," Forbes, March 20, 2017.