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December 21, 2017

Wisconsin State Legislature

*Sent Via E-mail*

**Re: COST Opposes Unsound Property Tax Valuation Proposals**

Dear Members of the Wisconsin State Legislature:

On behalf of the Council On State Taxation (COST), I am writing to express continued concern with A.B. 386 and A.B. 387 and companion bills S.B. 291 and S.B. 292 (hereafter collectively referred to as “Legislation”). This Legislation would inequitably target certain types of business properties for tax increases by inappropriately excluding valid appraisal methods to determine fair market value. Such valuation is contrary to Uniform Standards of Professional Appraisal Practices (USPAP). Accordingly, the Legislature should reject these unfair real property valuation proposals.

**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’s members conduct a significant amount of business in Wisconsin and its membership seeks to continue to have business property in the State valued on a “full value which could ordinarily be obtained therefor at private sale.”<sup>1</sup>

**Fair and Equitable Property Tax System**

The COST Board of Directors has adopted the following formal policy statement on Fair and Equitable Property Tax Systems:<sup>2</sup>

*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 disproportionately falls upon business is not equitable and will negatively impact a state’s business tax climate.*

<sup>1</sup> See Wisconsin Stat. § 70.32(1).

<sup>2</sup> COST’s Policy Statements are available at: <http://www.cost.org/Page.aspx?id=3140>.

And specifically related to valuation methodology, the policy statement provides as follows:

*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.*

### **General Concerns with the Legislation**

Based primarily on local tax assessors' fears, the Legislation would unwisely alter Wisconsin's property tax law to bar appraisers, representing either side, from using nationally accepted appraisal practices to value business properties. The Appraisal Standards Board, a foundation authorized by Congress to provide guidance on the use of acceptable appraisal standards, publishes the above-referenced USPAP guidelines each year. The Legislation would inappropriately eliminate an entire class of comparable property used to determine the fair market value of retail property. This elimination of comparable properties is not contemplated in the USPAP guidelines and is simply an attempt to artificially increase the valuation. COST encourages the Legislature to continue to allow appraisers on both sides to follow USPAP guidelines and to not bar the use of certain methods.

Additionally, the fair market value of business properties can fluctuate with the market and the economy, and this Legislation fails to account for valuation decreases that stem from the 2008 recession. A Wall Street Journal article highlighted that from 2007 to 2009 there was a 40 percent drop in commercial real-estate prices.<sup>3</sup> Further, the impact of the growth of the internet and the closure of many retail stores cannot be ignored.<sup>4</sup>

### **Concerns with Restrictions on Comparable Sales Valuations (A.B. 386 & S.B. 292)**

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 "full value" for property tax purposes. This Legislation would unfairly restrict the use of the comparable sales approach if the property is vacant or the seller places a deed restriction on how the property can be used by a purchaser. COST acknowledges that a long-term vacancy or deed restriction can have an impact on how the sale of a comparable property is used; however, those issues can be addressed by the appraisers when they conduct their appraisals. This Legislation would unfairly limit appraisers' use of the comparable sales approach.

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<sup>3</sup> 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.

<sup>4</sup> 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.

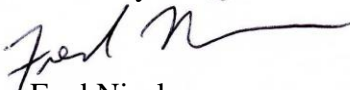
**Concerns with Use of Above-Market Rental Valuations (A.B. 387 & S.B. 291)**

In 2008, the Wisconsin Supreme Court correctly addressed the use of the income approach to value rental property and held that a fee simple interest, upon which fair market value must be based, should reflect market lease rates, not actual contract rates, *see Walgreens Co. v. City of Madison* ([752 N.W. 2d 689](#)). Valuing and imposing a property tax on above-market rents subjects the property to taxation based on a financing value, not the fee simple interest value of the property which a willing buyer would pay. This proposed change to valuing above-market rents should be rejected for what it stands for—an unjust money grab that allows local governments to overvalue property with above-market rents versus using an open market, value-in-exchange standard.

**Conclusion**

COST believes the valuation policies proposed in the Legislation should be rejected. This would also prevent potential challenges to the proposed changes under the State's uniformity clause. 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