

Legislative Analysis



TAX TRIBUNAL DETERMINATIONS IN ASSESSMENT DISPUTES

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House Bill 5578 (reported from committee as H-1)
Sponsor: Rep. David C. Maturen
Committee: Tax Policy
Complete to 6-1-16

Analysis available at
<http://www.legislature.mi.gov>

FLOOR SUMMARY:

The bill would amend the Tax Tribunal Act to spell out the criteria that must be applied in an assessment dispute before the "Entire Tribunal" as to the true cash value of real or personal property.

The term "Entire Tribunal" in the bill refers to the hearing division of the Michigan Tax Tribunal other than the residential property and small claims division. According to the Tribunal website, cases before the "Entire Tribunal" involve a formal hearing process and resolve the more complicated appeals. There is a formal record of the hearing and attorneys typically represent the parties. Entire Tribunal hearings are held in the Lansing office. The presiding judge is either a Tribunal member or a hearing officer (i.e. an administrative law judge).¹

[The bill is understood to stem from recent decisions by the Tax Tribunal on taxpayer appeals of property valuations by large retail stores (so-called big box stores) and similar commercial properties and, notably, the kind of "comparable properties" used in making such decisions.]

Under the bill, the tribunal must make an independent determination of, and separately state its finding of fact and conclusions of law as to, all of the following, and in the following order:

** The market in which property competes, the supply and demand for the property, the demand for potential uses of the property, and the economic viability of the property at the specific location within the market in which it competes.

** The reasonably probable use to which the property can be put in the immediate future and the present use of the property that results in the highest and best use. In making this determination, the tribunal must determine:

- The use that is physically possible.
- The use that is legally permissible.
- The use that is financially feasible.
- The maximally productive use.

¹ See <http://www.michigan.gov/taxtrib/0,4677,7-187-38256---,00.html>

** The calculation of a replacement or reproduction construction cost for property that has the same highest and best use and the same utility, features, and age as the property.

** The comparable properties in the market in which the property competes that have the same highest and best use as the property. In determining comparable properties, the tribunal must:

- Determine that information for each property considered comparable has been verified and accurately and completely discloses all private restrictions and covenants on the use of the property and their impacts, the terms of the sale, the method of financing, and market information.
- Exclude property considered to be comparable with a use that is different from the highest and best use of the property.
- Exclude property if the sale or rental occurred under economic conditions substantially different from the highest and best use of the property unless there is substantial evidence the economic conditions are common at the location of the property.
- Exclude property that was vacant at the time of sale unless there is substantial evidence to support all of the following:
 - The cause of the vacancy is typical for marketing properties of the same class, or there is substantial evidence to support a method of adjusting the value of the vacant comparable property, to support the extent of the adjustment, and to support a conclusion that the final adjusted value for the vacant property is not speculative.
 - The time of the vacancy is within the marketing exposure time period typical for properties of the same class, or there is substantial evidence to support a method of adjusting the value of the vacant comparable property, to support the extent of the adjustment, and to support a conclusion that the final adjusted value for the vacant property is not speculative.
 - The vacancy does not reflect a use different from the highest and best use of the property.
 - The vacancy is not the result of economic or market conditions that are different from the property subject to assessment, or there is substantial evidence to support a method of adjusting the value of the vacant comparable property, to support the extent of the adjustment, and to support a conclusion that the final adjusted value for the vacant property is not speculative.
- If use of property considered to be comparable was made subject to a private restriction or covenant in connection with the sale or rental of the property that causes the comparable property to have a different legally permissible use than the property subject to assessment and that operates to prohibit or limit the current and lawful use of improved property by the subsequent transferee, include the property only if the private restriction or covenant:
 - assists in the economic development of the property,

- provides a continuing benefit to the property,
- does not materially increase the likelihood of vacancy or inactivity, and
- was not imposed for any of the following purposes:
 - to reduce the value of the property,
 - to reduce taxes levied on the property, or
 - to exclude competitors of the grantor from the market.

** The basis for both of the following:

- Selecting the most relevant units and basis for comparison consistent with the treatment in the market of comparable property.
- Adjusting the comparable properties for differences in location, age, size, physical condition and characteristics, function, rental terms, financing and other income use, economic characteristics, legal characteristics, and other components that influence the value.

** The method of valuation, subject to all of the following:

- In determining the valuation, the tribunal must use, weigh, and reconcile:
 - The method of valuation used by the assessor.
 - All of the following methods of valuation:
 - comparable sales,
 - capitalization of income, and
 - cost less depreciation.
- In using, weighing, and reconciling the methods of valuation, the tribunal must state whether the information supporting each method is accurate and reliable and require additional information necessary to determine a value that is credible and not speculative.
- The tribunal must not disregard any method of valuation without a reasonable justification supported by substantial evidence or a stipulation that complies with the requirements of subsection (2) (a).

The tribunal's determinations are subject to the following:

** The tribunal could consider the parties' stipulation to a determination only if the parties further provided a stipulated explanation of the evidentiary basis for that determination that comports with the evidentiary basis required for an independent tribunal determination.

** For each finding of fact, the tribunal must separately identify supporting evidence that is substantial and reliable and has been verified.

** If the evidence on the record does not constitute substantial evidence, the tribunal must require additional evidence sufficient to support a conclusion that the tribunal has reached an independent determination.

** All of the tribunal's determinations must be made in accordance with generally accepted appraisal principles, including the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Foundation.

FISCAL IMPACT:

The bill establishes several specific criteria that the Tax Tribunal must consider when evaluating a taxpayer's appeal of a property assessment, and prescribes the order of priority of the criteria. The expectation appears to be that the Tribunal's decisions will result in higher taxable values (and therefore state and local property tax revenue) than if only one factor is used, such as using only one kind of property as comparable property within the specific market. Although the bill would not necessarily increase taxable values from their existing levels, it could potentially prevent large reductions resulting from appeals in the future.

It is not possible to determine a net fiscal impact because there are too many unknown factors. The number of appeals and their magnitudes cannot be predicted in advance, nor can the manner in which the Tax Tribunal will interpret the provisions of the bill. Further, the degree to which local units of government are willing to lower assessments to avoid legal costs associated with defending assessments against appeals also can't be known with any certainty.

The bill could have a nominal fiscal impact on the Michigan Tax Tribunal to the extent that it would necessitate further training programs for judges and staff.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.