MAC
MICHIGAN ASSOCIATION OF COUNTIES

Issue briefing: Dark Stores

OVERVIEW

Michigan has three accepted methods of determining a property's "true cash value," or fair market value:

- **Comparable sales (Sales Approach)**
- **The cost of construction less depreciation (Cost Approach)**
- **How much income a property produces (Income Approach)**

Counties typically have valued "Big Box" stores such as Home Depot and Meijer based on Cost Approach, up to a few years ago.

The corporations, however, have convinced the Michigan Tax Tribunal to rely on the Sales Approach. And since they usually refuse to sell their older structures to other retailers, and have even imposed deed restrictions on vacated property to block their use for retailing, these corporations have argued, successfully, that their current locations should be compared to vacant – or dark – structures.

This has become known as the "Dark Store" approach to valuing property.

Acceptance of this practice by the MTT has created special taxation treatment for such retailers and shifted more of the burden for financing basic public services onto homeowners and other businesses.

Amount refunded by locals due to Michigan Tax Tribunal decisions since 2013:

(Michigan Association of County Treasurers survey, 2015)

$75 MILLION
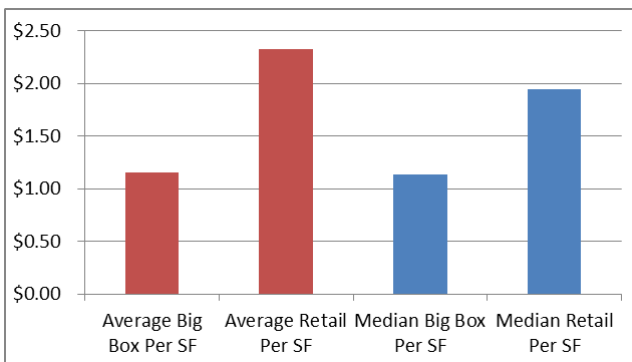
CASE STUDY: OAKLAND COUNTY

A study of property taxes in Oakland County showed Big Boxes are paying much less than their smaller competitors. The average retail rate is twice the average Big Box rate; **the median retail rate is 72 percent above the median Big Box rate.**

EXAMPLES ACROSS MICHIGAN

Target (Novi)

Before: $70-80 PSF

After: $40-60 PSF

Target (Benton Twp.)

Before: $44-48 PSF

After: $21-28 PSF

Target (Midland)

Before: $64-66 PSF

After: $24-30 PSF

Target (Auburn Hills)

Before: $70-86 PSF

After: $50-64 PSF

IKEA (Canton Twp.)

Before: $77-102 PSF

After: $29-40 PSF

Lowe's (Marquette Twp.)

Before: $74 PSF

After: $25-29 PSF

Kohl's (Kochville Twp.)

Before: $66-80 PSF

After: $34-42 PSF

Lowe's (Frenchtown Twp.)

Before: $70 PSF

After: $22-29 PSF

What is the purpose of Senate Bill 524 and House Bill 4909?

The purpose of SB 524 and HB 4909 is to address the Dark Store Theory, the tax minimization strategy used by national "Big Box" retailers to gain dramatic reductions in their property tax bills. HB 4909 limits the ability of these retailers to pursue anti-competitive strategies against local business by purchasing property in a local unit's zoned commercial corridor and placing restrictive deeds on the property to prohibit, contrary to local economic development and planning, any commercial use of the property that might compete with the retailers' business. SB 524 requires that assessors and taxpayers use accepted appraisal methods longstanding in Michigan and limit the use of speculative methods or the exploitive deed-restrictive methods to gain unfair tax advantages over local businesses.

Does SB 524 and HB 4909 tax Big Box stores differently than other stores?

No, to the contrary, SB 524 eliminates the special treatment sought by national Big Box retailers — an exclusive assessment valuation method based on sales of vacant, abandoned, deed-restricted properties. What homeowner would ask to have its property valued based on sales only of foreclosed homes? Big Box stores of national retailers, must like any other taxpayer, value their property using the cost approach unless the national retailers are able to produce sufficient data or reasons to use a different approach to value. The bills require that Big Box stores be valued and taxed in the same manner as any other Michigan storefront business and like any other taxpayer.

Is the Dark Store theory of property valuation consistent with Michigan law?

No. Not only has Michigan historically relied on the cost less depreciation approach as the primary valuation method for assessing commercial and industrial property, the two, and only two, published and precedential Big Box cases in the state rejected the use of distressed, vacant property sales and instead used the cost less depreciation method. *Thrifty Royal Oak, Inc v City of Royal Oak*, 130 Mich App 207 (1983) and *Meijer, Inc v City of Midland*, 240 Mich App 1 (2000). In both cases, appraisers presented all three traditional approaches of value for the Tribunal to evaluate the facts. National Big Box retailers wish to only present distressed comparable sales.

Is changing the definition of "true cash value" unconstitutional?

No. Section 3 of Article 9 of the Michigan Constitution directs the Legislature to provide the methods to uniformly assess property in Michigan. Michigan's Supreme Court has held that the methods by which true cash value is determined is exclusively a legislative function. Only when the Legislature has failed to provide guidance, can courts fill the gaps. The Legislature has amended the definition of true cash value six times since 1992.

Are assessors "over-assessing" property?

No. The claim is false and, like the Dark Store theory, is entirely unsubstantiated. Michigan is unique in that it is the only state that has so pervasively adopted this Dark Store Theory. See *Lowe's Fighting to Reduce Local Property Taxes*, (*Anniston, Ala., Star*, Aug. 14, 2015). For example, Michigan assessors once assessed Lowe's 47 Michigan stores, on average, at $55 per square foot, which is within the range of values found in other states, and actually *lower* than rates found in many states. As a result of the Dark Store theory, Lowe's Michigan stores are now assessed at an average of $24 per square foot, including five Lowe's stores now assessed at or below $10 per square foot.

Won't the problem with Big Box value reductions eventually change over time?

No. Under Proposal A, the taxable value (the amount on which taxes are calculated) may not increase more than inflation or 5 percent, whichever is less.