



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0372/6
JK:jld&amn

2017 BILL

- 1 **AN ACT** *to amend* 70.03 (1) and 70.32 (1); and *to create* 70.32 (1b) of the statutes;
2 **relating to:** property tax assessments regarding leased property.

Analysis by the Legislative Reference Bureau

This bill provides that, for property tax purposes, real property includes any leases, rights, and privileges pertaining to the property, including assets that cannot be taxed separately as real property, but are inextricably intertwined with the real property. The bill also requires real property to be assessed at its highest and best use. Current law requires that real property be assessed at its full value and upon actual view or from the best information that the assessor can obtain from “arm’s-length sales” of comparable property. This bill defines an “arm’s-length sale” as 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.

The bill also provides that an assessor shall determine the value of leased property by considering the lease provisions and actual rent pertaining to property, if the lease provisions and rent are the result of an “arm’s-length transaction.” The bill defines an “arm’s-length transaction” as an agreement between willing parties, neither being under compulsion to act and each being familiar with the attributes of the property.

The Wisconsin Supreme Court decided in 2008 that a property tax assessment of leased retail property using the income approach must be based on “market rents,” which is what a person would pay to rent the property, based on rentals of similar property, as opposed to “contract rents,” which is the amount that the lessee actually paid to rent the property. See, *Walgreen Company v. City of Madison*, 2008 WI 80, 752 N.W.2d 689 (2008). This bill reverses that decision.

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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:

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

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

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

16 70.32 (1) Real property shall be valued by the assessor in the manner specified
17 in the Wisconsin property assessment manual provided under s. 73.03 (2a) at its
18 highest and best use from actual view or from the best information that the assessor
19 can practicably obtain, at the full value which could ordinarily be obtained therefor
20 at private sale. In determining the value, the assessor shall consider recent
21 arm’s-length sales of the property to be assessed if according to professionally

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1 acceptable appraisal practices those sales conform to recent arm's-length sales of
2 reasonably comparable property; recent arm's-length sales of reasonably
3 comparable property; and all factors that, according to professionally acceptable
4 appraisal practices, affect the value of the property to be assessed. In this subsection,
5 "arm's-length sale" means a sale between a willing buyer and willing seller, neither
6 being under compulsion to buy or sell and each being familiar with the attributes of
7 the property sold. In this subsection, "highest and best use" means the specific
8 current use of the property or a higher use to which the property can be expected to
9 be put in the immediate future, if the use is legally permissible, physically possible,
10 and financially feasible and provides the highest net return. When the current use
11 of a property is the highest and best use of that property, value in the current use
12 equals full market value.

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

14 70.32 (1b) In determining the value of leased real property under sub. (1), the
15 assessor shall consider the lease provisions and actual rent pertaining to a property
16 and affecting its value, including the lease provisions and rent associated with a sale
17 and leaseback of the property, if all such lease provisions and rent are the result of
18 an arm's-length transaction involving persons who are not related, as provided
19 under section 267 of the Internal Revenue Code for the year of the transaction. In
20 this subsection, an "arm's-length transaction" means an agreement between willing
21 parties, neither being under compulsion to act and each being familiar with the
22 attributes of the property.

23 **SECTION 4. Initial applicability.**

24 (1) This act first applies to the property tax assessments as of January 1, 2018.

25 (END)