

The Honorable Robert Jauch
Chair, Committee on Tax Fairness and Family Prosperity
Wisconsin Senate
Room 118 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: 2007 Assembly Bill 426 (Property Tax Assessment of Billboards)

Dear Senator Jauch:

The Wisconsin Association of Assessing Officers (WAAO) strongly opposes the bill now before your committee concerning assessment of billboards (“off-premises advertising signs”) for property tax purposes (2007 Assembly Bill 426). This letter explains why.

WAAO is the principal voice for assessors in Wisconsin. Its members include over 500 assessors, as well as other officials directly involved in property tax assessment and administration. WAAO’s mission is to promote the public good by ensuring equitable assessments.

WAAO opposes 2007 Assembly Bill 426 (and its counterpart, 2007 Senate Bill 220) because it grants a unique, unfair, and unconstitutional property tax advantage to the billboard industry alone, at the expense of all other families, businesses and organizations that bear the burden of property taxes.

- **The bill is unconstitutional.**

The Wisconsin Constitution’s Uniformity Clause (article VIII, section 1) requires that all property be assessed uniformly, with a few constitutionally created exceptions, such as agricultural property. The bill would create a statutory exception to uniformity, described in this letter that would clearly violate the Wisconsin Constitution. If your committee has any doubt that the bill is unconstitutional, it can seek an opinion of the attorney general.

- **The bill would spawn new litigation and impose on municipalities the major expense of litigating whether the bill is constitutional.**

The billboard industry has historically been ready to spend enormous sums on legal fees. It would certainly take the question of constitutionality all the way to the Wisconsin Supreme Court. That would impose on one or more municipalities the burden of demonstrating that the bill is unconstitutional. The municipalities would have no way to recover legal fees from the billboard companies.

- **The bill would single out one type of property for unique preferential treatment that is inconsistent with the well-established methodology for assessing property according to its fair market value.**

In general, all nonagricultural property must be assessed at its fair market value: the amount the property will sell for in an arm's-length transaction on the open market between a willing seller not obliged to sell and a willing buyer not obliged to buy it.

Fair market value is always determined by a method long established in Wisconsin law. This method was most recently explained by the Wisconsin Supreme Court in a case involving the assessment of billboards, the *Adams* case (*Adams Outdoor Advertising, Ltd. v. City of Madison*, 2006 WI 104).

The method has three steps.

First, the assessor determines whether there has been a recent arm's-length sale of the assessed property and, if so, whether it conforms to recent arm's-length sales of reasonably comparable properties. If that is the case, the assessment must be based on the sale price of the property.

Second, if that is not the case, the assessor determines whether there are recent arm's-length sales of other reasonably comparable property. If so, the assessment must be based on these comparable sales, with appropriate adjustments. This is called the sales comparison approach.

Third, if there is no recent arm's-length sale of the assessed property or reasonably comparable properties, the assessment may be based on all factors that affect the value of the property. Under these circumstances, the assessor most often considers the income approach (the value of the income the property produces) or the cost approach (the original cost of the property less depreciation and other deductions).

The bill would create a unique exception. It would require billboards to be assessed without regard to their fair market value. Instead, billboards would be assessed based *only* on the cost approach, specifically, “subtracting depreciation from the cost of reproducing the sign.” It would require assessors to ignore recent arm's-length sales of the billboard or reasonably comparable billboards and to ignore income the billboard produces.

- **The bill would subsidize the billboard industry at the expense of all other families, businesses, and organizations that pay property tax.**

By creating a unique exception for billboards, the bill would require assessments below fair market value.

That would shift property taxes to everyone else who pays them, including families already struggling under the heavy burden of property taxes.

The highly-profitable billboard industry has done nothing to deserve being subsidized at everyone else's expense.

- **The bill would treat the value of billboards differently for property tax purposes than for taking or condemnation purposes.**

When a billboard is lawfully taken or condemned, the owner is entitled to just compensation based on its value. The billboard industry invariably claims that the value should be based on its income, not cost. If the bill were enacted, the billboard industry would claim low valuations when billboards are assessed (based on cost) and far higher values (based on income) when they are removed.

- **The bill is inconsistent with the *Adams* case.**

In the *Adams* case, the Wisconsin Supreme Court exhaustively discussed the valuation of billboards. Under the facts of the case, the Court held, the assessor improperly relied only on the income approach and rejected the cost approach "out of hand." However, the Court added, since Adams' experts and the City's chief assessor "all testified that income attributable to the billboard structures could be isolated, we conclude that a per se rule against the use of the income approach to appraise billboards for property tax assessment is not necessary."

The bill would create a per se rule requiring billboards to be assessed by the cost approach. By doing so, the bill would create a per se rule requiring the assessor to ignore a recent arm's-length sale of the billboard itself, recent sales of reasonably comparable properties, the income approach, or any approach other than the cost approach.

Assessors would be required to value a billboard structure located next to a heavily traveled highway exactly the same as if it were located next to a rustic road.

For these reasons, WAAO strongly opposes this special-interest legislation and urges you to reject it.

WAAO is ready to answer any questions you may have about the bill or this letter. WAAO is also very interested in appearing before your committee when you consider the bill.

Copies of this letter are being sent to the other members of your committee and to Senator Decker.

Very truly yours,

Katherine Romanak
President
Wisconsin Association of Assessing Officers

cc: Senator Pat Kreitlow
Senator Kathleen Vinehout
Senator Glenn Grothman
Senator Joseph Leibham
Senator Russell Decker