

Rep. Randy Bridges  
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Dear Chairman Bridges:

On behalf of retailers located in the commonwealth, the Kentucky Retail Federation is writing to you regarding property assessments of retail and commercial properties which have been discussed in the PVA Task Force meetings. The Kentucky Retail Federation respectfully requests the following comments be submitted to all PVA Task Force members and placed on the record for consideration as part of the task force's final report.

In Kentucky, the retail industry is the largest employer in the commonwealth, and retailers and their employees pay significant state and local taxes every year—including, sales, income and property taxes. Retailers are an essential part of the fabric of our communities.

But the business of retailing has changed dramatically because of consumers moving to online sales, which has led to fewer brick and mortar retailers over the last few years. This change has only been accelerated by the recent global pandemic, which led to 20 national retailers filing for bankruptcy this year alone. Some retailers are reducing their physical footprint in response to these market forces as well. As retailers are trying to stay open during the global pandemic, now is not the time to propose legislation that will negatively impact the retail industry even further. Property assessors may not recognize these realities as contributing to the overall lower property assessments.

Kentucky Retail Federation staff has closely monitored the proceedings of the PVA Task Force, and we have concerns about some discussion points brought up by PVAs testifying before the committee; specifically dark store theory and the valuation of triple net leases. Dark store theory is not an issue unique to Kentucky; instead property assessors in other states have tried to remove vacant properties to determine the appraisal value of a property, leading to the over-assessing of property. The issue of triple net leases is in essence an attempt to value not just the land and structure, but on the profitability of the business itself. The net effect of these actions is double taxation as retailers already pay income taxes.

The Federation and its members believe that property assessments should be based on sound, longstanding valuation principles, such as the Uniform Standards of Professional Appraisal Practice and Appraisal Institute principles. In fact, Kentucky's Constitution requires property taxes to be uniform (*Section 171*). Dark store legislation seeks to manipulate best practices by inventing new, less credible valuation rules designed to increase assessments on commercial property. In dark store theory, assessors try to weaken the application of sound valuation principles by valuing retail properties based on the current occupant and income they generate on

the property. This creates non-uniform assessments that put some Kentucky businesses at a competitive disadvantage.

Retailers believe that property tax should be based on bricks, sticks and land. Some property assessors have tried to assess the property based on the current occupant and the income they generate on the property. Retailers already pay income taxes in the Commonwealth and should not be subject to double taxation on income generated. This also creates an unlevel playing field for retailers as some will pay more in property taxes and others will pay less, because of the income generated at one location versus another.

Property valuation administrators in Kentucky seem to recognize this inequity based on a presentation by three PVAs titled “The Valuation of Net Leased Drugstore Properties” presented by Larry Harney (Scott County), Thomas Hart (Jefferson County) and Justin Stevens (Fayette County). In the presentation, it notes that companies with higher credit ratings with triple net leases are a higher value than companies with lower credit ratings. Basing property assessment in some part on credit ratings would set non-uniform taxation, which is not allowed under the *Section 171 of the Kentucky Constitution*. Real estate tax should just be based on taxing real estate and not the business value and the tenant of the property should be irrelevant.

Retailers also point out that the statutes should clarify that assessors are required to value the fee based on simple interest for all parties. By clarifying the definition of real property it would ensure property assessments in Kentucky are in compliance with the Kentucky Constitution and reduce the number of tax appeals. Another suggested change is in relation to the appeals process. A recommendation would be to make the standard of review regarding factual findings when a case reaches the Kentucky Board of Tax Appeals to be *de novo*.

In summary, property valuation in Kentucky should be based on sound and standard appraisal practices. In accordance with Section 172 of the Kentucky, property should be assessed at fair cash value—property not business value. The Constitution in Section 171 also requires uniformity and assessing the value of a property based on the business is not uniform. Retailers’ brick and mortar footprints are shrinking, especially in the wake of the global pandemic. To keep retailers located in Kentucky operating and employing Kentuckians, we urge the PVA Task Force not to support any legislation addressing dark store theory. Dark store theory legislation will simply lead to more dark stores. Finally, no statutory changes should be made that would create winners and losers based on solely property assessments.

If you have additional questions or would like more information, please feel free to contact the Kentucky Retail Federation and we would be happy to provide such additional information.

Sincerely,



Shannon Stiglitz