



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 114 (as enacted)
Sponsor: Senator Vincent Gregory
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 164 of 2014

Date Completed: 1-6-15

CONTENT

The bill amended the General Property Tax Act to eliminate the use of occupancy rate decreases in determining the taxable value of property.

Under the State Constitution, as amended by Proposal A in 1994, year-to-year increases in the taxable value of a parcel of property are limited to 5% or the rate of inflation, whichever is lower, as adjusted for additions and losses, until there is a transfer of ownership. The General Property Tax Act reflects this limitation and defines "additions" and "losses" for the purpose of assessing property and determining its taxable value.

The Act's definition of "losses" includes an adjustment in value, if any, due to a decrease in the property's occupancy rate, to the extent provided by law. The definition of "additions" formerly included an increase in value attributable to the property's occupancy rate if a loss had been previously allowed because of a decrease in occupancy rate, or if the value of new construction was reduced because of a below-market occupancy rate. (As discussed below, the Michigan Supreme Court in 2002 struck down this part of the definition of "additions", although the language remained in the Act.)

The bill limits the use of occupancy rates in the determination of losses to the period before December 31, 2013. The bill also deleted the language providing for the use of occupancy rates in the determination of additions.

The bill includes the following statement, "This amendatory act, which removes an increase in value attributable to an increase in a parcel of property's occupancy rate from the definition of 'additions'...reflects the decision of the Michigan supreme court in WPA Acquisition Company v City of Troy..."

The bill took effect on June 12, 2014.

MCL 211.34d

BACKGROUND

In a decision issued on May 14, 2002, the Michigan Supreme Court addressed the definition of "additions" in the General Property Tax Act as it relates to an increase in occupancy (*WPW Acquisition Company v City of Troy*, 466 Mich 117). The Court stated, "At issue is the constitutionality of a statutory provision...that purports to include, in certain circumstances, an increase in the value of property because of increased occupancy by tenants within the

meaning of 'additions.' We conclude that this statutory provision is unconstitutional because it is inconsistent with the meaning of the term 'additions' as used in Proposal A."

The Supreme Court agreed with the circuit court's holding that this provision was an unconstitutional legislative attempt to change the meaning of "additions" from the meaning that had been established by statute when Proposal A was adopted in 1994. At that time, the General Property Tax Act had defined "additions" as "all increases in value caused by new construction or a physical addition of equipment or furnishings...". The Court stated, "Obviously, this definition did not encompass any increases in occupancy by tenants in a building within the meaning of the term 'additions.'"

According to the Court, since the Act had established "additions" as a technical legal term in the area of property taxation when Proposal A was passed, the term had to be given the meaning that "those sophisticated in the law understood at the time of enactment", unless it was clear from the constitutional language that some other meaning was intended. Rather than finding any indication that a more expansive meaning was intended, the Court said that the opposite appeared to be the case.

The Court also noted that construing constitutional language is a basic judicial function. Although Proposal A imposed an obligation on the Legislature to provide implementing legislation for a general limitation on the increase in taxable value of parcels of property, it did not grant legislative authority to alter the meaning of "additions".

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will generally increase State and local property tax revenue by an unknown amount that will depend on the number of affected taxpayers and the specific characteristics of affected property. The bill will prevent reductions in taxable value that would otherwise occur when occupancy rates decline. The higher value also will become a greater base upon which future increases in taxable value will be computed.

The growth in the taxable value of property from one year to the next is generally restricted to the lesser of a measure of inflation or 5%. Exceptions are made for "additions", which generally represent new construction added to property or other similar acquisitions. In the case of rental property, legislation enacted after the adoption of Proposal A in 1994 included increases in occupancy as additions (and reductions in occupancy as losses). As discussed above, the Michigan Supreme Court in 2002 ruled the new definition of "additions" invalid, but did not address the changes to the definition of "losses". The bill effectively codifies the court decision regarding additions, and makes a reciprocal change regarding losses.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.