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To: Wisconsin State Legislature  
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities  
Date: April 30, 2019  
Re: Dark Store and Walgreens in other States

Passing the dark store/Walgreens bill, SB 130/AB 146, would make Wisconsin assessment law consistent with other states, including several Republican dominated low tax states.

The law in the following states is the opposite of what it is in Wisconsin with regard to assessing leased commercial properties with nationally known, creditworthy tenants on long-term leases, like Walgreens. In these states it is appropriate for assessors to consider actual rent and other factors like recent sale prices of the property when valuing leased property:

1. **Kentucky.** *Walgreens, LLC & Walgreen Co. v. David O'Neill, Fayette County Property Valuation Administrator*, Kentucky Court of Appeals (September 23, 2016). In this case the court rejected Walgreen's argument that the assessor overvalued the property by considering the income generated under Walgreen's triple net lease, which Walgreen's asserted was above market. The court upheld the circuit court and the Board of Tax Appeals' conclusions that the assessor's inclusion of the income generated under Walgreen's lease was consistent with Kentucky law allowing an assessor to value property using the income generation approach.
2. **Ohio.** *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595 (2008). The Court concluded that a recent sale price of a Walgreens indicated the true value of the property for taxation purposes, and rejected Walgreen's argument that the sale price should not control because it reflected the high rent and creditworthiness of Walgreens as a long-term tenant. In rejecting Walgreen's argument, the court said that the recent sale price was for the real estate, not the tenant's business.
3. **Kansas.** Among the various factors to be considered when assessing property under Kansas law is the: "earning capacity as indicated by lease price, by capitalization of net income or by absorption or sell out price." K.S.A. 79-503a
4. **Florida.** Florida assessment law lists 8 factors an appraiser is to *consider* to arrive at a just or fair market valuation – Fla. Stat. Section 193.011. One of the 8 factors to be considered includes, "The income from said property."
5. **Utah.** *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision*, Appeal No. 17-1080 (February 22, 2019). In this case, the Tax Commission *raised* Walgreen's assessment from \$4,695,200 to \$5,450,000. Walgreen had argued that the property should be valued at \$2,700,000 as if it was a second generation use.
6. **Virginia.** *Walgreen Co. v. County of Spotsylvania, VA*, Circuit Court Case Nos. CL13-1151 & CL15-723 (September 27, 2017) The court agreed with the county assessor that the highest and best use of the Walgreens was as a drugstore subject to a long-term lease from a creditworthy tenant. The court upheld the county assessor's determination of the fair market value of the fee simple interests of the property and rejected Walgreen's argument that recent sale prices of the

property should be ignored because they do not accurately reflect the fair market value of the fee simple interest but rather the leased fee interest.

7. **New York.** *Rite Aid Corp. v. Huseby*, 130 A.D.3d 1518 (2015). In upholding the town assessor's assessment of a property leased to a drugstore, the court stated that when using the income capitalization method for determining property tax assessment on real property actual rental income is often, as a general rule, the best indicator of the property's value.
8. **Connecticut.** *Walgreen Eastern Company, Inc. v. Town of West Hartford*, Supreme Court of Connecticut, 329 Conn. 484. The court concluded that a) the court below was required under the income capitalization approach to consider both contract rents and market rents; b) the court properly considered pharmacy tenant's leasehold interest as one indicator of the true and actual value; c) the evidence was sufficient to support a finding that continuing use as retail pharmacy was highest and best use of property; and d) Walgreen tenant failed to establish that assessment of real property was manifestly excessive.

We urge you to pass the dark store and *Walgreens* legislation, SB 130/AB 146, and make Wisconsin assessment law consistent, rather than at odds, with other states, including several low tax states. The bill allows assessors, when determining the fair market value of leased property, to consider any lease provisions and actual rent affecting the value of the property. The bill requires the assessor to reconcile the results of such consideration with other professionally acceptable appraisal practices specified in the Wisconsin Property Assessment manual, such as reasonably comparable sales and the cost approach. This is not, as you can see from above, a radical concept.