



AROUND THE DOME

November 2009

As the Legislative year wraps up, (only 9 session days are scheduled for the remainder of 2009), now is a good time to take stock in what we are thankful for and what we are still striving to accomplish. The easiest way to assess the current legislative environment is to determine what can help us and what will hurt us. The BOMA Government Affairs Committee has been tracking these bills with the help of Scofes & Associates Consulting, Inc. (S&A). Lobbying and educational activities are ongoing, and your assistance as a BOMA member is not only appreciated, but can make a big difference in getting our goals accomplished.

What can help us:

Senate Bill 1 seeks to repeal the surcharge on the Michigan Business Tax (MBT). The MBT has become a political hot button in Lansing as the Senate Republicans continue to call for the elimination of the Modified Gross Receipts portion of the MBT, and the Governor's Office and the Department of Treasury oppose any significant changes. The recent Treasury estimates of tax revenue suggest that the state will be \$1 billion behind last year's collection. This makes it clear that any attempts to further cut tax revenue would have to be offset by significant budget cuts or new taxes from other sources. Although there is some discussion of a compromise or tax shifting, at this time any attempt to eliminate the modified gross receipts tax or the MBT altogether is seen as political posturing and highly unlikely.

House Bill 4421 fixes a mistake that was made when the MBT was originally passed. This bill is designed to resolve the issue of taxing foreclosure and bankruptcy adjustments as part of the base of the MBT. The sponsor, Rep. Jon Switalski has agreed to work with Sen. Nancy Cassis to move a package of bills to eliminate foreclosure credits from both the base and the modified gross receipts surcharge of the MBT. Senate and Treasury staffs are working on language that they can support as a substitute for these bills moving forwards. However, given the ongoing budget crisis, this bill is stuck in the House Taxation Committee with no hearing date in sight.

What will hurt us:

House Bill 4456 otherwise known as the WPW bill. The bill would impose additional taxes on the commercial real estate business in Michigan. Ever since the Michigan Supreme Court ruled in favor of WPW Acquisition Company vs. City of Troy back in 2002, Legislators have introduced bills to "fix" the problem. However, the only real problem is that the fix is usually worse than the issue it purports to be fixing. When Proposal A was adopted, it placed limits on increases in real property tax with a cap at the rate of inflation or 5%, whichever was less. The WPW ruling agreed with the Constitutional cap, but the House Democrats lead by Southfield Legislators' have been trying to increase the property taxes ever since. The bill has passed the House and is currently sitting in the Senate Finance Committee, hopefully never to see the light of day.

Senate Bill 610 creates a new lien that can be placed on commercial property. In addition to their current legal remedies, SB 610 would grant real estate brokers the extraordinary ability to place a nonconsensual lien on commercial properties if their commissions are in dispute. BOMA believes that the Michigan legal system already provides ample remedies to resolve any disputes over commissions, thereby making the proposed legislation unnecessary. If the broker has an appropriate contract with its client, the broker should be sufficiently protected by the current state of the law. Allowing a broker to record a claim of lien creates a potential cloud on the title of commercial real estate thereby making commercial real estate transaction less attractive. The bill would likely increase litigation, add additional costs, and delay closing transactions with no countervailing economic benefit to the State of Michigan or the commercial real estate industry. The bill has passed the Senate Regulatory Reform Committee and is expected to pass the whole Senate shortly. Our strategy is to get the bill stopped in the House Regulatory Committee.

Of course there is a **cornucopia** of other bills to be analyzed, tracked and acted upon, before the Legislature ends Sine Die, December 2010, but until then **Happy Thanksgiving.**

The "Around the Dome" newsletter is written monthly by BOMA's Michigan lobbying firm Scofes & Associates Consulting (S&A) for BOMA members to be aware of key issues in Lansing. In addition, S&A is monitoring top issues identified by the Government Affairs Committee. If you have comments on the newsletter or BOMA issues, please direct them to GAC Chairs Gregory McDuffee at Gregory_McDuffee@DWJBA.com, John Sier at John.Sier@Kitch.com or Janet Langlois at JLanglois@bomadet.org.

We welcome your comments and questions on BOMA advocacy issues.