

# Walgreens Tax Loophole Talking Points

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Municipal officials seek legislation clarifying that it is appropriate for assessors to consider the actual lease amounts and recent sale prices of leased commercial space when calculating the fair market value of the real estate, which is the same information that persons considering purchasing such property would use to determine its value.

- In 2008 the Wisconsin Supreme Court held in *Walgreens v. City of Madison* that an assessment using the income approach of commercial property leased under a triple net lease with “above market” rents must be based on hypothetical “market rents” rather than the terms of Walgreen’s actual leases and that the value added by an “above-market” rent constitutes a contract right, rather than a real property right.
- The 2008 decision requires assessors to value Walgreens and other leased commercial and manufacturing properties substantially below the property’s actual recent sale price.
- Walgreens, CVS and other leased stores claim recent sale prices as the value of the real estate on federal income tax forms, but insist on a much lower value for property tax purposes, typically less than half of the actual sale prices of the properties on the open market. See the attached chart.
- **Example from Appleton:** Relying on *Walgreens v. City of Madison* (2008), the Court of Appeals found that a CVS property in Appleton should be valued at \$1.8 million, much less than the City’s \$4.4 million assessment, even though the higher value was based on an actual sale price of the property.
- No other taxpayers receive similar special treatment. A homeowner could not claim that the assessed value of his home should be half the amount for which it was purchased.
- Courts in other states have rejected Walgreens low value argument. See, for example, *Walgreen Eastern Company, Inc. v. Town of West Hartford* 329 Conn. 484 (2018 Supreme Court of Connecticut).
- If the Legislature does not Act, more businesses will employ the *Walgreens* loophole, causing more of the property tax burden to shift to homeowners and small businesses.
- A study of twelve communities showed that if the dark store and *Walgreens* tax loopholes were fully implemented, residential tax bills would increase on average by 8 percent in those communities.
- Homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin (68%). This is much higher than in most other states. Homeowners in Minnesota, for example, pay only 50% of the property tax levy. In 1970, homeowners in Wisconsin also paid only 50% of the tax levy.
- **The Solution:** Pass legislation reversing *Walgreens* and clarifying that assessors may consider actual lease amounts and recent sale prices of the property when determining the fair market value of leased properties.