

Dark Store and *Walgreens* Tax Loopholes

Less Taxes for some mean more for Homeowners

By Curt Witynski, Deputy Director, League of Wisconsin Municipalities
July 9, 2018

A growing number of commercial and manufacturing properties are using property tax avoidance strategies known as the Dark Store and *Walgreens* loopholes to push their fair share of property taxes onto homeowners and small businesses.

Any property owner not using these loopholes, which includes all homeowners, will pay more in property taxes to make up for the tax reductions obtained by the commercial and manufacturing properties using them.

Local governments in Wisconsin rely on property taxes to fund essential services like police, fire, roads and libraries. Local officials statewide are concerned about more of the property tax burden being shifted onto homeowners. Homeowners should not and cannot bear more of the cost of local services.

The Dark Store Loophole Explained. Tax attorneys for big box stores like Target, Walmart, Meijer, Menards, and Lowes, use the dark store loophole to argue that the value of a new store in a busy commercial district should be based on the value of former retail properties in unpopular areas that are now closed and vacant. While courts in Wisconsin have not yet endorsed the dark store theory, that has not stopped tax attorneys for big box stores from using the argument before assessors in Wisconsin.

A real example: A Lowe's store in Wauwatosa is assessed for taxes at \$13.6 million. Lowe's claims the property is only worth \$7.1 million even though it spent over \$16 million to acquire the land and build the structure. Lowe's argues that the *land* alone was devalued from \$9 million to \$3 million once the big box store was constructed and insists that only vacant dark stores can be used as comparable properties.

Police Calls to Big Box Stores. Big box retail stores demand more police service than any other commercial properties and certainly way more than residential properties. Municipal police are frequently called to respond to thefts and other issues at big box stores. As big box stores fight to avoid paying their fair share of taxes, they use more of the services for which property taxes pay. Meanwhile, more of the burden of paying for police services gets shifted to homeowners, the class of property using such services the least.

The *Walgreens* Loophole Explained. Assessors are required to assess property for property tax purposes at its fair market value. The best evidence of fair market value is usually a recent arms-length sale price of that property. The Wisconsin Supreme Court created an odd exception to this rule for certain leased commercial and manufacturing properties in a 2008 decision involving a *Walgreens* store. The exception requires assessors to value property that is tied up in a long term lease to a single business at half of the recent sale price of that property. For

example, Walgreens and CVS typically lease their store space. The buildings leased by Walgreens and CVS are popular investment properties and typically sell for \$4 million or more depending on their location. Yet, these properties are required to be assessed for property tax purposes at \$2 million.

A real example: 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 recent sale price of the property.

No other taxpayers receive similar special treatment. A homeowner, for example, could not claim that the assessed value of his or her home should be half the amount for which it was purchased. Courts in other states have rejected Walgreens low value argument, concluding instead that a recent sale price is the best indicator of value.

Walgreens and CVS consistently use the recent sale price of the property as the value of the real estate for all other purposes, including federal income tax forms. They claim the lower value only for property tax purposes.

Other commercial and manufacturing businesses that lease their space are beginning to use the same arguments to lower their property tax bills.

The Tax Shift to residential. The dark store loophole and *Walgreen's* decision shift more of the burden of paying for essential local services from commercial and manufacturing to residential taxpayers. By any measure, homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin. Homeowners pay 68% of property taxes in Wisconsin. 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 League of Wisconsin Municipalities analyzed the potential impact on residential property owners in twelve communities if the dark store and *Walgreens* tax loopholes were fully implemented and resulted in a 50% reduction in the value of certain commercial and manufacturing properties. We found that homeowners in those twelve communities would on average see their property taxes increase by 8%.

Legislative Fix Needed. The Wisconsin Legislature can close the loopholes – fix the problem – and stop the tax shift to homeowners by passing legislation in 2019. The Legislature had an opportunity to close the loopholes in 2018, but failed to do so. The dark store and *Walgreens* reversal bills had remarkably broad support among legislators of both parties. The dark store bill had 84 co-sponsors (63% of the Legislature). The *Walgreen's* bill had 61 co-sponsors (46% of the Legislature). If the bills had been scheduled for votes, they would have passed both houses by huge margins.

Unfortunately, the Wisconsin Manufacturers & Commerce Association (WMC) and businesses using the loopholes convinced legislative leaders to kill the legislation.

WMC claims that cities and villages promote legislation closing the dark store and *Walgreens* tax loopholes so they can collect more property taxes. WMC contends local officials “have a self-interest in assessing property higher because it means they can collect more taxes.”

This statement reveals a fundamental misunderstanding about property taxes in Wisconsin. Higher assessments do not equate to more tax revenue. Assessments determine who pays what portion of the tax levy, not the size of the levy. State law strictly limits a community’s ability to increase property tax collections. Even if the assessed value of a property were increased, the total amount of taxes collected by the community stays nearly frozen from one year to the next under state law. A community will collect the same amount of taxes regardless of whether the dark store and *Walgreens* loopholes are closed, unless it significantly cuts spending on essential services, like police and fire or street maintenance.

Closing the loopholes avoids shifting even more of the property tax burden from commercial and manufacturing property to homeowners and small businesses. Local officials are fighting for a fair and equitable property tax system, not more tax dollars.

The League of Wisconsin Municipalities will work with legislators again next session to try to restore common sense and fairness to the property tax assessment process. Maybe next year homeowners will win.