

Tax Breaks for Big-Box Stores Can Drain Money From Schools

By **Francisco Vara-Orta**

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Paying attention to how much nearby corporate retailers pay in property taxes may not be a priority for most school district leaders, but some policymakers think that could change soon.

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Across the country, retailers—in particular big-box stores—are pushing back on how local governments assess the value of their properties with the goal of lowering their tax bills. Using a tactic known as “dark store theory,” retailers and their legal teams are increasingly arguing that the massive stores they operate ought to be appraised as if they were vacant or “dark.” When they succeed, the annual property taxes that retailers pay—which help fund public schools in most local communities—can drop precipitously.

The retailers, most of them corporate giants such as Target, Lowe’s, and Home Depot, contend the large buildings their stores occupy—typically more than 100,000 square feet—are difficult to sell because they are customized to a particular retailer. They argue their stores, even brand new and bustling with business, shouldn’t be assessed at the “best and highest use”—which is how most assessors determine how much tax they owe—but at a rate similar to the resale value of box store properties that may be shuttered. It’s an argument that some assessors find absurd and an abuse of the tax code.

So far, the strategy has worked, particularly in the courts, and has led to lowering the taxes of big-box companies by hundreds of millions of dollars, according to interviews with assessors and lawmakers in several states who have analyzed the effects.

The trend is most pronounced in the upper Midwest, where hundreds of lawsuits and appeals have been launched in Michigan, Indiana, and Wisconsin. But as the strategy spreads, it’s triggering a legislative backlash led chiefly by Republicans who see the dark store theory as a troubling tax loophole.

THE COSTS OF 'DARK STORE' TAX LOOPHOLES

Big-box retailers in some states have fought aggressively to lower property taxes on their stores, a move local officials say exacts a deep toll on public services, including schools.

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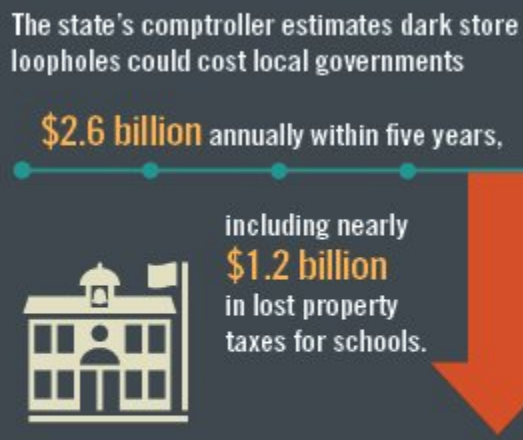
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SOURCES: Michigan Association of Counties, the Association of Indiana Counties, Indiana County Assessors Association, Wisconsin League of Municipalities, Austin American-Statesman.

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"If you have any big-box retailers in your school district, this is definitely something to watch," said Brian Woods, the superintendent of the Northside Independent School District in San Antonio, Texas, where Lowe's, the home improvement retailer, is suing the county appraiser over its tax bill.

Texas' state comptroller, Glenn Hegar, recently sounded the alarm over the dark store tactic, writing in [an editorial published in the Austin American-Statesman](#) that it's akin to "corporate welfare of a particularly ugly kind."

Hegar, a Republican, estimated that the proliferation of dark store loopholes could cost the Lone Star State's local governments \$2.6 billion annually within five years, including nearly \$1.2 billion in lost property taxes for schools. He warned that it also could "rip another \$703 million a year away" from

the funding program which provides most state aid for Texas' public schools.

Lost Revenue vs. Staying in Business

Local governments depend on property tax revenues to help finance schools, fire and police, parks, libraries, and roads. That's why assessors worry about the potentially sweeping impact the tax loophole could have on essential community services.

When big-box retailers prevail in lowering their assessments, it can shift more of the tax burden to homeowners and to smaller, local businesses which may not have the legal firepower to push back on how their stores are appraised. Of course, schools depend on revenue generated from homeowners and local business owners as well, so the entire school finance ecosystem could see some form of impact, district officials said.

"This really is an issue about these stores paying their fair share of taxes," said Donna VanderVries, an attorney and appraiser who is the equalization director for Muskegon County, Michigan. "We are charged with uniform and equitable assessment. To carve out a special niche for these stores goes against that responsibility to the public."

In Michigan, Indiana, and Wisconsin, millions of dollars in revenue have already been lost to dark store arguments, according to studies conducted by associations that represent city and county governments in those states. Those costs stem from expensive court battles, losing out on future tax revenue when retailers successfully appeal, and in some cases, reimbursing retailers for higher property taxes paid in previous years.

VanderVries said the impact is also long-term. Once a property is assessed, she said, its value is essentially locked in and usually doesn't change much.

But the retailers and their lawyers have argued publicly that reducing their property tax burden helps keep stores open in the long run, which is better for communities and local economies.

Steve Paul, an Indianapolis-based lawyer who has represented several retailers including Target, Home Depot and Lowe's, said big-box merchants have valid reasons for seeking the property tax relief. Competition from online sales is one, along with the loss of major retailers such as Macy's, Sears, Kmart, and J.C. Penney shutting down hundreds of stores in recent years—corporate merchants that often anchor shopping malls.

"This is a difficult issue as it could mean a significant revenue loss for one of the parties," Paul said. "But you have to ask yourself if you want to drive businesses out of the area because taxes are too high. Then you're going to have a lot of 'dark' stores in the community, with much less or even no tax revenue really coming in."

The Impact on Schools

Officials in the Howard-Suamico school district, which serves the villages of Howard and Suamico near Green Bay, Wis., have been watching one dark store case unfold with concern.

Menards, a Wisconsin-based home improvement retailer, is suing the village of Howard over how it appraised one of its properties.

Howard assessed Menards' 18.7-acre site at \$12.45 million in 2016. According to court documents, the company argues that while it spent \$10.6 million to buy the land and build the store, the site is worth only \$5.8 million. In its suit filed last year, the retailer demanded that Howard provide a refund, with interest, and pay its legal fees.

Menards, like many of its peers, has been arguing in court that the property's value should be judged by "comparable sales"—the prices that vacant big boxes command when they are sold in the area. The company says Howard's assessment "was not uniform" with the assessments of other properties in the village and around the state.

If Menards prevails, the company's annual tax payment to the Howard-Suamico school district would fall from roughly \$103,000 to about \$48,000, according to Matt Spets, the assistant superintendent for operations. And the district would owe Menards a refund of about \$55,000 for the taxes it paid last year. That, Spets said, equates to an extra teacher salary annually for a district that serves 6,100 students in eight schools.

In the short term, Spets said the district could manage the lower revenue amount. In future years, however, Spets said the district would have to ask residents to pay higher taxes or cut its budget by a corresponding amount if more retailers succeed in lowering their taxes. But residents may not be inclined to raise their taxes for schools: Last April, voters rejected a referendum that would have helped fund building upgrades, student support services and personnel costs.

"It's not an ideal situation," said Spets who noted that rural school districts are the most vulnerable.

David vs. Goliath

A major hurdle for city, county, and school officials who want to fight back against the big-box retailers is cost. VanderVries, the assessor in Muskegon, Mich., said her department and peers in communities like hers may feel forced to settle with a powerful retailer when they appeal their property appraisal, because appraisers know their local governments don't have the wherewithal to mount an expensive legal defense if the battle moves to the courts.

"You also just don't want to get a reputation as being anti-business," she said.

Paul, the lawyer who represents retailers, swats back at those arguments, saying that assessors and some lawmakers are inciting panic over the financial hit that cities and schools would take.

Jack L. Van Coevering, a lawyer in Grand Rapids, Mich., has represented municipalities in several cases pushing back on the dark store approach. He sees a clear connection to schools.

He provided *Education Week* with an analysis that showed a \$2.8 million annual loss in revenue for Michigan school funding if Lowe's was able to reduce its taxes at for all of its stores in the state.

"This impact is permanent and annual," he said. "The tax loss would be repeated every year because in Michigan increases in the property tax base is capped at the rate of inflation. [The analysis shows that] schools are the primary local government unit at risk."

Unlikely Adversaries

State lawmakers have stepped into the disputes, proposing bills to curb the use of the dark store theory in Michigan, Indiana, Wisconsin, and Texas. Many have stalled, but one measure passed in Indiana in 2015, only to be repealed a year later and replaced with one that some assessors felt had fewer teeth.

In San Antonio, Texas, at the Northside Independent School District, Superintendent Woods and the school board have discussed the issue in the past year as the Lowe's case winds through the courts. There, the local assessor warned the superintendent of the potential financial implications as the county's largest school system with over 105,000 students and hundreds of national retailers within its boundaries.

Lowe's is suing the Bexar County Appraisal District to cut its property values for 10 stores in the San Antonio area where Northside is based, [according to the San Antonio Express-News](#). The appraisal district estimates those values could drop from \$80-\$85 per square foot to \$30 a square foot if Lowe's prevails, the paper reported.

Earlier this year, a Republican state lawmaker, Rep. Drew Springer, proposed a bill to limit businesses' ability to use the dark store argument that garnered bipartisan support, passing out of two committees. But the bill never made it to the House floor for a final vote, and a spokeswoman for Springer said this month that he didn't have plans to refile it right away.

"It's created a real challenge for Republican lawmakers, because you have those who prioritize being friendly to corporations, or 'business friendly,' now in conflict with others who see keeping individual homeowner property taxes lower as the more important goal," Northside's Woods said.

Indeed, the state comptroller's office estimated that if the dark store argument is successfully used by stores across Texas, it will amount to an increase of \$311 in property taxes annually for every home in the state.

The dark store controversy is currently most active in Michigan and Wisconsin, where a few bills to rein in the practice are in the works, which Republicans are largely pushing.

State Rep. David Maturen, a member of the Michigan legislature and a former assessor based in Brady Township, has filed a bill to require the Michigan Tax Tribunal to apply "standard appraisal procedures when reaching their findings of facts and conclusions of law in larger property tax cases" when hearing appeals. So far, it's backed by a bipartisan group of 54 House members.

"I'm pushing this as a Republican on the grounds of it being an issue of fairness and equity and able to use my five decades in this line of work," Maturen said. "I think my colleagues on both sides of the aisle know I am not making up stories when it comes to the serious impacts we are seeing."

Maturen proposed a similar bill in 2016, and it passed the Michigan House by a vote of 97-11. But it never advanced from the Senate finance committee.

Wisconsin had two bills aiming to curb the tax reduction loophole. One bill, being advanced by Rep. Rob Brooks and Sen. Roger Roth, both Republicans, would ban use of the "dark store argument" in challenging assessments. Another measure that Brooks is pushing would reverse a 2008 state supreme court decision won by Walgreens that said the value of leases should not be considered in assessments—which also determine tax rates.

"I believe that the bills will be approved," Brooks said in a statement, adding the full Assembly body could vote on it in the fall.

The state's largest business lobbying group, the Wisconsin Manufacturers & Commerce, had representatives testify against both bills in June, saying the proposals essentially are "a back door for municipalities to implement a local income tax" and injected partisanship into the debate, contending the GOP proposals mirror "attempts by liberal policymakers in previous sessions."

Although it's still unclear how quickly schools may feel any implications from retailers getting their taxes lowered, folks on both sides of the issue remain vigilant as the courts and state legislatures ping pong over what to do. Paul, the lawyer who represents retailers, contends that merchants aren't out to target education funding.

"No one wants to see school districts lose revenue," Paul said. "But there is more than one way to skin

a cat. This is an argument about what's most equitable."

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