

# **Dark Store and Walgreens Tax Loopholes -- An Explanation**

Prepared by League of Wisconsin Municipalities  
June 2018

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

Local governments in Wisconsin, including schools, counties, cities and villages, rely on property taxes to fund essential services like police, fire, roads and libraries.

**Tax Shift to Residential:** 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 that are using them.

The total amount of property taxes a local government may collect annually is strictly limited by state law and stays pretty much the same from one year to the next. What can and does change is how the tax pie gets divided. When one class of property, like commercial, pays less, other classes, like residential, must make up the difference to pay for police, teachers, firefighters and local roads.

Residential property owners already pay \$68 of every \$100 of property taxes local governments collect. The residential share of the property tax burden is not as high in most other states. Homeowners in Minnesota, for example, pay only 50% of the total property tax levy.

According to an analysis of 12 communities by the League of Wisconsin Municipalities, homeowners could see their property taxes increase by 8% or greater, if commercial and manufacturing property values are lowered by 50% as a result of chain stores, fast food operations, big box retailers and even banks using the Dark Store and Walgreens loopholes.

Municipal and other local officials across the state are deeply concerned about more of the property tax burden being shifted onto homeowners. Homeowners should not and cannot bear more of the tax burden than they already do.

**Legislative Action Necessary.** The Wisconsin Legislature can close the loopholes – fix the problem – and stop the tax shift 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 broad support among legislators. Nevertheless, businesses relying on the loopholes successfully killed the legislation.

**The Dark Store Loophole Explained.** Tax attorneys for big box stores like Target, Walmart, Meijer, Menards, Home Depot, 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, and other commercial retail chains 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 property taxes, they actually use more of the services property taxes pay for. 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.** Walgreens, CVS, and other commercial and manufacturing businesses that lease their space rely on a 2008 Wisconsin Supreme Court decision, *Walgreens v. City of Madison*, to argue that the assessed value of their properties for property tax purposes should be less than half of the actual recent sale prices of such properties.

In *Walgreens* the court concluded that the actual rents Walgreens pays should not dictate the value of the real estate for property tax purposes. Instead, assessors should value the property based on hypothetical "market rents" rather than the terms of the actual leases.

Since the decision, leased drugstores have become the most popular properties in the national real estate investment market, regularly selling for \$5 million or more in Wisconsin. Attorneys for Walgreens and CVS successfully argue that the actual sale prices don't represent market value and the underlying leases are the wrong tool for determining the property's value for 'property tax purposes.'

Instead, they say, the assessments should hinge on the amount the landlord could get if the drugstore moved out and a different retailer moved in. The courts have agreed and as a result, these stores are regularly assessed at half or less than their sale prices.

**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.

Walgreens, CVS and other leased stores 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.

There are over 200 Walgreens and 84 CVS stores located in Wisconsin's cities and villages. In addition, other commercial and manufacturing businesses that lease their space are beginning to use the same arguments to lower their property tax bills.

**Bottom-line:** Homeowners deserve a return to a fair allocation of the property taxes necessary to pay for essential municipal services.