

Four Facts about the Dark Store and Walgreens tax Loopholes

Prepared by the League of Wisconsin Municipalities
July 2018

1. Fact: National bond rating agencies are warning about the possible negative impacts on municipalities of the dark store tax loophole. In January 2018, Standard and Poor's Global Rating published an article saying that the dark store practice could place pressures on the budgets and credit quality of U.S. municipalities. The bond rating agency noted "the potential exists for the growing use of dark store theory to contribute to widespread fiscal pressure for certain types of issuers." Partially on the basis of this, Springsted, a Midwestern local government financial consulting firm, said in a dark store whitepaper distributed to clients in April 2018: "Municipalities at all levels would be wise to understand the [dark store] issue, quantify the potential risk and prepare contingency plans, and consider legislation that could mitigate risk."

2. Fact: Local officials across the state are deeply concerned that the dark store and Walgreens tax loopholes will cause even more of the property tax burden to shift from commercial and manufacturing property owners to homeowners. 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 all property taxes collected statewide. In 1970, homeowners in Wisconsin also paid only 50% of the 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, banks and others using the Dark Store and *Walgreens* loopholes. Homeowners should not and cannot bear more of the tax burden.

3. Fact: Local Governments won't receive one dime more in total property tax revenues if the dark store and *Walgreens* tax loopholes are closed. The state strictly limits the total amount of property taxes a city, village, town, or county may collect. A city or county will collect the same total 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 will, however, avoid shifting even more of the property tax burden from commercial and manufacturing property to homeowners and small businesses. Local government officials are fighting for a fair and equitable property tax system, not more tax dollars.

4. Fact: Assessors and other local government officials have nothing to gain -- no financial or other personal interest at stake -- with regard to how high or low a particular property is assessed for property tax purposes. City, village, and town assessors are required to strictly adhere to state law, case law, and the Wisconsin Property Assessment Manual (WPAM) when assessing the value of property. State law requires assessors to be certified by the Department of Revenue. Assessors must comply with annual training and continuing education requirements. The Department of Revenue has the power to decertify any assessor that is consistently not assessing property in compliance with the standards and procedures set forth in state law and the WPAM.

Dark Store Tax Loophole Talking Points

Prepared by League of Wisconsin Municipalities

June 2018

Municipal officials are asking the Legislature to close the dark store loophole to avoid shifting more of the property tax burden from commercial and manufacturing property to homeowners and small businesses.

- Tax attorneys for big box stores like Target, Walmart, Meijer, Menards, Home Depot, and Lowes, are using what is known as 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.
- **An actual example:** The Lowe's store on Burleigh St. 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 because the big box store was constructed and insists that only vacant dark stores can be used as comparables.
- Big box stores are using the dark store argument as part of their effort to pay a smaller share of property taxes even though they demand more police services than other commercial properties and way more than residential properties.
- If not stopped, the dark store strategy will result in a huge shift of the tax burden from commercial property owners to homeowners and others.
- 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.
- Homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin (68% of total statewide levy is paid by homeowners). It's not that high in most other states. Homeowners in Minnesota, for example, pay only 50% of the property tax levy.
- In 1970, Wisconsin homeowners paid only \$50 of every \$100 that a community needed to pay for services.
- **The Solution:** Pass legislation like 2017 Assembly Bill 386 and close the dark store loophole and stop the tax shift to homeowners.
- AB 386 clarifies that assessors must use comparable properties that are within the same market segment and similar to the property being assessed with regard to age, condition, use, type of construction, location, design, and economic characteristics. It says that assessors may not use a dark store as a comparable for property that is not dark or vacant.
- The bill codifies existing Wisconsin case law and parts of DOR's Wisconsin Property Assessment Manual.
- Local governments will not receive one dollar more in tax revenue if the bill passes, but the tax shift to homeowners will end.
- 63% of the Legislature signed on as co-sponsors of the dark store bill, but business group opposition killed our efforts to close the loophole that they use.

Walgreens Tax Loophole Talking Points

Prepared by League of Wisconsin Municipalities
June 2018

Municipal officials are asking the Legislature to reverse the 2008 Wisconsin Supreme Court decision in *Walgreens v. City of Madison* to avoid having even more of the property tax burden shift from commercial and manufacturing property to homeowners and small businesses.

- In 2008 the Wisconsin Supreme Court held in *Walgreens v. City of Madison* that an assessment using the income approach of commercial property leased at “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.
- Indeed, Walgreens, CVS and a growing number of other leased commercial and manufacturing properties are being assessed at less than half of the actual sale prices of the properties on the open market. See the attached chart.
- 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 the lower value for property tax purposes.
- **Real World Example from Appleton:** 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.
- 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.
- If the Legislature does not Act, more businesses will employ the *Walgreens* loophole, causing more of the property tax burden 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.
- Homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin (68% of total statewide levy is paid by homeowners). 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 like 2017 Assembly Bill 387, clarifying that actual lease amounts are appropriately factored into the valuation of leased properties.
- If the bill is enacted local governments will not receive one dollar more in tax revenue due to levy limits, but a tax shift will be avoided.
- 46 percent of the Legislature co-sponsored the *Walgreen’s* reversal bill last session, but opposition from business groups relying on the *Walgreens* loophole killed the bill.