

Dark Store Tax Loophole Resource

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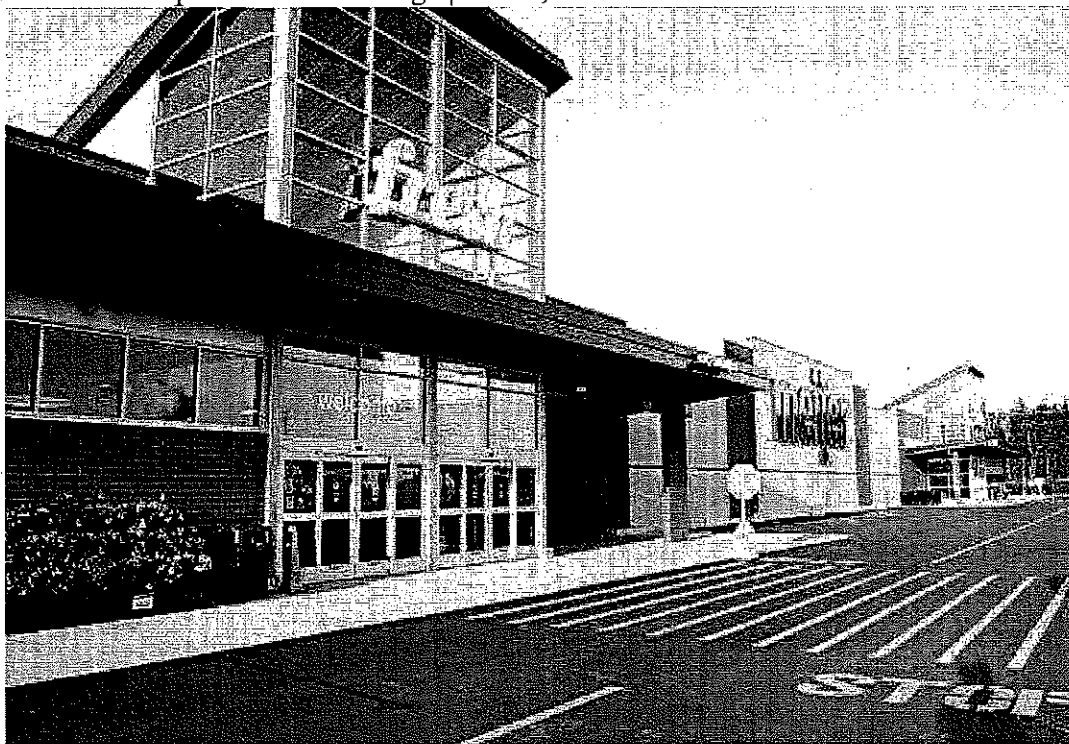
The Issue: The “Dark Store” strategy of property tax assessment is looming large over communities throughout the state of Wisconsin and unfortunately could soon be coming to your city or village. In fact, it may already be there.

In essence, the Dark Store strategy is a tax loophole being used by Big Box retailers and other national chains to lower the amount they pay in property taxes. Retailers such as Lowe’s, Target, Meijer, Home Depot, Menards, Walgreens, and CVS are arguing that the market value of their thriving store should be based on the sales of similar size “comparable” properties that are vacant and abandoned.

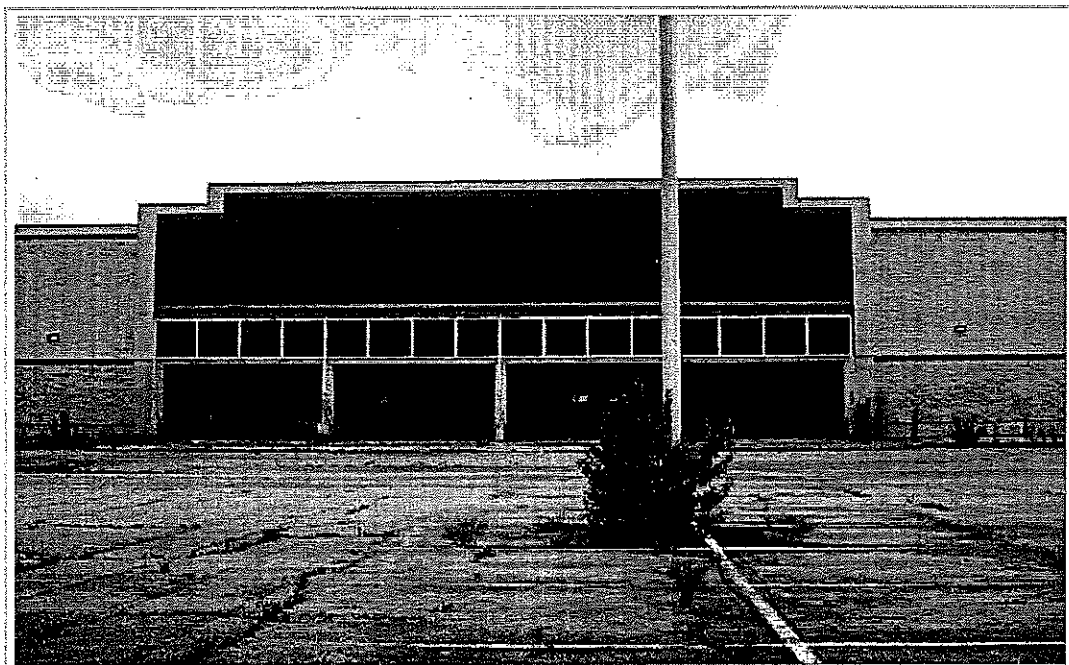
What? You mean a fully operational store, like a new Target, gets to pay the same property taxes as a closed, empty and “dark” K-Mart down the street? Yes, that’s exactly what the retailers are fighting for and it’s what is starting to happen more and more frequently.

Some courts in Wisconsin have upheld this “Dark Store theory” and cut property tax assessments in some cases by as much as 50 percent – resulting in a tax shift to homeowners or a cut in local services. These rulings could result in a shift of millions of dollars in tax burden across Wisconsin unless the loop hole is closed by the legislature.

The Solution: Follow the lead of the Indiana state legislature and pass legislation in Wisconsin closing off these tax strategies and stopping the tax shift to home owners. Pass legislation clarifying that leases are appropriately factored into the valuation of properties and prohibiting assessors from valuing thriving big box stores the same as abandoned buildings in a different market segment.



Should this new thriving store be valued for property tax purposes like the abandoned store in the photo below? That's what many big box chains are successfully arguing to reduce their property taxes. The result is that other taxpayers like you have to pick up the slack. Not fair, is it? Tell your legislator to do something about it. Support legislation banning the dark store tax strategy.



Big Box Dark Store Documentary


<http://tinyurl.com/darkstore>

A highly informative documentary film explaining the complex, yet devastating "Dark Store" tax loophole issue facing Wisconsin communities. This is a hot topic the League of Wisconsin Municipalities has been fighting for more than a year and at a compact 24-minutes it is great film to show in your local communities when explaining this issue.

"Boxed In" is a 2016 documentary by Northern Michigan University Professor Dwight Brady, an Emmy Award winning producer, and 14 NMU students.

Dark Store Resources

Dark Store Issue Briefing.

 Dark Store Model Resolution calling on the Legislature to pass legislation Closing Tax Loopholes Causing More of Property Tax Burden to Shift from Commercial to Residential.

Big-Box Stores Battle Local Governments Over Property Taxes.

Nice summary of the dark store issue in the September 2016 issue of Governing.

Should Lowe's 'dark store' strategy in Texas concern D-FW taxpayers?

An article on the just beginning process in Texas. Dallas News

'Dark stores' argument allows big businesses to skimp on property taxes.

An account of the 'Dark Store' Janesville situation. Janesville Gazette

An account of Lowe's actions in Alabama. [AL.COM Article](#)

West Bend WI asks governor to close tax loopholes.

Facing two lawsuits and the prospect of a significant decline in tax revenues from larger retailers, area administrators have officially petitioned state officials for assistance. [Daily News Article](#)

Wauwatosa, WI -- Mayor and many local governments asking the state for help.

Local municipalities are losing millions each year, and thousands of dollars are being spent on legal fees. It's an issue that's been steadily creeping into Wisconsin -- big box stores appealing their assessed values to pay lower property taxes.

[FOX6 story HERE.](#)

Brookfield, WI sends message to combat big retail loopholes.

City of Brookfield -- Worst-case scenario: Property tax bills for the average resident go up \$233.50.

[Brookfield Elm Grove NOW article HERE.](#)

How Big-Box Retailers Weaponize Old Stores

Tucked away on the northern edge of Michigan's rugged Upper Peninsula, Sault Ste. Marie is bracing for the battle of its life. The tourist town is heading to court in early 2017 to fight Walmart Stores, which seeks to cut \$286,000 off its annual property tax bill on a local store. Using what critics call the "dark store loophole," Walmart is following in the footsteps of big-box merchants including Lowe's and Target by arguing that its bustling store should be assigned about the same value for tax purposes as one that's been vacant for years, hundreds of miles away. [Bloomberg Businessweek Article Here.](#)



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Issue Briefing: Dark Store Tax Shift

Court rulings giving tax cuts to chain stores result in tax increases for homeowners

Property taxes for homeowners and main street businesses are increasing in Wisconsin as national retailers pay less. A carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and to their home-owning customers. If the Legislature fails to close this loophole, we estimate that millions of dollars in property taxes will shift from large commercial properties to homeowners and other taxpayers over the next few years.

The table below shows what assessors estimate the tax increases that homeowners in select communities will experience when the Dark Store theory is fully-implemented. Calculations are based on amount of national chain retail, 2015 mill rates, and median home values:

City	Estimated Tax Increase	Average increase per home per year
Brookfield	5%	\$233.50
Hudson	9%	\$374.58
La Crosse	7%	\$197.12
Oconomowoc	8%	\$360.96
Pleasant Prairie	17%	\$892.50
Wauwatosa	7%	\$382.12
West Bend	8%	\$253.89

This is not a new problem, nor is it exclusive to Wisconsin. Wisconsin is merely the latest state to experience this coordinated legal attack on in-state taxpayers. Indiana and Michigan have already experienced it. In Indiana, the Legislature promptly slammed the door on this court-created loophole. A similar legislative fix is pending in Michigan. Wisconsin must do the same.

Loophole #1: It's just a big empty box. Tax attorneys for Target, Meijer, and other big box chains are using what is known as the "**Dark Store Theory**" to argue that the assessed value of a new, thriving store should be based on the value of vacant or abandoned buildings of similar size. They argue that regardless of their new location or how updated their building is the value for 'property tax purposes' should be based on the value of the buildings and locations they abandoned prior to moving into the new store at their new location.

Real World Example from Wauwatosa: The Lowe's store at 12000 W. Burleigh St. is currently challenging the city's assessed valuation. The City assessed the property at \$13.6 million. The City's expert believes the market value is actually \$17.7 million. Lowe's argues the property's current value is \$7.1 million of which \$3 million is attributed to land. Yet, the land was purchased in 2007 for \$9,012,800. Lowe's built a

140,000 square foot building in 2006 for approximately \$7 million, they then subsequently purchased the land after constructing the building. Altogether, Lowe's spent in excess of \$16 million to acquire the land and build the structure. Now, Lowe's argues that the land was devalued from \$9 million to \$3 million because the big box store was constructed. Lowe's insists that under Wisconsin law (based on the *Walgreens* decision) only vacant dark stores, such as the vacated big box stores near the former Northridge shopping area, can be used as comparables. The City disagrees, but their only options are costly litigation or settling with the property owner on a compromise value.

Loophole #2: Gold box on Wall Street, cardboard box on Main Street. Walgreens and CVS stores use a different, but related strategy, to argue that the assessed value of their properties should be less than half of actual sale prices on the open market. The two have already sued more than 100 Wisconsin communities, claiming the rent they pay for their newly-constructed, highly-visible corner locations doesn't accurately reflect its market value. These properties are developed to the retailer's specifications and leased to them with no landlord responsibility other than collecting rent. More than 80% of Walgreen stores and 95% of CVS stores operate under a lease arrangement. This arrangement is so desirable that drugstores have become the most popular single-tenant properties in the national real estate investment market. But attorneys for Walgreen and CVS argue that their 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.

Real World Example from Oshkosh: Walgreens challenged the City of Oshkosh's assessments of two of its stores. The city based its assessment on the actual amounts for which the properties were sold. The court rejected the city's approach and ordered that the two Walgreens be refunded for several tax years. The total amount of the refunds equaled \$305,672. Other taxpayers in Oshkosh now have to pick up Walgreen's former share of the tax burden. There are over 200 Walgreens located in Wisconsin's cities and villages.

Other states have stopped this tax shift. The Republican-controlled Indiana Legislature overwhelmingly passed bipartisan legislation in 2015 and 2016 prohibiting assessors from valuing new big box stores the same as abandoned stores in a different market segment. The Michigan legislature is considering similar proposals. In May 2016 the Michigan house passed a dark store fix bill by a vote of 97-11. The bill is pending in the Michigan Senate.

Solution: Follow Indiana's lead and pass legislation in Wisconsin closing off these tax strategies and stopping the tax shift to home owners. Pass legislation clarifying that:

1. Leases are appropriately factored into the valuation of leased properties; and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations. 11/1/16

'Dark store' cases could cost millions in taxes

Doug Schneider, USA TODAY NETWORK-Wisconsin Published 6:22 a.m. CT Feb. 13, 2017 | Updated 2 hours ago



(Photo: Jim Matthews/USA TODAY NETWORK-WI)

HOWARD - An aggressive move by some major retail chains is putting homeowners in parts of Brown County and a number of other areas of Wisconsin at risk of a property tax jump in the coming years.

The action by retailers like Menards, Target, Lowe's and Walgreens has cost taxpayers millions of dollars in Michigan and Indiana. Oshkosh had to refund more than \$300,000 in taxes and fees. Howard, the Howard-Suamico School District and the county could wind up owing thousands to Menards.

It works like this: Retailers challenge their property assessments, citing similar — but vacant, or "dark" — stores, claiming their buildings are worth millions of dollars less than they've been assessed for by local governments, which typically set values based on both the building and its use.

In many cases, they've won so decisively that a Bloomberg headline said stores have "weaponized" the approach.

When retailers win, the other taxpayers lose. Municipalities have two choices: Cut services — sometimes dramatically — or make the rest of the community pay more in taxes. About 70 percent of municipal tax collections comes from homes. Smaller communities are hit particularly hard due to their smaller tax bases.

"What happens if the assessments of large format retailers get chopped in half?" asked Howard Village Administrator Paul Evert. "All the other taxpayers pick up the slack."

How much slack? Howard has assessed the Menards and its 18.7-acre site at 2300 Woodman Drive at \$12.45 million. Eau Claire-based Menard Inc. (<https://www.menards.com/main/home.html>) acknowledges it spent \$10.6 million to buy the land and build the store, but claims in legal papers that the site is worth only \$5.8 million.

In papers filed in November, the retailer demands that Howard provide a refund, with interest, and pay its legal fees. "The 2016 assessment of the property was excessive," wrote Christopher Strohbehn, a Milwaukee attorney. "The tax imposed on the property was excessive."

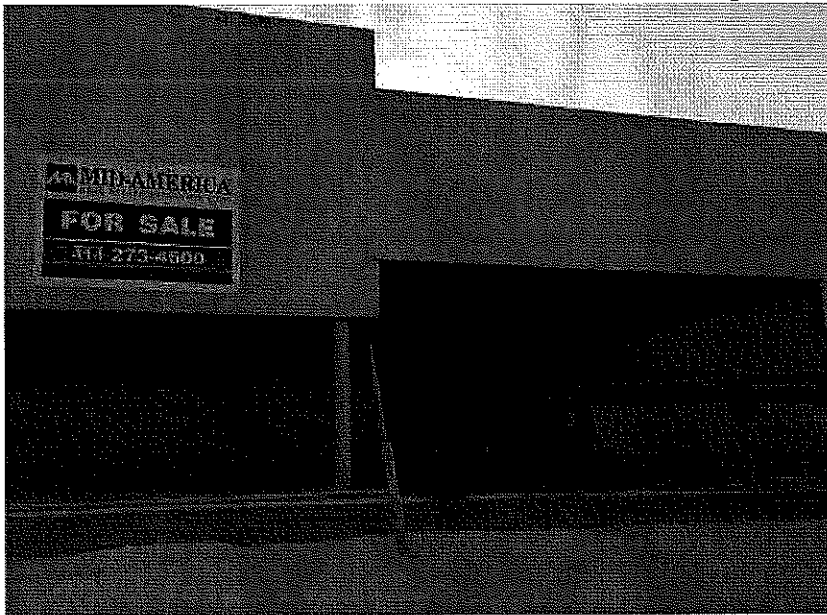
RELATED: [Retailers seek tax cuts with 'dark stores' theory \(/story/money/business/2017/01/14/retailers-seek-tax-cuts-dark-store-theory/96502204/\)](#)

RELATED: [WI cities worry over 'dark stores' lawsuits \(/story/money/2016/12/26/cities-brood-over-dark-store-lawsuits/95650564/\)](#)

RELATED: [Big box stores ring up property tax discounts \(/story/news/politics/2015/04/11/big-box-stores-reduced-property-assessments/25649545/\)](#)

RELATED: [Relief in sight for 'Dark Store' tax appeals \(/story/news/local/2016/07/11/relief-sight-dark-store-tax-appeals/86870964/\)](#)

The challenge is one of more than a dozen the company has filed in Wisconsin in the past year.



The vacant Cub Foods grocery in the East Town shopping center is among the stores cited by Menards as a building with comparable value to its Howard store in a challenge of the village's tax assessment of the store on Woodman Drive. (Photo: Jeff Bollier/USA TODAY NETWORK-Wisconsin)

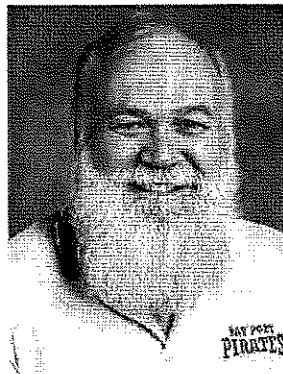
The company listed several stores as comparable to its Howard facility, including a Cub Foods in Green Bay, a Sears in Sheboygan and a former Home Depot in Beaver Dam. The three have something in common. None has operated as a store for years.

With Menards paying \$209,000 in taxes this year, the communities that tax it would have to refund about \$111,000 if the store wins the case.

'A real problem'

Communities including Ashwaubenon and Howard and the League of Wisconsin Municipalities are asking the state to step in, said Patrick Moynihan Jr., the Ashwaubenon village clerk who also represents the village on the county board. A committee of county lawmakers earlier this month recommended adding their voices to that crowd, saying the state needs to adopt legislation that blocks businesses from using unused buildings to reduce taxes on working stores.

"This is causing real impacts," said Howard Supervisor Richard Schadewald (<http://www.co.brown.wi.us/departments/?department=2c960fb409b5&i=e32767f67813>). "And the only remedy we have to help local taxpayers is with the state legislature. This is a real problem."



(Photo: Photo courtesy of Richard Schadewald)

How real? Menards' annual tax payment of Howard-Suamico School district (<http://www.hssd.k12.wi.us/>) taxes would fall from roughly \$103,000 to about \$48,000. For 2016, the district would have to refund the difference. In future years, the district would face a difficult choice: increase taxes next year to make up the difference, or cut its budget by a corresponding amount.

"That would be a rather large refund," said Matt Spets (<https://www.linkedin.com/in/matthew-spets-b477a762/>), the district's assistant superintendent for business services. "You're talking about one less teacher."

A reduction in the store's assessment would also mean more than \$50,000 in lost revenue for others that tax the store: Brown County, the village of Howard, Northeast Wisconsin Technical College (<https://www.nwtc.edu/>) and the state of Wisconsin.

Municipalities also fear that successful challenges will prompt other businesses to take similar steps.

"If one type of business or one type of property gets more favorable treatment, then everybody is going to be looking at that," Oshkosh City Attorney Lynn Lorensen said (</story/money/2016/12/26/cities-brood-over-dark-store-lawsuits/95650564/>). "They'll say, 'If Walgreens had success, maybe we can use a similar argument.'"

Retailers' side

Retail chains see the issue differently. They insist it's unfair for communities to assess based on what's inside their stories, rather than valuing only the
<http://www.postcrescent.com/story/news/2017/02/13/dark-store-cases-could-cost-millions-taxes/977312...> 2/13/2017

Additionally, modern retail store designs are fairly unique, making it sometimes difficult for a company to sell a store it no longer wants or needs. Potential resale value, of course, plays a role in how a property can be assessed (</story/news/2017/01/20/kewaunee-uke-plant-entitled-12m-tax-refunds/96730004/>). Or, like a former Walmart near Milwaukee, stores have deed restrictions that prevent them from being operated by other retailers.

The attorneys listed in Menards' Howard case didn't respond to requests for comment last week. But in a January interview with the Journal Sentinel (</story/money/business/2017/01/14/retailers-see-tax-cuts-dark-store-theory/96502204/>), one made his position clear: The value of the store is its property, not what's inside the building.

Minnesota attorney Robert A. Hill (<http://roberthilllaw.com/>)'s website calls his firm "relentless advocates for property taxpayers." He said municipalities "just want to pretend that what's black is white, and that real estate somehow should not be the only thing that gets assessed."

Municipal officials, though, says that approach defies logic.

"A brand-new Walmart is worth the same as a boarded-up Kmart?" said Deena Bosworth, director of governmental affairs for the Michigan Association of Counties (</story/news/politics/2015/04/11/big-box-stores-reduced-property-assessments/25649545/>). "I don't think so."

'Devastating effect'

In Michigan and Indiana, where dark-store lawsuits were an issue before they took hold in Wisconsin, impacts are being felt.

Michigan's local governments have issued more than \$100 million in tax refunds since 2010, experts say. Indiana's spent an estimated \$120 million. In 2015, Indiana attempted to resolve dark-store cases by establishing new assessment standards for big-box stores, but repealed them in 2016, apparently amid concerns about constitutional issues.

Before dark-store challenges became common, the average Michigan 'big box' store was assessed at \$55 per foot, said Jack Van Coevering (</story/money/business/2017/01/14/retailers-see-tax-cuts-dark-store-theory/96502204/>), an attorney who was chief judge of the Michigan Tax Tribunal but now represents municipalities in dark-store cases. Now, assessments of Menards and Target are less than half that.

"There's wave after wave after wave," he said. "Whether we've reached the end of the storm, I don't know."

An Escanaba-area library cut hours because its host community had to cut its budget. When an Upper Peninsula Lowe's brought a dark-store case last year, about 130 people protested outside the business. Northern Michigan University produced a 25-minute documentary video, "Boxed In." (<http://boxedin.news/what-is-boxed-in-all-about/>) on dark-store impacts.

"This has a devastating effect," the Michigan Municipal League says (<http://www.mml.org/advocacy/dark-stores/>). "Municipalities don't just lose future revenue, but have to pay back the retailers for 'over-taxing' them in prior years."

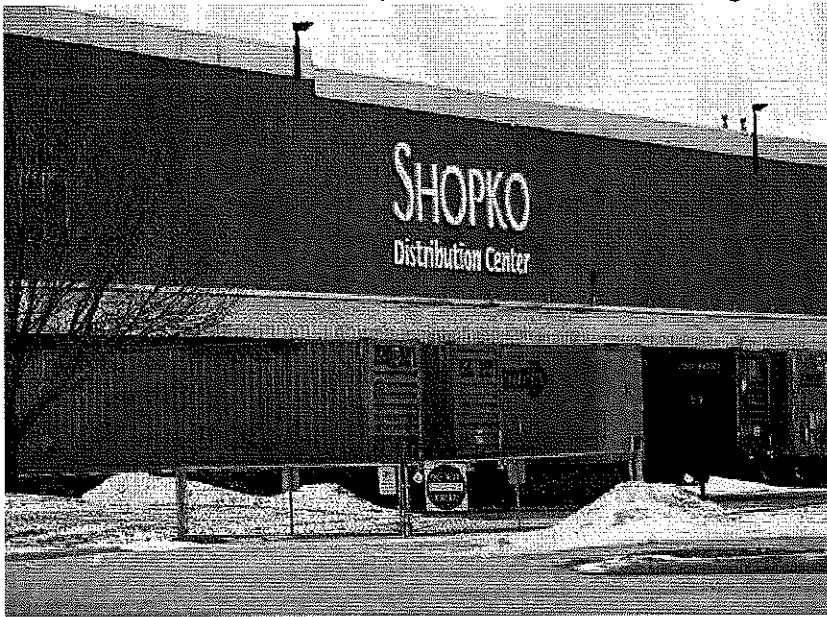
Communities also incur costs to fight the challenges. A Port Huron Menards sought a \$2 million cut to its 2014 and 2015 assessments (</story/news/local/2016/07/11/relief-sight-dark-store-tax-appeals/86870964/>). A court reduced the store's valuation by \$300,000.

The case cost the city more than \$33,000 in legal expenses — more than it receives in taxes from the store.

dschneid@greenbaypressgazette.com and follow him on Twitter @PGDougSchneider. USA TODAY NETWORK-Wisconsin reporters Rick Romell and Nate Beck contributed to this story.

De Pere suit

Big-box retailers aren't just suing because of assessments on their stores.



Shopko Stores Operating Co. is challenging De Pere's property tax assessment of its distribution center at 171 Lawrence Drive. (Photo: Jim Matthews/USA TODAY NETWORK-WI)

ShopKo Stores Operating Co. LLC has filed legal papers saying the city of De Pere over-assessed its west side distribution center by more than \$9 million. The retailer seeks an assessment reduction from \$20.1 million to \$10.9 million on its facility at 1717 Lawrence Drive, plus a refund of taxes it says it overpaid, and legal costs.

Shopko is represented by Christopher Strohbehn of Milwaukee, who also represents Menards in its assessment lawsuit involving its Howard retail store. De Pere is represented by a Madison firm.

Other battlegrounds

Brown County isn't the only place where some major retailers are seeking significant reductions in their assessments. Highlights:

- **Alabama:** Lowe's, a \$59 billion business, has filed lawsuits seeking assessment reductions on 27 stores. Officials said a loss could cost the state \$1.5 million annually.
- **Fond du Lac:** Menards argues that the value of its store is no more than \$5.2 million; the city's assessment is \$9.2 million. A similar lawsuit from Target says Fond du Lac should reduce its taxes by a third.
- **New York:** The city of Auburn agreed this month to settle a dispute by reducing the assessment of a Walmart by about \$1 million, which will give the store a tax refund of about \$11,000.
- **Racine:** Target has filed multiple challenges to its assessment. It cites a vacant Kmart and a former Home Depot as comparable properties.
- **San Antonio, Texas:** Lowe's sued Bexar County, claiming its 11 area stores were worth the same as empty buildings — about \$30 per square foot, rather than the \$80 to \$85 per square foot at which they were assessed. A court recently ruled against the retailer.

SOURCES: USA TODAY NETWORK-Wisconsin, *al.com*, *The Journal Times*, *San Antonio Express-News*, *Auburn Citizen*.

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