

## Are “Dark Store” Property Tax Challenges on the Rise?

“Dark store” appeals are made by businesses—often retailers—seeking to lower their property tax assessments and overall tax bill. Our survey suggests they may be rising in Wisconsin. Local officials reported 79 such tax appeals in 2017, up from 63 challenges in 2016 and 66 in 2015. A related type of appeal by businesses with long-term leases is on the decline, however.

In Wisconsin, any increase in property taxes can kindle controversy. So can the question of who should pay these higher taxes. “Dark store” appeals raise both concerns for businesses and local officials, so they naturally spark debate. New findings suggest the long simmering dispute may continue or even heat up.

### What are dark store appeals?

These challenges are made by retailers or other businesses seeking to lower their property tax assessments and overall bill. They are called “dark store” appeals because those making them argue their assessments should take into account the values of similar properties that are now vacant, or dark.

The appeals can be controversial because they can affect how the local property tax “pie” is divided. When the local assessor calculates a given property’s value, this tax assessment also determines what share of the overall tax levy will be paid by the parcel’s owner. If a retailer or other property owner successfully lowers its assessment on appeal, and the total tax levy and assessed values of other properties in the city remain the same, then the store’s share of the property tax levy will decline while homeowners and other businesses will pay a larger share.

Wisconsin assessors commonly use three methods to determine the market value of a given property such as a store:

- The sales approach, which looks at what buyers have paid for other comparable properties;
- The cost approach, which focuses on how much it cost to build a property minus any depreciation; and
- The income approach, which examines how much income a property generates. For instance, an apartment building with high rents would be assessed more under this approach than a building with lower rents.

Proponents of dark store challenges often argue for basing the real estate values of active stores and businesses in whole or in part on the sale of similar properties that were vacant, rather than on either the cost or income approach. Advocates say the sales of empty stores represent a good way to figure out what a store would fetch, and argue assessments based on construction costs may include expensive features other buyers may not want.

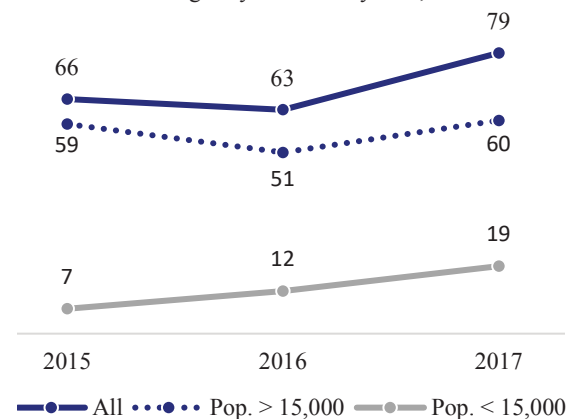
Dark store critics respond it is unreasonable for a retailer to spend millions of dollars on a relatively new building and then claim it is worth much less. They say a successful store with a good location is not comparable to an unsuccessful vacant one, and contend some retailers restrict the sale of their properties to competitors, potentially lowering the property’s market value.

### Are dark store challenges rising?

A survey by the Wisconsin Policy Forum for the League of Wisconsin Municipalities suggests this type of tax appeal is growing. The findings emerged from a spring questionnaire sent to the state’s nearly 600 cities and villages. Officials from 215 communities—or nearly 36%—answered the survey in *The 2018 State of Wisconsin’s Cities and Villages*, which included questions on tax appeals as well as local finances, services, and workforce.

Local officials said that in 2017 they had 79 tax appeals they classified under the dark store rubric, up from 63 challenges in 2016 and 66 in 2015. (See Figure 1.) Most of the appeals involved cities and villages with more than 15,000 residents, though smaller communities accounted for much of the growth in these cases in 2017.

**Fig. 1 “Dark Store” Appeals on the Rise**  
# of Challenges by Community Size, 2015-17



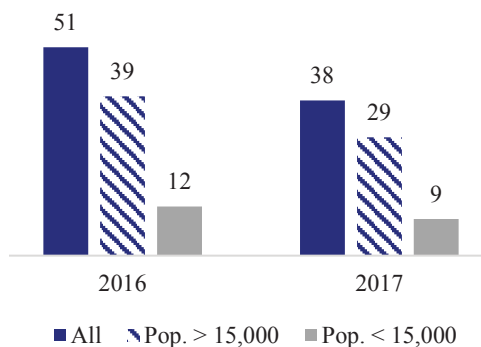
## Other appeals may be falling

In addition to dark store challenges, another type of tax appeal involves businesses with long-term leases that require the tenant to pay extra costs beyond just rent, such as property taxes, insurance, and repairs. Over the past decade, pharmacies with this type of lease have brought successful cases to appellate courts by arguing assessors should not be allowed to use the “above market rent” of a business to assign a higher value to the property.

The survey suggests this type of challenge may be becoming less frequent, with local leaders reporting appeals in this category dropped to 38 this year from 51 last year. (See Figure 2.) This may reflect the fact some of these

**Fig. 2: Long-Term Lease Challenges Fall**

Tax Appeals by Community Size, 2016-2017



businesses have won their appeals, leading assessors to change practices. Local leaders have said they believe the trend might still grow, however, if this type of lease is adopted by more businesses.

City and village officials said they refunded a total of \$3.1 million in taxes in 2017 from all appeals by owners of commercial and manufacturing property, up from \$2.2 million in 2016 and \$2.5 million in 2015. The survey also turned up a statewide rise in all appeals of commercial property tax assessments, from 189 in 2016 to 333 in 2017. This increase, however, was driven by challenges in the city of Madison that were unrelated to dark store appeals.

Lawmakers this spring considered but did not pass a bill dealing with dark store challenges. With these appeals on the rise, it is likely the fight over the issue will continue in the next legislative session. □

## Wisconsin Policy Forum

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## Policy notes

■ *Join us Sept. 11 for our Viewpoint Luncheon in Madison at the Concourse Hotel. We'll review our report "A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform" on criminal record expungement.*

*The presentation will be followed by a panel discussion featuring State Public Defender Kelli Thompson; Dane County District Attorney*

*Ismael Ozanne; Shanyeill McCloud of Clean Slate Milwaukee; and Elise Rommes of the Wisconsin State Council of the Society of Human Resource Management and moderated by WPF President Rob Henken. Register at [wispolicyforum.org/events](http://wispolicyforum.org/events).*

■ *The dispute over dark store challenges to property tax assessments will end up on the ballots of some Wisconsin voters this fall.*

*Counties including Outagamie, Washington, and Kenosha have placed advisory referendum questions on the Nov. 6 general election ballots. Opponents of this form of assessment challenge have promoted referenda in dozens of communities in recent years as they seek legislation to curtail the appeals.*

*To help voters make informed choices, this issue of Focus gives the arguments for and against this practice.*