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Wisconsin Governor Promises to Close 'Dark Store' Tax Loophole.

Walmart, Target, and other big-box retailers around the U.S. are deploying "dark store theory" to slash property taxes. Now the state at the center of this fiscal threat may take action.

In November, CityLab investigated the practice of "dark store theory," the novel legal argument big-box retail chains like Walmart, Target, and Menards use to slash their property taxes by assessing active stores as if they were vacant. The practice has resulted in the loss of millions of dollars in taxable value to communities in Wisconsin, Michigan, Minnesota, Indiana, and beyond.

Now Wisconsin Governor Tony Evers is pledging to shut it down: His proposed state budget will close the "dark store" legal loophole.

CityLab's story was followed by additional reports about the issue by the New York Times, Slate, and others. These articles, and the practice itself, have generated vigorous debate about what big-box properties that proliferate across the urbanized U.S. should be worth.

Lawyers representing retailers say that big-box stores are effectively worthless at the point of sale, which should be reflected in the taxes they pay—even while the stores are still active. And many companies file repeat tax assessment appeals until municipalities capitulate. Tax assessors say that this argument defies common sense, and that the lost revenue will eventually force a heavier tax burden onto other homeowners.

State tax boards weighing the two sides have largely been split about who's right. And municipal finance experts have warned that fiscal havoc lies ahead for local governments across the U.S. if the issue isn't resolved by state tax laws.

The commitment to close the loophole by Evers, Wisconsin's newly elected Democratic leader, also follows statehouse lobbying by the Wisconsin League of Municipalities and the Wisconsin Counties Association, two groups representing the interests of local units that levy property taxes. In 2018, state lawmakers considered a bill that would have blocked the practice, but the measure failed to reach a vote.

"Having large big box stores have the property tax levied at a level as if the building is empty is absolutely a non-starter with me," he told reporters this week. "It should be fair for all and in order to do that we have to close that loophole."

Still, this element of Evers' budget proposal is likely to find a challenger in Wisconsin Manufacturers & Commerce, the trade group representing retailers that have benefited from this tax appeal tactic. And Indiana, the only state that has enacted legislation to combat dark store theory, has continued to see challenges by commercial property tax payers using the same type of argument.

To Robert Hill, a Minnesota-based attorney who is perhaps the nation's top lawyer propagating dark

store theory on behalf of big-box stores, the issue is a matter of rebalancing the property tax burden that currently weighs too heavily on successful businesses. Corporations must defend themselves from being “discriminated against” by assessors, Hill told CityLab last year.

“We eat what we kill,” he said. “We kill only because they need to be killed.”

Evers’ budget proposal is expected later this month.

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