IPTI Xtracts

Property Tax and Assessment News from Around the World

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International Property Tax Institute

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## The Difference Between Tax Abatements and Tax Exemptions

Tax abatements and tax exemptions can be granted to city developers and home buyers to promote development and occupancy rates. While there are similarities, they are two very different programs.

What is a tax abatement?

A tax abatement is a reduction in property taxes for a specific period of time. It is most commonly applied to condominium or co-op units, but can apply to any type of real estate. It involves the application of a credit to the total taxes owed.

Though situations may vary, generally property taxes in a tax-abated building remain very low for the first few years of the abatement. As the years go on, taxes will begin to inch up each year until standard taxes are owed on the property.

Abatements can also be structured so that a developer only pays a specific percentage of taxes due, such as 50%, for a specific period of time, say 20 years. When the abatement period is over, taxes go back to regular levels.

A third option is a property tax abatement that freezes property taxes. In this case taxes are frozen to the levels they are at when the abatement is signed. This allows a development company to build on and make improvements to the property without increases to its tax bill.

Not all tax abatements are issued to attract developers. In some up-and-coming neighborhoods, local governments may offer tax abatements to buyers who are willing to purchase homes in low-demand areas. This type of tax abatement may be offered to anyone who buys in the designated area or only to low- or middle-income buyers. In many situations, this type of abatement requires that the home remain owner-occupied, but if the property is sold then the abatement can be transferred from seller to buyer.

In most cases, property tax abatements are granted by city or county governments, which is where most property taxes are paid. Property tax abatements that are issued to developers can be issued on a case-by-case basis to a particular company or as entitlement subsidies like enterprise zones.

What is a tax exemption?

A tax exemption reduces the taxable value of a condo or co-op's assessment so as to reduce the total property taxes owed.

The exemption is credited toward the real estate taxes due because the owner qualifies for one or more personal tax exemptions, and is tied to the person or entity paying the taxes – not to the property. That said, the same owner may qualify for a tax exemption on one property and not on another.

The difference between a tax abatement and a tax assessment

The difference is fairly simple: an exemption reduces the taxable value of a property, which in turn lowers the taxes owed. An abatement reduces the taxes directly, for a specific period of time.

## What Are Some of the Property Tax Exemptions in Los Angeles?

Property taxes for Los Angeles County homeowners, like all those in California, are reassessed at 1% per year of the fair market value, according to H. Michael Soroy of the Los Angeles-based Law Offices of H. Michael Soroy. Property tax increases are capped at 2% per year, and properties are not reassessed unless significant changes have occurred.

There are several exemptions available to help lower a homeowner's property tax liability, he said.


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For starters, there’s the Homeowners’ Exemption, Mr. Soroy said. When a property changes hands, it will be reassessed for tax purposes. If the home is the owner’s primary residence, it’s eligible for the exemption, which reduces the assessment by up to $7,000.

Also, "parents and grandparents may transfer their residence to children and grandchildren (and vice versa) without reassessment," he said. "The exemption is unlimited for the [principal] residence and up to $1 million for other real estate," which could include vacation homes and other properties.

There are other ownership modifications that "are not deemed to be ownership changes for the purpose of reassessments," Mr. Soroy added. These include changes between spouses or registered domestic partners, transfers from or to certain living trusts, and, in some cases, from or to individuals and legal entities such as LLCs and corporations.

For those over the age of 55 or those who are disabled, it is possible to transfer the "real property tax base" from a current residence in one California county to a new residence in Los Angeles County, Mr. Soroy said. That means a homeowner whose assessment is low could buy a new residence of equal or lesser value, but still pay property taxes based on the historic assessment of the previous home.

There are exemptions for veterans, as well, he said. "Veterans may be eligible for a reduction in the assessed value of their residence," Mr. Soroy explained. "Certain disabled veterans may be fully exempt from paying property tax for their residence."

Improvements to the property will normally trigger a reassessment, but an exemption was created for those adding an "active solar energy system," according to a spokesman from California-based Wilson Tax Law Group.

"If you install a solar energy system on your rooftop, [it] will not cause your property taxes to increase because of new construction," he said.

The exclusion was originally set to expire in 2015-16 but has been extended through the 2023-24 fiscal year.

In addition, the initial purchaser of a building with an active solar energy system may qualify for an exclusion, according to L.A. County’s Office of the Assessor.

So, if a seller installed a solar energy system, the next buyer may be eligible for the exclusion of "the portion of the value attributable to an active solar energy system." That would mean a lower assessed value and therefore less taxes.

Disaster relief is also available for those whose homes have been damaged or lost to fire or other calamity, according to the assessor’s office. If the losses must exceed $10,000 of current market value, owners can apply for a reassessment based on the damage to the home.

## A renewed plea for relief from property-tax exemptions

Municipal leaders in the region are again pushing state lawmakers to address the impact of property-tax exemptions for nonprofit agencies.

At a meeting last week, the Southeastern Connecticut Council of Governments adopted a 2019 legislative agenda that includes eight items, five of which were recommended by a council task force that analyzed tax exemptions and the effect they’re having on municipalities, particularly cash-strapped cities like New London.

On Monday, the council presented the agenda to members of southeastern Connecticut's legislative delegation.

The task force, formed earlier this year after Norwich Assessor Donna Ralston denied tax exemptions for dozens of nonprofits, prompting a review, calls on the General Assembly to establish a moratorium on new property tax exemptions and to amend state law to prohibit the granting of any new property tax exemptions without “concurrence” from municipalities directly affected by the new exemptions.

Another recommendation seeks a review of existing tax exemptions, an analysis of their cost to municipalities in terms of foregone revenue and a review of whether they’re justified.


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“Exemptions that are not justified shall be phased out/eliminated,” the recommendation states.

The task force also calls for the state to encourage nonprofits to rent rather than purchase property by enhancing reimbursements for rental fees or “by providing some other practical motivation for state nonprofit contractors and landlords.” It recommends that municipalities be allowed to tax newly acquired exempt properties for which no PILOT (state payment in lieu of taxes on hospitals, colleges and other state-owned property) is being received.

SCCOG recommends that the state be required to fully fund the PILOT program, which officials concede is highly unlikely.

“Sen. (Cathy) Osten reminded us what the reality is,” James Butler, SCCOG’s executive director, said Tuesday, referring to the Sprague Democrat who co-chairs the legislature’s Appropriations Committee. “The state cannot fully fund PILOT. … We’re being funded at a small percentage.”

Butler said municipalities around the country increasingly are grappling with the loss of revenue due to property-tax exemptions.

“It’s gotten to the point where it’s a crisis,” he said.

New London Mayor Michael Passero, who chairs SCCOG’s executive committee and served on the task force, declined to go that far Tuesday but acknowledged that his city has had to cannibalize funding for services to offset the revenue it annually loses to property-tax exemptions for nonprofit agencies and institutions.

He pointed to the example of the Light House, a nonprofit provider of services for the disabled, which purchased property on the city’s Shaw Street this year, removing the property from the city's tax rolls.

“They really provide a critical service for people throughout the area, but the way the state has set it up, New London takes all the hit,” Passero said. “We’re losing more and more (taxable) property.”

The task force’s report shows that New London’s has 7,258 properties, including 389, or 5.4 percent, that are exempt from taxes. In terms of area, 40 percent of the city’s land is exempt. New London’s top 10 exempt properties include two parcels owned by Connecticut College; Lawrence + Memorial Hospital; the Coast Guard Academy; the city-owned Ocean Beach Park; three city-owned schools; a magnet school owned by LEARN, the regional educational service; and State Pier.

Based on 2017 data, New London had to do without nearly $37 million in foregone tax revenue, according to the report. In Norwich, where 20.9 percent of the land is tax exempt, the foregone tax revenue totaled $22.4 million.

If all the exempt properties paid full taxes, New London’s tax rate could have been reduced from 43.17 to 24.34 mills and Norwich’s from 40.67 to 29.85 mills, the report says.

“It’s why the cities are failing,” Passero said of the burden associated with property-tax exemptions. “It’s the General Assembly’s fault. I can see the public policy behind subsidizing them (nonprofit agencies and institutions) but not behind putting it all on the taxpayers in New London, Hartford (and other cities).

“Two years ago, we went up there (to the legislature) to ask for a moratorium on exemptions and we got nowhere," he said. "The silence was deafening.”

In its legislative agenda, SCCOG also expresses continued support for the Mashantucket Pequot and Mohegan tribes’ plan to develop a third casino in the state as well as the legalization of sports wagering “and other advancements in the gaming industry that keeps Connecticut competitive with neighboring states.”

SCCOG’s agenda also “opposes any legislation that would hinder the Connecticut Municipal Electrical Energy Cooperative in performing its mission …”

The agenda was adopted less than a week after five CMEEC officials were indicted on federal corruption charges, prompting state Sen. Heather Somers, R-Groton, to call for “a complete overhaul” or elimination of the agency.

## Amazon picks New York and Northern Virginia for its new headquarters after year-long search

After running a year-long competition that drew interest from hundreds of cities and a number of states, Amazon has chosen New York City and Northern Virginia to split duty as its second headquarters.

On Tuesday, Amazon announced it has chosen New York's Long Island City and Virginia's Arlington for HQ2. Both locations will receive a $2.5 billion investment from Amazon, and each will have more than 25,000 workers over time. Hiring begins next year.

The reason behind the surprise decision to divide the facility was due to the talent pool. Amazon realized it could recruit more skilled workers and offer employees choice if it offered two locations.
The development projects promise to bring the cities a giant infusion of high-paying jobs and tax revenue, but are almost certain to draw fire from critics concerned about their impact on infrastructure and property values.

Amazon said it in a blog post it will receive incentives of about $1.5 billion based on job creation in Long Island City, and incentives of $573 million for Arlington. Jobs in both cities will have an average annual salary of $150,000, the company said.

In Long Island City and Arlington, Amazon will have four million square feet of office space with the possibility of expanding to 8 million square feet. Amazon estimates an incremental tax revenue of over $10 billion in the next 20 years as a result of its investment and job creation in Long Island City and New York, and $3.2 billion over the same time period in Arlington and Virginia.

Jay Carney, SVP of Worldwide Corporate Affairs at Amazon, said the process of cities offering incentives to companies looking to enter new regions is standard across the US.

"If you look at some of the packages that were put forward by other cities, the incentives ... in New York and the DC area, Northern Virginia are actually lower than were offered elsewhere," he told CNN's Julia Chatterley. "The talent was really the driving factor for us."

Carney said it was important for Amazon to be in spots that would be attractive to potential new employees.

The Arlington headquarters will be located in what Amazon is calling "National Landing," which is less than 3 miles from downtown Washington DC. The newly-branded neighborhood includes parts of Pentagon City and Crystal City in Arlington and Potomac Yard in Alexandria.

Meanwhile, the New York City office will be in the fast-growing Queens neighborhood of Long Island City, just across the East River and minutes from downtown Manhattan on the subway.
The company also announced a new hub in Nashville to oversee customer fulfillment, transportation and supply chain activities. It will employ 5,000 people. Nashville was on Amazon's short list for HQ2.

The second headquarters search began in September 2017 when Seattle-based Amazon announced it would start accepting proposals for what quickly became known as HQ2.

During the process, Amazon narrowed 238 bids to 20 finalists, including Chicago, Denver, Indianapolis, and Miami. Executives traveled across the United States -- and to one Canadian city -- to tour sites to find the company's next home.

Amazon's criteria for HQ2 included proximity to a major airport, ability to attract technical talent and a suburban or urban area with over 1 million people.

In a surprise twist, Amazon ultimately decided to choose two winners instead of one. It originally said HQ2 would create 50,000 high-paying jobs and would be a full equal to its Seattle headquarters.

One of the main concerns about the process was how a city would navigate an influx of 50,000 new workers. Splitting the project in half could ease the impact, and help Amazon avoid some of the blame for higher housing prices or more traffic in those regions. The move also allows Amazon to recruit top talent from two major Metropolitan areas.


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The search ignited a frenzy among cities looking to boost their economies. Some cities responded with elaborate gestures to try to woo Amazon. Tucson, Arizona, famously sent Amazon CEO Jeff Bezos a giant cactus, and Birmingham, Alabama, installed massive Amazon delivery boxes around the city. Kansas City's mayor gave five-star reviews to 1,000 random items on Amazon's website, and Stonecrest, Georgia offered to rename some of its land the city of Amazon.

Amazon has said employees who work in Seattle will have a chance to relocate. It will also hire teams and executives for the new locations.

The company estimates that its investments in Seattle from 2010 to 2016 added $38 billion to the city's economy. These investments include buildings, parks and infrastructure, such as corporate offices and Prime Now delivery sites.

But Amazon's search for HQ2 was never just about finding a new home.

Throughout the process, Amazon skillfully obtained free data from cities across North America, including proprietary information about real estate sites under development, details about their talent pool, local labor cost and what incentives cities and states were willing to pony up to bring the company to town.

"Amazon was not going through this exercise to pick a single HQ2," said Richard Florida, a leading urbanist and professor at the University of Toronto. "It was part of a broader effort -- a corporate relocation strategy -- to crowd source a wide variety of data."

And the company itself has said it would use the information from the bids when considering where to open new facilities, such as warehouses and smaller corporate offices. Several cities that didn't make the final 20 have already seen an investment from Amazon, including fulfillment centers in Spokane, Washington, and Ottawa, as well as a new office in Vancouver with jobs in fields like machine learning and cloud computing.

## Amazon HQ2: tech giant splits new home across New York City and Virginia

*Firm to add hub in Nashville but critics attack lack of transparency in process and tax breaks for world's richest man*

Amazon has announced it will open new offices in New York City and Arlington, Virginia, capping a year-long contest to host the tech giant's new headquarters that drew bids from hundreds of US cities.

The company plans to spend $5bn on its two new headquarters, with 25,000 employees each in Long Island City in Queens, New York, and in Arlington, outside Washington DC. Amazon also plans to open a new center handling transportation and order fulfillment in Nashville, which it says will employ about 5,000 workers.

Amazon had received more than 200 proposals from cities across North America vying to host the new headquarters, which will be in addition to its base in Seattle.

"We are excited to build new headquarters in New York City and northern Virginia," said Amazon's CEO, Jeff Bezos. "These two locations will allow us to attract world-class talent that will help us to continue inventing for customers for years to come."

Amazon's search, launched more than a year ago, brought in 238 bids from cities across North America, from heavy favorites like the eventual winners to smaller spots like Frisco in Texas and Danbury in Connecticut.

The competition brought it not just lucrative subsidy offers, but a rich trove of data about demographic patterns, infrastructure plans and workforce details.

Amazon narrowed the competition to 20 finalists in June, with cities such as Atlanta, Boston, Dallas, Los Angeles and Newark left in the running.

New York state has agreed to kick in $1.525bn in subsidies, the company disclosed in its announcement. That includes a tax credit worth up to $1.2bn, and a cash grant of $325m from the Empire State Development agency.

The company is planning to take up 4m sq ft of office space in Long Island City, a Queens neighborhood across the river from Manhattan.

In addition, Amazon is applying for tax benefits through two city programs that give breaks to any company that relocates to the boroughs outside Manhattan, or builds new industrial and commercial space.

Those programs could bring Amazon another $1.3bn in business tax credits and property tax breaks.

The company agreed to donate space on its new campus for a tech startup incubator and a new public school.

At the Virginia site, about three miles from downtown Washington DC, Amazon is set to receive $573m in subsidies. That includes cash grants of $550m from the state of Virginia and $23m from Arlington, based on its promises to create high-paying jobs.

They will open another 4m sq ft of office space at a location they are calling National Landing, a newly coined name that includes parts of Crystal City and Pentagon City.

The company says it will spend $195m on improvements to the Crystal City and the Potomac Yards metro stations, a pedestrian bridge connecting National Landing and Reagan national airport, and other infrastructure projects.

The Seattle-based tech giant is set to start hiring at both locations next year. It says average salaries will top $150,000 at both sites.

"This is the largest economic development initiative that has ever been done by the city or the state," New York's governor, Andrew Cuomo, said at a press conference on Tuesday. "Either you are creating jobs, or you are losing jobs. Either you are part of the economy of tomorrow, or you're part of the economy of yesterday. This is a competition."

But the company has faced a backlash for conducting an extensive headquarters search, and soliciting generous subsidy offers from cities around the country, only to settle on two of the highest-profile metropolitan areas on the east coast.

"The whole exercise was just to create more pressure for more tax breaks," said Greg LeRoy of Good Jobs First.

Local politicians are vowing to fight the project, with a protest planned for Wednesday in Queens.

"Amazon is a billion-dollar company. The idea that it will receive hundreds of millions of dollars in tax breaks at a time when our subway is crumbling and our communities need more investment, not less, is extremely concerning to residents here," said Queens congresswoman-elect Alexandria Ocasio-Cortez.

New York and Virginia also both pledged to help the company get approval to build helipads at its new campuses.

Cuomo and New York City's mayor, Bill de Blasio, pushed back against criticism of the subsidies, saying they expected to make back nine times as much in tax revenue. "We make money doing this," Cuomo said.

The project is set to be approved by a state agency, circumventing the vote by city lawmakers that would typically be required, Cuomo confirmed.

Nashville is getting a consolation prize in the headquarter contest, and the state and city are giving Amazon $102m in cash subsidies and tax breaks.

The new Amazon center there is planned for downtown Nashville, along the Cumberland river.

## What the Amazon tax breaks really mean

I think the easiest way to understand Amazon's HQ2 and the specific question of cities handing out tax subsidies is to abstract away from the particular details of Amazon's package.

A normal way for governments to raise revenue in the United States is with property taxes. If you build a gigantic new office tower somewhere, then you are going to owe a lot of property taxes to the local government.

So if you're smart and have good lobbyists, you'll say, "Hey, we were thinking of building a huge office tower in your city, but your taxes are so high. Maybe instead of paying the 8 percent property tax rate that's on the books, we could pay 2 percent instead for the first 20 years."

The city may well agree to this proposal because 2 percent of a giant office tower is still a lot more than 8 percent of a parking lot. What's more, bringing your office tower to town is going to generate a lot of sales tax and income tax revenue while probably helping to bolster property values across the board. So while reporters are going to write, accurately, that your company got millions of dollars in tax breaks in order to build your office tower, the city still ends up with more tax revenue than it would have had if you hadn't come to town.

So you can't really say things like, "Instead of handing out millions in subsidies to Jeff Bezos, we should invest in the subway." The subway doesn't need a tax break; the subway needs actual money. And the tax breaks don't represent money in hand that could be spent.

Which doesn't mean that the tax breaks are good!

*Dividing the surplus*

One basic issue here is that competition between cities has regressive impacts. Opening a big office tower generates a lot of economic surplus. It's good for the company, but it's also good for the host city. In these Amazon-style competitions, the company pits cities against each other to see which one will cede the largest possible share of the surplus back to the company. Those subsidies aren't an actual cost to the city that wins the competition, but they do represent a lost opportunity to share the economic surplus more broadly.

I don't have an elegant solution to the problem of municipal competition, except to say — as I have said before — that the federal government ought to start playing a larger role in these situations to try to prevent cities from racing to the bottom.

What we want is a healthy form of competition where companies try to locate in cities that provide a high quality of public services relative to their tax revenue, so that cities have an incentive to try to govern themselves well. The current dynamic not only allocates too much surplus to rich companies, it undermines that healthy form of competition. Amazon doesn't need to care whether New York City has cost-effective government or not; it just opts out of paying the costs.

But the very fact that mayors are inclined to hand out these subsidies should teach them a lesson about tax policy.

*The virtue of land value taxes*

The specific logic of Amazon subsidies is, when you think about it, exactly the general logic of Henry George's old idea that we should tax land value rather than property value.

Under Georgeism, in essence, everyone gets a "tax break" for investing in new physical structures because there is no taxation of investment in new physical structures. It's only passive ownership of the land that gets taxed.

This obviously wouldn't solve all the problems associated with cities' competitive bidding for business favors. But the fact that cities are inclined to make these kinds of bids and aren't necessarily wrong to do so ought to prompt some deeper thinking on their part about the extent to which their tax codes are or are not aligned with their actual policy goals.

## Walmart pushes for a tax reduction in Muskego using the 'dark store' strategy

Add Muskego to the list of places where Walmart has again gone shopping for a better deal on property taxes, thanks a loophole in the state's tax code known as the "dark store" challenge.


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Already facing a lawsuit from 2017, Muskego is now mulling its response to a second challenge from the nation's largest brick-and-mortar retailer, this time in an effort to adjust the store's 2018 tax assessment at W159 S6530 Moorland Road by reducing its property valuation.

According to the 2017 filing by Wal-Mart Real Estate Business Trust, the real estate arm of the giant retailer, the Muskego Walmart store was overvalued at $11,338,500 against what it claims should be a $7.8 million value.

While the 2018 case is relatively new — Warchol said the city was formally served notice of the lawsuit in the past week — the summons and complaint filed Sept. 20 goes even further. It says the property should be assessed at $5.7 million.

In both instances, Walmart is asking for a refund on any property taxes already for those two years to reflect the lower property values.

In most cities, property taxes for homeowners and others go up to make up for the loss of revenue after the dark-store change happens, which is one reason it has grown so controversial.

It's an uncommon concern in Muskego, but one which has been repeated by Walmart — as well as Target, Kohl's, Menards, The Home Depot and Blain's Farm & Fleet, among others — throughout the state since a legal strategy took hold several years ago.

A quick database search of Wisconsin Circuit Court Access online shows more than a dozen new cases opened in 2018 by Walmart alone in Wisconsin.

*Dark store strategy*

Part of information presented at a Committee of the Whole, and then in closed session, on Nov. 13 was intended to bring the Muskego Common Council up to date on the dark-store strategy used by big-box retailers to lower their property taxes, said City Attorney Jeff Warchol.

Using a strategy that has proved successful in Wisconsin courts, big-box businesses have argued that such properties should be assessed based only the value of the building itself, as if it were a vacant or "dark" property, excluding the business operations going on inside. Meanwhile, assessors have been basing the value of the property on the value of the store with a going business inside.

Area officials say it is a known tax loophole, one which the League of Wisconsin Municipalities is lobbying legislatures to close.

The result of successful court cases, as well as the settlements communities have been forced to make knowing the futility of fighting the challenges, is that the tax reduction realized by big-box stores in effect shifts the tax burden onto other property taxpayers, especially residents.

In Waukesha alone over the past three years, the settlements and court decisions involving Target, Menards, Walmart and Blain's Farm & Fleet have cost the city $800,000, according to the city assessor's office, Waukesha Mayor Shawn Reilly noted at a July 17 common council meeting.

Like Muskego, the village of Mukwonago faced a 2017 challenge by Walmart, as well. The retailer claimed the store at 250 E. Wolf Run was overvalued at $14,637,600 against a $9,250,000 dark-store value.

Warchol, who has served as Muskego's city attorney for the past three years, doesn't recall this specific dark-store strategy being used locally to date — that is, prior to Walmart's action. (He noted that Kohl's challenged its tax assessment several years ago, though not under the same legal approach.)

*Fielding the challenge*

In Muskego's case, the latest challenge is in its early stages, with the city meeting in closed session Nov. 13 to consider the litigation.

Given that the city has been served two actions — one for 2017 and one for 2018 — by Walmart, Warchol said the city is considering processing both cases as one.

"Nothing is reduced to writing," he said. "There is talk of settlement. We're going to find out what they want."

Warchol said the city will consider what step it should take next after conferring with attorneys from Walmart.

## WISCONSIN - America's big box stores sucked up corporate welfare and killed Main Street -- now they're ducking property tax

For a generation, big box stores have swept across America, using predatory pricing and other dirty tricks to kill the independent retail sector; they used their corporate lobbying muscle to tempt cities and towns into handing out massive corporate welfare checks to lure them to town, and now, with the help of hustling contingency lawyers, they are promulgating a property-tax scam called "the dark store theory" that is cutting their taxes in half or more, with further reductions every year, and no end in sight.

The "dark store theory" holds that property taxes on thriving, super-profitable big box stores should not be based on how much the property sold for, plus the capital investment, minus depreciation -- instead, these stores should be valued based on the selling price of nearby failed big-box stores that have been sold at knock-down prices.

Big box stores used their generous municipal subsidies to overbuild across American towns, creating a glut that resulted in widespread closures after the financial crisis. Because big box stores are so terribly built -- shoddy construction, weird layouts, and not even enough freight docks to use as a warehouse -- the shuttered stores sell for a tiny fraction of their book value.

But even though the big boxes are shuttering their stores like crazy, the remaining stores are still profitable -- thanks to the overinvestment in big box stores during the rampup phase, all the local retail that might have competed with the remaining stores has collapsed. That leaves locals with no choice but to drive longer distances to the remaining stores to shop, meaning that the predatory mega-retailers now get to spend less to do the same business.

Entrepreneurial corporate lawyer/consultants like Detroit's Michael Shapiro (who is credited with inventing "dark store theory") and Minnesota's Robert Hill have made a fortune for themselves and for big box stores by filing costly court challenges to the stores' tax assessments, arguing that their property taxes should be based on the price of the abandoned, unsuccessful nearby stores, not on the standard formula of sale price plus improvements minus depreciation.

These lawyers seek reductions of fifty percent or more on property tax bills, and return year after year to drive those bills even lower. The small towns they hit -- who often can't afford to litigate against multinational, private-equity-backed retail giants -- roll over.

Towns that have granted these tax concessions are going broke. Ste St Marie, MI has slashed city pensions; Escanaba, MI has cut its library hours; and so on. Meanwhile, town residents and small businesses are facing rising tax bills as their cities seek to close the gap left by the sweetheart treatment the big boxes are getting.

Wisconsinites in 24 towns voted to end "dark store theory" tax treatments in ballot initiatives in this month's elections. But that's only a few towns in one states, and meanwhile the epidemic rages on.

Still, it’s going to be tough: Don Millis, a prominent tax attorney who represents retailers and a lobbyist for the Wisconsin Manufacturers and Commerce, the top advocacy group for big business in these parts, sits on the legislative committee assigned to review the issue.

Other states have proposed legal fixes, too, but in Indiana, the one state that managed to pass anti-dark store theory legislation in 2015, lobbying pressure led to its weakening the year after it was passed. The state tax board has continued to sympathize with retailers, who keep launching appeals.

If Wisconsin managed to change its laws, Hill told me, lawyers like him would just redouble their efforts. “That’s when we’ll grab the pitchforks and get the Constitution involved,” he said.



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## WISCONSIN - How the "dark stores" loophole helps big-box retailers evade millions in property taxes

Wisconsin voters just sent Governor-elect Tony Evers a clear message: End the practice that allows thriving Walmart supercenters to be taxed like shuttered stores.

Over 800,000 Wisconsin voters on Tuesday sent a message to Democratic Governor-elect Tony Evers: Close "dark store" loopholes that allow thriving big-box stores, like Walmart and Target, to be taxed the way vacant and abandoned stores are. The voters passed advisory referendums, or statements of support, in 23 counties, cities, and towns across the state during this midterm election—and though these measures aren't legally binding, they help put the issue officially on the new governor's agenda.

Since 2013, national retailers have successfully sued local governments in Midwest states to lower their property taxes. They claim that assessors shouldn't determine their stores' property value based on what they cost to build, or how much money the stores are taking in. In other words, they shouldn't be taxed like occupied, functioning stores. Instead, say the stores (which also include supermarkets like Meijer, hardware stores like Home Depot, Lowe's, and Menards, and pharmacies like CVS and Walgreens), the tax assessments should be based on what comparable stores sold for elsewhere. And that's where things get tricky. For comparison, they're pointing to so-called "dark stores"—those empty supercenters that blight small-town America.

Wisconsin retailers sought hundreds of millions in "dark store" tax revenue between 2014 and 2017.

The tactic saves those national retailers a lot of money. According to an analysis by USA Today's Wisconsin network, more than 100 suits were filed against the state's local governments between 2014 and 2017. Menards had challenged its tax assessments in 43 such cases in Wisconsin, while Walgreens and Walmart followed with 20 and 12 cases filed, respectively. When the analysis was published, 67 cases were unresolved. The retailers were collectively seeking over $700 million in tax revenue.

Scott Winter is president of the Wisconsin affiliate of the International Association of Assessing Officers, which has lobbied in support of two failed bills to close the loopholes. In response to a rash of litigation in that state and others in the Midwest, the parent organization issued a position paper which suggested that, if the dark store theory is to be believed, "a property is already functionally obsolete as soon as it is constructed."

According to Winter, it's common for stores to restrict, or "encumber," the "bundle" of property rights that come with a deed when they sell or lease a location. Those restrictions—which prevent a supermarket from moving into a property built to be a supermarket, say—contribute to driving down the property value. As a result, dark stores are often worse than derelict. Legally, those properties can no longer be what they were built to be.

The "dark stores" loophole allows retailers like Walmart and Home Depot to evade millions in property taxes—by claiming their supercenters are no more valuable than abandoned stores.

These restrictions, meant to ward off competition, have been criticized for cutting off access to food in small towns. In Bellingham, Washington, the only full-service supermarket has been vacant for over a year, since the parent company, Albertson's, moved the store three miles outside town, and refused to rent the space to anyone selling food. Walmart employs similar deed restrictions: when it sold its 200,000-square-foot Brownsville, Texas location in 2016, the purchaser, a local developer, agreed not to convert it into a grocery store or discount department store. The property is now a shelter for migrant children. The restrictions are an especially galling aspect of dark store lawsuits, as retailers are arguing their active stores should be taxed like ones they intentionally deprived of future value.

"What those [retailers] are suggesting is that we use these dark stores as comparables to their ongoing stores, even though the bundle of rights is different," Winter says. But "to use that as a comparable, without an adjustment, for the value of an ongoing operation, doesn't square with appraisal theory. And that's really the heart of the matter."


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How did this tax dodge strategy become a loophole—and specifically, the two loopholes that voters around the state asked Wisconsin to close?

One loophole stems from a 10-year-old Wisconsin Supreme Court ruling. In 2008, the state ruled in Walgreens vs. City of Madison that the amount the drugstore paid to rent a location didn't reflect its market value. Instead, it said, the property should be valued at the amount the landlord could get if Walgreens moved out. In Wisconsin, nearly 300 pharmacies can take advantage of that ruling. The second loophole is based on the premise that Winter described—the idea that the value of a new store should be the same as a vacant one. That's what happened in 2010, when a judge agreed that a Target store in Novi, Michigan, was worth only half its valuation. As a result, between 2012 and 2016, Bloomberg reported, Michigan counties lost more than $75 million in property taxes.

That theory hasn't been officially endorsed by Wisconsin courts, but it's been embraced by the state's big-box retailers anyway. And in recent years, as the Post-Crescent explains, they've used it as the basis to sue for lower tax assessments. Between 2014 and 2017, the paper found, retailers brought 130 dark store cases in "every corner of the state, spanning the retail-heavy Milwaukee suburbs, the Fox Valley and the Wausau and La Crosse regions." The retailers often prevailed. Of those cases, close to 60 towns, cities, and villages ended up settling out of court, and paying the retailers' tax refunds.

The refunds can hurt local governments' ability to provide public services like education.
Robert Hill, who represented Walmart when it sued Sheboygan County to lower its assessment, says the stores "are selling for a fraction of the assessments…. The assessors are literally ignoring valid market sales because they want to prop up their tax base by having these guys pay more than what they can sell their building for."

Now, though, many Wisconsin voters are saying enough. The League of Wisconsin Municipalities, which has supported two bills to close dark store loopholes, says property taxes are capped, by state law, at a specific level. The association argues that homeowners and small businesses are being forced to carry a larger share as big-box retailers slough off, and that refunds can hurt local governments' ability to provide public services, like education.

The Post-Dispatch looked at the village of Howard, in the suburbs of Green Bay, as an example. There, the hardware store chain Menards claimed, in court filings, that one of its stores had been overvalued by around $4.8 million. The company wanted the Howard-Suamico School District to refund it $55,000 in tax revenue—twice, for each year it was overassessed. Menards didn't get that refund, but going forward, the store will be assessed at the value that it sought: down from $10.6 to $5.8 million.

"In the district, which has about 6,100 students, $55,000 could pay for two or three special education aides, computers and furniture for three classrooms, or the salary and benefits for a teacher early in his or her career," the paper ruefully reported.

So what's next? Nothing, officially. Fewer than one-third of Wisconsin's 72 counties passed measures, after all, and these don't have legal clout. At the same time, statewide efforts have so far been unsuccessful: Two loophole reversal bills died in the state legislature last year. Still, supporters are encouraged by the results. "It's an advisory referendum so it's not going to change the law at all but it certainly, I think, speaks volumes," said Outagamie County Board Chairman Jeff Nooyen, where the referendum passed with about three-quarters of the vote. "That's pretty significant when you've got 50,000 voters telling their elected officials that we want this loophole closed."

## EVANSTON VOTERS CREATE A PROGRESSIVE 'MANSION TAX'

An increase in Evanston's "mansion tax" will tighten the city's squeeze on property owners making their way out the door.

You can move out of Evanston, but some residents will pay more to leave because voters Nov. 6 approved a higher tax on the city's priciest house sales.


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Voters narrowly approved a ballot question asking whether to increase the city's real estate transfer tax, also known as its "mansion tax," on home sales of $1.5 million or greater, according to Crain's Chicago Business.

The tax hike will impose differing transfer tax rates on real estate sales. Taxes on a sale worth between $1.5 million and $5 million will increase 40 percent. Sales that surpass $5 million will spike by 80 percent.

Prior to the referendum, Evanston imposed a flat transfer tax of $5 for every $1,000 of home value. For Evanston homes priced between $1.5 million and $5 million, the tax on home sellers will jump to $7 per $1,000 of home value. That would be $10,500 on the sale of a $1.5 million home, which is $3,000 more than under the previous rate.

Sellers listing their homes at over $5 million will see their mansion tax leap to $9 for every $1,000 of market value. The tax on a $5 million sale will be $45,000, which is $20,000 more.

Revenue from the mansion tax goes to the city's general fund, and is used to fund services including public safety, parks and recreation, and street maintenance.

The tax hike's impact on revenue creation is likely to be minimal, however. As Crain's points out, 17 Evanston homes sold for $1.5 million or more during the past year. The city recorded only two home sales greater than $5 million during that time. The median value of an owner-occupied home is $356,600, according to U.S. Census Bureau data. The tax on selling that median-priced house would be $1,783.

Evanston's mansion tax referendum echoes a policy trend that has also taken hold at the state level, in which political leaders propose raising the tax burden on affluent but small segments of the population as a way to maximize revenue. Led by House Speaker Mike Madigan, the Illinois House of Representatives in May passed a resolution in support of a progressive income tax structure. Fortunately, unlike Evanston's mansion tax referendum, the progressive tax resolution was nonbinding.

While these measures may play well politically, they fail to address the structural factors starving Evanston of tax revenue. Rising pension costs coupled with declining property tax revenue – the primary funding source of those pension costs – have the city looking at a $7.4 million budget deficit for the coming fiscal year. As the Evanston Review reported in October, local leaders are weighing a number of painful cuts, including police and firefighters among 40 layoffs, to fill that hole.

Neighboring Chicago also levies a real estate transfer tax, collecting $5.25 for every $500 on the transfer price for a piece of residential property. Local leaders this year floated an additional mansion tax amounting to 1.2 percent of the value of any home priced over $1 million. Outgoing Mayor Rahm Emanuel rejected the measure. Emanuel has for years, however, authorized a bevy of tax hikes aimed at paying down Chicago's massive pension debt. Nevertheless, the Windy City's pension debt stands at $28 billion, according to financial watchdog Truth in Accounting.

In order for the city to resolve its budget bind, Evanston must first address its spending problems. The city could start by trimming $700,000 in wasteful spending the Illinois Policy Institute identified in an October report.

But more fundamental reforms must be delivered at the state level. When state lawmakers reconvene next session, they should immediately begin the push for an amendment to the state constitution's pension clause. Such an amendment would protect pension benefits that workers already earned while enabling communities such as Evanston to slow the growth of future, not-yet-yearned pension benefits.

Without a constitutional amendment, growing pension costs will continue to haunt Evanston homeowners.

## Illinois ranked 5th for highest property taxes on businesses

SPRINGFIELD, Ill. (WRSP) — Illinois is ranked fifth in the nation for highest property taxes on businesses.


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The nonprofit tax foundation named Illinois fifth in terms of how much businesses pay in property tax.

University of Illinois Springfield distinguished professor Kenneth Kriz said for the last several years Illinois usually within the top five. Property taxes fund public services like public schools and infrastructure.

Kriz said it's a careful balance because the state can't just cut property taxes for businesses.

"If we put them drastically we have to cut public services, which is almost certain to cause businesses do not want to locate here because the number one factor over any number of surveys of business is the quality of labor," Kriz said.

Chris also explains that the value of the businesses in the state can drive up the amount they paid in property taxes.

Illinois residential property taxes are also high coming in a second on the list.

## California Back from the dead: Realtors resurrect defeated ballot measure to expand Prop. 13

On Nov. 6, California voters resoundingly rejected Proposition 5, which would have expanded property tax breaks for senior and disabled homeowners.

The measure garnered less than 41 percent of the vote. It was defeated in 57 out of 58 counties.

Yet, Prop. 5 may not be dead.

The California Association of Realtors plans to resurrect the initiative, launching a new petition drive for the 2020 ballot.

"We are not in any way dissuaded by the vote on Prop. 5," said Alex Creel, CAR chief lobbyist. "We got 41 percent of the vote, and we did not run any campaign."

CAR has filed its intent to gather signatures with the state but has yet to start circulating petitions.

But one new provision added to the 2020 measure — closing a loophole on commercial real estate property taxes — already is rubbing backers of a rival initiative the wrong way.

"I think it's shameful that they would make a second attempt to pass Prop. 5 after voters overwhelmingly rejected it," said Veronica Carrizales, a policy director for Los Angeles-based California Calls, part of the coalition supporting the rival ballot measure.

Realtors, she said, are widening tax breaks for some homeowners "to serve their own interests."

At issue is whether to expand property tax benefits under Prop. 13, the landmark 1978 tax measure that capped property tax hikes for residential and commercial real estate at 2 percent a year.

Currently, homeowners who are 55 or older or severely disabled can keep their original Prop. 13 tax rate when selling their homes and buying a new one. But they can do so only once, and only if buying a home that's the same price or less than their old home. Current rules also limit the benefit to those staying in the same county or moving to one of the 10 counties accepting such transfers.

Under Prop. 5, senior and disabled homeowners would have been able to move anywhere in the state, as often as they like and even buy a more expensive home — all without losing their old Prop. 13 tax rate.

The Realtors' new 2020 initiative keeps those "portability" provisions intact. But it also adds two others:

Eliminating Prop. 13 tax-rate transfers on inherited homes used as rentals or second homes.


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Closing a loophole that allows commercial real estate buyers to avoid higher taxes after a sale. Normally, tax assessments rise to market values after real estate changes hands.

*'Terrible idea'*

But commercial property tax reform already is on the November 2020 ballot.

The rival measure, which qualified for the ballot in October, would eliminate Prop. 13 protections for most commercial properties while preserving it for residential real estate.

Under this "split-roll" initiative, commercial property tax bills would rise steadily, keeping pace with market value gains.

But CAR is part of the effort to derail that measure, split-roll backers say.

"We expected this kind of tactic," said Helen Hutchison, president of the California League of Women Voters, a key backer of the split-roll initiative. "Our opponents will do anything they can to confuse voters in an attempt to block our initiative."

Split-roll backers maintain the new Prop. 5 isn't any better than the old one, even with the two new provisions.

And they argue the Realtor's commercial property provisions are "a useless gesture," saying large corporations will just find new ways to skirt higher property taxes after a sale.

"Prop. 5 was a terrible idea," said Shamus Roller, executive director of the San Francisco-based National Housing Law Project and co-author of the state Voter's Guide argument against Prop. 5. "What they've done with the 2020 initiative is take a terrible idea and put some halfway decent ideas on top of that. It doesn't make the original idea any less bad."

*Housing shortage*

Prop. 5's tax provisions were designed to stimulate a market facing a severe housing shortage, Creel said.

While it would do little to increase homebuilding, it would encourage more homeowners to put their houses on the market, boosting sales by an estimated 43,000 a year, or more than 10 percent of all existing single-family home sales. That, in turn, would create more opportunities for younger families to buy homes.

"While we don't love our houses, we love our (lower) property taxes," Creel said, explaining why many seniors don't move. Portable tax rates would "help older people sell their home, … (and) it helps everyone on that housing ladder move up a rung."

Carrizales questioned CAR's motives, speculating the trade group merely is trying to increase commissions by boosting sales, which have run an average 19 percent below pre-recession levels during the past six years.

"Prop. 5 was about increasing more sales, increasing profits for (members) of the California Realtors association," Carrizales said. "I think the voters saw through that."

Christopher Carlisle, another CAR lobbyist, denied that claim.

"If this is a scheme to generate more commissions, it's not a very good one," Carlisle said. "We have half a million real estate licensees in the state, and we're only generating 43,000 new commissions."

*Tax boosters*

The state's Legislative Analyst Office report on Prop. 5 concluded the measure would cost schools and local governments an estimated $1 billion annually in revenue.

Creel acknowledged CAR — which filed its new initiative with the state three months before the election — is seeking to offset Prop. 5's tax revenue losses by adding provisions that would boost tax collections.

For example, the current law lets children keep their parents' low Prop. 13 tax rate when inheriting their homes — a provision designed to help children stay in their parents' residences. But roughly two-thirds of those homes end up as rentals or vacation



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properties, the legislative analyst reported. Eliminating tax breaks for homes not used by children as their primary residence would generate about $1 billion a year, the legislative analyst estimated.

Officials speculated closing the commercial property reassessment loophole would raise tens of millions to hundreds of millions in new revenue each year.

“We knew we had problems with (Prop. 5) due to the negative legislative analyst report,” Creel said. “Rather than put all our eggs in one basket, we decided to go ahead with another initiative in 2020 that would not have all the negative fiscal impacts.”

In addition to the initiative, CAR also is seeking changes through the state Legislature, which could place a measure on the ballot in March 2020, rather than in November.

Creel said CAR understands it may take more than one attempt to pass tax-rate portability. CAR was part of the fight to pass the 1995 Costa-Hawkins Act limiting rent control. That took 11 years to pass.

“We’re no strangers to the long fight,” Creel said. “We’re just starting.”

## California rejects measure to expand property tax break

California voters have rejected a ballot measure to expand a property tax break for older homeowners who move, sparing schools and local governments a major revenue loss.

With 5 million ballots counted early Wednesday, Proposition 5 was behind 57 percent to 43 percent.

Under current law, seniors and near-seniors can transfer tax assessments if their new homes are worth the same or less than the ones they sell, and they can only do it only once. Current law also limits out-of-county transfers.

Proposition 5, backed by the California Association of Realtors, would have allowed over-55 homeowners to transfer their assessments to any new home — no matter what it costs — anywhere in the state and as many times as they wish.

It was a low-key campaign with high stakes.

"Today's decisive defeat sends a strong message to the California Association of Realtors that voters won't tolerate self-interested initiatives that attack the critical local services that strengthen our communities," Graham Knaus, executive director of the California State Association of Counties, one of the main backers of the No on Prop 5 campaign, said late Tuesday.

The Realtors Association said Wednesday that it would pursue a revised measure on the November 2020 ballot and seek changes through the state Legislature.

"We are disappointed in the election outcome, but we remain committed to helping seniors, disabled homeowners and those impacted by California's natural disasters to not be subject to a punitive property tax increase when moving to a safer, more practical home," said Jared Martin, president of the Realtors Association.

The Legislative Analyst's Office concluded that schools and local governments would each probably lose more than $100 million in property tax revenue a year initially and that, over time, those losses would reach about $1 billion a year for each. About 85,000 homeowners over 55 who move every year without the tax break would pay much less.

Current law requires the state to provide more funding to most schools to cover property tax losses. Not so for local governments.


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Supporters said passage would end a "moving penalty" on older people and encourage more to sell, helping alleviate California's housing shortage. The Legislative Analyst's Office estimated home sales would increase by tens of thousands a year.

The Realtors paid for a consultant's report that contended Proposition 5 would have much less of an effect on state and local governments, resulting in annual losses of $120 million to annual gains of $200 million.

Opponents challenged the assertion that Proposition 5 would spur construction and warned about a hit to public services.

As a result of Proposition 13 passed in 1978, a home is typically taxed at 1.1 percent of the purchase price and increases no more than 2 percent a year. Prices have risen much more, sticking many homeowners with much higher taxes when they move.

Supporters raised $13.2 million as of Oct. 23, mostly from the Realtors, whose benefit from sales commissions. But the campaign only spent about half of what it raised and didn't engage in television advertising or direct mailers.

Opponents raised $2.8 million, largely from the Service Employees International Union and the California Teachers Association.

## CALIFORNIA - "No" on Proposition 5

Taxes can be a valuable tool for a community looking to fix crumbling sidewalks and clean up its streets. But Proposition 5 would defeat the entire purpose of that.

At first glance, this proposition looks like it could be geared at curbing the California housing crisis by keeping property taxes down even if homeowners move to other homes. If Californians are incentivized to leave their homes for more affordable ones, it could leave markets open.

The problem is they would be taking their tax dollars with them.

Rich homeowners who purchased their homes for a fraction of what they currently cost would, under Proposition 5, be able to waltz on over to a new home and still pay the same property tax assessment. Since the new home’s market value isn’t considered, they could move into a new neighborhood where existing homeowners have paid considerably higher taxes to pay for neighborhood upkeep. In the process, though, new homeowners could move into expensive communities for a fraction of the cost, deflecting the burden of property taxation.

The caveat to this is the fact that the proposition is specifically limited to those 55 and older or people with severe disabilities. The intention is that these individuals will buy up more accommodating homes and free up some of the market for new homeowners. But because this only impacts the tax assessments for those who leave and not the tax assessments or market value of the homes they are leaving, the proposition stands to just benefit a limited few and leave California with a couple of empty homes in the process.

Proposition 5 basically grants, for example, elderly millionaires who live in Westwood the ability to move wherever they want in the state and use the same low tax assessment in their new home. This practice would turn California’s housing crisis into a scramble for rich homeowners to buy up property at rates that are far more affordable, leaving in the dust those struggling to afford rent.

That’s the last thing California needs. The board thus strongly endorses a “no” vote on this measure.

## NEW YORK - Fixing a Broken Property Tax System

It’s no secret: the New York City property tax system circa 2018 is badly broken. It’s outdated, unfair and excessively complicated.

Over the past nearly four decades, inequities have sprung up across the city because of the way current tax laws were structured back in 1981.


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As a result, people living in million-dollar brownstones in scorching hot real estate markets have lower effective property tax rates than homeowners elsewhere in Brooklyn who have lower property values. The homeowners I represent in Bay Ridge, Dyker Heights, Bath Beach, and Bensonhurst have certainly not been immune to this dysfunction.

Knocking on doors last summer and speaking with homeowners during my campaign for City Council, the defective property tax system was one of the issues I heard about the most.

So after I got elected, I fought hard and got Mayor de Blasio to finally establish the NYC Advisory Commission on Property Tax Reform that he'd promised way back when.

Now, I've asked this commission to forge quickly towards a fairer, simpler and more transparent system, and to keep in mind inequities between neighborhoods as it moves forward.

Homeowners in my district cannot afford to be paying to subsidize lower property taxes in our city's hottest housing markets. It makes no sense that they should. But that's exactly what they're doing under the current system, and we have a responsibility in government to offer them some relief as soon as possible.

Property tax reform needs to be a fight for homeowners and also for renters. Our city has been hit hard by skyrocketing rents, and landlords passing down exorbitant property taxes to their tenants have only made the problem worse.

We need to make sure that tenants benefit not at homeowners' expense, but along with them. Because, right now, both groups are hurting.

The way I see it, we need to do three things.

First, New York State needs to correct the problems with its current law. Albany needs to start a shift away from the current capped system and towards an alternative that allows property taxes to reflect real property values of the present day better, or, better yet, step aside and grant New York City the authority to solve its own problem.

Second, we need to create a provision that would limit property taxes by tying them to family income, which would protect middle and low-income families living in rapidly booming housing markets from getting socked with skyrocketing taxes.

Third, if and when property taxes decline on rental properties, we need to guarantee that savings are being passed down to tenants and not redirected elsewhere. This would prevent landlords from hoarding the relief rightfully owed to tenants, especially of rent-controlled and stabilized units – of which our area has a very large amount.

All of these steps should serve the simple goal of reducing disparities in effective property tax rates among residential properties. Property taxes as a percent of market value would be similar across the city, with the "circuit breaker" protection for homeowners of lower incomes. Renters too would see savings in a city plagued by an affordable housing crisis.

Make no mistake: The people of Bay Ridge, Dyker Heights, Bath Beach and Bensonhurst are right up there with those hit hardest by our busted property tax system. This reform effort needs to be about bringing fairness, simplicity and sanity to our system. The hardworking people we serve deserve nothing less.

*Councilmember Justin Brannan represents the 43rd Council District and is a Lindsay Fellow at the City University of New York.*

## PENNSYLVANIA: After reassessment, Philadelphia tax appeals hit five-year high

**Months after the city issued new assessments to homeowners that will lead to sizable tax hikes for many, 7,700 property owners have filed appeals of their 2019 market values.**

The number of appeals filed to the city's Board of Revision of Taxes is the largest since 2014, when the city implemented a new system of valuing properties at their actual market value.

An even larger number of homeowners — more than 20,000 — filed informal appeals this year, nearly quadrupling the number of such requests received last year. And more than half of those 20,000 owners had not received the result of the so-called first-level reviews by Oct. 1, the deadline for filing an official appeal to the Board of Revision of Taxes.

The spike in review and appeal filings comes after the city released new market values for all of its 461,000 residential properties, increasing the median assessment of single-family homes by 10.5 percent. The updated values drew criticism from homeowners — many of whom received substantial increases and wondered how they would afford their tax bills — and City Council members, who rejected Mayor Kenney's proposal for a property tax increase. City Council also hired a Massachusetts-based firm to audit the Office of Property Assessment; that work is expected to be complete in the coming weeks.

Unlike other counties in Pennsylvania, reassessments in Philadelphia do not need to be revenue-neutral. The city, therefore, can earn more revenue as property assessments increase. Assuming perfect tax collections, the city and School District would receive an additional $191 million in property levies as a result of the residential reassessment, as well as expiring 10-year tax abatements, new construction, and other factors, according to an Inquirer and Daily News analysis of property records.

The first-level reviews, or informal appeals, had to be submitted by May 25 to the Office of Property Assessment, which could then review its market values before homeowners filed an official appeal to the Board of Revision of Taxes, a separate entity that holds hearings to judge whether market values are fair.

As of Oct. 1, a city spokesperson said that about 9,400 of the 20,500 first-level reviews had been completed, and 2,336 property owners received revised assessments. More than 11,000 others were left in limbo.

Bella Vista homeowner Warren Isom is among them. The market value of Isom's home on Fitzwater Street increased by more than 50 percent, which will result in a tax hike of more than $3,000. His next-door neighbor's home had the same 2018 assessment as Isom's but is now valued at nearly $180,000 less than his, despite being a largely identical property.

Isom said Monday that he believes he has a strong case, but he has still not heard the results of his first-level review. He called the Office of Property Assessment in September and said a friendly staff member advised that he should just file an appeal before Oct. 1.

"I wonder just how prepared the agencies are to deal with this level of what must be considerable backlog," he said. "And with a problem, that's pretty squirrelly."

Backlogs and delays in the assessment appeal process are not new; the board still hasn't completed hearings on 2018 assessments that were filed in 2017. Carla Pagan, executive director of the Board of Revision of Taxes, said hearings are scheduled through December for about 600 remaining properties.

While awaiting appeal results, owners must pay taxes on their property's new value. They can receive an account credit or request a refund if the board decreases the assessment.

The Board of Revision of Taxes, which took weeks to count the total number of appeals it received by the Oct. 1 deadline, released the total count Monday (7,700). It received 6,600 appeals last year for 2018 assessments, when the city issued new values for commercial and industrial properties, Pagan said. In 2017, when owners were informed of new land values, more than 4,000 appeals were filed. In 2014, the first year of the city's Actual Value Initiative, under which properties are to be assessed at 100 percent of market value, there were 23,000 appeals.

For taxpayers still awaiting first-level review results who have not yet filed appeals to the board, there is another window of opportunity to file after the Office of Property Assessment finishes its reviews and notifies the owners. But for Isom, of Bella Vista, there are still more questions than answers.

"When are the reviews supposed to be done, what's the sequence?" he said. "What's my legal position?"

## SOUTH DAKOTA: Sales tax laws catch up to the internet age

The Commerce Clause of the Constitution grants powers to the Congress to regulate, among other things, interstate commerce. We should not allow individual states the power to impose undue burdens on commerce between the various states.


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To this end the Supreme Court has identified two limits on a state's ability to regulate interstate commerce. First, the state may not create regulations that discriminate against interstate commerce. Second, the state may not impose undue burdens on interstate commerce.

In 1992, the Supreme Court used these Commerce Clause limits to hold that a state could not collect sales tax from a seller unless that seller had a physical presence in the state. A physical presence meant either property or employees.

So a seller who simply shipped product into a state from an out-of-state location, and did not maintain either property or workers in the buyer's state, was protected from the need to collect any sales tax on behalf of the buyer's state.

The theory was that the lack of physical links to a state, or nexus in sales tax terms, meant that the state would impose an undue burden on the seller if a sales tax liability were assessed. States tried to compensate for this by imposing "use" or "compensating" taxes on their resident buyer, but those taxes are easily circumvented.

In 1992, NAFTA was signed. John Gotti was sentenced to prison for life. Euro Disney opened in France. Prince Charles and Princess Diana separated. LA erupted in riots following the Rodney King beating. Miley Cyrus was born. And people bought their stuff at physical stores. In fact, the Mall of America, the largest mall in the States, opened outside Minneapolis.

Buying stuff at physical stores and Commerce Clause protections for lack of a physical presence – a perfect marriage. At least in 1992.

In 2018, many people prefer to do their shopping by clicking. My youngest daughter is personally responsible for 46 percent of the internet commerce in the United States. OK, I made that up, but it has to be something like that.

In June, the Supreme Court came into the internet shopping era. It said that the 1992 decision was not right, at least not in 2018. So they rejected the norm of following judicial precedent.

South Dakota enacted a law in March 2016 that required out-of-state retailers to collect sales tax when selling to a South Dakota resident. This law was not limited to retailers with a physical presence in South Dakota.

The law was premised on the theory that even an out-of-state seller benefited from the economy and infrastructure provided by the state. This was the link that justified imposing a sales tax on those sellers.

South Dakota knew it had to avoid imposing an undue burden on interstate commerce. So its law had a few nice things in it. First, it applied only to sellers that had either $100,000 or more of in-state sales or 200 or more separate transactions, both measured in either the current or preceding year. This eliminated the little guy from what might be an impermissible burden.

Second, it said the tax could not be collected for years prior to the enactment of the new law. Third, it had a standardized set of rules to avoid creating administrative burdens for sales to different locations, and the state even provided free software to help administer the tax assessment.

The Supreme Court said the era of e-commerce made the physical presence test "removed from economic reality." It also, the court said, created a judicially imposed tax shelter for businesses that limit their physical presence but sell into a state.

So states may now collect internet sales taxes? Maybe. Some states have laws like South Dakota and are already collecting tax. Others had laws on the books but must revisit the language to ensure the law is like the South Dakota "no undue burden" law. States thinking about such laws should follow the South Dakota road map.

## TEXAS: Property Tax Reform Needed



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Despite the economic success of the Texas Model of relatively fiscally conservative governance, a skyrocketing local property tax burden remains one of the state's most pressing policy challenges.

While Texans have the luxury of not paying a state personal income tax, which should be constitutionally banned, they're currently weighed down by more than 5,100 local taxing jurisdictions that boast the sixth highest property tax rate nationwide. These locally-determined tax rates along with often subjectively appraised property values combine to give the total property tax levy statewide of $56 billion in 2016—contributing to an average property tax burden of more than $8,000 per year for families of four.

Although many Texans live in uncertainty year-to-year on what their property tax bill will be, much of the damage of such ominous tax burdens are not so uncertain: discouraged economic growth, distorted investment decisions, depressed job creation, and ultimately renting property from the government forever.

While the pain is felt statewide, it's particularly felt among housing-rich but income-poor individuals, such as the elderly, who often must move as increasing tax liabilities extend beyond their means. In fact, some Texans who have paid off their mortgage now pay more for their property tax liability than prior mortgage payments, forcing them out of their home. The high property tax burden also keeps some people from ever having the means with which to purchase property.

Both of these issues limit the liberty and economic prosperity of Texans from property taxes at often no fault of their own. This is particularly harmful because people aren't able to ever own their home but rather pay rent to the government forever. And even those who do not have property are burdened as renters can reasonably expect property managers to pass the tax along to them and consumers pay more goods and services as business owners do the same.

The culmination of these increases by local tax jurisdictions contribute to the total property tax levy statewide increasing by 233 percent to $56 billion in property taxes collected in 2016—the single largest tax imposed in the Lone Star State. For comparison, there may be a need for increasing spending and therefore taxes to fund increases in population and inflation. However, in this period, the state's population growth increased by 47 percent and price inflation increased by 53 percent—collectively well below the increase in property taxes.

On an average annual basis, the total property tax levy increased by 6.3 percent during that period; however, population growth increased by 1.9 percent and price inflation increased by 2.2 percent. Again, these growth rates indicate the mounting burden on Texans compared with a potentially reasonable argument for spending and taxing more. With many local tax jurisdictions raising property taxes at rates that are outpacing key measures of Texans' ability to pay, the Texas Legislature has attempted to limit the growth of property taxes but to little avail. The steady increase in the property tax burden despite these unsuccessful attempts signal the real issue: Texas' local governments don't have a revenue problem, they have a spending problem.
By first identifying this spending problem, we can begin to discuss real property tax relief.

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