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Stores' quest for tax refunds

When retailers are able to get property taxes lowered, it can mean less money for cities, counties and school districts.

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While many local officials are focused on how Gov. Tim Pawlenty plans to cut local government aid, others are keeping a close eye on what Thomas Wilhelmy is doing.

As a tax attorney representing Sears, Roebuck & Co., Wilhelmy has been successful in getting property taxes lowered at the retail giant's Mall of America store. In the past four years, he has lowered the store's value by \$2.6 million, or 24 percent.

The store's taxes in 2001 fell by 25 percent, or \$127,821.

But each Wilhelmy win usually means bad news for cities, counties and school districts: Lower valuations mean less property tax money. With local governments bracing for cuts, the work of Wilhelmy and other tax attorneys could have a greater-than-usual impact on local revenues.

Though Wilhelmy declined to be interviewed, the Web site of the Fredrikson & Byron law firm in Minneapolis says Wilhelmy's property tax appeals division has won "reductions in value in excess of several million dollars each year" for department stores and shopping centers.

Challenges such as those Wilhelmy mounts led Hennepin County to refund \$15.3 million in tax payments last year, more than triple the \$5 million refunded in 1999.

Hennepin County records show that 889 tax court petitions were filed last year, the most since 1997.

One year in the early 1990s, during a similar economic downturn, the county refunded more than \$100 million to property owners.

"My anticipation for 2003 is we'll see a larger number than the 889 just because of the economy and the market," said Tom May, the county assessor.

In Dakota County, 114 tax court petitions were filed for 2002, up from 87 the year before. The 2002 petitions led to \$14.8 million in refunds — money that was sent back to taxpayers after they won their tax court case or reached a settlement with the county.

Commercial values have always been more susceptible to economic trends, especially in the case of retail stores where values are calculated using sales figures.

But Sears seems to act regardless of the economy.

"We don't want to pay more than what's fair and appropriate," said Jan Drummond, a Sears spokeswoman. "We have a continual



Tax attorney Thomas Wilhelmy represents retail giant Sears.

review of all our expenses."

Many local officials have come to expect the yearly protests.

"They challenge their evaluation every year," said Richard Toy, the city assessor in Minnetonka, where Sears and J.C. Penney have stores at Ridgedale. "It's always Penneys and Sears that take you to court."

Such stores, "every year they file, they see if they can get something," said James McComb, a retail analyst who has worked for firms seeking lower property valuations. When they succeed, he added, "that tends to reconfirm why they do it every year."

Toy said Sears — unlike other stores such as Marshall Field's — makes it difficult to arrive at accurate assessments because it does not voluntarily share the sales figures needed to help calculate store values.

Sears, he said, discloses those numbers only after filing a tax court petition, and even then the figures are protected from public disclosure.

Wilhelmy, who is seeking a reduction in the assessed value of the Roseville Herberger's store, also represents J.C. Penney and Kmart. Kent Smith, a property appraiser for Ramsey County, calls the attorney a "very bright guy."

Series of challenges

Sears has challenged the assessed value of its store in Eden Prairie Center in eight of the past 11 years, winning a reduction each time.

Hennepin County officials initially put the Eden Prairie store's value at \$7.2 million in 2002, but later agreed to lower the figure to \$6.7 million. As a result, the store's overall property tax bill was lowered by \$20,297.54, or 7.3 percent.

At Brookdale in Brooklyn Center, Sears filed challenges for seven of the past nine years. In five of them, the store was able to lower its value — and its tax bill. For 2003 taxes, the store's value is set at \$7.3 million, down from \$8 million in 1995.

Sears' efforts have produced more dramatic results at the Mall of America.

The retailer filed challenges for its Mall of America store for six of the past eight years, and succeeded in having values reduced each time.

In 2001, the county initially set the store's value at \$11.5 million, but agreed to a settlement that dropped the value to \$8.6 million. For Sears, the adjustment cut the store's annual property taxes by \$109,211, or 25 percent.

While most cities and counties set aside money annually in anticipation of having to pay refunds, a sudden increase in tax challenges can send them scrambling.

"It was over a half million dollars for one year," said Dale Eggenberger, Minnetonka's finance director, recalling the flood of refunds that followed successful property tax appeals in the early 1990s. He said the city had to dip into its fund balance to come up with enough cash.

This year, Minnetonka has budgeted \$25,000 for property tax refunds, a rise from \$21,000 last year and well above the \$8,000 refunded in 2001.

Tricky valuations

Evaluating large retail stores remains complicated, said May, the Hennepin County assessor. Tax court attorneys said that mall anchor stores such as Sears often cost more to build than they are worth and are subsidized by the mall's owners.

A key component in setting home values, an analysis of how much comparable houses sold for, doesn't help much because large stores are rarely sold, May said.

"The thing that strikes me as kind of unusual is the wide swings in value in commercial and industrial properties as opposed to your house, which tends to keep on moving [up]," said Robert Rudy, a Hennepin County assistant attorney. Rudy has headed the county's tax court unit since 1980.

Indeed, Sears' Eden Prairie store had a value of \$6.7 million in 1992, dropped to \$6.2 million the next year and slowly rose back to \$6.7 million in 2002.

In one of the most closely watched cases of the 1990s, Rudy battled the owners of Southdale Center over the value of the Twin Cities' first enclosed shopping mall. The trial took 42 days, with the county using computers to examine the mall's income and expenses over 15 years.

An expert representing Southdale placed the mall's value for 1992 at \$52 million, but an expert for the county countered with \$122 million. Meanwhile, the county's original appraisal — which triggered the tax court petition in the first place — put the value at \$158.9 million.

The court set the mall's 1992 value at \$113 million.

"The mall was greatly overvalued," said McComb, whose company, the McComb Group, prepared trade area studies for Southdale that were used during the trial. "That was a period of time when [local government] assessors weren't particularly skillful in figuring out values. They were doing things sort of off the top of their head."

Mark Maher, a former Hennepin County tax attorney, said county assessors often are overworked, forcing them to perform "a mass assessment" of properties.

But even Sears does not challenge property values across the board. Its store at Maplewood Mall had a value of \$7.7 million in 2002, up from \$5.5 million in 1996, but Sears hasn't challenged the store's value since the 1980s, said Smith, the Ramsey County assessor's official.

"Maybe I don't have the value high enough," Smith joked. "Maybe that's what that means."

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CORRECTION

Published 02/13/03:

This article about tax court petitions incorrectly said Dakota County had \$14.8 million in property tax refunds last year as a result of the petitions. The figure represents the amount the county reduced property values last year as a result of the petitions.