

TAXATION:

STREET RAILWAYS:

Motor busses operated in connection with street railroad or street railway for the transportation of passengers should be assessed by the State Tax Commission and not by a local assessor.

January 10, 1941

State Tax Commission  
Jefferson City, Missouri

Attention: Mr. Clarence Evans, Chairman



Gentlemen:

We are in receipt of your request for an opinion dated November 26, 1940, which is as follows:

"Will you please furnish this department with an official opinion on the following statement of facts:

"The St. Louis Public Service Company is incorporated under the provisions of Article 5, Chapter 90, R. S. No. 1919 and also under the provisions of an Act of the Legislature approved April 12, 1921, (Laws, 1921, page 661), and, is by its Articles of Association authorized to engage in the business of transporting passengers for hire by street railway and motor busses.

"Prior to the reorganization of that company, it operated a number of motor busses and also owned all of the capital stock of a motor coach corporation, known as Peoples Motor Bus Company of St. Louis, the busses of which were separately operated.

"The St. Louis Public Service Company was reorganized in November, 1939, under the provisions of the Reorganization Bankruptcy Federal Statute; the physical property of the Peoples Motor Bus Company of St. Louis was amalgamated with the physical property of the parent company.

"During the time that the Peoples Motor Bus Company was engaged in operating its busses, its busses and other property were assessed by the Assessor of the City of St. Louis. The motor busses of the St. Louis Public Service Company, together with its railroad properties, were assessed by the State Board of Equalization upon the recommendation of this body.

"The question now arises, in view of the fact that the motor bus operations of the St. Louis Public Service Company are authorized by a provision of its Articles of Association under the Manufacturers and Business Companies Act, whether the motor busses and other physical property, ancillary to the bus operation, should be taken cognizance of by this body for assessment purposes or whether the assessment should be made locally?"

From this statement we find that the St. Louis Public Service Company is now authorized under its charter as amended to carry on the business of operating a street railway by the use of both street cars and motor busses, under the Street Railroad Act.

Under Section 10018, R. S. Mo. 1929, street railways are required to make a statement of their properties for taxing purposes to the State Board of Equalization. This section should not be confused with the railroad section, being Section 10012, R. S. Mo. 1929. The street railway section, Section 10018, R. S. Mo. 1929, reads as follows:

"On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief

officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this state, the length of double or sidetracks, the length of such line located upon real estate to which such company may have title as right of way, the length of such line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, owned, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement."

It will be noticed under the above section that the president or other chief officer of every street railroad company in every city of this state whose line is wholly or partially completed and in operation shall furnish a turn-in of the property of the company to the State Auditor, which officer has now been substituted by the State Tax Commission. It also specifically says "electric cars, cable cars or cars propelled by any other device for the transportation of passengers \* \* \*." Under this partial section, motor busses are a device for the transportation of passengers, and a return of their valuation should be made to the State Tax Commission and not to the local assessing authorities.

Under Section 10018, supra, no division has been made as to the turn-in of different properties of the street railway company, but it specifically states and describes all of the property of the street railway or street railroad company.

That all property of a street railway or street railroad company must be turned in to the State Tax Commission was held mandatory in the case of State ex rel. Union Elec. Light & Power Co. v. Baker, 293 S. W. 399, 1. c. 404, where the court said:

"Under the railroad act, as we have heretofore observed, only a part or class of railroad property could be assessed by the state

board of equalization, the remaining class or portion being subject to local assessment. By the street car act, all property of the street car companies was required to be returned to the state auditor for assessment by the state board of equalization.

It may be conceded that the General Assembly might have provided for the assessment of the property of electric power and light companies, electric transmission lines, etc., by a separate act similar to the street car act, or some other act, but we are not concerned with such possibilities. Our only concern is rightly to determine the validity of this particular act as amended."

Section 10019, R. S. Mo. 1929, provides that the properties of a street railway shall be assessed and apportioned in the same manner in which other railroad property is assessed and apportioned. This section merely describes the method and not the question as to which specific property shall be turned in to the State Tax Commission.

Section 10022, R. S. Mo. 1929, provides for the apportionment of these taxes.

Since Section 10018, supra, specifically states that the chief officer shall turn in to the State Tax Commission all cars propelled by any other device for the transportation of passengers, any property connected with the transportation of passengers is not excluded and should not be taxed locally by the local assessor, and the chief officer is not compelled to make a return of property of that nature to the local assessor.

Also, in the case of *Kansas City Public Service Co. v. Ranson*, 41 S. W. (2d) 169, 1. c. 172, the court said:

"Construing the above Act of March 11, 1897, and passing upon the identical question now before us, this court in banc, speaking through Brace, J. (161 Mo. 198, 199, 200, 61 S. W. 603, 605), said:

"Prior to this enactment (Act of March 11, 1897), the whole property of a street railroad was subject to assessment for taxes by the local authorities. The effect of this act in that respect was simply to change the assessing authority from them to the state board of equalization, and we know of no reason why this might not have been done."

Under the holding in the above case, the court specifically held that Section 10018, supra, which was an enactment of March 11, 1897, simply changed the assessing authority from the local tax assessor of all state railroad property to the State Board of Equalization and the State Tax Commission.

In the case of State ex rel. School Dist. of Kansas City v. Waddill, 52 S. W. (2d) 476, l. c. 477, the court in passing upon the construction of Section 10018, supra, said:

"The assessment and levy of taxes in this state is purely statutory.' State ex rel. Ziegenhein v. Thompson, 149 Mo. 441, 445, 51 S. W. 98. 'The assessors have no jurisdiction to assess property otherwise than as the statute prescribes.' Abbott v. Lindbower, 42 Mo. 162, 168. 'Under our system of taxation \* \* \* there can be no lawful assessment except in the manner prescribed by law.' State ex rel. v. Lesser, 237 Mo. 310, 318, 141 S. W. 888, 889. The answers to the questions propounded in the preceding paragraph must therefore be found in applicable tax statutes. In referring to those statutes, the section numbering employed in the revision of 1929 will be used."

Also, at l. c. 478, the court said:

"Under the provisions of the three sections just referred to and quoted in part, it is too plain to admit of controversy that all the property of a street railroad company, used in or incident to the operation of its street railroad, is to be assessed, apportioned, certified, and the taxes thereon levied, in the manner pro-

vided by law for the assessment and taxation of other railroad property. The provisions for the assessment and taxation of 'other railroad property' are outlined in sections 10012, 10017, 10022, 10024, 10025, 10028, and 10029, R. S. 1929 (Mo. St. Ann. Secs. 10012, 10017, 10022, 10024, 10025, 10028, 10029). According to these, the property of a railroad company is divided into two classes. The first consists of the railroad, side tracks, depots, water tanks, turntables, rolling stock, etc., all of which have been denominated by this court in construing the statutes as the distributable property of a railroad company. The second class consists of all property not included in the first, such as roundhouses, workshops, etc., referred to in section 10025 as 'local property.' This latter class is required to be assessed by local assessing officer, and need not be further considered at this time."

The holding in this case was to the effect that Section 10018, supra, applied to street railroad companies only, while Section 10012 and other sections set out in the above paragraph applied as to the method of assessing, apportioning and certifying the taxes levied and not as to the specific property that should be turned in to the State Tax Commission.

In reading the three above cited cases it is clearly shown that the Street Railway Section 10018 requires the chief officer to make a return of all the property used in or incident to the transportation of passengers to the State Tax Commission, while under the Railroad Act, Section 10012 and Section 10025, R. S. Mo. 1929, there are two different kinds of property. Under the Railroad Act the first consists of the railroad itself and certain described property, which should be taxed by the State Tax Commission, and the second class consists of all other property not included in the first, such as roundhouses, workshops, etc., consisting of local property, which is required under Section 10025, R. S. Mo. 1929, to be assessed by the local assessing officer.

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CONCLUSION

In view of the above authorities, it is the opinion of this department that the chief officer of the St. Louis Public Service Company should, for taxation purposes, make a return of all motor busses and other property incidental to the transportation of passengers and used in connection with the regular and permanent street railway to the State Tax Commission and not the local assessor.

It is further the opinion of this department that Section 10018, R. S. Mo. 1929, when it mentions "propelled by any other device for the transportation of passengers," includes motor busses.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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(Acting) Attorney General