

TAXATION:

INTER-STATE BUS AND TRUCK LINES: The State Board of Equalization does not have jurisdiction to assess Inter-State Bus and Truck Lines because the statute authorizing same has been repealed.

November 5, 1941

Mr. Jesse W. Mitchell, Chairman
State Tax Commission
Jefferson City, Missouri



Dear Mr. Mitchell:

This is in reply to your request made pursuant to our telephone conversation and the letter of the Hon. William L. Igoe to the State Tax Commission dated October 31, 1941, regarding the assessment of taxes on inter-state bus and truck lines. It is my understanding that this matter is now before the State Board of Equalization for assessment of inter-state bus and truck lines and the question has now been raised as to whether or not the State Board has jurisdiction.

The law authorizing the taxing of inter-state bus and truck lines was repealed by the General Assembly in 1941, Laws of Mo. 1941, page 694. It did not have an emergency clause, therefore, did not go into effect until ninety days after the adjournment of the General Assembly. The rule as to the effect of a repeal of a statute is stated in State ex rel. v. Hackman, 272 Mo. 600, 607 as follows:

"I. As a general rule, a statute expressly repealed is thereby abrogated and all proceedings commenced thereunder which have not been consummated are rendered nugatory unless the repealing act is modified by a saving clause. * * * * "

There was no saving clause to the repealed section of 1941.

The inter-state bus and truck lines are to be assessed as railroads. The assessment of property owned by these carriers on June 1, has not yet been completed. Under Article 14, page 74, R. S. Mo. 1939, this assessment, if the property can be assessed, would be before the State Board of Equalization for consideration. The rule as to the effect of the repeal of a statute is also stated in 59 C. J. 1185, Section 722 as follows:

"The general rule against the retrospective construction of statutes does not apply to repealing acts, and, in the absence of a saving clause or other clear expression of intention, the repeal of a statute has the effect, except as to transactions passed and closed, of blotting it out as completely as if it had never existed, and putting an end to all proceedings under it. * * * * *

In Ann. cases, 1912, B, page 1148, l. c. 1151, the case of Merchant's Insurance Company v. Ritchie, 5 Wall 541, 13 U. S. (L. ed.) 540, the following statement is made:

"It is declared that while jurisdiction depends wholly on a statute, suits brought during the existence of the statute fall with its repeal."

In discussing the effect of the repeal of a tax ordinance, the Supreme Court of the United States in the case of Flannigan v. the County of Sierra, 196 U. S. 559, 49 L. ed. 597, 598, said:

"The general rule is that powers derived wholly from a statute are extinguished by its repeal. Sutherland, Stat. Const. para. 165. And it follows that no proceeding can be pursued under the repealed statute, though begun before the repeal, unless such proceedings be authorized under a special clause in the repealing act. 9 Bacon, Abr. 226. This doctrine is oftenest illustrated in the repeal of penal provisions of statutes. It has, however, been applied by the supreme court of the state of California to the repeal of the power of counties to enact ordinances for revenue."

CONCLUSION

From the foregoing rules, we are of the opinion that the State Board of Equalization does not at this time

Mr. Jesse W. Mitchell

-3-

November 5, 1941

have jurisdiction to assess inter-state bus and truck lines because the statute authorizing such assessment has been repealed and the repeal is now in full force and effect.

Respectfully submitted,

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APPROVED:

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