

ROADS & BRIDGES:

Special tax on distributable property of utility companies apportioned to districts wherein property located.

12-11
November 25, 1933.

Hon. Andy W. Wilcox
Chairman
State Tax Commission
Jefferson City, Missouri



Dear Mr. Wilcox:

This is to acknowledge your letter which reads as follows:

"What is the legal method of computing and apportioning or distributing the special road and bridge tax on the distributable property of utility companies to special road districts and common road districts?"

In approaching this subject we feel somewhat as the court did in *Carthage Special Road District of Jasper County v. Ross*, 270 Mo. 76, l. c. 80, to-wit:

"Our road laws remind us of the famous comment of Peter on the epistles of his Beloved Brother Paul: 'In which are some things hard to be understood.' We have been compelled to approach them frequently during the last few years, and do so with the feeling that we are taking up a bundle of plugs, whittled to suit well enough the local uses that suggested them, but far too small for the apertures into which we are called upon to fit them. In the attempt to do so it will be of service to consider the broad foundation upon which they rest. The entire highway system is a unit. The legislative problem is to provide money to construct, improve and maintain

these facilities in such a way as to distribute the burden approximately in proportion to the benefit received by each locality, as well as by each taxpayer. It is evident that this problem is not well solved by a system of little units like our road districts, for it is frequently the case that the most expensive roads must lie over the roughest, most unproductive and least valuable lands."

I.

Section 7868, R. S. No. 1929, provides:

"The county courts of all counties, other than those under township organization, shall, during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered, of suitable and convenient size, road mileage and taxable property considered. Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

The above statute makes it mandatory that the county court divide the county into road districts. Thus, the county is divided into road districts, which for convenience we designate "common road districts."

Section 8024, R. S. No. 1929, provides:

"Territory not exceeding eight miles square, wherein is located any city, town or village containing less than one hundred thousand inhabitants, may be organized as hereinafter set forth into a special road district: Provided, however, the provisions of this section shall not apply to counties under township organization, and shall not apply to all counties in this state now containing or which may hereafter contain 50,000 inhabitants or more and lying adjoining any city of this state containing 300,000 inhabitants or more."

It is thus seen that a county likewise may have "special road districts" as well as "common road districts."

II.

The rate of tax levy in "common road districts" and "special road districts" is found in Sections 7890 and 7891 respectively.

Section 7890, R. S. Mo. 1929, provides:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'"

We quote Section 7891 R. S. Mo. 1929, and divide same to emphasize it:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county:"

This part of said section is unambiguous and entails no difficulty in ascertaining what the Legislature meant. Note underscored words.

And further,

"Provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be:"

It will be noted that this portion of said statute provides, (1) that the tax collected in all road districts (general or special) shall be paid into the county treasury, and (2) "placed to the credit of the special road district, or other road district, from which it arose." The question to be determined is what is meant by "other road district" or does "common road districts" fall within the meaning of the words "other road districts"? Note underscored words.

And further,

"Provided, further, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; etc."

III.

COMMON ROAD DISTRICTS.

Above we have shown that the tax levies for road purposes consist of (1) for general county road purposes (7890) and (2) for special road and bridge tax (7891).

Section 7867 R. S. Mo. 1929, provides:

"All taxes derived from the levy authorized by section 7890, R. S. 1929, are hereby appropriated to the use of the county court in each county where levied, to be used at the discretion of said court for the construction and maintenance of roads and bridges located within the confines of the county highway system here provided for as well as all other roads and bridges in such county."

Thus, as far as the "common road districts" are concerned, moneys derived by section 7890 may be expended within the confines of the county highway system. This is not true of the special tax authorized by section 7891. We call your attention to this proviso therein found:

"Provided, however, that all that part or portion of said tax which shall arise from and be collected, and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be:"

IV.

SPECIAL ROAD DISTRICTS.

Taxes levied in a "special road district," whether under Sections 7890 or 7891, are entitled to be spent within its boundaries. Observe part of Section 8042, R. S. Mo. 1929:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes, or for road and bridge purposes, by

virtue of any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district, or districts, * * * * * shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, * * * * *; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, etc."

Thus "special road districts" are entitled to all moneys collected on taxes for road purposes (Secs. 7890 and 7891) in that district. Such was the holding of the Supreme Court in State ex rel. Special Road District v. Barry County, 302 Mo., 1. c. 291:

"The three sections (10682, 10683 and 10818) as they now stand do not indicate any change of the legislative purpose with respect to the distribution of road and bridge taxes collected upon property within special road districts.

Section 10683 (7891 R. S. Mo. 1929) provides that all that part of the special road and bridge tax which shall be collected and paid upon property lying within any road district shall when paid into the county treasury be placed to the credit of the district from which it arose.

Section 10782 (7890 R. S. Mo. 1929) which directs the levy of a road and bridge tax in connection with the general levy for county purposes makes no provision for its distribution.
But

Section 10818 (8042 R. S. Mo. 1929), voicing the legislative purpose with respect to special road districts, provides that all money collected 'as county taxes for road purposes, or for road and bridge purposes, by virtue of any law,' upon property within a

special road district, shall be set aside to the credit of such special road district. The conclusion that a special road district is entitled upon timely application therefor to receive all moneys collected as taxes for road and bridge purposes upon property within its boundaries is unavoidable. * * * * *

V.

We have hereinbefore concluded that taxes collected in a "special road district" for road and bridge purposes, both special and general, are to be expended in that district. And we have likewise concluded that taxes collected by virtue of Section 7890 in "common road districts" are not confined to be expended in the district whence derived.

Your inquiry concerns the special discretionary tax (Sec. 7891) levied on distributable property of public utilities in both "common" and "special road districts." Utility companies' distributable property is assessed the same as railroad property by the Tax Commission. After its assessment it is apportioned according to the provisions of Section 10022 R. S. No. 1929. Observe this section:

"Said board shall apportion the aggregate value of all property hereinbefore specified belonging to or under the control of each railroad company, to each county, municipal township, city or incorporated town in which such road is located, according to the ratio which the number of miles of such road completed in such county, municipal township, city or incorporated town shall bear to the whole length of such road in this state: Provided, that in any case where a company whose line of road is liable to taxation shall have been or may become consolidated into another corporation, entitled by its charter or otherwise to exemption from county or other taxation, that portion of the road which is liable to taxation, as aforesaid, shall be assessed separately, and the value thereof apportioned to the counties, municipal townships, cities or incorporated towns in which it is located."

In conclusion it is our opinion that distributable property of public utilities located in a "special road district" (in counties not under township organization) should be apportioned to that district. As to "common road districts" (in counties not under township organization) distributable property should be apportioned insofar as the special road and bridge tax is concerned, to the district in which it is located. In other words, property of public utilities located in a road district (special or common), as concerns the special road and bridge tax (Sec. 7891) is apportioned to the district wherein located according to the rule prescribed in Section 10022. As per your oral request we have not included in this opinion the questions inquired about as pertaining to counties under township organization.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG