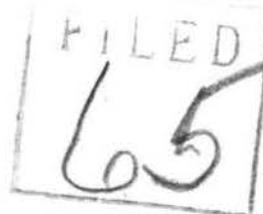


STATE TAX COMMISSION:

Commission to assess busses of electric light and power company, operated in lieu of street cars as distributable property; also franchise of said electric light and power company.

5-7

May 3, 1935.



State Tax Commission of Missouri
Jefferson City
Missouri

Att: Hon. Andrew J. Murphy
Commissioner.

Gentlemen:

This is to acknowledge receipt of your letter which reads as follows:

"The Tax Commission would like a ruling from you on the following question:

"Does the State Tax Commission continue to assess the distributable property of the busses run by the Power Company here in Jefferson City in place of the former Street Railway Company?

"Our understanding is that the Missouri Power and Light Company is operating these busses in lieu of street cars under their old street railway charter or franchise and we are inclined to believe that as long as it continues to operate under this corporation that the property of this company and franchise of the corporation should be re-reported to the Tax Commission for assessment.

"There are a number of other companies in the State that have substituted busses for street railways and are operating in a similar manner.

"Please advise us of your opinion of the law in the matter, and obliged."

We direct you to applicable statutes and authorities.

Section 9854, R. S. Mo. 1929, in subdivision 6, provides:

"(6) The commission shall have the exclusive power of original assessment of railroads, railroad cars, rolling stock, street railroads, bridges, telegraph, telephone, express companies, and other similar public utility corporations, companies and firms now possessed and exercised by the state board of equalization. Said commission shall also have all powers of original assessment of real and personal property now possessed by any assessing officer, subject only to the rights given by the Constitution to the state board of equalization."

We contemplate from the above subdivision of the statute that the State Tax Commission shall have the power of original assessment of railroads, railroad cars, rolling stock, street railroads, bridges, telegraph, telephone, and express companies, and other similar public utility corporations, companies and firms now possessed and exercised by the state board of equalization. In light of this subdivision, we are of the opinion said tax commission has exclusive assessing power and having such power shall assess busses of electric light and power company as distributable property of said company.

Section 10009, R. S. Mo. 1929, provides:

"The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and of all other similar corporations owning operating and managing public utilities, and of all quasi public corporations

possessing special and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purpose of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation."

Section 10066, R. S. Mo. 1929, Laws of Mo. 1933, page 422, provides:

"All bridges over streams dividing this state from any other state owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course or construction, or which shall hereafter be constructed, and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same duties and are given the same powers in assessing, equalizing

and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes of railroad property; and the president or other chief officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, or express company, or the owner of any such toll bridge, is hereby required to render statements of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, or express companies in like manner as the president, or other chief officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property.

It is obvious from the wording of the above two sections of the statutes that the franchise of said company mentioned in your letter or any companies coming within the purview of this section shall be assessed in like manner as the property of any railroad company is now assessed.

Section 10018, R. S. Mo. 1929, provides:

"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, included 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."

Section 10019, R. S. No. 1939, provides:

"The said property returned to the state auditor, as by section 10018 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private persons, and the same shall be assessed, apportioned, certified and the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property.

Section 10020, R. S. No. 1939, provides:

"It being the purpose of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property all laws and parts of laws inconsistent or in conflict therewith are hereby repealed."

In the case of State ex rel. School District v. Maddill, 330 No. 1118, loc. cit. 1123, the Court said in construing the above sections:

"(2) 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 provided by law for the assessment and taxation of other railroad property. *****"

Section 10012, R. S. Mo. 1929, provides:

"On or about the first day of January in each and every year, the president or other chief officer of every railroad company whose road is now or which shall hereafter become so far completed and in operation as to run locomotive engines, with freight or passenger cars thereon, 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 total length of their road so far as completed, including branch or leased roads, the entire length in this state, and the length of double or sidetracks, with depots, water tanks and turntables, the length of such road, double or sidetracks in each county, municipal township, incorporated city, town or village through or in which it is located in this state; the total number of engines and cars of every kind and description, including all palace or sleeping cars, passenger and freight cars, and all other movable property owned, used or leased by them on the first day of June in each year, and the actual cash value thereof."

The Court in State ex rel. School District v. Waddill, supra, in further construction of the statutes above cited, at pages 1125 and 1126, said:

"(4) A reading of the three sections

relating to the assessment and taxation of the property of street railroad companies in connection with those prescribing the method for the assessment and taxation of the property of other railroad companies leaves no doubt but that the property of the former, as described in said Section 10018, is required to be 'assessed, apportioned, certified and the taxes thereon levied' in the manner prescribed for the assessment and taxation of the distributable property of the latter. *****

CONCLUSION.

In light of all these statutes when read together, it is the opinion of this department that such of the properties of the electric light and power companies and particularly of the properties of the company mentioned in your letter as may be used distributably, including franchise of the company mentioned in your letter, or any company, shall be assessed by the state tax commission. It is our opinion that no electric light and power company or any company that is now operating busses in lieu of street cars shall escape assessment of such busses as distributable property.

Yours very truly,

APPROVED:

J. E. TAYLOR
Assistant Attorney-General.

ROY McKITTRICK
Attorney-General.

RCS/JET:afj