

RAILROADS:

ASSESSORS: Distributable property assessed by State Tax Commission; non-distributable property is local property and is assessed by the county assessor

---

January 14, 1937

2-4



Honorable N. Elmer Butler  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Sir:

We have received your inquiry, which is as follows:

"Will you please give me an opinion on the following:

"In this County we have the Empire District Electric Co. that owns several acres of land, and most of it in small rural school districts that are usually short on school revenue, this company being a corporation is asking that the land they own be placed on the Rail Road book and taxed as such. Is it compulsory that this be done by the Assessor?"

For the purpose of assessing taxes on property owned by railroad corporations in this state the Legislature has provided in Article 13, R. S. 1929, the course to be followed. Broadly speaking, there are two classes of railroad property for the purpose of assessment and taxation; the one is what is termed distributable property, the other is all property that is not distributable property, it being sometimes designated as local property. The former class, that is, the distributable property, is subject to assessment at the average rate of all property in the county and is assessable by the State Board of Equalization; the local property is subject to the local rate and is assessed by the assessor but after assessment is subject to the method prescribed in said Article 13 as to the method of collection thereof.

In the case of State ex rel. School District v.

Waddill 330 Mo. 1118, the court was primarily considering the distributable property and the taxation thereof, but in that opinion some light is thrown on the non-distributable property and the assessment thereof. At page 1124 the court says:

"The provisions for the assessment and taxation of 'other railroad property' are outlined in Sections 10012, 10017, 10022, 10024, 10025, 10028 and 10029, Revised Statutes 1929. 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 method prescribed for the assessment and taxation of the distributable property is our immediate concern."

And at page 1125, speaking of the distributable property, the court said:

"On the aggregate value apportioned to a county, the county court of such county shall levy taxes for county purposes at the same rate levied on other property in the county for such purposes; on the apportionments made to municipal townships, cities and towns respectively, it shall levy taxes at the same rates levied on other property within the territorial

boundaries of those subdivisions and agencies for their respective purposes; and on the apportionment made to the county it shall make a further levy of taxes for school purposes - at the average rate as heretofore defined. The school taxes so levied shall be distributed when collected, not on a mileage basis to the school districts in which some part of the railroad is located, but to all the districts in the county, the fund to be apportioned among them according to their enumeration returns."

In the case of State ex rel. v. Hannibal and St. Joseph Railroad Company 110 Mo. 265, l. c. 272, the court said:

"The buildings of a railroad company are subject to taxation like other property, at the local rates fixed in the districts where they are situated."

Section 10025 prescribes the method of assessing local property so owned, and is as follows:

"All property, real, personal or mixed, including lands, machine and workshops, roundhouses, warehouses and other buildings, goods, chattels and office furniture of whatever kind, owned or controlled by any railroad company or corporation in this state not hereinbefore specified, shall be assessed by the proper assessors in the several counties, cities, incorporated towns and villages wherein such property is located, under the general revenue laws of the state and the municipal

laws regulating the assessments of other local property in such counties, cities, incorporated towns and villages, respectively, but the taxes on the property so assessed shall be levied and collected according to the provisions of this article."

Section 10029 provides the method of levying school taxes. It requires the levy on the

"roadbed, rolling stock and movable property of railroads in this state"

be taxed by adding up the total school district rate for taxes and levying the average rate thereon, but as to "all

"all lands, workshops and warehouses, and other buildings and personal property belonging to such railroad company lying in any school district,"

that

"shall be taxed at the same rate as other property in such district, and the school taxes, and taxes for the erection of public buildings and for other purposes, thereon, shall go to the district in which such lands, depots, workshops or buildings are situate."

In the case of State ex rel. v. Hannibal and St. Joseph Railroad Company 135 Mo. 618, the Supreme Court of this State, in Banc, while holding that the local property owned by the railroad and not used in the usual operation of the road should be locally assessed throws considerable light on the question of what property held by the railroad is local property, it holds that a coal yard owned by the railroad and located along the side of the right-of-way and leased out is local property and should be locally assessed, saying, at l. c. 648,

"The local assessor had no power to assess the land of defendant which was used as a yard. The tracks in a yard may properly be termed side tracks, and include the ground necessary for the convenient and safe movement of cars and for loading and unloading them. But defendant had no right to lease out for private purposes a portion of the yard, and for taxing purposes still call it a part of the yard. State ex rel. v. Railroad, 117 Mo. 6.

"The assessment of lot number 10 by the local authorities was therefore proper and is sustained."

Section 10026 requires the railroad to furnish a sworn list to the county clerk of each county in which the railroad has property.

Section 10028 provides the method for levying the taxes, except for the school taxes which are provided for in Section 10029, supra.

Section 10066, Laws of Missouri 1933, pages 422 and 423, reads, in part:

" \* \* \* 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 on railroad property; \* \* \* \*."

The above section provides that the property owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gasoline pipe lines and express companies shall be subject to taxation to the same extent as the property of private persons, and shall be levied and collected in the same manner as now or may hereafter be provided by law for the taxation of railroad property in this state.

In the case of State v. Gehner, 286 S. W. 1. c. 119, the Court copied with approval an opinion given by the Attorney General's office, as follows:

"There is no question about how railroad property should be assessed. Section 13001, R.S. 1919, may be said to be the index finger of authority pointing to the right to assess railroad property, and section 13002 enumerates certain specific property in pointing out the manner of such assessment. This has been called the distributable property of a railroad company, a sworn list of which must be furnished the state auditor within a stated time, to be assessed by the state board of equalization.

"Section 13027, R.S. 1919, provides that all property of the railroad company not particularized by section 13002 shall be assessed locally, and it will be seen that this section also particularizes somewhat the local property by saying what it includes such as land, machine, and workshops, roundhouses, warehouses, and other buildings, goods and chattels and office furniture of whatever kind or character.

These sections seem to be an undertaking to set forth in contradistinction what shall be termed distributable property and what may be termed the non-distributable property of railroads, and the sections named the assessing authority for each. The underlying principle characterizing the distinctions so made would seem to be that the distributable property consists of that which is used directly in the operation of the railroad, and the non-distributable property consists of such property whose use may be only indirectly involved.

"I take it that the particularization employed in sections 13002 and 13027 was not intended by the Legislature to be the conferring of a power with limitations upon that power to tax only what was therein specified, but that the undertaking to particularize was intended to be illustrative of the method or manner of handling the property for taxation purposes; that the property known as the distributable property of the railroad company, from its character and manner of its use, could be better handled for taxation purposes through the state board of equalization and a more nearly just assessment accomplished; and that for this reason the Legislature made it the state board's duty to make the assessment, while it left to the local authorities the right to assess purely local property. \* \* \* \*

"There was no such particularization in providing for the assessment and taxation of bridges, telegraph, telephone, and express companies, electric power and light companies, electric transmission lines and oil pipe lines, as was made by the Legislature in pointing out the method for taxing railroad property, but the section was made to refer back to the railroad statutes for the manner of taxation, and the two groups of statutes, I think, should be read together in order to arrive at the legislative meaning.

"In the light of all these statutes, when read together, it is the opinion of this department that section 13056, R. S. 1919, as amended by the act of 1923, means

that such of the properties named therein as may be used distributably, including franchises, are to be assessed by the state tax commission, and that the remainder, or nondistributable property, is to be left to the local authorities for assessment according to the practice followed by the tax commission prior to the opinion of July 31, 1923."

We do not attempt to classify the particular piece of property in the class of local or in the class of distributable, but from the rules as announced by the courts and as hereinabove set forth, you will exercise your sound judgment as to which class it belongs in.

While you do not ask the question definitely, yet it appears that you desire to know the procedure in levying these taxes.

Section 10030, R. S. Mo., 1929, providing for the making of the railroad tax book, is as follows:

"Within ten days after the county court shall have levied the taxes on railroad property, as prescribed in the two preceding sections, the county clerk of such county shall extend the same on a separate tax book, to be known as the railroad tax book, in which he shall place, first, the total valuation of the roadbed and rolling stock of each railroad company, as equalized and apportioned to such county by the state board of assessment and equalization, with the amount of state, county, municipal township, city, town or village school taxes, and taxes for the erection of public buildings and for other purposes, levied thereon by the county court, stated separately; second, a description of each tract of land, town lot, or other real estate, including the machine and workshops and other buildings in numerical order, and per-

sonal property, as returned by local assessors, and the amount of state, county, municipal, city, town or village school taxes, and taxes for the erection of public buildings, and for other purposes, levied thereon, stating each separately, and crediting school taxes and taxes for the erection of public buildings, and for other purposes, to the proper district or municipality."

If the property is local and non-distributable, then the school taxes are levied at the rate of other property in the school district, and the taxes collected on it go locally to the district in which it is located as though owned by a private individual.

If the property is in the class known as distributable, the course to be followed is as follows, as set forth in the case of *State ex rel. School District v. Waddill*, supra, where the court said, l. c. 1125:

"The State Tax Commission shall assess the aggregate valuation of such property, regardless of its location in this State. The State Board of Equalization shall then equalize such aggregate valuation and apportion it, on a mileage basis to the counties, municipal townships, cities and towns in which the property or some part of it is located, and certify the result of its action to the county courts of the proper counties. On the aggregate value apportioned to a county, the county court of such county shall levy taxes for county purposes at the same rate levied on other property in the county for such purposes; on the apportionments made to municipal townships, cities and towns respectively, it shall levy taxes at the same rates levied on other property within the territorial boundaries of those subdivisions and agencies for their respective purposes, and on the apportionment made to the county it shall make a further levy of taxes for school purposes--at the

January 14, 1937

average rate as heretofore defined. The school taxes so levied shall be distributed when collected, not on a mileage basis to the school districts in which some part of the railroad is located, but to all the districts in the county, the fund to be apportioned among them according to their enumeration returns."

In either event, and regardless of whether the property is local or distributable, the tax is levied and the books extended under the provisions of Section 10030, supra.

#### CONCLUSION

It is our opinion that real estate owned by a railroad but not a part of the right-of-way and not used for side tracks and not such property as is usually used in the immediate operation of a railroad, is non-distributable or local property of the railroad and should be assessed by the local assessor of the county.

If the property you inquire about is owned by an electric power and light company or a transmission line, the same rules apply as to the assessment of its property as apply to railroads.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General.

DW:HR