

16

TAXATION: Railway express building owned by Terminal Railroad
RAILROADS: Association of St. Louis should be assessed as
DEPOTS: distributable property of railroads.

October 13, 1941

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



Dear Mr. Mitchell:

This is in response to an oral request of the State Board of Equalization and the State Tax Commission on the question of "whether or not the Railway Express Building owned by the Terminal Railroad Association of St. Louis, Missouri, should be assessed as distributable property by the State Tax Commission or assessed as local property by the Assessor of the City of St. Louis, Missouri."

The distributable property of railroads is returned for taxation by virtue of the provisions of Section 11243, R. S. Mo. 1939, which provides as follows:

"On or before 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, 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 local property of railroads is assessed by virtue of Section 11256, R. S. Mo. 1939, which is as follows:

"All property, real, personal or mixed, including lands, machine and workshops, round-houses, 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 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."

Neither of these two sections mention particularly express buildings, so it seems that if the building in question is taxable as distributable property, it would be because it comes within the classification of "depots", which are mentioned in said Section 11243, supra.

The evidence which was submitted to the Tax Commission on a hearing of this assessment showed that the Express Building, and land upon which it is situated, belongs to the Terminal Railroad Association and is operated by a lessee that the building is within a short distance of the Union Station and that express is transported between the Union Station and this building through tunnels. The term "depot" has been defined has been defined as follows: (Words and Phrases, Perm. Ed., Vol. 12, pp. 182, 183.)

"'Depot' is generally understood to be the place where a carrier is accustomed to receive merchandise, deposit it, and keep it ready for transportation or delivery. *Maghee v. Camden & A. R. Transp. Co.*, 45 N. Y. 514, 520."

"Railroad being charged with duty, as public carrier, at its 'depot,' of receiving and transporting all freight tendered for transportation, in extending yards to accomplish this result was discharging public duty as regards right of landowner to recover damages

Mr. Jesse Mitchell

(3)

October 13, 1941

therefor, 'depot' meaning a place where carrier is accustomed to receive merchandise, etc. Chesapeake & O. Ry. Co. v. Ricks, 135 S. E. 685, 688 146 Va. 10."

"In a mortgage given by a railroad company of its franchises, real estate, right of way, and depots, the term 'depots' is not necessarily limited to a place provided for the convenience of passengers while waiting the arrival or departure of trains. It applies also to the buildings used for receipt and storage of freight which when received is to be safely kept until forwarded by the cars of the company, or delivered to the owner or consignee. Humphreys v. McKissock, 11. S. Ct. 779, 781, 140 U. S. 304, 35 L. Ed. 473."

"One definition of 'depot' is a 'railroad station.' The term, as used in the statute directing railroads receiving goods for transportation into their warehouses or depots to forward them in the order in which they are received, and making them liable for losses occasioned by a failure to do so, embraces the entire station of the railroad, so that a railroad must forward property received for shipment in the order in which it is received though merely received on a platform used for handling that kind of property. Hill & Morris v. St. Louis Southwestern R. Co. of Texas, Tex., 75 S. W. 874, 876."

"The term 'depot' * * * may mean a house for the storage of freight and the accomodation of passengers, or it may mean a place where railroad trains regularly come to a stop for the convenience of passengers and for the purpose of receiving and discharging freight, or it may include all these things." The maintenance of a freight depot passenger traffic being transferred to the depot of another company in the same town, was a sufficient compliance with a stipulation in a railway bonus note that a depot should be maintained in the town. Fayetteville Wagon, Wood & Lumber Co., v. Kenefick Const. Co., 88 S. W. 1031, 1032, 76 Ark. 615, Quoting and adopting the definition in Arkansas Cent. R. Co. v. Smith, 71 S. W. 947, 71 Ark. 189."

From the definitions which are hereinbefore quoted, it will be seen that the word "depot" as used under the railroad sections was intended to be a place where freight shipped on the railroad may be deposited and which may be used by the passengers.

The Terminal Railroad Association has taken the position that it is necessary for it to provide a building such as the Railway Express Building in order to meet the requirements of the law as a railroad operator. Section 5174, R. S. Mo. 1939, provides in part as follows:

"Every railroad corporation in this state which now is or may hereafter be engaged in the transportation of passengers or property shall give public notice of the regular time of starting and running its cars, and shall furnish sufficient accommodations for the transportation of all such passengers, baggage, mails and express freight as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting, at the junctions of other railroads and at the several stopping places, * * * * * .
Every railroad corporation or company which shall fail, neglect or refuse to comply with any or either one of the provisions of this section from and after the first day of July 1885, shall for each day said corporation or railroad refuses, neglects or fails to comply therewith after said day, forfeit and pay a sum of twenty-five dollars, which may be recovered in the name of the state of Missouri to the use of the school fund of the county wherein said crossing is situate; * * * * * ."

This section indicates that primarily the duty of the railroads such as the Terminal Railroad Association is to keep and maintain facilities sufficient for the handling of the traffic of all kinds which includes express freight. If such a duty necessitates the erection and maintenance of a building, then the railroads must do so.

From an examination of cases from different states in which questions similar to the one here involved were considered, it seems that there has been no set rule whereby the question could be answered. In the case of Milwaukee & St. P. R. Co. v. Milwaukee, 34 Wis. 271, it was held that a freight depot or warehouse was not subject to local taxation under the Wisconsin statute since it was "necessarily used in operating" the

railroad. In that case the court stated:

"It is of no importance that they were to some extent, in charge of the agents of the propeller lines, who stored in them some goods received from propellers and consigned to parties in Milwaukee, and in some cases collected storage charges thereon. Notwithstanding these facts, the structures were used principally for a purpose necessary to the operation of the railroad. We have seen that in such case it is quite immaterial that the structures were also used exceptionally, for other and private purposes."

In the case of Re; Long Dock Co., 75 N. J. L. 325, it was held:

"Where a ferry building used by a railroad company in transferring its passengers between its trains and its ferry was used by persons who were not passengers on its trains but who desired to use the ferry, and where, during an average month, 1,000,500 railroad passengers passed through the ferries, as against 295,000 local passengers, and 72,000 trucks, 42,000 of which were connected with railroad business and 30,000 were of local character, passed over the ferries, it was held that the main and principal use of the property was in connection with the railroad traffic, and hence that it was not locally taxable."

It is difficult to determine what the courts would hold in respect to the question of whether or not this property is taxable by the State Tax Commission. This question might be determined by the fact that the State Board and the City of St. Louis had, up until very recent years, considered it as distributable property.

In view of the provisions of said section, 5174 supra, and the different definitions of the word "depot", and the use to which depots are generally put, we think it ^{would} ^{not} be straining the definition of the word "depot" to include a building such as the Railway Express Building, which is used for handling freight express.

Mr. Jesse Mitchell

-6-

October 13, 1941

CONCLUSION

From the foregoing, it is the opinion of this department that the Railway Express Building, owned by the Terminal Railway Association of St. Louis, Missouri, should be assessed as distributable property by the State Tax Commission.

Respectfully submitted,

TYNE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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