

MICROWAVE STATIONS:  
STATE TAX COMMISSION:

Microwave stations owned or controlled by the American Telephone and Telegraph Company, and the Southwestern Bell Telephone Company, are not distributable property of a public utility to be assessed by the State Tax Commission, but constitute property to be locally assessed under Section 151.100, RSMo 1949.



April 12, 1955

Honorable James M. Robertson, Chairman  
State Tax Commission  
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"This department requests an official opinion from your office determining the status of microwave stations, towers and equipment, with respect to whether they should be assessed as distributable property for purposes of Ad valorem property taxation by the State Tax Commission or as non-distributable property by the local assessors at the situs of the stations and towers.

"In general these units consist of a 20x40-Foot building on one acre of ground. The buildings house central office equipment, switchboards, relays and miscellaneous equipment. The towers are of structural steel extending to a height of about 140-Feet. Placed atop the towers are two receiving and two sending microwave instruments.

"In the event that your department holds the value of any of these properties to be allocable to taxing districts over which the microwaves are beamed, kindly advise as to the method of allocation to be employed by this Commission."

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You also verbally inform us that all of these are public utilities, being the property of the American Telephone and Telegraph and the Southwestern Bell Telephone Company.

We would first note that the State Tax Commission is limited to the assessment of public utilities by Paragraph 1 of Section 138.420, RSMo 1949, which reads:

"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."

Public utilities are made subject to taxation, and the manner of their taxation is provided by Section 153.030, RSMo 1949. Paragraphs 1 and 2 of that section read as follows:

"1. 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 of construction, or which shall hereafter be constructed, and all property, real and tangible personal, owned by telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies 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.

"2. 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, county boards of equalization and the state tax

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commission 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 and state tax commission have or may hereafter be empowered with, in assessing, equalizing, and adjusting the taxes on railroad property; and the president or other authorized officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, pipe line companies, 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, pipe line companies, or express companies in like manner as the president, or other authorized officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property."

Since public utilities are to be taxed in the same manner as railroad companies, we turn to Chapter 151, RSMo 1949, and find that the State Tax Commission assessed property of railroad companies by authority of Section 151.060, RSMo 1949, which reads:

"1. The state tax commission shall assess, adjust and equalize the aggregate valuation of the property of each one of the railroad companies in this state specified in section 151.020.

"2. The commission shall have power to summon witnesses by process issued to any officer authorized to serve subpoenas, and shall have the power of a circuit court to compel the attendance of such witnesses, and to compel them to testify; they shall have the power, upon their knowledge, or such information as they can obtain, to increase or reduce the aggregate valuation of the property of any railroad

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company included in the statements and returns made by the railroad companies and the clerks of the county courts, and shall assess, adjust and equalize any other tangible property belonging to said railroad companies, or tangible property belonging to any railroad companies in this state of the kind specified in section 151,020, upon which no returns have been made, which may be otherwise known to them, as they deem just and right.

"3. In assessing, adjusting and equalizing any railroad property for any year or years the state tax commission may arrive at its finding, conclusion and judgment, upon its knowledge, or such information as may be before it, and shall not be governed in its findings, conclusions and judgment by the testimony which may be adduced, further than to give to it such weight as the commission may think it is entitled to; provided, that when any railroad shall extend beyond the limits of this state and into another state in which a tax is levied and paid on the rolling stock of such road, then the said commission shall assess, equalize and adjust only such proportion of the total value of all the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company."

However, the State Tax Commission may assess only the distributable property of public utilities. In the case of State ex rel. Union Electric Light & Power Co. v. Baker, 316 Mo. 853, 293 S.W. 399, 1 c. 402, the court stated:

"In State ex rel. v. Hannibal & St. J. R. R. Co., 135 Mo. 618, 37 S. W. 532, we referred to the property designated in the first of these two statutes as 'distributable' property, and to that designated in the second as 'local' property. A distinction thus created between these

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two classes of property, for purposes of assessment and based upon the nature of the uses to which they are devoted, was indicated in State ex rel. v. C. R. I. & P. Ry. Co., 162 Mo. 391, loc. cit. 394, 63 S. W. 495, 496, as follows:

"The theory of the system of taxing railroads, as contained in our statute, seems to be that the railroad, with all the necessary appurtenances to its efficient equipment as a means of traffic, is to be taken as a whole and assessed for taxation by the state board of equalization. That does not, however, include property that is used by a railroad corporation as a collateral facility to its business, such as workshops, etc., nor property held for purposes other than those of a carrier, all of which is subject to taxation by the local authorities."

Paragraph 1 of Section 151.020, RSMo 1949, reads:

"1. On or before the first day of May in each and every year, the president or any authorized 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 tax commission a statement, duly subscribed and sworn to by said president or other authorized 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

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property owned, used or leased by them on the first day of January in each year, and the actual cash value thereof."

Section 151.100, RSMo 1949 reads:

"All real property, or tangible personal property, including lands, machine and workshops, roundhouses, warehouses and other buildings, goods, chattels and office furniture of whatever kind, and not herein specified, owned or controlled by any railroad company or corporation in this state, 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 chapter."

In the case of Nashville Railroad Company v. Patterson, 122 S.W. 467, the Supreme Court of Tennessee stated:

"Switches and industrial tracks off the main right of way, but used as a part of the general system, and for the same purposes as switch tracks on the right of way are used, must be assessed as 'distributable' property, but all buildings, coal bins, roundhouses, machine shops, depot buildings, and other structures located on the terminal yards must be assessed as 'localized' property, within Acts 1897, p. 102, c. 5, requiring railroads to file a schedule setting forth the length in miles of its railroad bed, switches, and side tracks, and the value of the whole, providing that the road of any railroad shall include side tracks, switches, etc., and that the roadbed, rolling stock, franchises, choses in action, and personal property, having no actual situs

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shall be known as 'distributable property,' and shall be valued separately, and that the depot buildings and other property, real, personal, and mixed, having an actual situs, shall be known as the 'localized property,' and shall be valued separately. Nashville, C. & St. L. Ry. Co. v. Patterson, 122 S.W. 467, 469. 122 Tenn. 1."

On the basis of the above we believe the microwave stations in question not to be distributable property, but property to be locally assessed.

#### CONCLUSION

It is the opinion of this department that microwave stations owned or controlled by the American Telephone and Telegraph Company, and the Southwestern Bell Telephone Company, are not distributable property of a public utility to be assessed by the State Tax Commission, but constitute property to be locally assessed under Section 151.100, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

HPW:vlw