

TAXATION AND REVENUE: Methods of apportioning distributable
STATE TAX COMMISSION: property of pipeline companies.



June 10, 1955

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

Dear Sir:

Reference is made to your request for an official opinion incorporating the following two questions:

"(1) Should the valuations placed upon second or looping pipe lines be allocated to the same taxing jurisdictions as the original lines, even though they may be laid to pass through other taxing jurisdictions, or should said valuations be apportioned to follow the added lines precisely in conformance with their physical situs?

"(2) Should the valuations placed upon pipe lines be distributed strictly and only on the length of lines or should any valuation adjustment be made by the Commission on account of the varied diameter of the pipe lines?"

Fundamentally, the assessment of pipeline companies and the subsequent apportionment of the distributable property of such companies is to be done in the same manner as railroad companies. In this regard your attention is directed to a portion of Section 153.030, RSMo 1949, reading as follows:

"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 commission are hereby required to perform the same duties and are given the same powers in assessing, equalizing

Honorable James M. Robertson

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." (Emphasis ours)

In construing an amendment to this statute which first brought within its purview electric light companies, the Supreme Court of Missouri, in State ex rel. v. Baker, reported 293 S. W. 399, established the rule that such companies are to be assessed and in other respects treated for taxation in the same manner as railroad companies. Such a result would unquestionably be reached with respect to what are described in the statute as "pipeline companies."

We, therefore, give consideration to Section 151.080, RSMo 1949, relating to the apportionment of the valuation fixed for the distributable property of railroad companies, inasmuch as such statute and the cases decided thereunder must serve to guide the State Tax Commission in the discharge of its duties with respect to pipeline companies. This statute reads as follows, providing for apportionment:

"* * * * * according to the ratio which the number of miles of such road completed in such county, municipal township, city or incorporated town, special road district, public water supply, fire protection and sewer districts or subdivision,

Honorable James M. Robertson

except school districts, in which such road is located, shall bear to the whole length of such road in this state; * * * * *

In discussing the propriety of applying the mileage basis ratio to the aggregate valuation of such property for the purpose of establishing a basis of apportionment, our Supreme Court said this in *State ex rel. Murphy v. Stone*, reported 119 Mo. 668, l. c. 675-7:

"While it is necessary that the board should be advised in detail of the items, quantity, situation and value of the property which go to make up the entire thing, the value of which they are to assess, and for this purpose reports from the companies and from the county clerks are required to be made in detail, the power to assess for purposes of taxation is limited to the valuation of the property as an aggregate and can not be applied to divisible parts, whether by county boundaries or otherwise." Washington County v. Railroad, 58 Mo. 372.

"After the board has ascertained the value of this thing made up of tracks, depots, water tanks, turntables, rolling stock, etc., known in common parlance, and denominated in this statute as a railroad, they are to apportion that value among the several municipalities of the state, in which any part of this whole thing is located by a certain standard in length--a mile--a mile of what? There can be but one answer. A mile of that thing called a railroad, made up of the items mentioned, in section 7718, the value of which as a whole is to be apportioned for such purpose. The number of miles of the railroad in this state, or within any municipal subdivision thereof is not to be measured by the length of its main tracks, or of its main track and side tracks combined, any more than it is to be measured by the combined length of its main tracks, side

Honorable James M. Robertson

tracks, rolling stock and the other property which go to make up the road value to be apportioned. It is the length of the whole thing, a railroad, which these several constituents, in place, go to make up, that is to be measured. Its length between its terminal points in this state, and its length in the several municipal subdivisions of the state is to be ascertained, and its value apportioned to each of said municipalities in the ratio that its length in the municipality bears to its whole length in the state. This is the obvious meaning of the statute, and the construction that has been placed upon it by the board of equalization from the beginning.

"While the precise question in this case has not been passed upon directly by this court, yet what has been ruled and said in cases that have come before it in which this statute was considered, and bearing indirectly upon this question, tend only to support this construction. See Washington County v. Railroad, supra; State ex rel. v. Severance, 55 Mo. 378; In matter of Apportionment of Taxes, 78 Mo. 596; State ex rel v. Railroad, 92 Mo. 137; State ex rel. v. Richardson, 97 Mo. 348; State ex rel. v. Railroad, 117 Mo. 1. The interpretation is so plain, however, that it does not need the support of authority." (Emphasis ours)

It will be observed that, in the above case, the Supreme Court of Missouri has definitely approved the "mileage basis" as the proper one for apportioning the valuation of distributable property of railroads. With such approval has been coupled the directive that such aggregate valuation is to be apportioned to those municipal subdivisions of the state within which any portion of such miles is located. It is our thought that a similar result should be reached by the State Tax Commission in apportioning the aggregate valuations of the distributable property of pipeline companies which, for purposes of taxation, are to be treated in the same manner as railroad

Honorable James M. Robertson

companies, as pointed out supra.

Your second question relates to the power of the State Tax Commission to deviate within various taxing jurisdictions from the average mile valuation resulting from the application of the mileage ratio. We do not believe that such a course is proper to be followed on the part of the Commission.

In State ex rel. v. Railroads, reported 215 Mo. 479, the contention was made on behalf of a taxing jurisdiction that the entire valuation of a bridge should be allocated to such taxing jurisdiction wherein located. It was shown that the bridge was of an approximate value of \$150,000, whereas such taxing jurisdiction under an apportionment under the mileage rule would receive a taxable valuation of not to exceed \$5,000. However, the Court rejected the contention of the taxing jurisdiction, using the following language, l. c. 494-6:

"The final insistence of counsel for respondent is that if the bridge in question is to be assessed under sections 9338 and 9339, Revised Statutes 1899, according to what is known as the 'mileage rule,' and not under section 9387, as contended for by the appellants, then the bridge will be assessed for almost a nominal sum, namely \$5,000; while, if assessed under the last section, the assessed value thereof would be \$150,000, which would result in great injustice to the respondent and practically exempt the bridge from taxation.

"In our judgment that insistence is not sound, for, in the first place, when the bridge is treated as a part of the roadway, then the entire road is assessed according to the mileage rule, and the total value of the bridge is taken into consideration and constitutes one of the elements which go to make up the total assessable value of the road, and when the total value is divided by the number of miles the road is in length, the value

Honorable James M. Robertson

of the bridge is equally distributed along the entire length of the road; and when the railroad company pays its taxes, each county through which it passes receives its proportional part thereof instead of paying the entire taxes assessed against it to the county in which the bridge is located.

"In the second place, if we view the matter from a standpoint of absolute justice and equity, then all non-toll railroad bridges should not be considered at all in fixing the value of railroads for assessment purposes, whatever their size or cost of construction may have been, except in so far as they constitute so many feet or miles of the road to be assessed. Such bridges have no more intrinsic or commercial value than the same number of feet of road constructed by it over a perfectly level prairie country and where the cost of construction was perhaps not more than one-thousandth part as much as was the cost of constructing the bridge. In fact, it is not so valuable as the latter, for several reasons: (1) there is not so much idle money tied up in the latter; (2) the expenses of maintaining the latter are not near so great; (3) the trains can run faster over the latter and much safer than over the former; and (4) the company has no legal right to charge any more for carrying freight and passengers over the bridge than it has for carrying them the same distance over the perfectly level portion of their road. Under the law of this State the cost of constructing and maintaining railroads is not taken into consideration in fixing the tariffs the companies may charge for the transportation of freight and passengers over their lines -- that is, no railroad of the same class can lawfully charge higher tariffs than the legal schedule, even though its cost of construction may have been double the cost of the construction of some other road of

Honorable James M. Robertson

the same class; and that being true, why should the bridge be assessed at a higher value per foot or mile than any other portion of the road? We are unable to see any sound reasons therefor. That, however, is a matter over which we have no control-- it belongs to the lawmaking power of the State and not to the judiciary."

The constitutionality of such procedure had previously been established in the Murphy case cited supra, wherein our Supreme Court said, l. c. 677-679:

"It is undoubtedly true, of this scheme of assessment, as was said in Washington Co. v. Railroad, supra, that 'one county may contain railroad property worth far more than that within another and may yet receive a smaller apportionment for taxation by reason of having a less number of miles of road completed within its limits.' And this feature of it forms the burden of the petitioner's complaint, and the reason urged why the construction contended for by the petitioners, should be put upon the statute, by which the length of the road in the state is to be measured, not by its tracks in place, but by adding the length of the side tracks to the length of the main tracks, in order, as it is said, that the statute may not become obnoxious to the constitutional provision contained in article 10, section 3, requiring that all taxes 'shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.'

"If this scheme for the assessment of distributable railroad property is unconstitutional, it is not seen how the removal, by construction, of any irregularity in the apportionment of the value of side tracks could relieve it of constitutional features, since these constitute but a part of the property

Honorable James M. Robertson

value distributable under its provisions for the purposes of taxation, without regard to its particular situs. The statute as it reads, and as we have construed it, is either constitutional or unconstitutional, and its meaning can not be changed by a forced construction for any purpose.

* * * * *

"The arguments made here in support of the petitioner's construction of this act, may furnish reasons for a different, and, as is contended, a more equitable distribution of the assessed value of railroad property, which, with propriety, might be addressed to the legislature for a change in the law, but they can not change the plain meaning of that law, nor do they furnish substantial ground for questioning its constitutionality.
* * * * * " (Emphasis ours)

CONCLUSION

In the premises, we are of the opinion:

(1) That the State Tax Commission should apportion the aggregate valuation placed upon the distributable property of pipeline companies to those taxing jurisdictions through which any line of such company passes and,

(2) That such valuations should be apportioned in strict adherence to a mileage ratio basis without regard to varying sizes of pipe, type or kind of equipment, or actual valuation found in the taxing jurisdiction through which the lines pass.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

John M. Dalton,
Attorney General