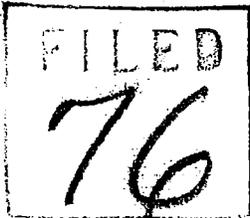


STATE TAX COMMISSION:  
TAXATION:  
ASSESSMENT:

Buildings and structures housing the generating equipment of electric companies which are public utilities, including dam sites and real property used in conjunction therewith, are to be assessed locally and are not to be assessed by the State Tax Commission.



December 9, 1958

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

Dear Mr. Robertson:

Reference is made to your request for an official opinion, which request reads in part as follows:

"Should the generating plants of electric companies which are public utilities, including dam sites and real property used in conjunction therewith, be assessed by the State Tax Commission?"

We understand the question to be whether or not the State Tax Commission should undertake to assess the generating plants, dam sites and real property used in conjunction with an electric company which operates as a public utility or whether such property should be assessed locally. Real property used in conjunction therewith we understand to include, among other things, the submerged land of a hydroelectric generating and distributing company.

Section 138.420, RSMo 1949, provides for the original assessment of certain property of public utility companies by the State Tax Commission in the following language:

"1. 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."

Section 153.030, RSMo 1949, provides that:

" \* \* \* all property, real and tangible personal, owned by telegraph, telephone, electric power and light companies, electric transmission lines, pipe line companies

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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."

Paragraphs 2 and 3 of said section more fully provide 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 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.

"3. On or before the first day of May in the year 1946 and each year thereafter the president or other authorized officer of each such company shall furnish the state tax commission a statement, duly subscribed and sworn to by said president or other authorized officer, showing the full amount of all real and tangible personal property owned by each such company on January first of the year in which the report is due."

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The manner of levying and collecting taxes on railroad property is contained in Chapter 151, V.A.M.S.

What property of electric power and light companies is subject to assessment by the State Tax Commission and what property of said companies is assessable by the local assessors must be determined from the law relating to the assessment of railroad property, in view of the fact as previously noted that the taxes levied and collected upon such property shall be in the manner as provided by law for the taxation of railroad property (Section 153.030, supra.)

Section 151.010 provides that all real property, tangible personal property and intangible personal property owned, hired or leased by any railroad company or corporation in this state shall be subject to taxation. Section 151.020, V.A.M.S., specifies what property shall be reported to the State Tax Commission. Said section provides, in part, as follows:

"1. On or before the first day of May in each year, the president or any authorized officer of every railroad company whose road is 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 the 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, city or incorporated town, special road district, library district, school districts which levy taxes for library purposes pursuant to section 137.030, RSMo, public water supply, fire protection and sewer districts or subdivisions except other school districts, 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

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

Section 151.060, RSMo 1949, provides that the State Tax Commission shall assess, adjust and equalize the aggregate valuation of the property of railroad companies in this state as specified in Section 151.020, supra.

Section 151.100, RSMo 1949, provides for the assessment of other property of railroad companies as follows:

"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."

Referring to these two sections, the Supreme Court, in the case of State ex rel. v. Metropolitan State Railroad Co., 161 Mo. 188, stated that for the purpose of assessment the General Assembly has divided railroad property into two classes, one of which could be designated "local" and the other "distributable," the class denoted "local" being that specified in Section 151.100, and the class denoted "distributable" being that specified in Section 151.020. The so-called "distributable" property is assessed as an entirety by the state agency and the so-called "local" property is assessed by the local authorities as other local property is assessed.

Attention is invited to the case of State ex rel. Union Electric Light & Power Co. v. Baker, 293 S.W. 399. In that case the relator attacked the assessment of its property by the State Tax Commission under the authority of the above noted sections basically upon the grounds that the statutes failed to designate the specific property of said relator subject to assessment by the State Tax Commission and that the method of assessment

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designated by the statutes was so indefinite and uncertain as to be unworkable and, therefore, conferred no jurisdiction upon said Commission in the premises. In answering relator's contention, the court in its opinion stated (l.c. 403-404):

" \* \* \* A clear distinction is thus drawn between property directly and that indirectly or collaterally involved in the business of a railroad which traverses counties, municipal townships, and incorporated cities, towns, and villages. The business of generating and distributing light, heat, and power by transmission lines and their necessary appurtenances has the same inherent characteristic of traversing counties, municipal townships, and incorporated cities, towns, and villages, and when the statute requires its president or other chief officer to render a statement of its property 'in like manner' as a railroad president or chief officer, we think he should be guided by this same distinction which we have heretofore recognized as controlling in the return of railroad property. Nor do we conceive that the scope of section 13002 is limited to the property therein specifically designated; namely, roads, double or side tracks, depots, water tanks and turntables, engines and cars. The designation of property herein concludes with the general clause, 'and all other movable property owned, used or leased by them,' etc. The rule of ejusdem generis is applicable, and the words 'all other movable property' clearly means property of the same general nature or class as that previously specified; that is, property directly used and necessary to the railroad's efficient equipment as a means of traffic. 36 Cyc. 1119. This statute has been in force for many years, and we are not advised that its validity has ever here been drawn in question on the ground that the method provided is ambiguous or unworkable in the assessment of this class of railroad property. Furthermore, section 13056, as originally enacted (Laws Missouri 1877, pp. 391, 392), was limited to bridge, telegraph, and express companies. Telephone companies were subsequently included (Laws Missouri 1901, pp. 223, 224), and in 1923

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electric power and light companies, electric transmission lines, and oil pipe lines were included by the amendment now under consideration. The properties directly involved in the prosecution of the various kinds of business enumerated in this statute, like that of railroads, all have the common characteristic of traversing and extending in and through various counties, municipal townships, and incorporated cities, towns, and villages. Through all these years this statute has been uniformly administered by respondents in accordance with its provisions without question as to its meaning, until the present suit arose apparently out of relator's exception to the valuation placed by respondents on this class of relator's property. The executive construction thus placed on this statute is also entitled to great consideration. The doctrine is thus stated in 36 Cyc., pages 1140, 1141:

"The construction placed upon a statute by the officers whose duty it is to execute it is entitled to great consideration, especially if such construction has been made by the highest officers in the executive department of the government, or has been observed and acted upon for many years, and such construction should not be disregarded or overturned unless it is clearly erroneous."

"The provision of amended section 13056 that relator make return of its property 'in like manner' as a railroad company means that it shall return its property of the same general character or class; that is, its transmission lines and all movable property necessarily appurtenant and directly used in their efficient equipment as a means of distributing electrical energy, light, heat, and power. We do not regard the method of return here provided as ambiguous or unworkable in the assessment of relator's property by the state tax commission."

We believe that it is significant that in referring to the property which was to be returned to the State Tax Commission

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for assessment the court referred to transmission lines and all movable property necessarily appurtenant and directly used in their efficient equipment as a means of distributing electrical energy, light, heat and power.

A company which distributes to the consumer light, heat, power or electrical energy which it produces is engaged in a two-phase operation. The production and the distribution. It is our opinion that only the property which is necessarily appurtenant and directly used in the distribution of electrical energy, light, heat and power would be subject to assessment by the State Tax Commission, and that buildings and structures housing generating equipment, dam sites, and real property used in conjunction therewith would be properly subject to assessment by local authorities.

We understand that the conclusion here reached is the construction adopted by the State Tax Commission and has been uniformly applied over the years. As was pointed out in the Baker case, supra, the construction placed upon a statute by the officers whose duty it is to execute it is entitled to great weight and should not be disregarded or overturned unless it is clearly erroneous. In other words, we are of the opinion that the property referred to should be assessed according to the established and long standing practice.

#### CONCLUSION

Therefore, in the premises, it is the opinion of this office that buildings and structures housing the generating equipment of electric companies which are public utilities, including dam sites and real property used in conjunction therewith, are to be assessed locally and are not to be assessed by the State Tax Commission.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton  
Attorney General

DEG:hw