

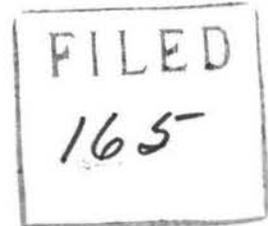
TAXATION:
UTILITIES:
ASSESSMENTS:
COUNTY ASSESSOR:

The microwave station including the tower, equipment, and real estate on which it is situated owned by the American Telephone and Telegraph Company and located in Morgan County should be assessed by the county assessor of Morgan County.

OPINION NO. 165

May 30, 1973

Honorable Flavel J. Butts
Representative, District 132
Room 235A, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Butts:

This is in response to your request for an opinion from this office as follows:

"Should the American Telephone and Telegraph Company pay taxes in Morgan County?

"Should the State Tax Commission notify the American Telephone and Telegraph that they have got to pay these taxes? Or should the Morgan County Court do so?

"The American Telephone and Telegraph Company owns about 1.47 acres of land in Sec 26, township 42, range 16 in Morgan County, Barnett, Missouri. The building and land is valued at about \$65,685.00. The microwave and tower estimated at \$272,000.00.

"I talked to Mr. Dan Williams of the Tax Commission about this. They ruled last year on this that they didn't have to pay taxes in Morgan County, but is undecided themselves, so they want an opinion also."

The answer to your question depends on whether the real estate together with the microwave equipment and tower located in Morgan County and owned by the American Telephone and Telegraph Company is to be valued and assessed by the county assessor of Morgan County or by the State Tax Commission.

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It is a matter of common knowledge that the American Telephone and Telegraph Company is a public utility and some of the property they own is to be assessed by the State Tax Commission as provided by law for the assessment of property of a public utility.

From the information we have, the microwave station located in Morgan County has no tangible connection with other properties owned by the American Telephone and Telegraph Company such as telephone or telegraph poles together with the wires in other counties or taxing units of the state.

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, pipe line 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 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,

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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 assesses 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 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

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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, 402 (banc 1927), 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 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.'

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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 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."

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The above statutes provide for taxation of property owned by public utilities which includes telegraph, telephone, electric power and light companies, electric transmission lines, pipeline companies, and express companies. This chapter expressly provides that the taxes levied on such property shall be levied and collected in the same manner as provided by law for the taxation of railroads in this state.

Under Chapter 151, RSMo, it is the duty of the State Tax Commission to place a value on all the property and to equalize the value of the property commonly-called distributable property to the different counties, cities, towns, school districts, and other political subdivisions which participate in the taxation of such property where the property is located. The statutes require the officials of the different companies to submit a list of all their property located in the different counties, cities, road districts, and so forth, which levy taxes on such property to the State Tax Commission to the clerk of the county court of each county in which such property is located. Under Section 151.080, RSMo, the State Tax Commission apportions the aggregate value of all the property to each county, city, road district, and so forth, in which the road is located according to the ratio of the number of miles in each county, city, road district, and so forth. It should be noted that the theory of taxation of railroad property is based on the fact that tangible property is located in the different counties, road districts, cities, and so forth, and that such counties and taxing units are to receive taxes on such property that is located within their boundaries. In the case of the railroads, the court has considered two classes of property--one local and the other distributable. The local property is to be assessed by the county assessor or township assessor while the distributable property is to be assessed by the State Tax Commission. In regard to railroads, the statute describes the property that is distributable. In general, it is movable property that has no permanent situs plus the tracks on which it runs. The State Tax Commission apportions the aggregate value of the distributable property to each county, city, and other taxing districts based on the percentage it bears to the total property and then the tax rate is levied locally based upon such value. This applies only to the property that is classified as distributable property. All other property belonging to the railroad is assessed under Section 151.100, RSMo, under the general revenue laws of the state and the municipal laws regulating the assessments of local property.

The fundamental question we have now is whether this microwave equipment should be classified as local property or as distributable property. It is located in the building in Morgan County and has no tangible connection with any other property belonging to the

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American Telephone and Telegraph Company in Morgan County or in any other county, city or taxing district in the state. It is hard to see how this equipment can be classified as distributable property when this property is located in a specific area and has no connection with any other part of the telephone system. All the State Tax Commission does is value the distributable property for taxation and the tax is levied and is paid locally where the property is located. The tax is paid under all circumstances where the property is located whether it is distributable or not. The theory is that distributable property of a railroad has a situs in the taxing unit and the State Tax Commission determines its value for tax purposes and taxes are paid locally.

The microwave tower and equipment has no physical connection with any county other than the one it is located in. Therefore, it would be impossible to apportion the assessment value of such tower and related equipment among the various counties in the state. This being so, it is local in nature and must be assessed by the local county assessor.

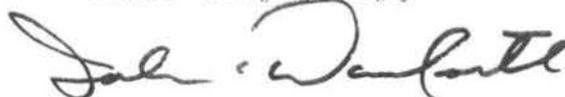
Section 137.095, RSMo, requires all real and tangible personal property of all corporations operating in this state shall be assessed and taxed in the county in which the property is situated. It is our view that real estate, the building, the tower, and the equipment of the American Telephone and Telegraph Company located in Morgan County should be assessed as real and tangible personal property in Morgan County by the county assessor of Morgan County.

CONCLUSION

It is the opinion of this office that the microwave station including the tower, equipment, and real estate on which it is situated owned by the American Telephone and Telegraph Company and located in Morgan County should be assessed by the county assessor of Morgan County.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General