TAXATION: Mode of apportioning for taxation the valuation of the distributable property of telephone, telegraph, electric power and light companies and electric transmission lines.

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State Board of Equalization
Jefferson City, Missouri

Gentlemen:

This is in reply to your request of recent date wherein you request an opinion from this department on the mode of apportioning for taxation the valuation of the distributable property of telephone, telegraph, electric power and light companies and electric transmission lines among the counties, municipal townships, cities or incorporated towns in this state.

On this question we find that Section 11295 R. S. Mo. 1939 provides in substance that all property, real and personal, of telephone and telegraph companies shall be subject to taxation, and that the taxes levied thereon shall be collected in the manner provided by law for the taxation of railroad companies, and the county courts and county and state boards of equalization are required to perform the same duties and are given the same powers in assessing, equalizing and adjusting taxes on the property of telephone and telegraph companies as said courts and boards of equalization have in assessing, equalizing and adjusting taxes on railroad property, and the president or chief officer of such telephone and telegraph companies is required to render statements of the property of such companies in like manner as the president or chief officer of railroads is required to render for the taxation of railroad property.

Section 11253, R. S. Mo. 1939, requires the Board of Equalization of Missouri to apportion the aggregate value of all distributable property of railroads to each county, municipal township, city, or incorporated town in which said railroad is located, "according to the number of miles of such road completed in such county,

municipal township, city, or incorporated town shall bear to the whole length of such road in this state."

After the State Tax Commission has placed a valuation on the distributable property of a railroad company, subject to the approval of the State Board of Equalization, it then becomes the duty of the State Board of Equalization to apportion this valuation among the various political subdivisions of the state, in accordance with Section 11253. In making this apportionment of the total value, the State Board of Equalization has no discretion. It must follow the rule. It performs a ministerial duty as expressed by the court in State ex rel. Union Electric Light and Power Company vs. Baker, et al, 293 S. W. l.c. 404:

> "In State ex rel. vs. Railroads, 215 Mo. 479, local citation 494, 114 S. W. 956, we referred to this as the 'mileage rule' for assessment of railroad property by the state board of equalization. It was first promulgated as Section 8 of the original act, passed in 1871, entitled, 'An Act to provide for a uniform system of assessing and collecting taxes on Railroads' (Laws of Missouri 1871, pp 56-59), and is clearly part and parcel of 'this scheme for the assessment of distributable railroad property,' so called in State ex rel. vs. Stone, 119 Mo. 668, local citation 677, 25 S. W. 211, 213. The apportionment here contemplated was not in the nature of a power conferred upon the board of equalization, but rather a ministerial clerical duty required of that body before the record of its proceedings should be filed with the State Auditor. It seemingly marked the completion of the assessment. 3 Cooley on Taxation (4th Ed.) Sec. 1171." (Underscoring ours)

The rule for the apportioning the valuation of the

distributable property of railroads has been stated in State ex rel Murphy vs. Stone 119 Mo. 668. In that case Jackson County sought by a mandamus action to compel the State Board of Equalization to add the length of the side tracks to the main lines of the railroads for the purpose of apportionment of taxes under what is now Section 11235 R. S. Mo. 1939. The question of apportionment was squarely before the court in that proceeding. The petition of the plaintiff was dismissed and the court in decisive language held that for the purpose of apportionment only the main line of the railroad, consisting of all the elements of distributable railroad property between terminal points, is to be considered. This case which was decided in 1893 settled the method and defined the rule for the apportionment of taxes on railroad property and it has been followed by the State Board of Equalization to this time.

The Attorney General, in his brief in that case, at l.c. 669, stated:

> " * * There can be but one way to arrive at the length of a railroad. It is the distance between the terminal points * * There may be a double track one-half of the way and innumerable side tracks or sidings, but the length of the road remains the same, whether there is one track or a dozen. That these double tracks or sidings serve to enhance the value of the road cannot be doubted but they do not increase its length. * * * "

At l.c. 676, the court, in speaking of the manner of assessing railroads and apportioning the value to the several municipalities, said:

> "After the board has ascertained the value of <u>this thing</u> 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 subdivisions 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 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."

This rule is also stated in Vol. 61, C. J., page 696:

"Where the amount of a tax against a railroad company is to be based upon the number of miles of its road, or on the average valuation per mile, the mileage of 'second tracks,' or additional tracks, more than one, laid in the same right-of-way, is not to be taken into account but only the mileage of the line as a whole."

The rule of the Stone case, supra, was reaffirmed by the Supreme Court en banc in the recent case of State ex rel. St. Louis County vs. Evans, et al, 139 S. W. (2nd) l.c. 970, decided in 1940, in which the court said:

> "In determining the length of the road for the purpose of apportionment, only the length of its main track is to be considered. State ex rel. Murphy et al vs. Stone et al, 119 Mo. 668, 25 S. W. 211."

In the case of State ex rel Union Electric Light and Power Company vs. Baker, 293 Southwestern 399, the relator sought by certiorari proceedings to quash the record and judgment of the State Tax Commission and the State Board of Equalization, alleging that the assessment of the company under the then recently amended Section 11295 which added electric power and light companies to those utilities whose taxation came under the provisions of the railroad law, was unauthorized, unjust, illegal and without authority and beyond the jurisdiction of the State Board. The relator further alleged that the taxation system was impracticable and unworkable and set forth no specific mode of taxing the various classes of property that go to make up an electric power and light company. The court denied the writ of certiorari, holding that there were common characteristics of railroad and power and light property in traversing the various political subdivisions of the State and that the assessment of power and light companies could be applied to the railroad law by analogy. While the court in its opinion used the expression "wire mileage basis," the question of method or rule of allocation was not an issue.

It is apparent from the pleadings and opinion in the Baker case that the parties did not have in mind the distinction between a wire mileage theory and the pole line theory. At l.c. 400, in the Baker case, supra, the relator's

petition is quoted as follows:

> " * * respondents ..... apportioned said assessed valuation to several counties aforesaid and to the City of St. Louis according to the wire mileage basis, apportioning to each such subdivision such part of the entire valuation as the number of miles of transmission line within such subdivision bore to the entire mileage of the relator's system within the State of Missouri."

In the Baker case, the court found common characteristics and analogous properties as between electric power and light companies and railroad companies as expressed at l.c. 403:

> "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." (Underscoring ours)

In this case, in discussing the common characteristics and analogous properties of electric power and light companies and railroad companies, the court found that miles of right-of-way with poles, cross arms and wires were comparative to miles of railroad consisting of right-of-way tracks, ties, etc. As expressed at l.c. 402:

> "Now, it may be that relator, an electric power and light company engaged in the business of generating and distributing light, heat, and power as a public utility, operates no locomotive engines with freight or passenger cars, and neither owns, uses, nor leases any roads, double or side tracks, depots, water tanks or turntables, engines or cars of any kind, but the very nature of its business requires it to own, use, or lease many miles of right-of-way with poles, cross arms, wires and other facilities and equipment located thereon and thereover . . . . . ."

From the foregoing it will be seen that the rule for apportioning the valuation of the distributable property of railroad companies among the various political subdivisions of the State has been definitely established by the Stone case and has been and is now the settled law in this State. That rule is that only the main line of a road between terminal points can be considered for apportionment regardless of the number of tracks that may be along the right-of-way of such line.

Section 11295 R. S. Mo. 1939 provides that telephone, telegraph and electric power and light companies are to be taxed in the same manner, and the boards of equalization have the same powers and the companies are required to report in the same manner as are railroad companies. In the Baker case, supra, the court found that miles of right-of-way with poles, cross arms, wires and other facilities and equipment located thereon have the same common characteristics as miles of railroad and a logical inference and conclusion is that miles of wire can no more be used for allocation purposes than miles of single track with respect to railroads, but that miles of transmission and distribution

lines complete with all the accessories and appurtenances thereto which includes all of the distributable property of such lines between certain termini are the unit for apportioning values of telegraph, telephone and electric power and light companies among the various political subdivisions of the State.

CONCLUSION

From the foregoing, it is the opinion of this department that the state taxing authorities in apportioning the valuation of wire utility companies for taxation should apportion the valuation of the distributable property of such companies among the counties, municipal townships, cities or incorporated towns in the state on a trench or pole mile basis, viz., the value of the distributable property of said company shall be apportioned to each county, municipal township, city or incorporated town in the proportion that the total trench or pole miles of the company in such county, township, city or town bear to the total trench or pole miles of the company in the state without regard to the number of lines, wires, cables, trenches or poles which may lie adjacent or parallel within such county, township, city or town.

Respectfully submitted,

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APPROVED:

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