

Taxation: Freight depot of a Railroad not used by the Railroad Company but leased to private company should be assessed locally for taxes.

July 23, 1938

Hon. Clarence Evans, Chairman  
State Tax Commission  
Jefferson Hotel  
St. Louis, Missouri



Dear Sir:

This will acknowledge receipt of yours of the 22nd which reads as follows:

"The question on which we desire an opinion arises from the following condition:

"The Missouri Pacific Railroad Company has a freight depot on their property in the City of St. Louis which is leased to another company. The Company to which said property is leased uses the building as a store room for the gathering of freight in small quantities to be shipped in car load lots. The Missouri Pacific Railroad Company being the principal customer of the operating Company. The question is:

"Should the freight depot in question be subject to local assessment or should it be assessed as a part of the distributable property of the Missouri Pacific Railroad Company? The Company who leased this property from the Railroad Company is a separate corporate entity and not under the control of the Railroad Company.

"Assistant Attorney General, Hewitt, sat in conference with the assessing authorities of St. Louis, the officers of the Railroad Company and the Tax Commission several weeks ago and he was expected to furnish an opinion concerning same.

"Mr. Corwin, Attorney for the Railroad Company, writes this Commission, today, that he has not received the opinion as yet. The hearing in St. Louis will be held Tuesday, July 26. If an opinion can be furnished in time for our use next Tuesday, kindly mail same to Clarence Evans, Chairman of the State Tax Commission, c/o Jefferson Hotel, St. Louis, Mo. If the time is too short or the information given not sufficient that you feel justified in offering an opinion, the Company will have to rely on their own counsel and the Assessor of St. Louis County likewise."

The determination of your question involves a consideration of certain statutes relating to the taxation of railroad property. Section 10012, R.S. Mo. 1929 reads as follows:

"On or before the first day of January in each and every year, the president or other chief 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 auditor a statement, duly subscribed and sworn to by said president or other chief 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 June in each year, and the actual cash value thereof. (R. S. 1919, Section 13002.)"

Section 10017, R. S. Mo. 1929, provides in part as follows:

"The said board shall proceed to assess, adjust and equalize the aggregate valuation of the property of each one of the railroad companies in this state specified in section 10012."

Section 10025, R. S. Mo. 1929, reads as follows:

"All property, real, personal or mixed, including lands, machine and workshops, roundhouses, warehouses and other buildings, goods, chattels and office furniture of whatever kind, owned or controlled by any railroad company or corporation in this state not hereinbefore specified, 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 article. (R. S. 1919, Section 13027.)"

To determine your question, it is necessary to determine whether the freight depot inquired about in your letter is a part of the property required to be returned to the State Tax Commission under Section 10012, or whether it is local property mentioned in Section 10025. If it belongs to the class described in Section 10012, then the State Tax Commission should make the assessment, but if it is local property described in Section 10025, then the local authorities should assess the property. To make this determination, it is necessary to read the two sections of the statutes together.

In the case of State ex rel v. Railroad, 117 Mo. 1, the Supreme Court was considering the same question with regard to land purchased for future yard purposes of a railroad with the intention of building terminal facilities thereon in the future, but it was not in fact used for such purposes at the time of the assessment. In discussing the case the court said, l.c. 7:

"The property specified in section 6866, which is to be assessed by the state board, is that required to be returned to the state auditor, namely, the entire length of the road in this state and the length of double and side-tracks, with depots, water-tanks and turn-tables. This description taken by itself is not clear, but the uncertainty is, to a large extent,

removed when taken in connection with section 6876. That section provides that all other property of the railroad company, real, personal, including lands, machinery and workshops, round-houses and other buildings shall be assessed by the local assessors. There can be no doubt but section 6866 includes the road, road-bed, bridges and that property actually used for the purposes of a right of way, but it is equally clear that it does not include lands used for shops, engine-houses, and warehouses. And we think it is equally clear that section 6866 does not include land which may have been purchased for future yard purposes, and which is in fact not used for such purposes at the time of the assessment."

In that case the land being considered was under lease to private parties also. The court further said, l.c. 9:

"The property here in question was not used for railroad purposes when assessed, but was in the possession of defendant's tenants, under an eight year lease, and used by them for manufacturing purposes, with the right reserved by the tenants to remove their buildings at the expiration of the lease. There is no claim made in this case that it was by any specific description returned to the state auditor, and the only claim is that it should be deemed and taken to be property embraced within that property assessable by the state board. That it did not fall within that class of property is in our opinion too clear to call for further remarks."

Sections 6866 and 6876 referred to in the foregoing opinion correspond respectively to Sections 10012 and 10025, R. S. Mo. 1929.

In *Red Willow County v. Chicago, B. & Q. R. Co.* (1889) 26 Neb. 660, 42 N.W. 879, under a statute providing for the assessment by the state board of equalization of the roadbed, right of way, and superstructures thereon, main and side tracks, depot buildings and depot grounds, section and tool houses, rolling stock and personal property, necessary for the construction, repair, or successful operation of the railroad, and providing for the assessment of other railroad property by local authorities, the court stated:

"There is no material conflict in the testimony. The land in controversy was not a part of the roadbed or right of way of the railway of the defendant in error. The most that can be said is that it was purchased by the railway company in anticipation that sometime in the future it might be necessary for tracks, etc. But this is not sufficient. Land to constitute roadbed and right of way must in fact be used for that purpose. . . . A corporation will not be permitted, however, to purchase real estate for which it has no immediate use as a part of its right of way, and return the same for taxation as a part thereof, if in fact it is not used for that purpose."

In view of the foregoing authorities, we think the rule is that in order for property to be classed as a part of the roadbed or right of way of a railroad, such property must actually be used for that purpose. By similar reasoning, in order for a building to be classed as a depot, we think that the building would actually have to be used for that purpose by the railroad company. From the information in your letter, it is clear that the depot inquired about is not used by the railroad company as a part of its transportation facilities, but it is used by a private company for the convenience of such latter company in assembling freight for shipment. The use of the building clearly

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is not a part of the operation of the railroad, but is more in the nature of a store room operated by a private company. We do not think the building can be classed as a depot of the railroad since it is not used by the railroad as a part of its transportation system.

CONCLUSION

It is, therefore, the opinion of this office that a freight depot owned by a railroad company and situated on the right of way of such company but leased to another company which uses the building as a store room, is subject to assessment by the local assessing authorities as local property and is not subject to assessment by the State Tax Commission.

Yours very truly

HARRY H. KAY  
Assistant Attorney General

APPROVED:

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J. W. LUFFINGTON  
(Acting) Attorney General

HHK/w