

TAXATION:
STREET RAILWAYS:
ALLOCATION:

Miles of street traversed on regular routes
by busses owned by street railways should be
used in allocation for tax purposes.

October 8, 1941

Mr. Jesse A. Mitchell, Chairman
State Tax Commission
Jefferson City, Missouri



Dear Mr. Mitchell:

This is in reply to your letter of recent date wherein you request an opinion from this department based upon the following statement of facts:

"In St. Louis and Kansas City the Public Service Company (which is the street car system) are constantly removing miles of street car track and supplanting bus service over the same route."

"Should the miles of street traversed on regular route by busses be considered in the matter of allocation the same as where the electric cars operate on tracks?"

Sections 11249 to 11251, R. S. Mo. 1939, pertain to the assessment and taxation of street railways. These sections are as follows:

"**Sec. 11249.** Street car companies to make statement. -- On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, 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 full length of the line, so far as completed, including branch or leased lines,

the entire length in this state, the length of double or sidetracks, the length of such line located upon real estate to which such company may have title as right of way, the length of such line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, owned, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement."

"Sec. 11250. Taxes to be levied. -- The said property returned to the state auditor, as by section 11249 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private persons, and the same shall be assessed, apportioned, certified and the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property."

"Sec. 11251. Purpose of certain sections. -- It being the purposes of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property all laws and parts of laws inconsistent or in conflict therewith are hereby repealed."

By an opinion from this department dated January 10, 1941, written for the State Tax Commission, we said:

"In view of the above authorities, it is the opinion of this department that the chief officer of the St. Louis Public Service Company should, for taxation purposes, make

a return of all motor busses and other property incidental to the transportation of passengers and used in connection with the regular and permanent street railway to the State Tax Commission and not the local assessor."

"It is further the opinion of this department that Section 10018, R. S. Mo. 1929, when it mentions "propelled by any other device for the transportation of passengers," includes motor busses."

In State Ex. Rel. V. Metropolitan Street Railway, 161 Mo. 188, the Supreme Court in construing the state railway statutes said (l.c. 197-198):

"* * * By the law for the assessment and taxation of other railroads (Art. 8, Cap. 138, 2 R. S. 1889), the property of such railroads for the purposes of taxation is divided into two classes. One, consisting of the roadbed, rolling-stock and other movable property, may, for convenience, be designated as distributable property. This class is returned by the company to the Auditor, assessed as an entirety by the State Board of Equalization, and the value thereof apportioned to the several counties, cities, towns, villages and municipal townships in which such railroad is located, and the assessment certified to the county courts. (Secs. 7718 and 7727.) The other class, which may be designated as local property, embracing all other property of such railroads and which is not returned to the Auditor, is assessed by the local authorities as other local property is assessed. (Sec. 7728.) Upon these assessments the county courts levy the taxes authorized by law."

"Now by the first section of the Act of March 11, 1897, all the property of a street railroad is required to be returned to the auditor, and this is the property which by this act the State Board of Equalization is required to assess, apportion and certify to the county courts, in the manner provided by law, for the assessment of other railroad

property. The only manner provided by law for that board to assess the property of other railroads was that prescribed for the assessment of the distributable property of such railroads, and that is necessarily the manner required by this act for the assessment of the whole property of a street railroad. The defendant's railroad was assessed, the assessed value apportioned and certified to the county court in that manner, and hence assessed in accordance with the requirements of the act. Prior to this enactment the whole property of a street railroad was subject to assessment for taxes, by the local authorities. The effect of this act in that respect was simply to change the assessing authority from them to the State Board of Equalization, and we know of no reason why this might have not been done.* * *

This case may not be very pertinent to your question, but it does show that the state board does assess all taxes of street railways, and the same are taxed as the distributable property of railroads are taxed.

After the enactment of the State Tax Commission Act, these returns were made to the State Tax Commission. In *State v. Cairo Bridge and Terminal Company*, 100 S. W. (2d) 441,443, the court said (2-4):

"In the year 1917, the state Legislature created a State Tax Commission. See Laws 1917, p. 542, etc., Mo. St. Ann. para. 9819 et seq. p. 7916 et seq. Section 19, subd. 5, of Laws of 1917, p. 547, now subdivision 5 of section 9853, R. S. Mo. 1929, Mo. St. Ann. para 9853, subd. 5, pp. 7929, 7930, provides in part as follows: 'All statements of property or other reports, relating to assessment and equalization, required by law to be made to any state officer, shall hereafter be made to the state tax commission on blanks prescribed by the commission. (R.S. 1919, para. 12846.)' The Legislature, by the law creating a State Tax Commission, imposed upon it certain duties with reference to the assessment of property for taxation purposes. By that act the whole scheme of making such assessment of public utility property embraced

within the act was revised and materially altered. Subdivision 5 of section 9853, supra, expressly provided that the statements of property theretofore filed with the State Auditor, as provided in section 10066 and 10012, were to be filed with the State Tax Commission. Appellant was, therefore, no longer required to file such statements with the State Auditor.

* * * * *

Referring to the question of what effect changes from cars operated on rails to busses have upon the mode of assessment of the street railways, we find in the case of Russell et al v. Kentucky Utilities Company, 22 S. W. (2d) 289, 66 A. L. R. 1238, in speaking on this question, the court said (1.c. 1243):

"The purpose and object of the franchise involved in this case was to provide for the rapid and convenient transportation of the public. That was the basic right granted. The motive power or method of propulsion of the vehicle is subordinate or subsidiary. It is but the means of making the franchise effective. * * * "

In the case of In re International Railway Company, 275 N.Y.S. 5, wherein the question of the substitution of motor busses for cars running on tracks, was before the court, the court said (1.c. 8):

"This application deals both with the substitution of motor busses for cars upon tracks and the running of busses over new lines supplemental thereto. Leave to substitute busses for cars on a line already operated is not granting of a new right or franchise to use the streets. It is rather a modification of the old franchise permitting a change in the method of operation."

In our research of cases wherein motor busses have been substituted for cars running on tracks, we find that there are very few cases reported at this time, however, it will be noted that such a change does not affect the franchise, but only affects the mode of operation. We think the rule of statutory

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construction enacted in State ex rel. Ferguson-Wellston Bus Company v. Public Service Company of Missouri, 58 S. W. (2d) 312, 313 would be applicable here. It is:

"In order to correctly interpret a statute it is most important to ascertain the purpose for which it was enacted. "

These tax statutes herein referred to were enacted for the purpose of assessing and collecting taxes from street railways in the same manner as distributable property of railroad companies are taxed. To rule that the mode of assessment and allocation of taxes for street railways would be changed because of the facts that the company had been permitted to change its service from cars operating on tracks to busses would destroy the purpose for which the foregoing tax sections were enacted. In other words, each mile of street over which the street railway has been granted a franchise should be considered as mileage of such street railway, for the purpose of allocating taxes.

CONCLUSION

From the foregoing it is the opinion of this department that the miles of street traveled on regular routes by busses belonging to street railway companies should be considered in the matter of the allocation for tax purposes the same as are such street railway cars operating on tracks.

Respectfully submitted,

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APPROVED:

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