

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 23, 1965

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Jon W. Doyle, Asst. Attorney General Dept. " " "

Subject Computation of Railroad Tax -- Title 36, sections 2621 through 2628

FACTS

The Canadian National Railway this year filed a return with the Bureau of Taxation under the provisions of Title 36 M.R.S.A. sections 2621 through 2628 which provides for an annual excise tax on railroads. This return showed the average number of miles operated during the year in Maine to be 89.32 on one line, together with 0.27 miles of Maine Central line at Vanceboro.

(These figures represent the trackage used rather than miles traveled).

The report further indicates that use of the Vanceboro trackage was discontinued on April 7, 1964. The Vanceboro mileage figure was also included in the company's report of mileage to the Public Utilities Commission.

QUESTION

In computing the tax of the Canadian National Railway this year, based on 1964 operations, should the mileage of 0.27 be included?

ANSWER

Yes.

SUMMARY OF LAW

Chapter 361 of Title 36 provides for an annual excise tax on the operation of railroads in the state. This tax is to be computed in a manner set forth in section 2624.

Section 2624 of Title 36 provides in part that:

"When a railroad lies partly within and partly without the state . . . the tax shall be equal to the same proportion of the gross transportation receipts in the

state, and its amount shall be determined as follows: the gross transportation receipts of such railroad, . . . over its whole extent, within and without the state, shall be divided by the total number of miles operated to obtain the average gross transportation receipts per mile, and the gross transportation receipts in the state shall be taken to be the average gross transportation receipts per mile multiplied by the number of miles operated within the state, and the net railway operating income within the state shall be similarly determined."

The statute goes on to provide that the information to be acted upon by the Bureau of Taxation is that: "as returned to the Public Utilities Commission for the year ended on the 31st day of December preceding the levying of such tax"

REASONS

The statute provides that an annual excise tax shall be levied on railroads:

" . . . for the privilege of exercising its franchises and the franchises of its leased roads in the State" (See Title 36 M.R.S.A. §2623).

The tax is upon the "performance of an act," "the engaging in an occupation," "the enjoyment of a privilege." See Opinion of the Justices, 153 Me. 30.

The statute sets forth no period of time that the privilege must be exercised in order to incur the tax. It is the operation of the railroad and the exercise of the franchise, for any period of time, minimum or maximum, which gives rise to the tax. No proration is provided for under the statute.

In other words, the number of miles operated within the State equals the number of miles of line operated at any time during the year within this State.

Too, the tax must, under the statute, be based on the railroad's report to the Public Utilities Commission. Therefore, if mileage be included in the report, it must be taxed.

I conclude that the mileage of 0.27 should be included when computing the tax.

JRD:epd

STATE OF MAINE

Inter-Departmental Memorandum Date April 14, 1965

To Jon R. Doyle, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Computation of railroad tax - Title 36, sections 2621 through 2628

Section 2624 of Title 36 provides in part that "when a railroad lies partly within and partly without the state . . . , the tax shall be equal to the same proportion of the gross transportation receipts in the state, and its amount shall be determined as follows: the gross transportation receipts of such railroad, . . . over its whole extent, within and without the state, shall be divided by the total number of miles operated to obtain the average gross transportation receipts per mile, and the gross transportation receipts in the state shall be taken to be the average gross transportation receipts per mile multiplied by the number of miles operated within the state, and the net railway operating income within the state shall be similarly determined."

The same section indicates that the information to be acted upon by the Bureau is to be that "as returned to the Public Utilities Commission for the year ended on the 31st day of December preceding the levying of such tax. . . ."

The Canadian National Railway Company this year filed a return with this office showing the average number of miles operated during the year in Maine to be 89.52 miles on one line, together with 0.27 miles of Maine Central line at Vanceboro. The report also indicated that they discontinued use of this trackage at Vanceboro on April 7, 1964. Apparently in their return filed with the Public Utilities Commission for the year ended December 31, 1964 they included the 0.27 mile in the average mileage operated in this State during the year.

Question: In computing the gross receipts tax of the Canadian National Railway this year, based on 1964 operations, should we include or exclude the 0.27 mile in question?

EHL:j