

# MAINE STATE LEGISLATURE

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OPINION OF THE ATTORNEY GENERAL

*yes*  
*✓*  
October 12, 1973

*sub part J.N.*  
To: Ernest H. Johnson, State Tax Assessor      Bureau of Taxation  
From: Jerome S. Matus, Asst. Atty. Gen.      Bureau of Taxation  
Subject: Municipal Taxation of Privately Owned Railroad Cars

SYLLABUS:

A MUNICIPAL TAX ASSESSOR MAY ASSESS PERSONAL PROPERTY TAXES ON THE VALUE OF THE AVERAGE NUMBER OF CARS OF ROLLING STOCK OF A TAXPAYER THAT ARE HABITUALLY WITHIN THE LIMITS OF THE MUNICIPALITY DURING THE TAX YEAR.

FACTS:

You have provided this office with the following information:

"A number of tank car leasing companies own railroad tank cars which travel to Auburn in interstate commerce, discharge their contents and leave, again traveling in interstate commerce. A car will typically stay in Auburn for only a few days on such a visit.

"Up to now, the City of Auburn Tax Assessor has assessed a personal property tax on whatever tank cars happen to be physically present in Auburn on April 1st. It is proposed that all cars coming into Auburn during the year be assessed under a formula which would base the amount of assessment on the number of cars 'habitually within the limits' of Auburn throughout the year, rather than taxing whatever cars are there on April 1st.

"The formula would base the assessment on the number of 'car days' during the year. Thus if a company has 200 cars in Auburn at various times during the year with an average stay in Auburn of four days, there would be 800 car days. This figure would be divided by 365 to compute the average number of cars within Auburn throughout the year. Thus with 800 car days the formula would result in an average of 2.2 cars and the company would be assessed on the value of 2.2 cars. It is contemplated that the assessor and the tank car owners would work out an agreeable method for supplying to the assessor the information necessary for him to assess on this basis."

QUESTIONS:

1. Is the foregoing method of assessment permitted by the applicable state statutes?

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2. If the answer to the first question is in the affirmative, may the assessor retroactively adjust the assessment for prior years (a) if the adjustment would result in an increase in tax, and (b) if the adjustment would result in a decrease in the tax?

ANSWERS:

1. Yes.

2a. No.

2b. Yes, but only to the extent permitted by 36 M.R.S.A. §841.

REASONS:

1. Assessors have the statutory duty to " ... ascertain as nearly as may be the nature, amount and value as of the first day of each April of ... personal property subject to be taxed, ..." 36 M.R.S.A. §708. (emphasis supplied) This duty is required as ... all personal property of residents of the state and all personal property within the state of persons not residents of the state is subject to taxation the first day of each April as provided; and the status of all taxpayers and of such taxable personal property shall be fixed as of that date. ..." 36 M.R.S.A. §502.

For property to be subject to a personal property tax, it must have a status in the assessing jurisdiction as of April 1st. A tank car leasing company has the status of a taxpayer in the City of Auburn if on April 1 of any given year the leasing company owns railroad tank cars which travel to Auburn in interstate commerce, discharge their contents and leave (typically after a few days stay in Auburn) traveling again in interstate commerce even though on April 1 of any given year there may be no tank cars actually present in Auburn. The leasing company having the status of a taxpayer, it must then be determined "... as nearly as may be the nature, amount and value as of the first day of each April of ... personal property subject to be taxed, ..." 36 M.R.S.A. §708. Rolling stock is a particular type of personal property which by its very nature moves from jurisdiction to jurisdiction; however, it is personal property which must bear its fair share of the burden of taxation as required by Article IX §8 of the Constitution of the State of Maine.

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The Supreme Court of the United States has said "When individual items of rolling stock are not continuously the same but are constantly changing, as the nature of their use requires, this Court has held that a State may fix the tax by reference to the average number of cars found to be habitually within the limits." Johnson Oil Company v. Oklahoma, 290 U.S. 158, 162 (1933).

The nature of rolling stock is such that a municipal assessor can properly determine that the amount and value of the rolling stock is based on the rolling stock constructively present in his municipality as of April 1 of any given year. The determination may result from the use of a formula if the formula fixes the average number of tank cars habitually within the limits of the taxing jurisdiction, whether or not the tank cars are actually present on April 1. The formula contemplated by the assessor of the City of Auburn is a method whereby the number of cars habitually within the limits of Auburn may be ascertained. It is a proper formula for assessing rolling stock.

To construe our statutes otherwise results in a situation where the absence of rolling stock in a taxing jurisdiction on April 1 could be contrived for the purpose of escaping taxation. There is no exemption for rolling stock in the property tax statutes of the State of Maine. A construction of the Maine Property Tax Statutes that would permit a certain class of personal property to escape taxation entirely without a legislative determination that such a class of property should be exempt would be in direct violation of Article IX §8 of Constitution of Maine that requires that "all taxes upon ... personal estate, assessed by authority of this state, shall be apportioned and assessed equally according to the just value thereof; ... ."

2a. A municipal assessor may only make a supplemental assessment when " ... estates liable to taxation have been omitted from assessment, or any tax on estates is invalid or void by reason of illegality, error or irregularity in assessment." 36 M.R.S.A. §713. There are no given facts to indicate a situation permitting supplemental assessments as set forth in 36 M.R.S.A. §713.

2b. 36 M.R.S.A. §841 provides in pertinent part:

"The assessors for the time being, on written application, stating the grounds therefore, within one year from date of commitment, may make such reasonable abatement as they think proper, provided the taxpayer has complied with §706. ...."

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Thus, provided the taxpayer has made written application to the assessor for an abatement with his reasons within one year of the commitment, and the taxpayer has complied with the requirements for the listing of property set forth in 36 M.R.S.A. §706, the assessor may, if satisfied that an abatement is proper, make an adjustment which would result in a decrease of tax.

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Assistant Attorney General

JSM:gr

cc: Attorney General