

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 219
90TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, April 13, 1999, with recommendation that the House Committee Substitute for Senate Bill No. 219 Do Pass.

ANNE C. WALKER, Chief Clerk

L0934.02C

AN ACT

To repeal section 138.431, RSMo 1994, relating to ad valorem taxation, and to enact in lieu thereof twelve new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 138.431, RSMo 1994, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 137.1000, 137.1003, 137.1006, 137.1009, 137.1012, 137.1015, 137.1018, 137.1021, 137.1024, 137.1027, 137.1030 and 138.431, to read as follows:

137.1000. Sections 137.1000 to 137.1030 shall be known and may be cited as the "Private Car Ad Valorem Tax Law" and shall, notwithstanding the provisions of sections 137.975 to 137.985 to the contrary, apply to all taxable years beginning on or after January 1, 2000.

137.1003. As used in sections 137.1000 to 137.1030, the following terms mean:

- (1) "Commission", the state tax commission;**
- (2) "Director", the director of revenue;**
- (3) "Distributable property", all property which is used directly in the movement of passengers and freight, including railroad cars, but not property used as a collateral facility nor property held for purposes other than rail transportation;**
- (4) "Freight line company", any person, association, company or corporation, not being the owner or lessee of a railroad or street railway company, engaged in the business of furnishing or leasing any railroad cars except dining, buffet, chair, parlor, or sleeping cars, which are used in the operation of any railroad or street railway company wholly or partly within the state, or when owning and operating, or operating, any railroad freight, refrigerator or tank car on railway lines in this state for the transportation of his or its goods, wares, merchandise or products.**

137.1006. The commission shall have the exclusive power of original assessment of the distributable property of freight line companies.

137.1009. 1. The form for all reports required under sections 137.1000 to 137.1030 shall be prescribed and furnished by the commission.

2. If any freight line company refuses or fails to make and return the reports required by sections 137.1000 to 137.1030 within the time prescribed and without an

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

extension of time, the commission shall increase by four percent the total assessed valuation of the distributable property of any such company, unless the commission, for good cause shown, waives such penalty.

3. Any such reports delivered by United States mail to the proper official or officer designated shall be deemed to be received as of the postmark date stamped on the envelope or other cover in which such reports are mailed. In the event any report is sent by registered or certified mail, the date of registration or certification shall be deemed the postmark date. No penalty shall be imposed on any company whose reports are delivered by United States mail, if the postmark date stamped on the envelope or other cover containing such reports falls within the prescribed period or on or before the prescribed date, including any extension granted for making the report.

4. Every railroad or street railway company operating in this state shall file annually, on or before May first of each year, a true and accurate statement of the main line track mileage of such company in operation in each county of this state on December thirty-first of the preceding year, total mileage traveled on their track by railroad cars of the freight line companies and other information the commission may require for the purpose of carrying out its duties under sections 137.1000 to 137.1030. Such reports shall be made in such manner and form as prescribed by the commission.

5. In addition to the reports required by subsection 2 of this section, each freight line company shall file a similar report at the same time and in such manner as said commission shall prescribe showing the total mileage traveled on track from railroad and street railway companies, date and original cost of acquisitions and other information the commission may require for the purpose of carrying out its duties under sections 137.1000 to 137.1030.

6. In case any freight line company shall fail to make such report the commission may accept the report of said railroad or street railway company as correct.

137.1012. 1. The commission shall assess, adjust and equalize the aggregate valuation of the distributable property of each freight line company. For the purpose of estimating the true value in money of the distributable property of a freight line company, the commission may take into consideration the reports filed under section 137.1009, the reports, statements or returns of the company filed in the office of any board, office or commission of this state, or any county thereof, and such other evidence of any kind bearing thereon. No report, statement or return shall be conclusive upon the commission in estimating the true value in money of the operating property of a freight line company. The commission may set the aggregate valuation of the distributable property of any freight line company upon which no returns have been made, which may otherwise be known to them as they deem just and right.

2. The commission may summons witnesses by process issued to any officer authorized to serve subpoenas and compel them to testify.

3. In originally assessing, adjusting and equalizing any distributable freight line company property for any year or years, the commission may arrive at its findings, conclusion and judgement, upon its knowledge, or such information as may be before it, and shall not be solely governed in its findings, conclusions and judgment by the testimony which may be adduced, but may give to it such weight as the commission may think it is entitled to receive.

4. When the operations of any such company shall extend beyond the limits of this state and into another state, then the commission shall assess, equalize and adjust only such proportion of the total value of all distributable property of such company as may be reasonably allocated to this state. To accomplish this end, the commission may require information in its form reports under section 137.1009 which is necessary to properly assess and allocate such property.

137.1015. 1. After original assessments, adjustments and equalization by the commission have been completed, each freight line company interested therein shall be promptly notified by the action of the commission and may apply for a review of the original assessment. The commission shall grant and hold such review and fix the date thereof. Such review may be by whatever procedures decided upon by the parties and may include, but not limited to, a formal or informal hearing, the presentation of affidavits and documentary evidence, and the presentation of legal arguments or briefs. All affidavits, documentary evidence and other factual evidence not presented at a formal hearing shall be duly sworn to and verified. In the event the parties cannot agree to the procedures to be followed, a formal hearing shall be held at which the freight line company seeking review shall have the burden of establishing the correct assessment, adjustment and equalization pursuant to section 138.420, RSMo. A record shall be kept of all matters submitted in review of an original assessment.

2. If, after such review and consideration of the facts, the commission is of the opinion that the original decision or any part thereof should be changed, the commission may change or modify the same.

3. Any freight line company aggrieved by the decision of the commission may, if it has participated in a review under this section, seek review as provided in chapter 536, RSMo.

137.1018. 1. The commission shall ascertain the statewide average rate of property taxes levied the preceding year, based upon the total assessed valuation of the railroad and street railway companies and the total property taxes levied upon the railroad and street railway companies. It shall determine total property taxes levied from reports prescribed by the commission from the railroad and street railway companies. Total taxes levied shall not include revenues from the surtax on subclass three real property.

2. The commission shall report its determination of average property tax rate for the preceding year, together with the taxable distributable assessed valuation of each freight line company for the current year to the director no later than October 1 of each year.

3. Taxes on property of such freight line companies shall be collected at the state level by the director on behalf of the counties and other local public taxing entities and shall be distributed in accordance with sections 137.1021 and 137.1024. The director shall tax such property based upon the distributable assessed valuation attributable to Missouri of each freight line company, using the average tax rate for the preceding year of the railroad and street railway companies certified by the commission. Such tax shall be due and payable on or before December thirty-first of the year levied and, if it becomes delinquent, shall be subject to a penalty equal to that specified in section 140.100, RSMo.

137.1021. 1. The taxes collected by the director under the provisions of sections 137.1000 to 137.1030, less one percent for the cost of collection which shall be deposited in

the state's general revenue fund, shall be deposited in a special trust fund to be known as the "County Private Car Tax Trust Fund", which is hereby created. The fund shall be apportioned to the several counties in the state, based upon the ratio of the total main line track mileage of the railroad and street railway companies within each county to the aggregate total of the state. Prior to distribution of the car tax trust fund to the counties, six-tenths of one percent of the fund shall be transferred to the blind pension fund. The remaining money in this fund shall not be deemed to be state funds and shall not be commingled with any funds of the state.

2. The county upon receipt of the taxes under the provisions of sections 137.1000 to 137.1030 from the director shall apportion seventy percent of the revenues collected to the school districts within each county using the same basis of distribution as used in distributing receipts from the average school tax rate for that year, and the remaining thirty percent to the county general revenue fund.

137.1024. Whenever any freight line company fails to pay to the director the tax due within the time prescribed in section 137.1018, it shall be the duty of the director, as soon as practical thereafter, to make a statement in writing to the attorney general naming the freight line companies that have not paid such tax.

137.1027. 1. Upon receipt of the statement from the director of revenue as provided in section 137.1024, it shall be the duty of the attorney general to institute a suit or suits in any court of this state or of the United States having jurisdiction, in the name of the state, and at the relation and to the use of the director for the collection of said taxes, penalties and interest as the case may be.

2. The property of such freight line companies shall be subject to seizure under execution by the property officer in any county in this state, to satisfy a judgment rendered for such taxes, penalties and interest.

137.1030. In the event a final judgment of a court of competent jurisdiction shall find that all or portions of this act is not enforceable, then without further action by the general assembly, the procedure for the assessing, adjusting and equalizing the distributable property of the freight line companies shall be the same procedure as provided in sections 137.975 to 137.985.

138.431. 1. To hear and decide appeals pursuant to section 138.430, the commission shall appoint one or more hearing officers. The hearing officers shall be subject to supervision by the commission. No person shall participate on behalf of the commission in any case in which [he] **such person** is an interested party.

2. The commission may assign such appeals as it deems fit to a hearing officer for disposition. The commission may, in its discretion, reserve such appeals as it deems fit to be heard and decided by the full commission, a quorum thereof, or any commissioner, subject to the provisions of section 138.240, and, in such case, the decision shall be final, subject to judicial review in the manner provided in subsection 4 of section 138.470.

3. The manner in which appeals shall be presented and the conduct of hearings shall be made in accordance with rules prescribed by the commission for determining the rights of the parties; **provided that, the commission, with the consent of all the parties, may refer an appeal to mediation. The commission shall promulgate regulations for mediation pursuant to this section. No regulation or portion of a regulation promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to**

the provisions of chapter 536, RSMo. There shall be no presumption that the assessor's valuation is correct. A full and complete record shall be kept of all proceedings. All testimony at any hearing shall be recorded but need not be transcribed unless the matter is further appealed.

4. Unless an appeal is voluntarily dismissed, a hearing officer, after affording the parties reasonable opportunity for fair hearing, shall issue a decision and order affirming, modifying, or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. The commission may, prior to the decision being rendered, transfer to another hearing officer the proceedings on an appeal determination before a hearing officer. The complainant, respondent-assessor, or other party shall be duly notified of a hearing officer's decision and order, together with findings of fact and conclusions of law. Appeals from decisions of hearing officers shall be made pursuant to section 138.432.

5. All decisions issued [under] **pursuant to** this section or section 138.432 by the commission or any of its duly assigned hearing officers shall be issued no later than sixty days after the hearing on the matter to be decided is held or the date on which the last party involved in such matter files his **or her** brief, whichever event later occurs.

Bill

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