

TAXATION: Extension lines of telephone should be
TELEPHONE: considered as a part of the right of way
EXTENSION LINES: of a telephone company for allocation of
wire companies for taxation purposes.

✓ 112
October 3, 1941

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



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion on the following statement of facts:

"In the matter of allocation of wire companies, should the extension line which runs from the main line to the residence of owner be considered as right of way?"

Section 11295, Revised Statutes of Missouri, 1939, provides in part as follows:

"All bridges over streams dividing this state from any other state owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course of construction, or which shall hereafter be constructed, and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe

lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same duties and are given the same powers in assessing, equalizing and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; * * * "

From this section it will be seen that we must look to cases in which the railroad tax statutes have been construed in order to pass upon your question.

In the case of State ex rel. v. Stone, 119 Mo. 668, the court had before it the question of the apportionment of railroad property and the length of the road, and said, l. c. 676:

"After the board has ascertained the value of this thing made up of tracks, depots, water tanks, turntables, rolling stock, etc., known in common parlance, and denominated in this statute as a railroad, they are to apportion that value among the several municipalities of the state, in which any part of this whole thing is located by a certain standard in length -- a mile -- a mile of what? There can be but one answer. A

mile of that thing called a railroad, made up of the items mentioned, in section 7718, the value of which as a whole is to be apportioned for such purpose. The number of miles of the railroad in this state, or within any municipal subdivision thereof is not to be measured by the length of its main tracks or of its main track and side tracks combined, any more than it is to be measured by the combined length of its main tracks, side tracks, rolling stock and the other property which go to make up the road value to be apportioned. It is the length of the whole thing, a railroad, which these several constituents, in place, go to make up, that is to be measured. Its length between its terminal points in this state, and its length in the several municipal subdivisions of the state is to be ascertained, and its value apportioned to each of said municipalities in the ratio that its length in the municipality bears to its whole length in the state. This is the obvious meaning of the statute, and the construction that has been placed upon it by the board of equalization from the beginning."

Applying this statement of the court to the case of the telephone system, the length between terminal points and its length in the several subdivisions of the state is to be ascertained. In other words, the length of the easements of the telephone company, regardless of the number of wires strung along or under same, constitute the mileage. So, if the wire company has an easement over which extensions are made to a private residence, that distance should be considered as a part of the wire mileage of the wire company for allocation purposes. By easement, we do not think the law would

Hon. Jesse A. Mitchell

-4-

October 3, 1941

require that it be a written conveyance, but any authority whereby the wire company would be authorized to extend its lines would be considered an easement for the purposes herein mentioned.

CONCLUSION

From the foregoing, it is the opinion of this department that in the matter of allocation of wire companies, the extension lines which run from the main line to the residences of owners should be considered as a part of the right of way.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

TWB:VC