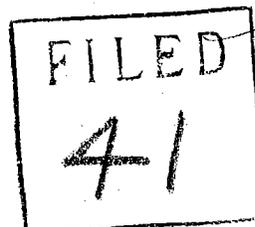


CITIES:  
TOWNS: VILLAGES:  
FOURTH CLASS CITIES:  
CITY FINANCES:  
TAXATION:  
PUBLIC UTILITY  
TAXATION:

A fourth class city is not required to separate funds received from the taxation of railroads and other public utilities from those received from other taxpayers for similar purposes. Only the method of assessment of property belonging to public utilities varies the collection of local taxes from the ordinary taxpayer.

November 11, 1959



Honorable Haskell Holman  
State Auditor  
Jefferson City, Missouri

Dear Mr. Holman:

This is in reply to your recent inquiry as to whether railroad and public utility taxes received by a fourth class city must be apportioned among the various funds according to the rates levied or whether such a city may merely credit funds from these sources to its general fund. Your inquiry reads:

"In a recent audit of the records of a city of the fourth class, it was found that the moneys received from Railroad and Utility taxes were placed to the credit of the general fund, although the total tax levy included levies authorized for general municipal purposes, Health and Welfare, Park, Sewer Bonds and City Hall and Fire Department. Therefore, since the provisions of Section 151.120, Revised Statutes of Missouri, provide, among other things, that it shall be the duty of each city to certify to the County Court a statement of the rate per cent levied by the city, prerequisite to the levying of taxes on railroad properties, the placing of Railroad and Utility tax moneys to the credit of the general fund has given rise to a question upon which the opinion of your office is desired.

"The question is as follows:

"Is it permissible for a city of the fourth class to place all of the moneys received from Railroad and Utility taxes to the credit of the general fund, or must the money received from such source

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be apportioned to the various funds according to the tax rates levied for such purposes?"

By the provisions of Chapter 153, RSMo 1949, taxes on bridges, express companies, and public utilities are taxed in the same manner as railroad companies. Accordingly, we shall analyze the manner in which railroads are taxed as provided in Chapter 151, RSMo 1949.

Valuation and assessment of the properties of these enterprises is divided into two categories, distributable property and local property. Thus, properties subject to purely local taxation are found in Section 151.100 RSMo 1949. This section reads:

"All real property, or tangible personal property, including lands, machine and workshops, roundhouses, warehouses and other buildings, goods, chattels and office furniture of whatever kind, and not herein specified, owned or controlled by any railroad company or corporation in this state, shall be assessed by the proper assessors in the several counties, cities, incorporated towns and villages wherein such property is located, under the general revenue laws of the state and the municipal laws regulating the assessments of other local property in such counties, cities, incorporated towns and villages, respectively, but the taxes on the property so assessed shall be levied and collected according to the provision of this chapter."

By the terms of Section 151.120, RSMo Cum. Supp. 1957, after assessment of this local property by local authorities, a statement of the assessment is certified to the county court together with the rates to be applied to such property.

An excellent discussion of the method in which distributable property of public utilities is assessed is found in State ex rel. and to the use of Hatten, vs. Kansas City Power and Light Co., 365 Mo. 296, 281 SW2d 784, 1.c. 786 and 787:

"The law governing the taxation of railroad property which is thus made applicable to power and light companies is to be found in Chap. 151, §§151.010 to 151.340. These statutes have been construed as dividing the property of such companies into two classes, distributable and local. Distributable property (with which alone we are presently

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concerned) is to be assessed and valued as a whole, and the aggregate value allocated to certain taxing subdivisions on a wire or track mileage basis, and the local property to be assessed by the local assessor of the taxing subdivision in which such property is located. State ex rel. Hayes v. Hannibal & St. J. Ry. Co., 135 Mo. 618, 37 SW 532; State ex rel. Spratt v. Chicago, R.I. & P. Ry. Co., 162 Mo. 391, 63 SW 495; State ex rel. Union Electric Light & Power Co. v. Baker, 316 Mo. 853, 293 SW 399. Section 151.020 provides in substance that the president or other authorized officer of a railroad company shall furnish to the state tax commission annually a sworn statement setting out in detail certain information with respect to the distributable property owned by it 'in each county, municipal township, incorporated city, town or village through or in which it is located in this state.' Under §151.060 the state tax commission is required to assess, adjust and equalize the aggregate value of the property specified in §151.020. Under §151.080 the aggregate value of all such property is apportioned or allocated by the tax commission to certain local taxing subdivisions according to the ratio that the pole mileage in such subdivision (in the case of power and light companies, or trackage in the case of railroads) bears to the whole length of the pole mileage (or trackage) in this state.

"The tax commission is required to keep a record of its proceedings, and to certify its action to the county court setting forth certain information with respect to distributable property owned by each railroad (or power and light company) in the state, and the value thereof per mile and its total length 'in each county, city, town, village and municipal township;' also the total values 'assessed, adjusted, equalized, and apportioned to such county, city, town, village and municipal township therein by said commission.'

"Section 151.140, in relation to levying the tax,

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provides that the 'county court, upon receipt from the state tax commission\* \* \*shall\* \* \* ascertain and levy the taxes for state, county, municipal township, city, incorporated town and village and school purposes \* \* \* and for other purposes on the railroad and the property thereof, in such county, municipal township, city and incorporated town or village, at the same rate,' etc."

As pointed out on the court's discussion, the county court, by the terms of Section 151.140, RSMo Cum. Supp. 1957, applies the same rate of taxation of both local and distributable property of public utilities, according to the rates furnished by the various taxing authorities within the county. The county clerk, by the terms of Section 151.170, RSMo Cum. Supp. 1957, makes a separate tax book for these taxes, showing separately the distributable and local property, together with the rates applied thereon. By Section 151.190, RSMo Cum. Supp. 1957, the county clerk forwards a statement of these taxes to the railroad or public utility being taxed. Section 151.200, RSMo Cum. Supp. 1957, provides that these taxes must be paid to the county collector on November 1 of the year in which these were levied.

After collection, Section 156.260, RSMo 1949, provides that the county collector pays the county taxes into the county treasury and the city taxes into the treasury of such city. This act then goes on to say that "amounts paid into the county and city treasury shall be dispersed as provided by law."

There are no further provisions within the railroad and utility tax laws as to what must be done with these funds once they are received by the local taxing authority. One also searches in vain the laws pertaining to financial administration in fourth class cities for any requirement that these funds once received by the taxing authority, must be treated differently or kept separate from those received from other tax payers for similar taxes.

#### CONCLUSION

Therefore, it is the conclusion of this office that a fourth class city is not required by the statutes regulating its financial affairs, nor by the laws pertaining to the taxation of railroads and other public utilities, to segregate taxes received from railroads and other public utilities. Taxes received from all public utilities are to be proportioned to the various city funds and paid out in the same manner as taxes received from individuals.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Jerry B. Buxton.

Yours very truly,

John M. Dalton  
Attorney General