

CHAPTER 23
RAILROAD PROPERTY TAX

Authority
N.J.S.A. 54:29A-6.

Source and Effective Date
R.1994 d.132, effective February 15, 1994.
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

Executive Order No. 66(1978) Expiration Date
Chapter 23, Railroad Property Tax, expires on February 15, 1999.

Chapter Historical Note
Chapter 23, Railroad Property Tax, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), the chapter was readopted as R.1984 d.100, effective April 2, 1984. See: 16 N.J.R. 233(b), 16 N.J.R. 747(c). Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1989 d.147, effective February 24, 1989. See: 21 N.J.R. 18(a), 21 N.J.R. 779(c). Subchapter 7, Appeal and Review, was repealed and new rules on the same subject were adopted as R.1990 d.630, effective December 17, 1990. See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1994 d.132. See: Source and Effective Date. See, also, section annotations.

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APPENDIX I

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

18:23-1.1 Purpose; scope; history

(a) The first general New Jersey Railroad Tax Law dates back to 1884¹ when railroad property was assessed both by the State and local governments. Since that time, the tax rate and classification of property have been the subject of many statutory amendments. In 1941 the basic structure for the present tax law was adopted² and the previous statutes repealed. The new law provided for both a property tax and a franchise tax, based on net railway operating income allocated to New Jersey on the basis of a trackage formula. The Franchise Tax is not a tax on earnings but a Franchise Tax measured by net operating income allocated to New Jersey.³ In 1948, the tax was extensively amended so as to adopt the present system of classifying railroad property and the current franchise rate of 10 percent of net railway operating income.⁴ Again, in 1964 and 1966, the law was amended so as to exclude main stem and facilities used in passenger service.⁵ Furthermore, the 1966 amendment eliminated local rates of taxation of property used for railroad purposes and substituted a uniform tax, collected by the State of New Jersey. The revenues collected are appropriated for payment to municipalities, in lieu of railroad property tax, plus additional sums appropriated as are required for replacement revenues to certain municipalities, in which railroad property is located, in accordance with a formula, known as State Aid, established by the New Jersey Legislature.

(b) The Act for which these rules are promulgated is the Railroad Tax Law of 1948. These rules are issued pursuant to N.J.S.A. 54:29A-6.

(c) These rules, insofar as they are identical in substance to existing rules relating to the same subject matter shall be construed as restatements and continuations and not new rules.

(d) Any reference in these rules to the "Act" or the "Tax Act" refers to the Railroad Tax Act of 1948 as amended, (N.J.S.A. 54:29A-1 et seq.).

(e) The Railroad Tax law of 1948 is administered by the Division of Taxation through Property Administration.

Amended by R.1979 d.48, effective February 6, 1979.

See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

Amended by R.1994 d.132, effective March 21, 1994.

See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

¹ P.L.1884, c. 101

² P.L.1941, c. 291

³ Delaware, Lackawanna & W.R.R.N. Division of Tax Appeals, N.J. State Department of Taxation and Finance, 3 N.J. 27; 68 A.2d 749 (1949), State Department of Taxation and Finance, 3 N.J. 27; 68 A.2d 749 (1949), appeal dismissed 338 U.S. 946.

⁴ P.L.1948, c. 40, 41

⁵ P.L.1964, c. 251 P.L.1966, c. 139

18:23-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Director" means the Director of the Division of Taxation, Department of the Treasury, State of New Jersey.

"Facilities Used in Passenger Service" means land, stations, terminals, roadbeds, tracks, appurtenances, ballast and all structures used in connection with rendering passenger service, including signal systems, power system, equipment storage, repair and service facilities.

"Main stem" means the roadbed not exceeding 100 feet in width, as measured horizontally at the elevation of the base of the rail, including the full embankment or excavated area, with slopes, slope ditches, retaining walls or foundations necessary to provide a width not to exceed 100 feet at base of rail, together with all tracks, appurtenances, ballast and all structures erected thereon and used in connection therewith, but not including passenger or freight buildings erected thereon.

"Pre-tax year" means the year immediately preceding the tax year.

"Railroad" means any common carrier by railroad engaged in, owning or constructing facilities for the transportation of persons or property in or through this State, including railroads not owning any rolling stock, other than a street railway or traction company using or occupying the public streets, highways, roads or other public places, the taxation of which is otherwise provided by law.

"System" means any independently operating railroad which operates its facilities and those of one or more other railroads as a single utility for furnishing transportation service. A system includes all companies, the property of which is so operated either by virtue of control through direct or indirect ownership of a majority or more of capital stock, or under lease, trackage rights or under any other form of contract, and for which separate operating accounts are not maintained.