

REPORT ON RAILROAD TAXATION

N.J. Joint legislative committee to study rail-
road tax problems
1941

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NEW JERSEY SENATE

LETTER OF TRANSMITTAL

*To the Honorable Senate and House of Assembly of the
165th Legislature, State of New Jersey:*

Your Joint Legislative Committee, constituted by Senate Concurrent Resolution No. 8 (1941) to study and report upon railroad tax problems and the means of effecting a solution thereof, is pleased to submit herewith its final report. The Committee has held hearings, heard witnesses and received and considered numerous proposals relating to railroad taxation in this State, including drafts of recommended legislation transmitted to the Committee by the Governor. The nature of the several proposals and the disposition made thereof more fully appear in the subjoined *Report*.

After careful investigation and consideration of the needs of the State and its municipalities, the condition of the railroads operating in this State, and the merits of the various proposals, your Committee is of the opinion that the subject demands immediate legislative action. Your Committee is further pleased to recommend the enactment of the Legislative Proposals of Governor Charles Edison's Committee on Railroad Taxation in New Jersey. These proposals consist of four bills which provide for the payment of presently delinquent railroad taxes in full, without interest penalties; and a new railroad tax structure for the future, including a property tax with a flat rate of three per cent upon true value and a franchise tax measured by earnings.

Your Committee proposes to cause these bills, copies of which are appended to the accompanying report, to be introduced forthwith in the appropriate house of the Legis-

lature. These bills and the agencies and individuals by whom they have been prepared and sponsored have been under malicious and libelous attack by persons who for selfish political reasons are determined to wreck, if they can, any effort by this Legislature to act constructively upon this problem which has troubled New Jersey for almost ten years.

Your Committee believes that this Legislature cannot permit such political attacks to deter it from judging this program of legislation upon the merits and meeting this issue upon an economic basis. The people of the State are well able to judge between the standing of those making these scandalous attacks and that of Governor Edison and the agencies and legislators who have taken part in the preparation and presentation of this program.

The program presented with this report is the result of exhaustive study by Governor Edison's special Citizens' Committee on Railroad Taxation whose final report and recommendations were based upon research work and analysis furnished by the staff of the Princeton Surveys, of Princeton University.

The Princeton Surveys have vouched for the complete integrity of the research work upon which this program is based and issued a public statement to the effect that this legislation is sound and workable and in the best interests of the people of the State.

The four specific bills presented to the Legislature herewith are the same bills, with minor changes, prepared for the Governor's special committee by the Princeton group and submitted to your Joint Legislative Committee by Governor Edison, with his approval and recommendation.

It is the opinion of your Joint Committee that this program is equitable, sound, and meritorious and is in the public interest.

Three Governors of New Jersey and numerous commissions and experts have urged over the years that the railroad tax situation existing in this State be adjusted.

One of the most intensive of such studies made recently was that of the New Jersey Tax Law Revision Commission under the chairmanship of Senator Edward P. Stout. In its report of March 6, 1939, this commission summarized the railroad tax problem and concluded:

“This matter of adjustment of their taxes, however, is not the problem of this Commission, but the facts are stated here for the purpose of emphasizing the present railroad tax situation and the necessity for revision of our railroad tax laws.

“The Commission recommends that the present *ad valorem* system of taxation of railroad property should be continued, but that the rate of taxation should be reduced.”

Governor Edison has met this issue in a constructive and statesmanlike manner. He has made every effort to remove it from the field of politics. Your Committee stands with the Governor on the need for prompt solution of this vexatious problem of State government.

Upon the basis of its hearings and the investigation of the subject committed to it for study and report, your Committee finds that it is in the public interest that the legislation proposed be enacted without delay and it so recommends.

Respectfully submitted

ROBERT C. HENDRICKSON, *Chairman*,
I. GRANT SCOTT,
HOWARD EASTWOOD,
ARTHUR F. FORAN,
MANFIELD G. AMLICKE,
HERBERT F. MYERS, JR.,
DOMINIC A. CAVICCHIA,
JOHN E. BOSWELL,
Members of Joint Committee.

STATE OF NEW JERSEY

165TH LEGISLATURE

REPORT ON RAILROAD TAXATION

by

JOINT LEGISLATIVE COMMITTEE

Constituted by Senate Concurrent Resolution, No. 8 (1941)

Pursuant to instructions by the Legislature to the Committee, careful consideration has been given to the problem of railroad taxation as it exists in New Jersey today. In the interest of the State at large, the Committee felt under obligation to develop and propose a practical solution for this dilemma of ten years standing.

Every effort has been made to protect the legitimate interests of each group affected by the existing situation or any modification of it. Because the problem has been so long neglected, these interests have become increasingly divergent and insistent. Any workable solution must, therefore be one which conflicts with these diverse interests to the least possible extent. Budgets of State funds and municipalities must be respected. Similarly, the solvency and efficiency of the taxpaying railroads must be protected.

Hearings have been held for the purpose of obtaining opinions concerning a variety of possible approaches to a solution based on these premises. Meetings with members of the Governor's Citizens Committee have been directed toward a complete understanding of recommendations made by them. Representatives of the railroads have expressed their views concerning those recommendations and

have offered some modifications. In like manner, spokesmen for municipalities and educational funds have been heard; and one alternate proposal was presented to the Committee in bill form by representatives of Mayor Frank Hague of Jersey City.

Principal viewpoints and considerations brought before the Committee during these hearings and investigations are summarized as follows:

* * *

1. Any attempt toward a comprehensive solution of the railroad tax question must revolve around two broad considerations:

A. What disposal shall be made of railroad tax delinquencies which have accumulated since 1932 and which now amount to more than \$34,000,000?

B. What preventative measures shall be taken to insure that a similar situation will not again arise in future years?

2. The Committee appointed by Governor Edison recommends legislative action designed to answer these two questions in the following way:

A. By requiring payment in full by the railroads of all their delinquent railroad taxes to the State over a period of years. All penalties and interest accrued to date on account of these unpaid taxes is to be waived only for so long as the delinquent roads meet their annual installment requirements. In lieu thereof, interest at the rate of three per cent per annum shall be charged against balances unpaid since December 31, 1940. These interest payments shall be made in the same manner as are installment payments on account of principal.

B. By dividing the levy of future taxes between:

(1) An *ad valorem* tax levied against the assessed valuations of classes 1, 2, 3 and 4 of railroad property as determined by the State Tax Commissioner, at a flat rate of three per cent.

(2) A franchise tax based upon system net railway operating income after deduction of all railway tax accruals for the year preceding the tax year allocated to New Jersey in proportion to miles of all track;

(a) The resulting income allocated to New Jersey is capitalized at three per cent, and the assessed valuation of classes 1, 2 and 3 railroad property deducted therefrom.

(b) The remaining income, known as "franchise base" becomes taxable in the current year at three per cent.

3. The litigating railroads have, in general, expressed agreement "in principle" with the recommendations of the Governor's Committee as outlined above. They have, in whole or in part, raised objections "in fact" upon the following grounds:

A. That the method for determining franchise values is "unsound" in that it is based upon net railway operating income after deducting all railway tax accruals.

B. That a tax levied against franchises in the manner therein proposed would result in confiscation by the State of all net railway operating incomes allocated to New Jersey.

C. And that the number of years over which it is suggested that delinquent taxes be amortized is not sufficiently great to enable some of the railroads to meet the annual installment payments.

4. To meet these objections to the proposed legislation, the railroads have suggested changes as follows:

A. *First*: An *ad valorem* tax on property at 3.5 per cent and a franchise tax at 10 per cent levied against:

(1) Net railway operating income before all taxes (except Federal and payroll taxes) averaged for a five-year period ending with the tax year, and allocated to New Jersey on the basis of all track miles;

(2) Less a similar allocation of average income for a five-year base period covering the years 1936-1940, inclusive.

B. *Second*: An *ad valorem* tax on property at three per cent and a franchise tax at 12.5 per cent levied against; Net railway operating income before all taxes except Federal and payroll average for five-year period preceding tax year and allocated to New Jersey on basis of all track miles.

C. *Third*: An *ad valorem* tax on property at three per cent and an "excess earnings" tax at three per cent, levied against:

(1) Net railway operating income before all taxes except Federal and payroll averaged for five-year period preceding tax year and allocated to New Jersey on basis of all track miles;

(2) Less property taxes levied at three per cent, and

(3) Capitalized at 7.5 per cent. It was further suggested in this proposal that the "excess earnings" tax shall not be levied against any railroad company now in the custody of trustees under the bankruptcy act in any year prior to the last installment on account of its tax arrears.

D. *Fourth*: Adopt the legislation as recommended by the Governor's Citizens Committee, but only after making the following amendments:

(1) Change the formula for determining the number of years during which delinquent railroad taxes may be paid in such a manner as to give a longer installment period;

(2) Change the rate of capitalization for determining the franchise base from three per cent to 3.5 per cent;

(3) Change the definition of "net railway operating income" so as to conform with recent amendments in accounting requirements by the United States Interstate Commerce Commission;

(4) Change the date from which interest shall accrue at three per cent against unpaid taxes from December 1, 1940, as recommended to the date upon which this legislation becomes effective.

5. Representatives of Jersey City in Hudson County have emphatically expressed their disagreement with the recommendations of the Governor's Citizens Committee. This dissent is based upon the following arguments:

A. The railroads are able to pay their annual taxes as currently levied and also their delinquent taxes and penalties thereon owed to the State.

B. Any reduction in future taxes levied against the railroads will result in additional burdens on other taxpayers; and because about 60 per cent of all railroad taxes levied for local purposes accrue to Jersey City, this shifting of the burden is of particular significance to the taxpayers of that city.

C. The railroads have tried unsuccessfully to secure tax relief through court action. It is not the function of the Legislature to circumvent the courts in those decisions.

D. Track miles should be replaced by physical valuations as a basis for allocating system revenues to New Jersey.

E. The franchise formula, as recommended, so lends itself to evasion, that no railroad would actually pay any tax under it.

6. To meet their expressed objections to the proposed legislation, representatives of Jersey City have submitted, in bill form, an alternate proposal designed to:

A. Allow for the payment by the railroads of present delinquent railroad taxes and penalties by installments over a period of years.

B. Reduce the rate at which future interest against these delinquencies shall be charged from 12 per cent per annum to 3 per cent per annum.

7. Representatives of other municipalities and of the various educational funds for which railroad tax accruals are dedicated have expressed their confidence in the ability of this Committee to protect their interests. Each of them have asked nothing more than that they shall not be discriminated against in any proposed settlement.

8. Representing the State Tax Department, Mr. J. H. Thayer Martin suggested that all track miles be replaced by physical valuations as an allocating factor, and expressed doubt as to the theory and practice of the franchise tax proposed by the Governor's Citizens Committee.

With these considerations before it, the Committee undertook to weigh the various personal and group interests involved and to make recommendations which it felt were to the best interests of the State at large. In so doing, it analyzed the major questions suggested above in the following way:

(1) *Does the formula for taxing railroad franchises as recommended by the Governor's Citizens Committee result in confiscation of net operating income allocated to New Jersey?*

There is nothing inherent in the proposed formula which yields such a result. An assumption that taxes levied in any year shall exactly equal net railway operating revenue after deducting all taxes in the preceding year, tends to guarantee exactly the opposite situation. This can be demonstrated by a simple illustration:

Assume a railroad with constant net railway operating income before taxes. Also assume that tax accruals in the first year amounted to 45 per cent of that income. Its tax history would become:

YEARS OF OPERATION UNDER PLAN					
	1	2	3	4	Total
Net railway operating income					
before tax	100	100	100	100	400
Railway tax accruals	45	55	45	55	200
	—	—	—	—	—
Net remaining for fixed					
charges	55	45	55	45	200

It will be noticed that, for any two-year period, the amount available for fixed charges equals exactly one-half of the net railway operating income before taxes. This procedure could be carried on indefinitely without altering this situation.

(2) *Should the railroads be allowed a greater number of years in which to pay their delinquent taxes to the State?*

Ability of a railroad or any other organization to pay is a most intangible thing to measure. After due consideration of the factors involved, however, the Committee recommends that the "burden index" as defined in Bill I, Section 2 of the *Legislative Proposals*, submitted by Gov-

ernor Edison, be based upon net railway operating income *after* deducting all taxes. As defined in that section, income before taxes is used. This modification is predicated upon the consideration that the suggested income (the income *after* taxes) is that from which delinquency payments must be made.

No extension in time other than that resulting from the above amendment is recommended. The railroads have iterated their ability to borrow money at rates less than the three per cent charge which it is contemplated will be made against their delinquent taxes outstanding. With such ability, it would seem to be to the definite advantage of the roads to borrow such funds as are required for full settlement of these obligations. In arranging such loans, they could also arrange the period of repayment to fit their own convenience.

(3) Do any of the first three alternate proposals as offered by the railroads contain provisions which the Legislature should adopt in the best interests of the State?

Each of the proposals was designed to result in total tax levies during the first year of about the same amount as would result from application of the recommendations made by the Governor's Citizens Committee. But in arriving at such results, taxes actually to be levied against individual roads were altered materially from those anticipated by the Committee. Roads least able to pay were, in general, to be levied against at a higher rate than recommended, while the more able roads would, in most cases, receive a reduction in tax liability.

By the first alternate proposal offered by the railroads, no franchise tax would be levied in any year except when earnings for the five preceding years were in excess of similar earnings for the five years 1936-1940, inclusive. In years when this requirement is not met, the only railroad taxes levied would be those at 3.5 per cent on assessed valuation of physical property.

Each of the alternate proposals as offered by the railroads is predicated upon a five-year average of income. Such a procedure would result in a smaller levy in taxes during any five-year period containing a single year in which income was not sufficient to require the payment of a franchise tax by the recommended formula. Because of the suggested reduction in rates at which railroad property is liable to taxation, the Committee does not feel justified in recommending any alterations resulting in further reductions in future tax liability.

However sympathetic the Committee may feel toward the railroads now in the custody of trustees under the bankruptcy act, it does not feel justified in recommending that such roads be given any special treatment. To do so would invite a virtual deluge of bankrupt corporations upon the Legislature, each seeking some special action in its particular field of activity. In a democratic economy, special privileges must be granted only with extreme caution. So long as the federal bankruptcy statutes are available to such roads, there seems to be no reason for the Legislature to supplement the protection afforded by them.

(4) Should the Legislature adopt any of the amendments to the recommended legislation as suggested by the railroads?

The Committee has already suggested an amendment to the formula for computing "burden index" as recommended (see answer to question 2 above). This results in a slight change upward in the number of years over which delinquency payments will be allowed. No further change in the amortization period is here recommended.

The suggestion by the railroads that the rate of capitalization as applied to net railway operating income in determining the base for franchise tax levies be changed from three per cent to 3.5 per cent as recommended is not endorsed by this Committee. Such a modification in the franchise formula would result in a 14.3 per cent reduction in total taxes levied against each road subject to the fran-

chise tax as compared with levies under the recommended formula. These savings would accrue to the roads most able to pay and would bestow no benefits upon the poorer roads. In consideration of concessions already provided for in the recommended legislation, the Committee does not feel justified in recommending this additional consideration.

The definition of "net railway operating income" as suggested by the railroads is that which is now prescribed by the United States Interstate Commerce Commission. Because of this fact, the Committee recommends that the definition contained in Bill II, Article III, Section 14 of the proposed legislation be so modified as to conform with that of the Interstate Commerce Commission.

A change in the date from which interest at three per cent is to be charged against delinquent taxes from December 1, 1940, as recommended, to July 1, 1941, would result in an additional concession to the railroads amounting to \$585,000. This total would be further increased by \$85,000 for each additional month between July 1 and the effective date of this legislation. This Committee does not feel justified in recommending such further concessions to the railroads as this change involves.

(5) Are the railroads able to pay their annual taxes as currently levied and also their delinquent taxes and penalties thereon owed to the State?

In answering question 2 above, it has already been pointed out that ability to pay is a most intangible concept and is not susceptible to absolute measurement. The recommended legislation provides, however, for full payment by all roads of all delinquent taxes. These payments are to be made over a period of years determined by the earnings of the paying road. Provision has been made for waiving all penalties accrued to date, only so long as the paying road meets its installment obligations. This results from the consideration that the greater part of these penalties are owed by roads least able to pay, and because a cumulative rate of 12 per cent per annum is felt to represent an excessive charge.

With regard to future tax levies, the recommended legislation provides that a minimum tax of three per cent on the assessed value of physical property shall be levied. It provides, further, that a franchise tax shall be levied against those roads which have earnings sufficient to, when capitalized at three per cent, represent a capital valuation in excess of the physical valuation. There is nothing in this procedure which insures that total levies in future years will be less than those of the past. Even for the first year of operation under it the estimated tax bill against a few of the roads is larger than the 1940 levy.

If current expectation by the railroads of their earnings in 1941 materialize, total taxes levied during the second year of operation will exceed those levied in 1940. Thus, the Committee feels that, while it cannot measure quantitatively the absolute ability of any given railroad to pay taxes, a formula which results in taxes being levied in some relation to income of the taxpayer, reflects more closely that ability than does an unmodified *ad valorem* tax levied at average or local rates.

(6) *Does any reduction in future railroad taxes result in additional burdens being placed upon other taxpayers?*

A better statement of the question would seem to be, "Does any reduction in *the yield* from future railroad taxes result in additional burdens being placed upon other taxpayers?" A reduction in tax accruals alone can result in no added burden being placed upon any taxpayer.

As of January 27, 1941, only 80 per cent of all railroad taxes levied in New Jersey during the years 1932-1940, inclusive, had actually been paid. But, such an average includes all roads at all stages of completeness of payment. A breakdown by railroad systems appears as follows:

STATEMENT OF RAILROAD TAXES FOR THE YEARS 1932-1940
Percentage of Total Levies Paid as of
January 27, 1941

<i>Railroad System</i>	<i>Tax for State Use</i>	<i>Tax for Local Use</i>	<i>Aggregate Tax</i>
Penna. R. R.	100.0	99.94	99.97
P. Read. S. Lines	100.0	100.0	100.0
C. R. R. Co. of N. J.	60.60	61.44	60.99
Reading Co.	97.91	97.73	97.85
Erie R. R.	70.98	73.15	72.17
D. L. and W. R. R.	75.19	74.72	74.95
N. Y. Susq. and W. R. R.	58.26	57.30	58.01
L. V. R. R.	73.25	72.55	72.92
N. Y. C. R. R.	73.71	74.00	73.91
Uncl'd R. R's.	99.53	99.56	99.54
Totals	81.30	78.72	80.12

Source: Condensed from tables prepared by State Comptroller of the Treasury, January 27, 1941.

A study of these data indicates that any reduction in taxes levied against some roads (The Pennsylvania, etc.), would result in "shifting" of some of the present burden of taxation to other sources. But, such a study also indicates that a reduction for other roads (like the Central Railroad of New Jersey, etc.), amounting to as much as 40 per cent, would not alter the present distribution of the tax burden. Expected taxes to be levied during the first year under the recommended legislation will result in a total reduction from the 1940 levy amounting to about 18 per cent.

Because about 60 per cent of all second class railroad property in the state is located in Jersey City, it may be well to demonstrate the effect of the proposed change upon the revenues of that municipality.

Since 1932, a total of \$46,680,000 in second class railroad taxes have been levied by the State for the use of Jersey City. During these years, total collections of such levies have amounted to \$36,395,000, or 78 per cent. The history of these collections has been as follows:

JERSEY CITY

Second Class Railroad Tax Levies and Collections by year of Collection

(thousands of dollars)

<i>Year (ended June 30)</i>	<i>Levy</i>	<i>Current Collection</i>	<i>Per Cent of Levy</i>	<i>Total Collection</i>	<i>Per Cent of Levy</i>
1933	4,872	4,180	85.8	4,180	85.8
1934	4,716	2,346	49.7	2,765	58.6
1935	5,127	3,122	60.9	3,122	60.9
1936	5,365	3,269	60.9	3,269	60.9
1937	5,336	3,789	71.0	5,225	97.9
1938	5,126	3,680	71.8	3,680	71.8
1939	5,491	3,912	71.2	3,912	71.2
1940	5,093	3,789	74.4	5,143	100.9
1941 ¹	5,554	4,230	76.2	5,099	91.8
Totals	46,680	32,317	69.2	36,395	77.9

¹ To May 1, 1941.

Source: Tabulated and computed from records in office of State Comptroller of Treasury.

For purposes of comparison with the above data, estimated taxes which will accrue to Jersey City during the first year of operation of the proposed legislation, are shown by roads as follows:

JERSEY CITY

*Estimated Taxes Accruing Under Proposed Legislation
During First Year of its Operation (1941)*

(thousands of dollars)

<i>Railroad Systems</i>	<i>Property Tax at 3 per cent</i>	<i>Share of Franchise</i>	<i>Total Tax Accruals</i>
Central R. R. of N. J. . . .	798	...	798
Lehigh Valley R. R.	391	27	418
N. Y. Susq. and W. R. R. .	2	75	77
D. L. and W. R. R.	571	64	635
New York Central	12	...	12
Erie R. R.	454	16	470
Pennsylvania R. R.	873	623	1,496
All Other R. R.'s	53	379	432
Totals	3,154	1,184	4,338

Source: Estimated on basis of 1940 assessed valuation of physical property and incomes reported by the railroads for that year.

Comparison between the above two tables indicates that Jersey City stands to receive revenue from railroad taxes during the first year under the new proposal amounting to about as much as she has ever received currently.

The proposal provides that one-half of all yields from the franchise tax shall accrue to the municipalities in proportion as the second-class railroad property is distributed. For this reason, Jersey City stands to benefit materially from the anticipated expansion of railway income. If income expectations for 1941 materialize, more than \$5,-600,000 in railroad taxes will accrue to this municipality in 1942. Because of the provisions for distribution of franchise taxes, Jersey City no longer has to depend solely

upon payment by roads holding second-class property within her boundaries. Thus, Jersey City stands to participate in a division of tax monies paid by the more prosperous and more prompt railroads.

In addition, however, to the current taxes expected under the proposal, Jersey City will share in the payments on account of delinquencies and interest. The first two such payments to Jersey City are expected to amount to about \$1,800,000 each. Thus, total collections by Jersey City during the first year of operation under the plan are expected to amount to \$6,138,000, or more than she has ever levied or collected in railroad taxes in any single year. In the year 1942, this total is expected to exceed \$7,400,000.

(7) Is the Legislature circumventing the courts in modifying the railroad tax?

The courts have ruled that the Legislature of New Jersey has the power and authority to prescribe methods for taxing railroads within their jurisdiction. In deciding against the railroads in recent tax litigation, they have done nothing more than hand down such a ruling. They have merely enforced the law as it was written. They have never intimated that the law was a wise one nor have they ever suggested that it should not be changed. To the contrary, they have stated that such relief as the railroads can secure must be obtained through legislative action.

(8) Should all track miles be replaced by another factor in the formula for allocating railway system revenues to New Jersey?

Numerous allocation factors are available. Examples of these are road miles, equipment miles, traffic miles, assessed valuations, valuations for rate-making purposes, etc. All track miles was selected because it seemed to lend itself to rationalization upon sound theoretical grounds and to fit the New Jersey requirements better than any other measure. Similar arguments can well be advanced for using some other factor. It is certainly improbable that

any one factor can be termed an *absolute* measure, or that every factor is "basically sound" from every standpoint.

All track miles gives weight to terminal states because it is based upon total mileage of tracks of every description. It includes the mileage of every siding or spur in a terminal or along a line. It is a factor which is commonly used by other states and by the railroads themselves.

The best substitute would, of course, be accurate revenue and cost records which would reflect the results of operations within each political subdivision. Such records are actually impractical because the railroads do not operate that way. Their preparation would involve an infinite amount of allocating of "shared" revenue and cost. In addition, it would require a clerical staff and overhead far larger than is workably conceivable.

The United States Interstate Commerce Commission has prepared estimates of physical valuations of railroad properties for use in rate-making. Mr. J. H. Thayer Martin of the State Tax Department and Mr. Raymond Greer of Jersey City have recommended that these valuations be used instead of all track miles. The Committee has not felt justified in recommending that such a change be made. Because the amount of tax and its impact as determined are felt to be equitable, any such change in allocating factors would only result in laborious recomputations and rate adjustments. They would accomplish little more than a mechanical change from which no immediate benefit would evolve.

(9) *Does the franchise formula, as recommended, lend itself to easy evasion?*

Mr. Raymond Greer of Jersey City has emphatically stated his belief that the proposed franchise tax can and will be easily evaded. Mr. Maximilian Stallman of the Associated Railroads has repeatedly protested that it was too absolute and would result in confiscation of all net railway operating income allocated to the State.

In considering and in drafting the formula, every precaution has been taken to render it as nearly impossible of evasion as it could be. Definitions used are those prescribed by the United States Interstate Commerce Commission. Accounting procedures by which the returns are filed are also prescribed and supervised by that Commission. The State Tax Commissioner is given broad powers to investigate and modify the returns as filed by the railroads. The Committee feels that every possible precaution has been taken and that the franchise tax will not be easily evaded.

(10) *Should the Legislature adopt the alternate bill as presented by representatives of Jersey City?*

Analysis of this bill indicates that it accomplishes nothing more than to reduce the rate of interest charged against delinquent taxes from the date of its enactment. It requires full payment of delinquent taxes and penalties. It permits the railroads to amortize these payments over a 20 year period during which interest will be charged at the rate of three per cent. No change in method or degree of future taxation is recommended.

The Committee feels that this is not enough. Rather than adopt so meaningless a measure, it would prefer to see no action taken.

ROBERT C. HENDRICKSON,
Chairman,

I. GRANT SCOTT,
HOWARD EASTWOOD,
ARTHUR F. FORAN,
JAMES I. BOWERS,
MANFIELD G. AMLICKE,
HERBERT F. MYERS, JR.,
DOMINIC A. CAVICCHIA,
JOHN E. BOSWELL,
Members of Committee.

MINORITY REPORT OF JOINT LEGISLATIVE COMMITTEE

to study and report on any proposed settlement of past due railroad taxes, and on any proposed method of assessment for the future, pursuant to Senate Concurrent Resolution introduced by Senator Driscoll of Camden County, on March 10, 1941

To the Members of the Legislature:

As a member of the Special Legislative Committee on railroad tax compromise, I consider it my duty to render a minority report dissenting from the views of the majority of the members of this Committee.

This Committee has held four sessions. At each one of these sessions the provisions of the railroad tax bills, which were submitted to the Committee by Governor Edison, were reviewed in detail. I pointed out at each one of these sessions to the majority members of the Committee, and particularly to Senator Hendrickson, the fact that these bills as presently constituted gave undue preferential treatment to the railroads. I pointed out that under the terms of these bills the treasury of the State of New Jersey, the taxpayers and all of the people of this State would be forced to give \$121,000,000 of their money to the railroads in order to collect \$31,000,000. This \$31,000,000 only represented a part of the actual moneys which are due from the railroads in tax arrearages for the past nine years. The total amount due is \$52,000,000.

I stated to this Committee that nine years ago the railroads involved in this controversy went before the State Board of Tax Appeals and protested against the method of assessing their properties. The State Board of Tax Appeals denied their claims. They then went before the Supreme Court of this State and this Court ruled against them. They then went to the Court of Errors and Appeals of the State of New Jersey and once again their claims were thrown out. Not being successful in the State Courts they then went before the Federal District Court, the

United States Circuit Court of Appeals, and finally brought their case before the United States Supreme Court, and every one of these Courts ruled in favor of the people and said that these taxes were fair and just and the methods of assessing valuations were fair and equitable.

I told the members of this Committee that there was no reason why the railroads should seek this relief from the Legislature; they are in a position to pay these taxes without being granted any more preferential treatment than is given to any other taxpayer in the State of New Jersey.

It appears to me to be a ridiculous gesture and a very unbusinesslike one and one that is fraught with the grave question for the members of the Legislature or the members of this Committee to consider giving the railroads preferential treatment which will cut the railroad tax arrearage bill from \$52,000,000 to \$31,000,000, and as a further concession, cut their tax bill on current and future taxes from \$18,000,000 a year to \$13,000,000 a year. In other words, the people of the State of New Jersey are being deprived of \$21,000,000 of the tax arrearages which are due, and they are being deprived of \$5,000,000 per year on current and future taxes which will amount, under the terms of these bills, to over \$100,000,000.

This Committee cannot base their decision to settle these claims upon any valid argument. The arguments which were put before them by railroad representatives to the effect that the railroads face bankruptcy and are poverty-stricken are absolutely untrue in view of the reports which are on record with the Interstate Commerce Commission. Those reports, which have been filed by the railroads themselves, show that under the present Defense Program the increased business of the railroads has netted them millions of dollars in increased revenues and that as the years go on these millions will be multiplied many times over.

Why then should we give the railroads these moneys?

The majority members of the Committee particularly Senator Hendrickson, have said that they will amend the act to provide for more taxes out of the franchise provi-

sions of these bills. Let me say that those provisions of the bill are illusory and imaginative and will gain the people of New Jersey nothing.

In regard to the franchise tax provisions in the present railroad bills, I quote from the letter sent by Mr. R. M. Greer, Comptroller of the City of Jersey City, to Governor Edison. Mr. Greer has analyzed the franchise tax provisions of these bills thoroughly and he has said in his letter to Governor Edison: "The franchise tax in your bill is based upon 'railway operating revenues.' Railway operating revenue does not include all of the revenues derived by the operating companies from the use made by others of the railroad property assessed in New Jersey. This amounts to large sums annually, and if capitalized, would represent millions of dollars in property value.

"Joint facility rents (debits and credits) mitigate against New Jersey for the reason that in New Jersey the operating companies, or their lessors, own the terminals and railroad lines in fee whereas outside of New Jersey extensive and valuable terminals are frequently owned by a separate subsidiary company whose stock is entirely owned and all of its obligations guaranteed by the operating company. Hence, terminals which are assets in New Jersey become liabilities elsewhere, and the debits far exceed the credits accounted for in joint facility rents. This has been demonstrated repeatedly in the records of the New Jersey tax litigation.

"The total railway operating revenues of the companies operating in New Jersey do not include or reflect any part of the railway operating revenues of any of the companies who jointly use or whose traffic is served through interchange connections by the New Jersey railroads and terminals.

"The use of the franchise granted by the State of New Jersey, and representing the terminals on the New York waterfront, have been acquired at high prices by foreign operating companies to increase their operating revenues from transcontinental, coastwise and foreign commerce

which are not included or reflected in the railway operating revenues of the companies which operate the railroads and terminals in New Jersey. This also has been demonstrated in the records of the New Jersey tax litigation, and most important of all has been recognized by all of the Courts of the State and Federal Government in their decisions.

“Section 15 imposes a permanent flat tax of 3 per cent on the franchise valuation determined by the formula method provided in section 14, but the 3 per cent tax rate does not apply to the entire allocated amount of that valuation, but only to so much thereof as is left after deducting the total valuation of all other classes of railroad property; hence there never will be any assurance of the receipt of franchise taxes from any railroad company in the State of New Jersey. It is possible, under this arrangement, that the operating accounts of an operating company may be set up in such a manner so as to show a false franchise value so small that the ‘all track mile’ allocation to New Jersey may never exceed the assessed valuation of the system physical property in New Jersey. Consequently, the provision in Section 24 that one-half of the receipts of the franchise tax shall be allocated and paid over to the taxing districts is entirely illusory and speculative and no municipality can ever depend upon a share of the franchise taxes as an offset to its sacrifices in tax revenue resulting from the reduction of the tax rate on other property from the local rate to a flat 3 per cent.

“Thus it can be seen from the foregoing that for all practical purposes we cannot assume that anything will be paid to us from this franchise tax section; and we must, therefore, prepare ourselves for a tax loss for the future from railroad property to be in the sum of substantially over \$2,000,000 annually.

“The franchise tax provision has, in my opinion, done nothing more than confuse the whole issue at stake.

"In my opinion, Governor, the railroads under this franchise tax provision will be able to avoid the payment of any appreciable sums of money to the State of New Jersey in the way of a franchise tax by reason of their own bookkeeping methods and loopholes in the act as drawn. Many of the railroads will be able to avoid any payment at all by way of a franchise tax because of these loopholes."

It can thus be seen that the Committee in its efforts to place great credence upon the franchise tax provision is merely attempting to mislead the public into accepting these bills. This provision is nothing more than a clever trick inserted into the bills by the railroad representatives whereby the railroads will be handed \$121,000,000 of the people's money.

There is no doubt that this franchise tax provision was written into the bill in order to afford this Committee, an opportunity to camouflage the real purpose of these bills which is to give to the railroads over \$100,000,000 of the people's money.

I protested strenuously at the sessions because of the fact that Senator Hendrickson has seen fit to hold conferences with the railroad representatives. I stated quite frankly to the members of the Committee that it was very unethical for any member of the Committee to be holding conferences with the railroad representatives on bills which were to be acted upon by the Legislature and which concerned the future financial welfare of the people of the State of New Jersey. The persons to hold the conferences with are the people of this State who have a vital interest in this matter and who will, in the event these bills become law, suffer a loss of \$121,000,000 in taxes which are due, and will be due to them, in the future. This loss will have to be made up by the people of the State of New Jersey in some way. It can only be made up in an increased tax burden upon the taxpayer and homeowner of this State.

I, therefore, recommend to this Legislature, as a member of the Committee, that the majority report favoring

these bills be denied, and that the railroads of this State who are in a position to do so, be made to fulfill their obligation by paying the \$52,000,000 in tax arrearages which they presently owe, and by paying the full amount of all the current and future taxes which every Court in the State of New Jersey and the United States have said rightfully belongs to the people of the State of New Jersey.

PETER P. ARTASERSE,
*Assemblyman from
Hudson County.*

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