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State of New Jersey

**Report of Committee on Taxation of
Railroad and Canal Property**

To the Legislature

New Jersey State Library

1934

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REPORT

To the Honorable A. Harry Moore, Governor, and to the Senate and General Assembly of the State of New Jersey:

YOUR EXCELLENCY AND HONORABLE SIRs:

On the 27th day of November, 1933, Your Excellency the Governor transmitted to the Legislature a special message calling attention to the enormous amount of railroad tax revenue involved in the pending railroad tax litigation, the contentions of the railroad companies as to the alleged illegal method and discrimination in the assessment of railroad property, and the computation of the average rate of taxation, and urging that a committee representative of the Legislature and of the State be appointed to make with diligence and dispatch a painstaking and systematic study of the railroad tax question for the purpose of reaching an intelligent conclusion as to what changes should be made in the present railroad tax law so that the assessment of railroad property and the fixing of the average rate of taxation thereof may be so ascertained and determined as to eliminate all controversial questions and bring an end to the protracted litigation in respect thereto.

On receipt of this message, the Legislature passed the following joint resolution:

“That a committee of nine members be appointed to prepare necessary legislation for the taxation of railroad and canal property. Said committee shall consist of three members of the Senate, to be appointed by the President thereof, and three members of the Assembly, to be appointed by the Speaker thereof, and three persons, citizens of the State of New Jersey, to be appointed by the Governor. Said committee shall organize as soon as practicable, and

shall report its findings at the opening of the legislative session of one thousand nine hundred and thirty-four, together with proposed legislation."

This joint resolution was approved by Your Excellency the Governor on the 4th day of December, 1933, and took effect immediately, and is known as Joint Resolution No. 21 (P. L. 1933, p. 1292).

Pursuant to this joint resolution, the President of the Senate appointed Senators Clifford R. Powell, Albert S. Woodruff and Frank Durand, and the Speaker of the House of Assembly appointed Assemblymen Anthony J. Siracusa, Joseph C. Kinzley and Theron McCampbell, and Your Excellency, the Governor, appointed Senator Edward P. Stout; Dr. Harley Lutz and Mr. Roy B. White.

On the 13th day of December, 1933, your committee met at the executive office, State House, Trenton, New Jersey, and organized by the appointment of Senator Edward P. Stout as chairman and John B. McGeehan as secretary. Due notice was given of the first meeting of your committee and of each subsequent meeting. At the request of your committee, an assistant to the Attorney-General attended each meeting of your committee as a representative of the Attorney-General. At the first meeting your committee directed Dr. Lutz to visit the States of Wisconsin, Minnesota and Ohio to investigate the methods of railroad taxation in these States, and to report to your committee. These States were chosen because Wisconsin uses the ad valorem method, Minnesota uses the gross receipts method, and Ohio uses both methods. Dr. Lutz visited these States and submitted his report to your committee on the 15th day of January, 1934.

The Attorney-General, upon the request of your committee, furnished each member thereof with a copy of the briefs in the 1933 railroad tax litigation before the State Board of Tax Appeals, and a copy of the opinion of the State Board of Tax Appeals in that case, to enlighten your committee upon the questions involved in the railroad tax litigation.

At the invitation of your committee, J. H. Thayer Martin, State Tax Commissioner; Louis Focht, chief engineer of the State Tax Department; Francis D. Weaver, president of the State Board of Tax Appeals; John J. Solan, assistant to the Attorney-General for the State in the railroad tax litigation, and Maximilian M. Stallman, Robert J. Bain, and Alexander H. Elder, attorneys for the railroad companies in the railroad tax litigation, appeared before your committee and expressed their opinions with respect to the present railroad tax law, and made suggestions as to changes therein.

Upon request, the State Comptroller reported to your committee the amount of taxes in controversy in the pending litigation between the railroad companies and the State for the years 1931, 1932, and 1933.

Your committee gave due consideration to:

- (a) the report made by Dr. Lutz on the railroad tax laws of Wisconsin, Minnesota, and Ohio,
- (b) the railroad tax laws of this State as well as of other States,
- (c) the briefs of counsel in the 1933 railroad tax litigation,
- (d) the opinion of the State Board of Tax Appeals in the 1933 case,
- (e) the opinions of the representatives of the State and of the railroad companies, who appeared before your committee, as to what changes should be made in the existing railroad tax law.
- (f) the enormous amount of railroad tax revenue involved in the litigation, and
- (g) the contentions of the railroad companies as to the validity of the assessment and taxation of their railroad properties.

As a result, your committee respectfully reports as follows:

1. The amount of taxes in controversy for the years 1931, 1932 and 1933, in the pending litigation between the railroad

companies and the State, as shown by the report of the State Comptroller to your committee, is as follows:

1931 In Court of Errors and Appeals...	\$1,858,117.76
1932 In Federal Court (District of N. J.).....	3,117,979.32
1933 In New Jersey Supreme Court...	9,193,090.99
Making a total of.....	<u>\$14,169,188.07</u>

and, unless remedial legislation is passed at this session, it is estimated that an additional \$9,000,000 will be controverted by the railroad companies on the review by the State Tax Commissioner of the 1934 assessment of railroad property, making a total in controversy in excess of \$23,000,000.

The amount of taxes for 1931 in litigation is contested by three railroad companies, on the ground that the average rate of taxation applicable to 1st, 3rd and 4th classes of railroad property is not based upon the true value of property assessable under the General Tax Act. This tax revenue has been paid to the State, and, if distributed, would be paid to the municipalities for local school purposes, but, by order of the court, the amount involved in the litigation is withheld by the State Comptroller.

The amount of taxes for 1932 in litigation is contested by two railroad companies, on the ground that the assessed valuation of their properties is excessive and discriminatory and the average rate of taxation illegal. This tax revenue, if paid, would be distributable to the municipalities, but the railroad companies, under order of the court, are not required to pay same, pending the litigation.

The amount of taxes for 1933 in litigation is contested by all of the major railroad systems, on the ground that the assessed valuation of their properties is excessive and discriminatory and the average rate of taxation illegal. Of the amount involved, if paid, \$5,544,694.40 belongs to the municipalities and \$3,648,396.59 belongs to the State for State purposes, but the railroad companies are not required to pay same pending the litigation.

It follows, therefore, if the total amount of \$14,169,188.07 railroad tax money in controversy is paid, \$11,500,791.58 would belong to the municipalities. The municipalities have sorely felt the delay in receiving this anticipated tax revenue, and, in the event that the pending litigation terminates in victories for the railroad companies, the result will be a staggering blow to the financial structure of these municipalities.

2. The total assessed valuation of railroad property for the year 1933, as adjusted by the State Board of Tax Appeals, on the appeal of the railroad companies, is as follows:

First Class Property	\$215,139,302.00
Second Class Property	218,518,530.00
Third Class Property	68,658,474.00
Fourth Class Property	5,734,500.00
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	\$508,050,806.00

The average rate of taxation computed for 1933, and applied to 1st, 3rd and 4th classes of railroad property is 3.756 per \$100.00, and the taxes are as follows:

First Class Property	\$8,080,632.18
Third Class Property	2,578,812.29
Fourth Class Property	201,866.22
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	\$10,861,310.70

The taxes imposed upon Second Class property, at the local rates, are	8,335,742.53
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	\$19,197,053.23

3. The act for the taxation of railroad and canal property in this State provides for the ad valorem method of taxation, and requires the State Tax Commissioner to ascertain the true value of all property used for railroad or canal purposes of each railroad and each canal company in this State, including its franchise, and, in such ascertainment, he is required to separately value the four classes of property established by the act.

The railroad companies in the pending litigation complain that the State Tax Commissioner, in determining the value of such property of each railroad and canal company as an entirety,

- (a) first ascertains the value of each class and then adds these to ascertain the value of all such property of each company, instead of first valuing such property as an entirety, and then allocates such value to the several classes,
- (b) relies solely upon the physical or reproduction value, in ascertaining the value of first, second and third classes of property, and does not consider earnings and security valuations or other factors or elements of value,
- (c) relies on the assessed valuation as certified by the respective assessors of the taxing districts as the true value of all property located in the respective taxing districts, other than railroad property, in computing under existing law the average rate of taxation applicable to 1st, 3rd and 4th classes of property, and that the value so certified is not the true value of such property.

4. The dispute with respect to taxes in controversy is of such character that the litigation now pending is likely to be of long duration. The railroad companies challenge the validity of the assessments of railroad property, as ascertained by the State Tax Commissioner, contending that in applying the provisions of the Railroad Tax Act, the State Tax Commissioner fails to give consideration to all the factors which go to make up the taxable value of property in railroad use. They also assert that there is a systematic undervaluation of property locally assessed under the General Tax Act, and that by reason thereof an erroneous State average rate of taxation is ascertained, and that the application of this rate to certain of the railroad property results in the imposition of an unjust and illegal tax upon such property.

Your committee, in consideration of the serious situation presented, has concluded that it is unwise to formulate a new method or system of taxation of railroad property, and that the present Railroad Tax Act can be so supplemented and amended as to eliminate similar controversies with the railroad companies in the future, and, therefore, pursuant to the command of the joint resolution aforesaid, the chairman of your committee has prepared and caused to be introduced in both Houses of the Legislature, a bill known as Assembly Bill No. 354 and a bill known as Senate Bill No. 198, for that purpose, the salient features of which are:

(1) Maintaining the four classes of property and defining them as in the present law, as follows:

(a) First class property: The main stem of each railroad which shall be held to include the roadbed, not exceeding one hundred feet in width, with its rails and sleepers and all structures erected thereon and used in connection therewith, but shall not include any passenger or freight buildings erected thereon; the waterway of each canal which shall be held to include the towing-path and berem-bank;

(b) Second class property: The other real estate used for railroad or canal purposes in each taxing district in this State, including the roadbed (other than the main stem), waterways, reservoirs, tracks, buildings, water tanks, water works, riparian rights, docks, wharves and piers, and all other real estate, except lands not used for railroad or canal purposes; the term taxing district shall be held to designate any municipality, city, township, borough, incorporated town or village having power to assess and levy taxes, through which any road or canal may run;

- (c) Third class property: All the tangible personal property of each railroad and of each canal company which shall be held to include the rolling stock, cars, locomotives, ferry boats, all machinery, tools and other tangible personal property of any railroad company and the floating, movable and other tangible personal property of any canal company and also the locomotives and cars not belonging to such railroad company but built for its use and actually used in this State or run under its control in this State by a sleeping car company or other company; but the rolling stock of other persons or corporations temporarily used on any such road and the floating or movable property temporarily used on such canal, but not forming part of the equipment of such road or canal shall not be included in said term;
- (d) Fourth class property: The remaining property, including the franchise.
- (2) Requiring the railroad and canal companies to make returns to the State Tax Commissioner (in addition to those required under the existing act) of complete statements of the market or fair cash value of their stock and bonds and of their indebtedness and of their income accounts over a period of years and the allocation thereof to the State of New Jersey and of such other elements or factors of value as will aid in ascertaining the assessable valuation of such property;
- (3) Directing the State Tax Commissioner to consider the earnings value and the securities value together with the physical or reproduction value and all other elements or factors of value in ascertaining the true value as a unit of the entire prop-

erty of each railroad and canal company used for railroad or canal purposes in this State, including the franchise;

- (4) Maintaining, without impairment, second class railroad property as a distinct and fixed ratable of the taxing district in which it is situated, to be valued for the purpose of distribution of railroad tax revenue on the physical or reproduction value of such property as other property is valued for taxation under the General Tax Act;
- (5) Providing that the assessed valuation as a unit of the four classes of property shall be apportioned by taking 5% thereof as the assessable value of the 4th class property, and allocating the remainder to the other three classes of property upon the basis of their physical or reproduction value;
- (6) Providing that the maximum average rate of taxation applicable to the assessed valuation of 1st, 3rd and 4th classes of property shall be \$3.00 per \$100.00;
- (7) Providing that the local rate of taxation shall apply, as at present, to the assessed valuation of 2nd class property; and
- (8) Providing that the railroad tax revenue to be allocated and paid to the respective taxing districts shall be ascertained by applying the local rate of taxation to the physical or reproduction value of such property.

Your committee submits these findings of fact, and hopes that the bill of the chairman of your committee or some similar measure may provide a reasonable basis for the adjustment of the pending litigation and for the elimination of such controversies in the future.

Respectfully submitted,

EDWARD P. STOUT, *Chairman*,
ALBERT S. WOODRUFF,
CLIFFORD R. POWELL,
FRANK DURAND,
HARLEY L. LUTZ,
THERON McCAMPBELL,
ANTHONY J. SIRACUSA,
JOSEPH C. KINZLEY,
ROY B. WHITE,

Committee.

Dated: February 26, 1934.







