

Opinion No. 17-1962

March 28, 1917

BY: HARRY L. PATTON, Attorney General

TO: State Tax Commission, Santa Fe, N.M.

Tax Commission to Assess Private Cars Operated in State.

OPINION

I have your letter of the 23rd inst. in which you ask an opinion as to whether or not your Commission has authority to tax private cars other than those specifically mentioned in Section 4, Chapter 54, Laws 1915. You further state that these cars are such as are handled by packing companies and are leased to the railroad companies upon a mileage basis.

The first question to be determined is whether or not such cars are subject to taxation under the laws of this state. Art. VIII, Section 1 of the State Constitution reads as follows:

"Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class."

We have another statutory provision which relates to this subject found in Section 5427, Code 1915, which is as follows:

"All property, real and personal, in this state shall be subject to taxation, except as in the Constitution and existing laws otherwise provided."

If such cars, the same being actually in use in this state, were omitted from the tax rolls it would be a discrimination against railroad and sleeping-car companies, whose cars are subject to taxation. In Gray's Limitations of Taxing Power, Section 74, I find authority for taxing this character of property by means of proportional calculations such as I am advised are in use by you in taxing sleeping-cars. Such authority is further found in the case of American Refrigerator Transit Company vs. Hall, 174 U.S. 70, 43 L. Ed. 899. In this case Mr. Justice Shiras in an exhaustive opinion upholds the right of states to tax refrigerator cars hired to and used by railroads within the State of Colorado, and employed as vehicles of transportation in the interchange of interstate commerce, but owned by a foreign corporation which has no office or place of business within the State. A great many cases are cited in the opinion of the court to uphold the doctrine laid down. In my opinion such cars are proper subjects of taxation under the laws of this state.

The most serious question, however, relates to the right of your Commission to determine the value of the same under our statutes. Section 4, Chapter 54, Laws 1915, confers authority upon your Commission to "determine the actual value of all property belonging to railroads, telegraph, telephone, express, sleeping-cars and transmission companies within the State of New Mexico which is used in the operation of their lines." Such cars clearly do not belong to any of the enumerated companies. It has been suggested that they come within the class of transmission companies, but these cars are leased or hired to railroads and are not used by transmission companies "in the operation of their lines." In my opinion your Commission does not have the right to determine the value of this character of cars under the provisions of said Section 4, Chapter 54.

Notwithstanding my conclusion as to your right to act under the provisions of the chapter last cited, as I have stated before, I am of the opinion that these cars are proper subjects of taxation. If your Commission has not authority to determine the value under the provisions of Chapter 54, it would follow that the county assessors of the various counties would have the right to assess this character of property in like manner as they assess other property not enumerated in Section 4, Chapter 54. It is apparent that this is impracticable and could not be accomplished by the various county assessors. To obviate the difficulty, I would suggest that your Commission determine the value of this class of cars in the same manner that you determine the value of sleeping-cars operating within the state, and that you make an apportionment to the various counties by the same method used in the sleeping-car apportionment. That you then in an advisory capacity suggest to the assessors of the various counties the respective valuations which you have apportioned to the different counties. The assessors then acting upon the suggestion made by you might make the assessment in their respective counties.

I realize that such course is attended with some difficulties and that there are some complications connected with such procedure. Nevertheless, I believe that such assessments made by the county assessors might be upheld by the courts.

Section 8, Chapter 54, Laws of 1915, reads as follows:

"It is hereby made the duty of the State Tax Commission to ascertain whether any property subject to taxation in any county has been omitted from the assessment roll, in whole or in part, or has been listed thereon by incorrect or inadequate description, and in any such case the said Tax Commission shall certify the fact of such omission or incorrect or inadequate description to the county assessor together with a correct and adequate description of the property, real or personal, the number, quantity, amount of acreage thereof, and the name and postoffice address of the owner, if known. The assessor shall forthwith place the same upon the assessment roll in accordance with such certificate and at the actual value of such property. Any person aggrieved by such action shall have the right of appeal and hearing as in other cases of assessments."

In my opinion your Commission could further justify the action I have suggested by treating such property as omitted from the tax rolls, and by proceeding under the last foregoing section of the statute.