CHAPTER 295

RAILROAD, EXPRESS, FREIGHT LINE, SLEEPING CAR, TELEPHONE AND TELEGRAPH, AND TRUST COMPANIES

NOTE: Pressure of railroad company promoters, taking advantage of territorial anxiety to settle and develop unused lands, led the territorial legislature to include improvident provisions in charters granted to four land grant railroad corporations. Franchises, granted lands, and in fact all property of the railroad corporations were exempted from payment of property taxes and in lieu were required to pay a three per cent tax on gross earnings.

The insolvency of the railroad companies forced the newly admitted state to foreclose its mortgages and forfeit their franchises; but between 1861 and 1871, by special laws, rights were granted to successor companies similar to those found in the territorial charters.

An amendment to the Constitution (Article 4, Section 32a) permitting the enforcement of a gross earnings tax on railroads was ratified November 8, 1871. It contained a provision requiring a reference to the electorate before any change could be made in the railroad gross earnings tax provisions.

Ex. Laws 1912, Chapter 9, Section 1, raised the rate to the present five per cent; and Laws 1919, Chapter 533, proposed an amendment subjecting railway property to special assessments for local improvements. Each of the amendments were ratified by popular vote. The tax is not a tax on earnings, but a property tax measured by earnings, and consequently railroad companies are exempt from the provisions of the income tax.

295.01 DEFINITIONS.

Debit balances accruing in the adjustment of per diem charges on the exchange of freight car equipment are not deductible from gross earnings returns by a railroad company. State v M. & St. L., 204 M 250, 283 NW 244.

On a former appeal herein this court approved the Burlington formula, so-called, for computing the credit balances from the inter-exchange of freight cars between railroads operating within the state, and remitted the case with leave to defendant to prove that a better formula for the computing of such balances existed than the Burlington formula, and also for leave to argue constitutional objections to that formula, in case defendant failed to prove a better. Defendant failed to prove a better one; and, since the Burlington formula furnishes the most accurate computation of such credit balances and such balances are properly gross earnings, there can be no constitutional objection to the use of the Burlington formula. State v Ill. Central R.R. Co. 205 M 1, 284 NW 360.

The gross earnings tax imposed upon a railroad by section 295.02 under the authority of Minnesota Constitution, art. 4, s. 32a, is a property tax upon all railroad property under or operated for railroad purposes, including its franchise to exist as a corporation and to transact railroad business in the state; while the tax imposed upon corporations under section 290.02 is a property tax upon the right or franchise of the corporations to exist and transact business in the state, measured by the corporations' net taxable income as defined in Chapter 290. Insofar as L. 1933, c. 405, assumes to impose a franchise tax, measured by income, upon a railroad, based upon its ownership or operation for railroad purposes, the provisions of Chapter 405 are contrary to Minnesota Constitution, art. 4, s. 32a, and invalid, since Chapter 405 has never been approved by a vote of the people as required by that section. But that part of its corporate franchise which a railroad corporation exercises outside the scope of railroad ownership or operations is subject to the tax imposed by L. 1933, c. 405, s. 2. State v Duluth & Missabe, 207 M 618, 292 NW 401.

Exacting a motor vehicle tax from an express company in addition to gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State ex rel v Holm, 209 M 9, 295 NW 297.

The receipts of an express company derived from "transfer" and "pick-up and delivery" services rendered to railroads under contract, are part of its gross earnings for purposes of taxation. State v Ry. Express, 210 M 556, 299 NW 657.

Relator's freight cars, furnished and leased to railroads owining and operating railroad lines within and through the state, are taxable under the provisions of sections 295.01 and 295.23 to 295.27. The gross earnings method therein authorized for taxation of relator's business does not offend the uniformity required by Minnesota Constitution, art. 9, s. 1, or any other constitutional provision of Minnesota; nor does the classification of relators as freight line companies offend any of the provisions of the United States Constitution, Amendment 14. Almer v Commissioner, 213 M 62, 5 NW(2d) 637.

Where a railroad company owns and operates two lines of railroad between points within the state, one line wholly intrastate and the other partly interstate, its report of gross earnings from the interstate traffic must be "based upon the proportion of the mileage from which such business is done," as provided by section 295.01. It cannot be required to report earnings from such traffic of assumed movements thereon not corresponding with the facts, notwithstanding a long continued practice of so doing. State v Northern Pacific, 217 M 113, 14 NW(2d) 232.

The railroad under contract with state authorities paid gross earnings tax on interstate commerce on estimated mileage basis from 1903 to 1936. Finding it had overpaid it in 1937 changed to the statutory mileage basis. The commissioner, and on review, the MBTA refused to permit the overpayments prior to 1937 to be deducted from the 1937 tax. Northern Pacific v Commissioner, MBTA, Jan. 28, 1946 (229).

State tax on railroads, imposed by sections 295.01, 295.02, based on annual gross earnings within the state and on interstate business in proportion which mileage within the state bears to entire mileage of railroad over which interstate business is done, constitutes a property tax; and it does not impose a burden upon interstate commerce or violate constitutional provisions. Great Northern v State, 49 SC 191, 278 US 503.

As respects constitutionality of Minnesota statutes imposing lieu tax on railroads based on gross earnings, computed under the Burlington formula affecting an apportionment of revenues derived from leasing of freight cars in the state, that the apportionment may not result in a mathematical exactitude is not a constitutional defect, rough approximation rather than precision being the norm in such tax system. Ill. Central v State of Minnesota, 60 SC 419, 309 US 157.

RAILROADS

295.02 GROSS EARNINGS.

See, Annotations under section 295.01.

1. **Generally**
2. **Historical policy of state; commuted system**
3. **Exemption under charters**
4. **Immunity and obligation to pay are appurtenant to road**
5. **Land devoted to railroad purposes**
6. **Sale of exempted lands**
7. **Exemption a franchise**
8. **Union stations, elevators**
9. **What are gross earnings**
10. **Special assessments**
11. **Classification; graduation of percentage**

1. Generally

Lien given by gross earnings tax law for delinquent and unpaid taxes arises, as to earnings omitted from returns of previous years, only when those earnings have been assessed and taxes thereon certified by Minnesota tax commission to state auditor. Thus, where there has been a transfer, in connection with receivership proceedings, of ownership of railroad from whose returns the earnings were omitted, properties acquired by successor railroad are not subject to such lien because it is not retroactively effective from date when original returns were filed. State v C. M. St. P. & P. R. R. Co. 210 M 484, 299 NW 212.

8. Union stations, elevators

The operation of a recreation center in the St. Paul Union Depot is so disconnected from the transportation business of the proprietary lines that the income therefrom cannot be considered part of the gross income of the proprietary lines, and the income from the center is not subject to a gross earnings tax. 1942 OAG 331, Aug. 6, 1942 (216-I-3).

11. Classification; graduation of percentage

Inquiries answered relating to gross earnings tax law, especially relating to railroads rights of way. 1942 OAG 304, June 16, 1942 (216-I).

EXPRESS COMPANIES

NOTE: Prior to the ratification of the constitutional amendment November 3, 1896 (art. 9, s. 1) express companies were subject to the general property tax. L. 1897, c. 309, subjected express companies to a 3 per cent gross earnings tax rate, and after various changes in the rate, Ex. L. 1937, c. 3, s. 3, fixed the present rate of nine per cent.

This is a property tax and not a tax upon commerce or earnings.

Authorized by a constitutional amendment, ratified November 8, 1932 (art. 16, s. 3), the legislature, L. 1933, c. 360, subjected motor vehicles of express companies to the motor vehicle tax, without deduction from gross earnings tax they are required to pay.

295.15 ANNUAL STATEMENT.

The receipts of an express company derived from "transport," and "pick-up and delivery" services rendered to railroad companies under contract, are part of the gross earnings for purposes of taxation; and section 295.05 in no way violates any provisions of the state and federal constitutions. State v Railway Express Agency, 210 M 556, 299 NW 657.

Transportation by truck with point of origin and destination in Minnesota, although traveling in Wisconsin for an inconsiderable distance (0.46 mile), constitutes, for the purpose of imposing a property tax, intrastate commerce, and not interstate commerce; and trucks used in such transportation are subject to registration and payment of tax under "gross weight use tax" as being used in intrastate commerce, and are not proper subjects of registration under "truck mile tax" since they are not used exclusively in interstate commerce. 1944 OAG 290, Jan. 17, 1944 (632-E-14).

295.21 EXPRESS COMPANIES TO PAY NINE PER CENT ON GROSS EARNINGS.

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v Holm, 209 M 9, 295 NW 297.

Defendant leased his entire building to an express company, which is subject to the gross earnings tax, and claims that the tax paid by the express company

paid the taxes on the leased property. The gross earnings tax paid only such taxes as might have been taxed against the express company had its tax been assessed ad valorem instead of being measured by its gross earnings, and consequently the lessors' property is liable to an ad valorem tax. State v Fawkes, 210 M 587, 299 NW 666.

Earnings of a non-resident express company in carrying goods between two points within the state over a route incidentally traversing a portion of another state was, so far as they are derived from the carriage within the state valid, and may be included in the gross receipts upon which the tax was imposed by statute, without unconstitutionally burdening interstate commerce or denying due process of law. U. S. Express v Minnesota, 32 SC 211, 223 US 335.

Public service corporations paying gross earnings tax not subject to motor vehicle tax. 11 MLR 572.

Liability of leased property for ad valorem tax where lessee pays a gross earnings tax in lieu of other taxes on its property. 26 MLR 413.

295.22 DISTRAINT.

See, State v Railway Express, 210 M 556, 299 NW 657.

Relator's freight cars, furnished and leased to railroads and owning and operating railroad lines within and through the state, are taxable under the provisions of sections 295.01 and 295.23 to 295.27. The gross earnings method therein authorized for taxation of relator's business does not offend the uniformity required by Minnesota Constitution, art. 9, s. 1, or any other constitutional provision of Minnesota; nor does the classification of relators as freight line companies offend any of the provisions of the United States Constitution, Amendment 14. Almer v Commissioner, 213 M 62, 5 NW(2d) 637.

FREIGHT LINE COMPANIES

295.24 FREIGHT LINE COMPANIES TO PAY SEVEN PER CENT ON GROSS EARNINGS.

NOTE: Earlier method of taxation of freight line companies having proved unsatisfactory the legislature, L. 1907, c. 250, adopted the gross earnings system. The 1907 act was amended by L. 1909, c. 473. Our present law is not a license or earnings tax, but is held to be a property tax, and is based upon L. 1911, c. 377, as superseded by L. 1919, c. 506, and as amended by Ex. L. 1937, c. 3, s. 1, and Ex. L. 1937, c. 9, s. 1. No reference to the electorate is required.

SLEEPING CAR COMPANIES

295.29 ANNUAL STATEMENT OF SLEEPING CAR COMPANIES; SIX PER CENT TAX ON GROSS EARNINGS.

NOTE: The constitutional amendment, ratified November 3, 1896, authorized a gross earnings system of taxation against sleeping and parlor car companies. The first tax was fixed by L. 1897, c. 159. This was modified by L. 1907, c. 453, giving the taxpayer two methods of computation. This dual system of taxation was abolished in L. 1913, and our present method of taxation is based upon L. 1913, c. 480, s. 2, as amended by Ex. L. 1937, c. 3, s. 2, and Ex. L. 1937, c. 9, s. 2. The courts hold this to be a property tax.

A corporate franchise is property and taxable as such. The taxing of the franchise of sleeping car companies as property under the gross earnings receipts tax act, L. 1913, c. 480, s. 2, precludes the imposition of a franchise tax on such sleeping car company franchises under L. 1933, c. 405, s. 2. Pullman Co. v Commissioner, 223 M 96, 25 NW(2d) 839.

Imposition of a franchise tax upon a sleeping car company, which is also subject to gross receipts tax, is void as double taxation and as contravening constitu-

tional provision for uniformity in taxes. Pullman Co. v Commissioner, 223 M 96, 25 NW(2d) 839.

TELEGRAPH COMPANIES

295.32 GROSS EARNINGS TAX ON TELEGRAPH COMPANIES.

NOTE: Telegraph companies pay a gross earnings tax authorized by constitutional amendment ratified November 3, 1896. Our present rate is six per cent, based on Ex. L. 1937, c. 4, s. 1, as amended by L. 1945, c. 222, s. 1.