



**BURR & FORMAN**  
**TEEL FOR ALABAMA RAILROAD NEWSLETTER**

**The Taxman Cometh: Making Sure Your Railroad is Protected from Unfair Tax Valuation Assessments & Discriminatory Taxes in Alabama**  
**By AI Teel**

As important drivers of the state's economy and proud members of the local community, railroads have paid their fair share of taxes. And, for years, tax assessments were left unchallenged. Railroads were easy prey for state and local tax assessors because they were "nonvoting, often nonresident entities, and because they cannot easily remove their rights-of-way and terminals from the state."<sup>1</sup> Congress even recognized that states frequently practiced this discrimination against carriers by classifying their property at tax rates higher than property owned by other commercial and industrial concerns.<sup>2</sup>

The Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) was passed to prohibit states and their subdivisions from discriminating against interstate commerce by assessing rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property. In addition, states and their subdivisions may not levy or collect ad valorem property taxes on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.<sup>3</sup>

More recently, railroads have fought back against unfair tax assessments. Currently, throughout our state and others, railroads have challenged state property assessments by using other accounting methods to show that a state's accounting method violates the 4-R Act. To challenge a state tax under the 4-R Act, a railroad need only show, by a preponderance of the evidence, that the tax has a discriminatory effect; it need not show that the State intended to discriminate.<sup>4</sup> Railroads are not the only plaintiffs that can sue under the Act. Companies that lease specialty railroad cars to shippers can bring an action to enjoin state agencies from collecting discriminatory property taxes on their leased equipment

For the 2016 tax year, the Alabama Department of Revenue (Department) significantly raised the valuation of railroad property in Alabama. Railroads need to be prepared when the taxman cometh because if these assessments are left unchallenged, the valuation increase will surely continue on for subsequent years.

*How to Challenge:*

1. Execute a Form 2848A "Power of Attorney and Declaration of Representative" to evidence legal representation.
2. Request and secure a Final Assessment from the Alabama Department of Revenue.

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<sup>1</sup> S. REP. NO. 1483, 90<sup>th</sup> Cong., 2d Sess. 2 (1968).

<sup>2</sup> *Id.*

<sup>3</sup> 49 U.S.C.A. § 11501(b)(1).

<sup>4</sup> *Louisville & Nashville R. Co. v. Dep't of Revenue, State of Fla.*, 736 F.2d 1495 (11th Cir. 1984)

3. Options for Appeal: A railroad may appeal the Final Assessment within 30 days from the date of mailing or personal service of the Assessment. A railroad then has two totally different appeal routes it may choose: (i) an administrative appeal to the Alabama Tax Tribunal; or (ii) an appeal to the Montgomery County Circuit Court or the circuit court where the Railroad is located.
  - Appeal to the Alabama Tax Tribunal. A railroad can prosecute its appeal with the Alabama Tax Tribunal by filing a notice of appeal with both the Secretary of the Department and the Alabama Tax Tribunal. There is no filing fee and the taxpayer does not have to pay the assessment or post any security before prosecuting the appeal.
  - Appeal to the Circuit Court. Instead of appealing to the Alabama Tax Tribunal, Railroad can proceed directly with a judicial appeal by filing a notice of appeal with the Secretary of the Department and the clerk of the circuit court where the appeal is being filed. Again, a prerequisite to this judicial appeal is that the taxpayer must either pay the assessment in its entirety, or instead file a supersedeas bond or an irrevocable letter of credit in the amount of 125 percent of the assessment (taxes, penalties and interest).
  
6. Engage a valuation expert to provide an initial valuation, and then, if acceptable, to act as a valuation expert for the appeal. You may need the following for an evaluation. This information is primarily for the purpose of calculating an effective property tax rate:
  - Historical financial profit and loss statements for the last five years.
  - Budgeted/forecast revenues and operating expenses as of Oct. 1, 2015.
  - Customer contract details.
  - Current construction work in progress projects and associated costs
  - A description of the railroad and terminal including but not limited to: Miles of track classified by type (e.g. main line track, spurs, etc.); Number and description of owned rail cars by type (e.g. tankers, flat bed, box car, hopper car, etc.); Number of owned engines (including make, model and vintage); Date of original installation; Date and description of major modernizations; Assessment information (bills, maps, renditions) for all tax parcels associated with the railroad.
  
7. Alabama Tax Tribunal Proceedings. After the appeal is filed, the Department has 45 days (and can get another 45 days upon request) to file an Answer to the Railroad's position. The Railroad will then have 30 days to file a Reply. The parties are allowed limited discovery and can send interrogatories, requests for production of documents, requests for admissions and subpoenas for documents held by third parties. The judge of the Alabama Tax Tribunal may issue subpoenas requiring persons to attend the hearing. Proceedings before the Alabama Tax Tribunal "shall be tried de novo and without a jury." Ala. Code § 40-2B-2(k). The taxpayer generally has the burden of proof and the trial is handled like a normal bench trial.
  
8. Alabama Circuit Court Proceedings. The losing party has the right to appeal the Tax Tribunal's decision by filing an appeal to the circuit court. Ala. Code § 40-2B-2(m). The trial before the Circuit Court will be de novo, "except that the order shall be presumed prima facie correct, and the burden shall be on the appealing party to prove otherwise." Ala. Code § 40-2B-2(m)(4). Any further appeals will be to the Alabama Supreme Court or the Alabama Court of Civil Appeals.

Railroads and their suppliers should remain on guard against state and local tax discrimination with respect to all forms of state tax law and procedure.

Another trend railroads should be aware of is the ongoing challenge to the imposition of Alabama's sales tax on the fuel purchases of railroads. Alabama imposes a four percent tax on the purchase or use of property that applies to rail carriers' purchases or use of diesel fuel. However, Alabama exempts diesel fuel purchases made by trucking transport companies (motor carriers) and water transport companies (water carriers) from this tax. Instead, motor carriers pay a 19-cent-per-gallon fuel excise tax on diesel and water carriers pay no alternative tax. This issue has recently been taken all the way to the Supreme Court and likely will again.

*How to Challenge:*

1. File a Petition for Refund with the Alabama Department of Revenue. A petition for refund shall be filed with the department or an automatic refund issued pursuant to Section 40-29-71, or a credit allowed, within (i) three years from the date that the return was filed, or (ii) two years from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax.
2. The Alabama Department of Revenue then has six months from the date of the petition to grant or deny a petition for refund.
3. If the Department denies the Petition for Refund, a railroad then has the option to file a notice of appeal with the Alabama Tax Tribunal. This appeal must be filed within two years from the date the petition is denied.
4. The railroad also has the option to appeal from the denial of a petition for refund by filing a notice of appeal with the Circuit Court in Montgomery County, Alabama, or the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama. It must be filed within two years from the date the petition is denied. The circuit court shall hear the appeal according to its own rules and procedures, and shall determine the correct amount of refund due, if any. Through this process, railroads have started submitting Petitions for Refund to recover the sales tax collected and remitted, stating as the basis for the requested refunds the discriminatory taxation of rail carriers.

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*Burr & Forman's transportation team assists rail clients in a variety of areas including corporate, litigation, labor and employment and tax. They represent clients nationwide, including class I and major shortline railroads, as well as numerous railroad suppliers and contractors.*

*As a full-service law firm, the attorneys in this practice provide a wide variety of services to clients ranging from Federal Employers Liability Act (FELA) claims, crashworthiness, warranty claims and many other matters. They can assist clients in a range of issues related to cargo and the transportation of goods, as well as corporate law, from general contracts, purchase agreements and intellectual property, to complex mergers and acquisitions and securities regulation. The attorneys are also dedicated to finding ways to protect rail clients by challenging discriminatory taxation by state and local governments.*