

40450  
EB

SERVICE DATE – FEBRUARY 26, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 682

ANNUAL SUBMISSION OF TAX INFORMATION FOR USE IN THE REVENUE  
SHORTFALL ALLOCATION METHOD

Decided: February 22, 2010

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Surface Transportation Board (Board) is amending 49 CFR Part 1135 to add a rule that requires the Association of American Railroads (AAR) to annually update each Class I railroad's weighted average state tax rate for use in the Revenue Shortfall Allocation Method (RSAM). RSAM is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's Simplified Standards for Rail Rate Cases, STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) (Simplified Standards).<sup>1</sup> The new rule requires that the AAR submit this information by May 30 of each year.

EFFECTIVE DATE: This rule is effective on February 26, 2010.

ADDRESSES: Information or questions regarding this final rule should reference STB Ex Parte No. 682 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Valerie O. Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Board is revising its regulations to include a new rule, 49 CFR 1135.2, that requires the AAR to annually calculate the weighted average state tax rate for each Class I railroad and submit that information to the Board by May 30 of each year. On May 11, 2009, the Board completed its revision of the methodology it uses to calculate RSAM, one of the three benchmarks used in the rate standard applied to the smallest rate disputes under Simplified Standards. See Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method, STB Ex Parte No. 646 (Sub-No. 2) (STB served May 11,

---

<sup>1</sup> Aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir. 2009), and vacated in part on other grounds on reh'g, CSX Transp., Inc. v. STB, 584 F.3d 1076 (D.C. Cir. 2009).

2009) (RSAM Taxes). Specifically, that revision addressed the methodology used to calculate railroad-specific tax rates to be reflected in RSAM. The calculation of the railroad-specific weighted average state tax rates requires, as one component, the state tax rates applicable to each Class I railroad, which can vary by state and railroad depending on a number of factors. The Board noted in RSAM Taxes that, because of this variance, the Board would need updated tax information on an annual basis. Therefore, on September 21, 2009, the Board served a decision that, among other things, instituted this rulemaking, set a procedural schedule for comments, and proposed that the AAR annually update each Class I railroad's weighted average state tax information on or before the due date for the Class I railroads to file their Annual Report R-1, Schedule 250, which is April 30 of each year.<sup>2</sup> See Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method, STB Ex Parte No. 682 (STB served Sept. 21, 2009) (September Decision).

Pursuant to the procedural schedule forth in the September Decision, the AAR filed its comments on the proposed rulemaking on October 21, 2009. The AAR concurs with the Board's proposal to require the AAR to calculate and file the weighted average state tax rate for each Class I railroad on a specific date and also concurs with the proposed procedural schedule for reviewing the submitted information. The AAR requests, however, that the Board change the due date for submission of the state tax information from April 30 to May 30 of each year. The AAR states that the Annual Report R-1, due March 31 of each year, includes the mileage necessary to weight the state tax rates.<sup>3</sup> If there is a delay in filing the Annual Report Form R-1, which the AAR reports has occurred in the past, then the AAR states that it would not have enough time prior to April 30 to verify the mileage data and calculate the railroad-specific weighted average state tax rates. Therefore, the AAR requests that we extend the due date for submitting the railroad-specific weighted average state tax rates to May 30 of each year.

The Board received no reply comments to the AAR's submission. The Board finds the AAR's request to extend the due date for the calculations of the railroad-specific weighted average state tax rates reasonable. We will modify the final rule to reflect a due date of May 30 of each year.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

---

<sup>2</sup> The Annual Report R-1 is a report filed annually with the Board by March 31 by every Class I railroad pursuant to 49 U.S.C. 11145. This report contains a yearly accounting of the affairs of the railroad. Though Schedule 250 is one of several schedules required as part of the Annual Report R-1, it is a separate document used by the Board in revenue adequacy determinations, and it has a later submission deadline than does the rest of the Annual Report R-1 due to the time required to prepare it.

<sup>3</sup> The mileage information is included in Schedule 702.

Appendix

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1135 of title 49, chapter X, of the Code of Federal Regulations as follows:

**PART 1135 – REPORTING REQUIREMENTS FOR RATE PROCEEDINGS**

1. The authority citation for Part 1135 is revised to read as follows:

Authority: 5 U.S.C. 553, and 49 U.S.C. 721, 10701, 10704, 10708, and 11145.

2. Section 1135.2 is added:

\* \* \* \* \*

**§ 1135.2 Revenue Shortfall Allocation Method: Annual state tax information.**

(a) To enable the Board to calculate the revenue shortfall allocation method (RSAM), which is one of the three benchmarks that are used to determine the reasonableness of a challenged rate under one standard of the Board’s Simplified Standards for Rail Rate Cases, STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007), the Association of American Railroads (AAR) shall file with the Board, on or before May 30, the weighted average state tax rates applicable to each Class I railroad for the previous year. The AAR shall submit workpapers detailing its calculations.

(b) The Board will serve and publish a notice of the filing in the Federal Register within 10 days of the AAR’s filing.

(c) Any interested party may file comments on the AAR’s filing within 30 days of the notice described in section (b). If no comments are received within 30 days, the Board will automatically adopt the AAR’s weighted average state tax rates on the 31st day. If comments opposing the AAR’s calculations are received, the AAR’s response will be due within 20 days of the comments. The Board will review the submission and comments and serve a decision within 60 days from the date of the close of the record that either accepts, rejects, or modifies the AAR’s railroad-specific tax information.