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SERVICE DATE – SEPTEMBER 21, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 682

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

Decided: September 14, 2009

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes that the Association of American Railroads (AAR) annually update each Class I railroad's weighted average state tax rate for use in the Revenue Shortfall Allocation Method (RSAM), which 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). Pursuant to 49 U.S.C. 11145, the Board proposes that AAR calculate the weighted average state tax rate using the number of miles operated by each Class I carrier in each state and the corporate income tax rates for each state. The Board proposes that AAR submit this information on or before the due date for the Class I railroads to submit their Annual Report R-1, Schedule 250.

DATES: Comments must be filed by October 21, 2009. Replies are due November 10, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at: <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 682, 395 E Street, S.W., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Timothy J. Strafford at (202) 245-0356. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Board recently completed a revision to its methodology for calculating 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, 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, the Board is now instituting this proceeding to propose that AAR annually update each Class I railroad’s weighted average state tax information.

Under the Board’s proposal the AAR would calculate the weighted average state tax rate for each Class I railroad using the state corporate income tax rates and the number of miles operated by each carrier in each state for the previous year. For the state corporate income tax rates, AAR would use the state corporate tax information published on the website of the Tax Foundation,<sup>1</sup> adjusted as necessary.<sup>2</sup> For the route-mile portion of the average state tax equation, AAR would use information from each railroads’ respective R-1 Schedule 702 (Miles of Road at Close of Year—By States and Territories (Single Track)), column (g) of Schedule 702, which lists the total miles operated, including both “line owned” and “line operated under trackage rights.” AAR would also be required to submit workpapers detailing its calculations.

The Board proposes that AAR submit the state tax information annually on or before the due date for the Class I railroads to file their Annual Report R-1, Schedule 250, which is currently April 30 of each year. The Board proposes that within 10 days of receiving the AAR’s state tax information, it would issue a notice that the AAR has filed the state tax information and publish that notice in the Federal Register. The Board would allow a period of 30 days from the date of the notice for interested parties to comment. If no comments are received within 30 days, then the tax rates submitted will automatically be adopted on the 31st day. This tax information would then be used for calculating the RSAM figures for that year. If comments opposing AAR’s calculations are timely filed, AAR would have 20 days to respond. The Board would then review the submission and comments and serve a decision, within 60 days from the close of the record, that either accepts, rejects, or modifies the AAR’s railroad-specific tax information.

With regard to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, this proposed action directly impacts the representative association for the Class I railroads but does not directly impact small entities within the meaning of the Regulatory Flexibility Act. Accordingly, pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein will not

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<sup>1</sup> See <http://www.taxfoundation.org>.

<sup>2</sup> As the Board explained in RSAM Taxes, AAR had to adjust some of the state tax information reported on the Tax Foundation website due to the need for updated information, the Tax Foundation’s rounding of tax rates for certain states, or carrier- or state-specific adjustments such as franchise taxes, tax surcharges, and utility franchise taxes.

have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision is being provided to the Chief Counsel for Advocacy, Small Business Administration.

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 Nottingham, Commissioner Mulvey.

Anne K. Quinlan  
Acting Secretary

## Appendix

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend 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:

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§ 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 the due date for the Class I railroads to submit their Annual Report R-1, Schedule 250, 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 in the Federal Register within 10 days of the AAR's filing.

(c) Any interested party may file comments on 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 AAR's weighted average state tax rates on the 31st day. If comments opposing AAR's calculations are received, AAR's response is 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.