



ASSOCIATION OF
AMERICAN RAILROADS

Law Department
Louis P. Warchot
Senior Vice President-Law
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October 21, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423

Re: Ex Parte No. 682, Annual Submission of Tax Information for Use in the Revenue
Shortfall Allocation Method

Dear Secretary Quinlan:

Pursuant to the Board's Notice of Proposed Rulemaking served September 21, 2009,
attached please find the comments of the Association of American Railroads (AAR) for filing in
the above proceeding.

Respectfully submitted,

Louis P. Warchot
Counsel for the Association of
American Railroads

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 682

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

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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Date: October 21, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 682

ANNUAL SUBMISSION OF TAX INFORMATION FOR USE IN THE REVENUE
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COMMENTS OF THE
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In a Notice of Proposed Rulemaking served September 21, 2009, the Board has proposed 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). NPR at 1. Under the Board's proposal, the AAR would 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 further proposed that the AAR submit this information on or before the due date for the Class I railroads to submit their Annual Report R-1, Schedule 250, which is currently April 30 of each year. Id. 1

¹ 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, adjusted as necessary. For

The Board has also proposed a procedural schedule for reviewing the annual carrier-specific state tax rate information submitted by the AAR. The Board has proposed that: (1) within 10 days of receiving the AAR's submission, it would publish a Federal Register notice that the AAR has filed the state tax information; (2) the Board would allow a period of 30 days from the notice for interested parties to comment; (3) if no comments are received within 30 days, the tax rates submitted would automatically be adopted on the 31st day and be used for calculating the RSAM figures for that year; and (4) if comments opposing AAR's calculations are timely filed, AAR would have 20 days to respond. The Board would then review the comments and serve a decision, within 60 days from the close of the record, accepting, rejecting, or modifying the AAR's railroad-specific tax information. *Id* at 2.

Discussion

The AAR concurs in the Board's proposal setting a specific date upon which the AAR's weighted average, carrier-specific annual state tax rate submission would be filed each year and on the Board's proposed procedural schedule for reviewing the AAR's

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'." NPR at 2. This methodology was adopted by the Board in Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method, STB Ex Parte No. 646 (Sub-No. 2) (STB served Nov. 28, 2008). In a separate decision, the Board has requested the AAR to use this methodology in updating the state tax rate information for 2008. See STB Ex Parte No. 646 (Sub-No. 2) (STB served Sept. 23, 2008).

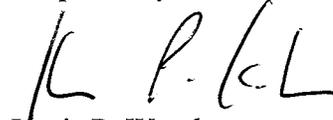
submission. The AAR, however, proposes a minor modification to the date upon which the AAR's submission would be due.

Currently, Class I railroads submit their main Annual Report Form R-1 to the Board on March 31. This 100-page report excludes Schedule 250, which is due on April 30. The main (100-page) R-1 report includes Schedule 702 (among other schedules), which contains the mileage necessary to weight the state tax rates. If a delay beyond March 31 for a Class I carrier's filing of its Annual Report R-1 should occur (as has happened in recent years), the AAR would have little or no time to verify a railroad's mileage data and make the necessary mileage calculations by April 30 for its annual state tax rate submission. Accordingly, the AAR proposes that the due date for its annual state tax rate update submission be changed to May 30 of each year to better ensure that any data issues are appropriately addressed and resolved before the AAR's submission is due.

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