

Official Opinion No. 83-22, Refund of Taxes to Milwaukee Railroad

May 26, 1983

Mr. John R. Steele
Aurora County State's Attorney
Post Office Box 577
Plankinton, South Dakota 57368

Official Opinion No. 83-22

Refund of Taxes to Milwaukee Railroad

Dear Mr. Steele:

You have requested an official opinion based on the following factual situation:

FACTS:

Aurora County is one of the counties which was involved in litigation with the Chicago, Milwaukee, St. Paul and Pacific Railroad relating to tax assessments on centrally assessed railroad property in 1969 and 1970. As you know, this litigation resulted in a determination that Aurora County and the other counties involved owed the Milwaukee Road a refund of taxes paid during those years. The Board of County Commissioners was advised by letter from your office dated April 28, 1983, that they are now subject to a Federal District Court Injunction ordering that they make payment of the amounts determined to be owing, including interest, to the Trustee of the Milwaukee Railroad property in bankruptcy. The refund payment will be initially made from the Aurora County contingency fund, inasmuch as there is no other fund available for the prompt payment of the amount due.

Based on the above facts you have asked as following question:

QUESTION:

Should the amount of the refund which the county must now pay over to the Railroad Trustee be apportioned out to the other taxing entities, to-wit: school districts and organized townships, on the basis of the amount of the original tax collected which was

paid over to each taxing entity or should the entire amount of the required refund be borne by the County general fund?

The refunds in question are the result of a Judgment in Circuit Court, Fifth Judicial Circuit in the matter of the Appeal of Chicago, Milwaukee, St. Paul and Pacific Railroad Company from the Decision of the State Board of Equalization filed on September 21, 1977, and subsequently affirmed by the South Dakota Supreme Court in the case of State ex rel. Aurora County, et al. v. Circuit Court, Fifth Judicial Circuit, etc., 268 N.W.2d 607 (S.D. 1978). The Judgment directed the State Board of Equalization and the Department of Revenue to fix the taxable value of the Milwaukee Railroad's operating property in each of the counties for the years 1969 and 1970 and certify the proper proportions of the taxable value to the county officials of the counties, cities and towns pursuant to SDCL 10-28-6 to 10-28-18 inclusive. The Judgment further ordered that the counties, cities and towns should then correct their records and adjust the Milwaukee Railroad's taxes for the years 1969 and 1970 to accord with such revised taxable values.

Pursuant to this Judgment of the Court the South Dakota Department of Revenue, Office of the Secretary, issued a Recertification of Value and Repayment Directive recomputing the taxable values in accordance with that Judgment. As noted at that time the Districts should make the refund and pursuant to SDCL 10-27-7 charge the same proportionately to the several taxing districts involved. This would be the same procedure as if a property tax refund had been accomplished under SDCL 10-18, particularly SDCL 10-18-10 where a refund order is issued and upon refund the amount shall be charged to the state, county, city, incorporated town, township or school corporation which may have received any part of such money, in proportion to the levies for the year for which the tax was extended.

The answer to your question is YES. The recertification directive of the Department of Revenue issued on November 23, 1977, is still in effect as is the Judgment of the Circuit Court. The county should comply with that directive and I have attached a copy of the same to this opinion. I would call your attention to the final paragraph of that directive with respect to school districts which may have dissolved in the interim.

In the event one or more school districts which received a portion of the tax for any one of the years involved in this recertification paid by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company may have been dissolved by reorganization processes, that portion which would have been charged against the school district would the same be in existence

at this time should now be charged against the school district to which the assets of the said dissolved district were transferred in the organization process.

Respectfully submitted,

Mark V. Meierhenry
Attorney General