
Special Franchise Tax Law and Decisions Upholding Its Constitutionality

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Special Franchise Tax Law.

Sections of the General Tax Law having to do with its inception and administration, as found in L. 1899, chap. 712, and amendments down to January 1, 1907.

§ 2. Definitions.

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cramage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation

situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax. (*Thus amended by L. 1899, chap. 712.*)

4. The term special franchise shall not be deemed to include the crossing of a street, highway or public place where such crossing is not at the intersection of another street or highway, unless such crossing shall be at other than right angles for a distance of not less than two hundred and fifty feet, in which case the whole of such crossing shall be deemed a special franchise. This subdivision shall not apply to any elevated railroad. (*Inserted by L. 1901, chap. 490.*)

§ 21. **Preparation of assessment roll.**—They shall prepare an assessment roll containing six separate columns, and shall, according to the best information in their power, set down:

1. In the first column the names of all the taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person, with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents and if payable in any other thing except money the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the rent assessed cannot be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

6. In the sixth column the value of the special franchise as fixed by the state board of tax commissioners. (*Amended by L. 1899, chap. 712.*)

7. Such assessment roll shall contain two additional columns, in one of which shall be inserted the amount of the tax levied

against each person named therein, and in the other the date of the payment of such tax. (*Inserted by L. 1901, chap. 159.*)

§ 31. **Corporations, how assessed.**— The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property, except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in, and of all of such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the state board of tax commissioners. (*Thus amended by L. 1899, chap. 712.*)

§ 37. **Correction and verification of tax-roll.**— When the assessors or a majority of them shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths and shall severally make and subscribe before such officer an oath in the following form: "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the state board of tax commissioners, we have estimated the value of the said real estate at the sums which a majority of

the assessors have decided to be the full value thereof; and, also, that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer. (*Thus amended by L. 1899, chap. 712.*)

§ 42. **Assessment of special franchises.**— The state board of tax commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, or tax district. After the time fixed for hearing complaints the tax commissioners shall finally determine the valuation of the special franchises, and shall file with the clerk of the city or town in which said special franchise is assessed a written statement duly certified by the secretary of the board of the valuation of each special franchise assessed therein as finally fixed and determined by said board; such statement of valuation shall be filed with the town clerk of the respective towns within thirty days next preceding the first day of July in each year; and with the clerks of cities of the state within thirty days before the date set opposite the name of each city in the following schedule. In the city of New York such statement shall be filed with the department of taxes and assessments.

SCHEDULE OF DATES FOR FILING OF ASSESSMENTS OF SPECIAL FRANCHISES.

Name of city.	Date.
Rochester	April first.
Jamestown	April first.
Ithaca	April first.
Gloversville	April first.
New York city	April first.
Auburn	May first.
Schenectady	June first.
Corning	June first.
Hornellsville	June first.
Oswego	June first.
North Tonawanda	July first.

Name of city.	Date.
Olean	July first.
Syracuse	July first.
Cohoes	July first.
Ogdensburg	July first.
Dunkirk	July first.
Troy	July first.
Rome	July first.
Watertown	July first.
Elmira	July first.
Lockport	July first.
Utica	July first.
Poughkeepsie	July first.
Little Falls	July first.
Watervliet	July first.
Niagara Falls	July first.
Kingston	July first.
Newburgh	July first.
Hudson	July first.
Amsterdam	July first.
Binghamton	July first.
Geneva	July first.
Middletown	July first.
Johnstown	July first.
Fulton	July first.
Plattsburgh	July first.
Tonawanda	July first.
Rensselaer	July first.
Oneida	July first.
Cortland	July first.
Yonkers	October first.
New Rochelle	October first.
Albany	October first.
Mount Vernon	October first.
Buffalo	December first.

Each city or town clerk shall, within five days after the receipt by him of the statement of assessment of a special franchise by the state board, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments in each tax district in said city or town and to the assessors of villages and commissioners of highway within

their respective towns and villages. The valuations of every special franchise as so fixed by the state board shall be entered by the assessors or other officers in the proper column of the assessment roll before the final revision and certification of such roll by them, and become part thereof with the same force and effect as if such assessment had been originally made by such assessor or other officer. If a special franchise assessed in a town is wholly within a village, the valuation fixed by the state board for the town shall also be the valuation for the village. If a part only of such special franchise is in a village, or is in a village situated in more than one tax district, it shall be the duty of the village assessors to ascertain and determine what portion of the valuation of such franchise, as the same has been fixed by the state board, shall be placed upon the tax roll for village purposes. The valuation apportioned to the town shall be the assessed valuation for highway purposes, and in case part of such special franchise shall be assessed in a village and part thereof in a town outside a village, the commissioners of highways of the town and village shall meet on the third Tuesday in August in each year and apportion the valuation of such special franchises between such town outside the village and such village for highway purposes. In case of disagreement between them the decision of the supervisor of the town shall be final. The town assessors shall make an apportionment among school districts at the time and in the manner required by section thirty-nine of this chapter. The valuation so fixed by the state board shall be the assessed valuation on which all taxes based on such special franchise in the city, town or village for state, municipal, school or highway purposes shall be levied during the next ensuing year. It shall not be necessary for the state board of tax commissioners to give notice to any person, copartnership, association or corporation of the valuation of a special franchise located in any village for village purposes except in a case where such valuation is required to be made for such village purposes by the state board of tax commissioners. The assessors or other taxing officer, or other local officer in any city, town or village, or any state or county officer, shall on demand furnish to the state board of tax commissioners any information required by such board for the purpose of determining the value of a special franchise. (*Added by L. 1899, chap. 712, and amended by L. 1900, chap. 254; L. 1902, chap. 112, and L. 1904, chap. 382.*)

§ 43. **Report to state board of tax commissioners.**— Every person, co-partnership, association or corporation subject to taxation on a special franchise, shall, within thirty days after this section takes effect, or within thirty days after such special franchise is acquired, make a written report to the state board of tax commissioners containing a full description of every special franchise possessed or enjoyed by such person, co-partnership, association or corporation, a copy of the special law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the state board. The state board of tax commissioners may from time to time require a further or supplemental report from any such person, co-partnership, association or corporation, containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same, to the effect that the statements contained therein are true. Such board may prepare blanks to be used in making the reports required by this section. Every person, co-partnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the state board of tax commissioners within a reasonable time specified by it, shall forfeit to the people of the state the sum of one hundred dollars for every such failure and the additional sum of ten dollars for each day that such failure continues, and shall not be entitled to review the assessment by certiorari, as provided by section forty-five of this chapter. (*Added by L. 1899, chap. 712.*)

§ 44. **Hearing on special franchise assessment.**— On making an assessment of a special franchise, the state board of tax commissioners shall immediately give notice in writing to the person, copartnership, association or corporation affected, and to each city or town in which such special franchise is subject to assessment, stating in substance that such assessment has been made, the total valuation of such special franchise, and the valuation thereof in each city, town or tax district; and that the board will meet at its

office in the city of Albany on a day specified in such notice, which must not be less than twenty nor more than thirty days from the date of the notice, to hear and determine any complaint concerning such assessment. But no notice need be given any such town unless the supervisor thereof shall at least fifteen days prior to the time fixed for such hearing file with said board a request in writing for notice thereof. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation, by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by mailing it to him at his place of business or last known place of residence; and on a city or town by mailing it to the mayor of such city or the supervisor of such town at the address specified in such request. A city or town entitled to notice under this section, shall have the right to be heard and to file affidavits and other proofs in respect to the valuation of such special franchise. Section thirty-six of this chapter applies so far as practicable to a hearing by the state board of tax commissioners under this section. (*Added by L. 1899, chap. 712, and amended by L. 1906, chap. 458.*)

§ 45. **Certiorari to review assessment.**—An assessment of a special franchise by the state board of tax commissioners may be reviewed in the manner prescribed by article eleven of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; a petition for a writ of certiorari to review the assessment must be presented within fifteen days after the completion and filing of the assessment-roll, and the first posting or publication of the notice thereof as required by law. Such writ must run to and be answered by said state board of tax commissioners and no writ of certiorari to renew any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or a judge granting the writ. An adjudication made in the proceeding instituted by such writ of certiorari shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. The state board of tax commissioners on filing with the city, town or village clerk a statement of the valuation of a special franchise, shall give to the person, copartnership, association or corporation

affected written notice that such statement has been filed, and such notice may be served on a copartnership, association or corporation by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence. (*Added by L. 1899, chap. 712, taking effect October 1, 1899, and amended by L. 1900, chap. 254.*)

§ 45-a. **Id; appearance by state board by special counsel; payment of his costs, expenses and disbursements.**—In any proceeding for the review of an assessment of a special franchise made by the state board of tax commissioners, said state board of tax commissioners is authorized to appear by counsel to be designated by the attorney-general. The compensation of such counsel and the necessary and proper expenses and disbursements, including the expense of procuring the evidence of experts, incurred or made by him in the defense of such proceeding, and upon any appeals therein, shall when audited and allowed as are other charges against such tax district, be a charge upon the tax district upon whose rolls appears the assessment sought to be reviewed. Where, in one proceeding, there is reviewed the assessment of a special franchise in more than one tax district, separate accounts shall be rendered for said costs, expenses and disbursements to the proper officer of each of said tax districts and audited and allowed by him as aforesaid. For the purposes of this section, the city of New York shall be deemed one tax district. (*Added by L. 1906, chap. 155.*)

§ 46. **Deduction from special franchise tax for local purposes.**

If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, co-partnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, co-partnership, association, or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place,