

SERVICE DATE – JUNE 8, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 682 (Sub-No. 9)

2017 TAX INFORMATION FOR USE IN
THE REVENUE SHORTFALL ALLOCATION METHOD

Decided: June 4, 2018

The Board is publishing, and providing the public an opportunity to comment on, the 2017 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

The RSAM figure 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, EP 646 (Sub-No. 1), slip op. at 10 (STB served Sept. 5, 2007),¹ as further revised in Simplified Standards for Rail Rate Cases–Taxes in Revenue Shortfall Allocation Method, EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its “potentially captive traffic” (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. § 10704(a)(2) (i.e., earn a return on investment equal to the railroad industry cost of capital). Simplified Standards–Taxes in RSAM, slip op. at 1. In Simplified Standards–Taxes in RSAM, slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. Id. at 5-6.

In Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method, EP 682 (STB served Feb. 26, 2010), the Board adopted rules to require AAR – a national trade association – to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad. See 49 C.F.R. § 1135.2(a). On May 29, 2018, AAR filed its calculation of the weighted average state tax rates for 2017, listed below for each Class I railroad:

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

Weighted Average State Tax Rates

Railroad	2017	2016	% Change
BNSF Railway Company	5.289%	5.288%	0.001%
CSX Transportation, Inc.	5.628%	5.160%	0.468%
Grand Trunk Corporation	7.961%	7.761%	0.200%
The Kansas City Southern Railway	5.409%	5.447%	-0.038%
Norfolk Southern Combined	6.194%	5.410%	0.784%
Soo Line Corporation	8.134%	8.071%	0.063%
Union Pacific Railroad Company	5.666%	5.636%	0.030%

Pursuant to 49 C.F.R. § 1135.2(b), notice of AAR's submission will be published in the Federal Register. Any party wishing to comment on AAR's calculation of the 2017 weighted average state tax rates should file a comment by July 9, 2018. See 49 C.F.R. § 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due by July 30, 2018. Id. If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. Id. If no comments are filed by July 9, 2018, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 10, 2018. Id.

It is ordered:

1. Comments on AAR's calculation of the 2017 weighted average state tax rates for the Class I railroads are due by July 9, 2018. If any comments opposing AAR's calculations are filed, AAR's reply is due by July 30, 2018.

2. If no comments are filed, AAR's calculation of the 2017 weighted average state tax rates for each Class I railroad will be adopted by the Board effective July 10, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.