

- SRP Advisory Committee has met 11 of a scheduled 14 times.
- Membership includes three railroad industry representatives, rail labor, communities, planning agencies, business groups, other transportation modes, railroad passenger groups, academics, and other state agencies.
- Separate railroad industry advisory group with Wisconsin shippers has met 4 of a scheduled 5 times.

- In-depth issue analysis currently underway on:
 - Wisconsin's future passenger rail system
 - Freight corridor preservation
 - Standards for state-owned lines
 - Freight rail congestion in the Chicago area
 - Intermodal facilities
 - HAZMAT shipments by rail
 - Railroad industry regulations
 - Railroad industry taxation
- After final advisory committee review of the issues in late July the issues and options are to be "tested" with focus groups statewide.

- Presentations to Senate and Assembly
Transportation Committees to be offered in late summer before Draft SRP 2020 is compiled.
- Final plan scheduled for release in early 2003 to be based on public and legislative input.
- Railroad Industry Tax issue only one of many being developed.

- Tax issue has been discussed and revised after three SRP 2020 Advisory Committee meetings and two Railroad Industry Committee meetings.
- Railroad industry has been offered an uninterrupted :30 at the July 31 SRP 2020 Advisory Committee meeting to make their case to other members of the committee.

- Advisory committees help determine if the issues are framed correctly and if the range of options is appropriate.
- After public and legislative review the SRP 2020 is designed to provide guidance on the appropriate state role in passenger and freight rail activities.



State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK RD. • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Scott McCallum
Governor

Richard G. Chandler
Secretary of Revenue

Senate Committee on Insurance, Tourism and Transportation, June 19, 2002

Tax Treatment of Railroads

State Ad Valorem Tax

Taxes on Railroads and Car Lines

Railroads are subject to a state ad valorem tax, in lieu of a local property tax, imposed on the portion of the company's total, or unit, value allocated to Wisconsin, adjusted for property exempt from taxation (including motor vehicles, waste treatment facilities and non-operating property). Value is allocated to Wisconsin based on ton miles shipped in Wisconsin, cars and tons originated, terminated, received, or delivered in Wisconsin, and property physically located in Wisconsin. This resulting base taxes at the state average property tax rate.

Eleven railroad companies are subject to the state ad valorem tax. Collections in FY01 were \$1.3 million—an artificially low amount because of settlement of litigation regarding the tax. Disregarding that settlement, collections would have been approximately \$11.8 million. This tax is collected by the Department of Revenue (DOR) and deposited in the state transportation fund.

Wisconsin also imposes a gross receipts tax on car line companies that lease railroad cars, locomotives and other equipment to railroads. The tax equals 3% of the lease revenue allocated to Wisconsin based on the percentage of total car miles in Wisconsin. Car line tax revenues in FY00 were \$0.5 million, collected by DOR and deposited in the state general fund.

The 4R Act and Challenges to Wisconsin's Tax

State tax treatment of railroads is governed by the federal Railroad Revitalization and Regulatory Reform Act (4R Act). Enacted in 1976, this law prohibits states and local governments from taxing railroads at a higher rate than commercial and industrial taxpayers, and prohibits taxes that discriminate against railroads. Subsequent to its enactment, courts overturned obvious instances of discrimination, such as higher assessment ratios for railroad property than other property, and taxation of the personal property of railroads when commercial and industrial personal property were exempt.

↳ DOR stated property tax is at just below \$26/1000 07
2.6%

Because an estimated 80% of personal property owned by industrial and commercial taxpayers were exempt from the property tax, Wisconsin's railroad taxes were challenged by railroads in 1988. Under an out-of-court agreement, the state refunded 80% of the railroads' 1988 taxes due to personal property. The tax statutes were not changed due to continuing litigation in other states on related issues and to permit the full tax to be re-imposed if the courts allowed.

In 1994, the U. S. Supreme Court, in *Oregon Department of Revenue v. ACF Industries*, ruled that exempt property is not part of the comparison class against which discrimination is measured for 4R Act challenges.

Based on this decision, the U. S. Court of Appeals, Seventh Circuit, ruled in favor of Wisconsin in two subsequent decisions. In *Burlington Northern Railroad Company v. Wisconsin Department of Revenue* (1995), the court dismissed the railroads' claim that Wisconsin railroad taxation was discriminatory because 100% of their personal property, but only 20% of commercial and industrial personal property, was taxable. In *Duluth, Missabe and Iron Range Railway Company v. State of Wisconsin* (1996), the court rejected the railroads' claim that the true assessment ratio on personal property in Wisconsin was less than the 100% ratio applied to them. The Court found the econometric analysis of property values using national capital/labor ratios on which the railroads based their claim as an unreliable basis for valuing property.

Subsequent to the U.S. Supreme Court ruling on Oregon's railroad tax, and while challenges to Wisconsin's tax were pending, DOR resumed assessing and taxing railroad personal property at 100% of market value. It also instituted proceedings to collect back taxes on the 80% of personal property taxes foregone from 1989 to 1993 (a 5-year limit on levying omitted taxes precluded the state from going back to 1988). The railroads challenged the levying of omitted taxes in state court and after the circuit court ruled in favor of the state and the appeals court ruled in favor of the railroads, the parties settled out of court, essentially agreeing to split the difference. Railroads that had paid their omitted tax were refunded about half their tax, plus interest, in October 2000, and railroads that did not pay the omitted tax paid about half their tax, plus interest, by December 2000; Refunds were about \$10.8 million, and payments to the state were \$0.3 million.

Federal court rulings generally held that car line taxes were also covered by the 4R Act, and three car line companies filed a lawsuit challenging the state's gross receipts tax in 1988. On the advice of the Department of Justice, DOR refunded the car lines' 1988 prepayments of their 1989 license fees and agreed not to levy and collect the tax in the future. The statute imposing the tax was not repealed due to pending litigation in other states and to permit the tax to be re-imposed if the courts allowed.

After the U.S. Supreme Court upheld Oregon's railroad tax, DOR moved to reinstate the gross receipts tax on car line companies; however, the companies believed the tax violated the 4R Act because it was based on gross receipts while railroads' paid an ad valorem tax. Following negotiations between DOR and the car lines, legislation (1995 Wisconsin Act 237) was enacted lowering the gross receipts tax on car lines to 3%, resulting in a tax comparable to that paid by railroads. DOR did not attempt to collect taxes for the years the tax was not collected.

Proposed Exemption for Rolling Stock

Railroads have sought an exemption from the state ad valorem tax for their rolling stock. Language providing this exemption was included in 1995 Assembly Bill 557, but was vetoed by the governor at the recommendation of the Department of Revenue. This exemption would reduce transportation fund revenues by an estimated \$2.6 million, which is about one-quarter of annual railroad taxes. Since this exemption would necessitate repeal of the car line tax, the

state would experience an additional loss of \$0.5 million GPR.

In support of the exemption, railroads argue that rolling stock was once exempt and that DOR took this exemption away. DOR disagrees with this interpretation. From 1988 to 1993, railroads' personal property was subject to tax, but DOR excluded 80% of this property from the tax base in the belief that this was required under the 4R Act. Rolling stock was never truly exempt from the ad valorem tax.

Sales Tax

Except for one exemption, railroads are treated like business in general with respect to sales and use taxes, in other words, sales of goods and services to railroads are taxable to the same extent they are taxable to most other businesses.

Under s. 77.54(12), equipment used by railroads in transporting passengers and freight is exempt from sales and use tax. This exemption includes sales of freight cars, passenger cars, locomotives, and rolling stock used in rail operations as well as accessories, attachments, parts, repairs and fuel for the exempt equipment. Similar exemptions are provided for sales of trucks and trailers to common and contract carriers, of aircraft sold to air carriers and of commercial vessels and barges.

The Railroad Taxation Study Committee formed by Governor Thompson recommended a sales tax exemption for materials, supplies and fuel used in the maintenance of railroad tracks and rights-of-way in its report issued April 1, 1997. The Department of Revenue did not concur in that recommendation. The Governor vetoed a provision in the 1999-2001 budget (1999 Act 9) that would have provided such an exemption, which would have reduced sales taxes by an estimated \$1 million annually. The provision would have largely eliminated railroads' sales tax liability without assuring that railroads would increase their maintenance activities.

Railroads claim they are disadvantaged compared with the trucking industry since truckers do not maintain roads and highways, except to the extent their gas taxes and registration fees cover a portion of the cost of highways. However, unlike public highways, railroad tracks are essentially the private property of a railroad and, except for manufacturing machinery and equipment, the state does not typically exempt such property.

Sales of transportation services, including rail freight and passenger service, are not taxable in Wisconsin.

Corporate Income and Franchise Tax

Railroads organized as corporations, like other corporations, are subject to the corporate income and franchise tax. Railroads had been exempt from the tax prior to 1991, but the exemption was repealed by 1991 Wisconsin Act 39.

Corporate income is taxable at a rate of 7.9%. Corporations operating in more than one state must apportion their income to determine the share taxable by Wisconsin. Interstate railroads apportion income using a special apportionment formula that equally weights two factors: gross receipts and revenue ton miles. Interstate motor carriers also apportion income with a special apportionment formula that equally weight gross receipts and revenue ton miles of carriage.

June 19, 2002

Page 4

The standard apportionment formula for multistate corporations uses three factors, Wisconsin sales, payroll and property compared to total sales, payroll and property, with the sales factor being double-weighted.

According to the 2000 Aggregate Statistics compiled by the Department of Revenue, 34 railroads paid approximately \$130,000 in corporate income tax in 2000.

DC:skr

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**TAX ROLL OF THE PROPERTY OF ALL RAILROAD COMPANIES WITHIN THE STATE OF WISCONSIN
FOR THE YEAR 2001**

Description of Property: Tax Rate 0.021427754

Real estate, right-of-way, tracks, stations, terminals, rolling stock, equipment, franchises, and all other real estate and personal property of said company within the state of Wisconsin.

Name of Company	(A) System Valuation (000)	(B) Wisconsin Allocation Percentage	(C) (A x B) Allocated Value	(D) Adjustments	(E) (C+D) Wisconsin Valuation	(F) (E x Tax Rate) Taxes Levied
Burlington Northern Railroad Company	\$10,200,000	1.5819%	161,353,800	(\$3,799,600)	\$157,554,200	\$3,376,032.64
Duluth, Missabe & Iron Range Railway Company	75,000	2.3325%	1,749,375	0	1,749,375	37,485.18
Duluth, Winnipeg & Pacific Railway Company	43,000	21.7752%	9,363,336	(351,000)	9,012,336	193,114.12
Escanaba & Lake Superior Railroad Company	15,000	43.2800%	6,492,000	(1,000)	6,491,000	139,087.55
I & M Railroad	75,000	0.6374%	478,050	0	478,050	10,243.54
Sault Ste. Marie Bridge Company	55,000	11.1021%	6,106,155	6,400	6,112,555	130,978.32
Soo Line Railroad Company	600,000	17.3668%	104,200,800	1,596,000	105,796,800	2,266,987.80
Tomahawk Railway, Limited Partnership	3,100	100.0000%	3,100,000	(29,000)	3,071,000	65,804.63
Union Pacific Railroad Company	9,300,000	0.9596%	89,242,800	(370,924)	88,871,876	1,904,324.70
Wisconsin Central Ltd. / Fox Valley & Western Ltd.	225,000	70.7174%	159,114,150	(1,240,774)	157,873,376	3,382,871.86
Wisconsin & Southern Railroad Company	10,000	76.9766%	7,697,660	(113,800)	7,583,860	162,505.09
Total 2001					\$544,594,428	\$11,669,435.43

\$ 3 million of this is rolling stock

State of Wisconsin
Department of Revenue

State of Wisconsin)
) ss
County of Dane)

I do hereby certify the foregoing tax roll for the year 2001 includes the property of all railroad companies defined in Section 76.02, Wisconsin Statutes, liable to taxation in this state; that the valuation of the property of each company as set down in said rolls assessed by the Department of Revenue, and that the taxes thereon have been assessed and levied at the rate of taxation required by law.

IN WITNESS WHEREOF, I have hereunto set my hand at the office of the Department of Revenue, in the City of Madison, State of Wisconsin this ____ day of November, 2001.

John W. Rader, Administrator
Division of State/Local Finance

Piliouras, Elizabeth

From: Bohling, Judy
Sent: Wednesday, June 19, 2002 10:03 AM
To: Piliouras, Elizabeth
Subject: RE: Transportation Hearing Today

Rose is taking the rest of the week off and Pat is in Milwaukee this morning but he plans to attend the Senate hearing on railroads, along with Ken Leonard, Al Stanek, and Jim Donlin.

Let me know if you need anything further. Thanks.

-----Original Message-----

From: Piliouras, Elizabeth
Sent: Wednesday, June 19, 2002 9:46 AM
To: Bohling, Judy
Subject: Transportation Hearing Today

JUDY:
WOW... EVERYONE'S GONE! ARE PAT AND ROSE OKAY? JUST WANTED TO TOUCH BASE WITH YOUR OFFICE TO SEE IF YOU KNOW WHO WILL BE TESTIFYING AT THE SENATE TRANSPORTATION COMMITTEE HEARING TODAY ON BEHALF OF THE DEPARTMENT.

THANKS!
BETH

Beth Piliouras

Office of Senator Roger Breske

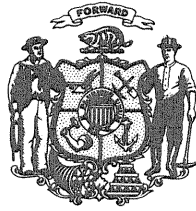
ROGER BRESKE

STATE SENATOR

12th District

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State Capitol, South Wing
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(715) 454-6575

E-Mail Address:
Sen.Breske@legis.state.wi.us

Web Address:
[http://www.legis.state.wi.us/
senate/sen12/sen12.html](http://www.legis.state.wi.us/senate/sen12/sen12.html)

SENATE COMMITTEE ON INSURANCE, TOURISM & TRANSPORTATION

Talking Points

June 19, 2002

The hour of 1PM having arrived, I will call this meeting to order. The Clerk will take the roll.

I have scheduled today's hearing to provide an overview of a number of railroad-related issues. Every session, the legislature considers a number of legislative proposals related to railroads and their importance to our state, but we rarely get to spend as much time discussing them as we would like.

Today's hearing is timed well for the committee to be briefed on the status of the state rail plan, other safety-related issues and a variety of railroad tax issues which have been debated in the past few sessions.

I would like to thank the Departments of Transportation and Revenue for being here today, as well as the representatives of the railroad industry who will be making brief presentations today.

Order of speakers:

Department of Transportation

Department of Revenue

Railroad Representative (Sam Gratz/Bill Gerrard's folks)

Can call as a panel

Rail Lease Car Representatives (Gunnar's folks)

Call as a panel – only one will likely testify

Piliouras, Elizabeth

From: Sam Gratz [samgratz@tds.net]
Sent: Thursday, June 20, 2002 8:57 AM
To: Elizabeth.Piliouras@legis.state.wi.us; Vaughn.Vance@legis.state.wi.us
Subject: Yesterday's Hearing

We want to thank the Senator and both of you for your work in holding yesterday's hearing. I feel that it was a good airing of some significant issues for us. We also came away feeling that the Dept. of Revenue does have a good understanding of the issues that we raise with regard to taxation of railroads.

We appreciate the efforts of Senator Breske in this regard, and look forward to working with all of you in the future.

Thanks so much,
Sam Gratz

CDL Railroad Crossing Disqualification

In 1998 24% of the 3,508 vehicle/train collisions involved large trucks.

The Federal Motor Carrier Safety Administration (FMCSA) enacted a rule (September 2, 1999) requiring commercial drivers convicted of railroad crossing violations to be disqualified. **WI has not yet passed such legislation.**

CDL Disqualifications for RR crossing convictions:

1 st conviction	60 days
2 nd conviction/3 years	120 days
3 rd or more convictions	1 Year

RR crossing convictions include:

- Failing to stop or slow down before crossing (all drivers)
- Failing to stop before reaching the crossing, if not clear (all drivers)
- Failing to stop before reaching the crossing (for drivers who are required to stop)
- Failing to have sufficient space to drive completely through the crossing without stopping (all drivers)
- Failing to obey a sign or officer at the crossing (all drivers)
- Failing to negotiate a crossing because of insufficient undercarriage clearance (all drivers)

States are required to have their laws enacted and to be administering the new disqualifications by October 4, 2002.

This is a federal CDL compliance requirement. Noncompliant states' federal funding for the National Highway System and Surface Transportation Programs may be sanctioned:

WI NHS and STP sanction estimates

First year:	\$11,419,212 (5%)
Second and each subsequent years:	\$22,838,424 (10%)

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CDL Disqualifications for RR crossing convictions:

1 st conviction	60 days
2 nd conviction/3 years	120 days
3 rd or more convictions	1 Year

RR crossing convictions include:

- Failing to stop or slow down before crossing (all drivers)
- Failing to stop before reaching the crossing, if not clear (all drivers)
- Failing to stop before reaching the crossing (for drivers who are required to stop)
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Second and each subsequent years:	\$22,838,424 (10%)

^{KPL}
SENATE HEARING SLIP

(Please Print Plainly)

DATE: #5

BILL NO. _____
OR _____

SUBJECT _____

(NAME) Glenn Bergerson

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

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DATE: 6/19/02 #4

BILL NO. _____
OR _____

SUBJECT _____

(NAME) Robert Zwartz

(Street Address or Route Number) 175 W. Jackson Blvd

(City and Zip Code) Chicago, IL 60604

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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#3

DATE: 6-19-02

BILL NO. _____
OR _____

SUBJECT _____

DAVE THORLEY
(NAME)
11855 Oregon Tr.
(Street Address or Route Number)
DeLand FL 32724
(City and Zip Code)
GATX Corp
(Representing)
Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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DATE: _____

BILL NO. _____
OR _____

SUBJECT _____

LOUIS MAZZUCA
(NAME) GE RAIL SERVICES
(Street Address or Route Number)
161 N. CLARK ST
Chicago IL 60601
(City and Zip Code)
GE RAIL SERVICES
(Representing)
Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: 6-19-02 ①

BILL NO. _____
OR _____

SUBJECT PRIVATE RAIL CARE TAX

JACK ETZKORAN
(NAME)
101 N. WACKER DR.
(Street Address or Route Number)
Chicago IL 60606
(City and Zip Code)
TTX COMPANY
(Representing)
Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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SENATE HEARING SLIP

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DATE: June 19, 2005

BILL NO. _____
OR _____

SUBJECT Railroad Tax

(NAME) Gary Bratball

(Street Address or Route Number) State 405 501 MATTHEW

(City and Zip Code) Milwaukee, WI 53337

(Representing) C.P. Rail (Seoulme Railroad)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: 6/19/02

BILL NO. _____
OR _____

SUBJECT Railroads

(NAME) John Rader

(Street Address or Route Number) _____

(City and Zip Code) Dept of Revenue

(Representing) _____

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 6/19/02

BILL NO. _____
OR _____

SUBJECT WISDOT

(NAME) WI Railroad Taxation

(Street Address or Route Number) _____

(City and Zip Code) 402 Sheboygan Ave

(Representing) WIS Dept of Transportation

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: June 19 2002

BILL NO. _____
OR
SUBJECT Railroads

Mike Payfle
(NAME)
101 N. Webster
(Street Address or Route Number)
Chicago IL 60606
(City and Zip Code)
Union Pacific RR
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: June 19, 2002

BILL NO. _____
OR
SUBJECT Railroad Taxes

Alec Vincent (Spoke)
(NAME)
2500 Loy Meek Dr
(Street Address or Route Number)
Ft. Worth TX 76131
(City and Zip Code)
BNSF Rwy Co.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: 6-19

BILL NO. _____
OR
SUBJECT State Rail Plan

Brian Sweeney
(NAME)
325 Cedar St.
(Street Address or Route Number)
St. Paul MN 55101
(City and Zip Code)
BNSF Railway Wisconsin
(Representing) / Rail Comm office

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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