R-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub-No. 14)]

2022 Tax Information for Use in the Revenue Shortfall Allocation Method

The Board is publishing, and providing the public an opportunity to comment on, the 2022 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 (Simplified Standards–Taxes in RSAM), 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, EP 646 (Sub-No. 2), slip op. at 1. In Simplified Standards–Taxes in RSAM, EP 646 (Sub-No. 2), 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.

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

Pursuant to 49 CFR 1135.2, AAR is required to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad for the previous year. On May 30, 2023, AAR filed its calculation of the weighted average state tax rates for 2022. AAR then refiled their calculations on June 1, 2023, to correct the Annual Report (R-1) data that was previously submitted. Therefore, June 1 will be considered the filing date for AAR's submission. Listed below for each Class I railroad are AAR's calculations:

Weighted Average State Tax Rates

Railroad	2022	2021	% Change
BNSF Railway Company	4.960%	5.068%	-0.108%
CSX Transportation, Inc.	5.242%	5.010%	0.232%
Grand Trunk Corporation	7.906%	7.904%	0.002%
The Kansas City Southern Railway Company	4.897%	5.164%	-0.267%
Norfolk Southern Combined Railroad Subsidiaries	5.620%	5.671%	-0.051%
Soo Line Corporation	7.802%	7.827%	-0.025%
Union Pacific Railroad Company	5.337%	5.451%	-0.114%

Pursuant to 49 CFR 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 2022 weighted average state tax rates should file a comment by July 10, 2023. See 49 CFR 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due within 20 days of the filing date of the comments. 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

10, 2023, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 11, 2023. Id.

It is ordered:

1. Comments on AAR's calculation of the 2022 weighted average state tax rates for the Class I railroads are due by July 10, 2023. If any comments opposing AAR's calculations are filed, AAR's reply is due within 20 days of the filing of the comments.

2. If no comments are filed, AAR's calculation of the 2022 weighted average state tax rates for each Class I railroad will be automatically adopted by the Board, effective July 11, 2023.

Decided: June 6, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

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