

File No. 36404 Continued

property and the balance of \$1,050,000 against securities held in the pension; relief and savings features of the Company established by it for the benefit of its employees, who become members of, and who contribute to, those features; the amount of assessment against each feature being \$100,000., \$750,000., and \$200,000., respectively; and was estimated in the absence of any return by the Company showing the actual securities held in the features. Excepting the entries against securities, the assessments have been increased each year until in 1923 the total, including securities, amounted to \$12,252,095.00.

From the action of the Appeal Tax Court in making the assessments, the Company has entered appeals to the Baltimore City Court, and after 1915, to the State Tax Commission, alleging in substance that the real and personal property assessed "was necessary, convenient and appropriate" to it as a railroad, and that by the Charter, it is "entitled to exemption from taxation upon all lands and buildings and other property necessary, convenient and appropriate for the operation of its railroad and the conduct of its business as a railroad company"; and as to the assessments against securities, the Company denies ownership and avers that they belong solely to the members of the pension feature.

All of these appeals are pending, and that a doubt has all along existed as to the propriety or validity of the assessments is apparent, for in your communication you say: "This Department has been carrying for years all such property in its assessment basis, but no effort has been made towards collecting any taxes thereon; this has been done on advice received from the City Law Department."

That the Baltimore & Ohio Railroad Company was granted in its Charter of 1826 an exemption from taxation, and that that exemption was not one which it was within the power of the Legislature to repeal or modify without the assent of the Railroad Company, is not to be denied. That question was long since determined by the Court of Appeals. Consequently, it could only have been upon the belief or assumption that the Railroad Company had either forfeited or surrendered its exemption from taxation that the assessments were originally entered in 1905 and have ever since been continued. The controlling question, therefore, is whether the Company has forfeited or surrendered its exemption from taxation, and as the determination of that question lies