

BOX

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FOLDER

98

**Franchise Tax and
Assessment Settlements**

1910, 1912

June 4/10

Communication

FROM
THE CORPORATION COUNSEL

Special Franchise
tax, doing the City
from various RR's
for years 1900 to
1909

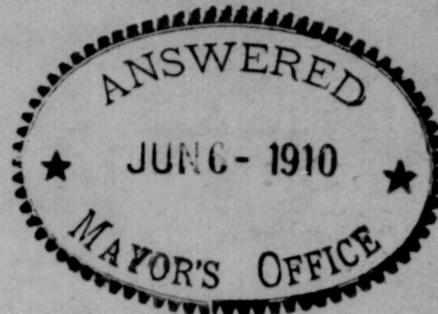
DATED NEW YORK,

*Law Department,
Office of the Corporation Counsel,*

New York,

June 4 1910

50 (MAR)



Hon. William J. Gaynor,
M a y o r.

S i r :

An offer has been made by counsel for the following street railroad companies to compromise the special franchise taxes due the City for the years 1900-1909 inclusive:

- Metropolitan Street Railway Company;
- Bleecker Street and Fulton Ferry Railroad Company;
- Broadway and Seventh Avenue Railroad Company;
- Eighth Avenue Railroad Company;
- Forty-second Street and Grand Street Ferry Railroad Company;
- New York and Harlem Railroad Company (City Line);
- Ninth Avenue Railroad Company;
- Sixth Avenue Railroad Company;
- Twenty-third Street Railway Company;
- Central Crosstown Railroad Company;
- The Christopher and Tenth Street Railroad Company;
- Fort George and Eleventh Avenue Railroad Company;
- Thirty-fourth Street Crosstown Railway Company.

The assessments as levied against the special franchises of these companies for the years in question by the State Board of Tax Commissioners amount to \$485,175,395.

It is proposed to take as the full value of these special franchises, sums which will aggregate \$398,239,497. When these full values are equalized for the years 1900-1902 inclusive at 67% and for the subsequent years at 89%, the aggregate equalized assessments will equal \$336,788,010. This is the sum upon which the taxes are to be calculated.

The total just given is 69.42% of the original assessments as levied by the Tax Commissioners, so that under the compromise a reduction from the face of the assessments of 30.58% is made.

In the case of the settlement of the special franchise taxes of the Third Avenue Railroad Company and its subsidiary lines, which has heretofore been approved by you and the Comptroller, the assessments for the purpose of compromise were calculated upon the basis of the net earning rule as laid down by the Court of Appeals in the Jamaica Water Supply Company case. The assessments, as thus calculated, resulted in a reduction of 34.8% being made from the original assessments as levied.

It is, therefore, apparent that the settlement proposed in the case now under consideration is more favorable to the City than was the Third Avenue settlement. The taxes on the reduced assessments would amount to \$5,552,956.32. There have been payments made to The City, however, in the nature of a tax by the companies in question during the various years amounting to \$2,640,136.04, which payments the relators claim the right to deduct from the face of the taxes under Section 48 of the Tax Law (formerly Section 46). A deduction of these payments would leave as the balance of the tax due The City, the sum of \$2,912,820.28, which with interest up to March 31st, 1910, amounts to \$3,750,000 for principal and interest. The principal of the taxes, however, is to draw interest from March 31st, 1910, until the date of their payment, so that this latter sum will be increased. This sum of \$3,750,000 would also be increased if

Letter to Hon. William J. Gaynor, *-3-* *Page* *-3-*

the relators do not establish their right to the full credits claimed by them for payments in the nature of a tax.

The proposed settlement has been approved by the Attorney General. I now submit the same for your consideration and recommend its acceptance.

Very respectfully,

Melville B. Wilson

Corporation Counsel.

CORPORATION COUNSEL,
CITY OF NEW YORK.

July 20, 1910.

2
Hon. William J. Gaynor,
Mayor of The City of New York.

S i r:-

I beg to advise you that the franchise tax litigation in which the New York Central Railroad sought to review the assessments against its special franchise in Park Avenue from 45th Street to 133rd Street, the trial of which has been pending before Referee James T. Graham for more than two years, has just resulted in a decision by the referee handed down today which is a complete victory for the city. The total assessments were nearly \$100,000,000 and the taxes on the assessments, including interest, amount to more than \$2,500,000.

The Railroad sought to have the entire assessment vacated and set aside, in which connection it urged four contentions:

First, that as the New York and Harlem Railroad Company, the owner of the franchise in question, had in 1831 purchased a 24 foot right of way on Park avenue before it was opened, the railroad was on Park avenue during the years in question not by reason of any special franchise granted by the State or the city, but by reason of a pri-

vate easement left to the company after the city had condemned and opened Fourth avenue in 1857. It therefore maintained that the company was not subject to any special franchise tax whatsoever.

The second claim was that if the court decided the railroad did have a special franchise on Park avenue, nevertheless the special franchise tax law was not intended to and did not tax special franchises of steam railroad companies.

The third claim of the railroad was that even if it had a franchise on Fourth avenue, the franchise was worth nothing; that therefore the only property taxable was the tangible railroad structures in the avenue, and as the city had paid one-half the cost of some of these improvements, that only the balance was taxable against the Railroad Company. If this claim had succeeded the assessments would be reduced from ten or twelve million dollars in each year to approximately two million dollars in each year.

The fourth claim was that if the company was wrong in the last contention, nevertheless, as the franchise was of no value, as it sought to prove before the referee, then the only property that could be taxed was the full value of the tangible properties in the avenue, to-wit, approximately \$5,000,000 for each year. The suc-

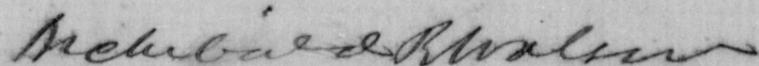
Hon. William J. Gaynor, -3-

cess of this claim would have resulted in the assessment being cut in half each year.

Upon the summing up the Railroad Company withdrew its third contention after considering the authorities produced by the city's counsel.

Referee Graham, in deciding these cases, found against the Railroad Company on each claim. He decided that the Railroad Company has a special franchise on Park avenue, taxable under the special franchise tax law, and that the company is taxable not only for the value of the tangible property in the avenue, but that its intangible franchise has very substantial value. The value of the intangible franchise the referee did not fix, the decision being that the Railroad Company did not succeed in establishing that it had no value. The referee therefore takes the assessments as fixed as the value of the special franchises in question. The result of the decision is that the assessments as laid are determined to be correct, so far as the claims of illegality and over-valuation are concerned, and that, subject to "equalization" under the decision of the Court of Appeals in the Jamaica Water Supply Company case, they must be sustained.

Respectfully,



Corporation Counsel.

July 20/10

Re to Franchise
Tax Litigation
of My Central
RR Co against
is special franchise
Tax in Penna

Nov 28/1910

Communication

FROM
THE CORPORATION COUNSEL

Re to Assessments
against Central
Park North and
East River RR Co

DATED NEW YORK,

4308-06-16

*Law Department,
Office of the Corporation Counsel,
New York,*

November 28 1910

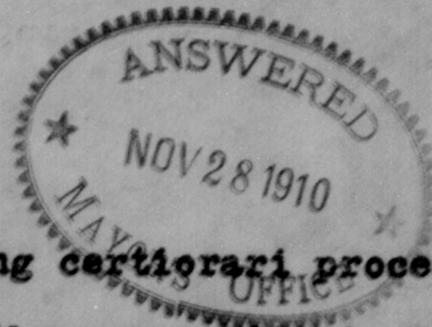
Hon. William J. Gaynor,
M a y o r .

S i r :

There are pending certiorari proceedings to review the assessments for the years 1901 to 1909 inclusive, made against the special franchises of the Central Park, North and East River Railroad Company.

For the years 1901 to 1908 inclusive, this railroad company was leased to and operated as a part of the Metropolitan Street Railway Company, the litigation concerning the special franchise taxes of which was settled pursuant to a compromise approved by you and subsequently approved by the Comptroller resulting in a deduction from the face of the original assessments of approximately thirty (30) per cent.

As the Central Park, North and East River Railroad Company was operated as a part of the Metropolitan Street Railway Company during all of the years except one to which the assessments relate, a settlement of the franchise taxes of the former upon the same basis as the Metropolitan Street Railway Company settlement was proposed by counsel, and for the reasons stated at length in the case of the Metropolitan Street Railway Company settlement, I think the present offer a reasonable one and one which should be accepted by The City.



Letter to Hon. William J. Gaynor, Page 2.

The original assessments and the amounts to which they would be reduced upon the basis of the Metropolitan Street Railway Company settlement is as follows:

1901	\$1,809,900.00	\$1,001,598.39
1902	2,297,200.00	1,271,269.97
1903	2,625,000.00	1,929,672.41
1904	2,600,000.00	1,911,294.29
1905	2,800,000.00	2,058,316.95
1906	2,800,000.00	2,058,316.99
1907	3,650,000.00	2,683,162.85
1908	3,212,000.00	2,361,183.84
1909	<u>2,750,000.00</u>	<u>2,021,561.46</u>
	\$24,544,100.00	\$17,296,377.15

The taxes on the original assessments amount to \$405,960.19, while the taxes on the final reduced assessments are \$281,315.35. From this amount is to be deducted the sum of \$47,943.09, which represents payments in the nature of a tax made to the City and which payments are deductible from the taxes under the provisions of the Tax Law. The amount to be paid to the City under the proposed settlement is \$233,372.26 with interest from the times the taxes became liens.

I accordingly submit the matter for your consideration. If you approve, will you be so good as to address to me a letter stating in substance that

you approve the settlement of the pending certiorari proceedings to review the assessments for the years 1901 to 1909 inclusive, made against the special franchises of the Central Park, North and East River Railroad Company, as recommended in my letter of November 28, 1910.

Respectfully,

McDonald Robertson

Corporation Counsel.

March 26, 1912.

Dear Mr. Comptroller:

I had an interview with Mr. Watson yesterday about the settlement of the franchise tax cases, and I trust he will move in the matter. If you have reached a basis of settlement we may as well settle it and not wait any longer for the Corporation Counsel's office. I will be satisfied with the result of your examination. The thing should have been settled long ago.

Very truly yours,



Mayor.

Hon. W. A. Prendergast,
Comptroller,
Department of Finance,
City of New York.

November 11, 1912. b

S i r :

I am informed that when the franchise tax cases came up in Brooklyn this morning and an adjournment was asked for by the companies your Mr. Peters said that there was no chance for a settlement -- that a settlement was further away now than two years ago. I do not understand this to be the case. And besides it will not be very agreeable to the Comptroller to hear anything like that, because he is in good faith under the impression that he has settled them all. I do not wish to set all his work at naught right off hand. On the contrary the cases ought to be adjourned, and if the Comptroller's settlement is not satisfactory we should go over it and make it satisfactory.

Very truly yours,

W. G. Taylor
Mayor.

Archd R. Watson, Esq.,
Corporation Counsel,
New York City.