

Taxation of Public Utility Realty

General Assembly of the Commonwealth of Pennsylvania

JOINT STATE GOVERNMENT COMMISSION

Harrisburg, Pennsylvania

1970

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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1969-1971

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* *Members of the Subcommittee on Public Utility Taxation*

LETTER OF TRANSMITTAL

*To the Members of the General Assembly of the
Commonwealth of Pennsylvania:*

This report contains recommendations of the Joint State Government Commission pertaining to the taxation of public utility realty developed pursuant to Senate Concurrent Resolution Serial No. 152 (Session of 1968) which provides in part: "RESOLVED, That the Joint State Government Commission is hereby directed to undertake immediately a review of existing law affected by the amendments to the Constitution contained in . . . Proposals Numbers 3, 4 and 5 (taxation and State finance), . . . and the preparation of appropriate implementing legislation required thereby, and to report its findings and recommendations to the General Assembly."

The Executive Committee authorized the creation of a task force and appointed an advisory committee of citizens with established reputations in the fields of taxation and state finance to assist in carrying out the Commission's assignment. The contribution of the task force, under the able leadership of Senator Thomas F. Lamb and Representative H. Jack Seltzer, Co-Chairmen, is fully recognized and appreciated. On behalf of the Commission, the counsel and guidance of the Honorable J. Dean Polen, Chairman, and the members of the advisory committee are gratefully acknowledged.

FRED J. SHUPNIK, *Chairman*

*Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
August 1970*

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RECOMMENDATIONS

The Joint State Government Commission recommends enactment of the constitutionally authorized in-lieu tax and distribution alternative to local taxation of public utility operating realty with the following major provisions:

1. The operating real property of public utilities be defined to exclude machinery and equipment including wires, pipes, and other lines, and thereby maintain parity with the definition of taxable realty of industrial establishments contained in existing law; additionally, easements and railroad right-of-way not be included.

2. The utilities subject to taxation under the act not include municipalities or municipality authorities furnishing a public utility service.

3. The operating real property of public utilities be assessed by local assessment officials in the same manner as locally taxable real property is assessed.

4. The Commonwealth levy a special tax upon the operating realty of public utilities equal to the amount which local taxing authorities could have imposed upon such property and calculated by multiplying the assessed valuation of each parcel of public utility operating property by the tax rate of each local taxing authority in which the property is situated.

5. The entire sum collected by the Commonwealth from the special tax on utilities' operating realty less actual administrative expenses not to exceed 1 percent of total collections, be distributed annually among all local taxing authorities in the proportion which the total tax receipts of each local taxing authority for the preceding fiscal year bear to the total tax receipts of all local taxing authorities. This is the formula suggested by the Constitution.

In the event the General Assembly wishes to give recognition to the *situs* of public utility realty in the distribution formula, it is recommended that each locality be allocated the property taxes it could have collected from public utility realty up to a maximum of 3 percent of its total collections from all local taxes and that the amount, if any, in excess of 3 percent of the locality's total tax collections be distributed to all localities on the basis of the constitutionally suggested formula.

These recommendations contemplate the repeal of the "Public Utility Realty Tax Act," of March 10, 1970, Act No. 66, retaining however the

liability for payment of taxes to the Commonwealth which exists at the date of repeal.

The recommendations with respect to the definition of public utility realty, assessment procedures and the preferred distribution formula represent no substantial change from the comparable provisions of Act No. 66. Unlike Act No. 66, however, this proposal excludes utility realty owned by municipalities or municipality authorities, on the basis that inclusion would merely involve the collection of tax revenues from some local governments or agencies for distribution to other local governments.

The significant difference between this proposal and Act No. 66 is the type of tax utilized to collect the amount to be distributed. The tax base of Act No. 66 is the "book value" of utility realty and the rate is 30 mills or such higher rate as is necessary to raise in the aggregate the total sum which could have been imposed in local property taxes. Under the Commission's proposal each utility would pay into the distribution fund exactly the amount which it would otherwise pay in local real property taxes. Under Act No. 66 there is no necessary relation between the amount a utility company's realty generates in tax liability and the amount the company actually pays in taxes. Inevitably some utilities—perhaps a majority—will pay taxes attributable to some other company's property.

PROPOSED LEGISLATION

The foregoing recommendations are implemented in the proposed "Public Utility Realty Tax Distribution Act." The distribution method which gives partial weight to the situs of utility realty requires different provisions only in Section 7 of the proposed act. In addition, amendments to "The General County Assessment Law," and "The Fourth to Eighth Class County Assessment Law," are required to clarify local assessment practices. The foregoing act, alternate Section 7, and amendatory acts are set forth in Appendix B.

I.

INTRODUCTION

On April 23, 1968 the electorate, by approving certain amendments to the Pennsylvania Constitution relating to taxation and state finance, removed the tax exemption previously accorded more than one billion dollars' worth of real property owned by public utilities. Article VIII, Section 4, which became effective July 1, 1970 specifically subjects the operating property of public utilities to either locally imposed real estate taxes or an in-lieu state tax and distribution alternative requiring the enactment of implementing legislation to distribute the proceeds.

By concurrent resolution adopted April 30, 1968 the General Assembly directed the Joint State Government Commission to review existing law affected by the amendments to Article VIII and to develop appropriate implementing legislation. In accordance with that directive a task force under the co-chairmanship of Senator Thomas F. Lamb and Representative H. Jack Seltzer, and an advisory committee under the chairmanship of Honorable J. Dean Polen, were appointed and organized into various subcommittees. The subcommittee responsible for the portion of the study relating to public utility realty taxation consisted of both legislative and advisory committee members, totaling 17 in number, under the chairmanship of Senator Lamb. After initially determining that implementation of the constitutional alternative rather than allowing local taxation was in the public interest, the subcommittee set about to explore various policies necessary to effectuate this decision. At a series of eight working meetings held between September 1968 and February 1970, the subcommittee examined methods of achieving the policy objectives and developed drafts of legislation. In the interim between the working sessions, members wrote and circulated position papers and memoranda explaining practices and procedures in specialized subject matter areas and reviewed background material assembled by the staff.

In early 1970 the immediate necessity of implementing the constitutional amendment by July 1 was relieved by the passage of the Act of March 10, 1970, Act No. 66, known as the "Public Utility Realty Tax Act." This act by providing for the distribution of in-lieu state taxes on the "book value" of public utility realty executed the constitutional provision authorizing supersedure of the power of local taxing authorities to levy upon public utility property. Much of Act No. 66 was directly derived from the proposals which had been developed and approved by

the subcommittee on February 11, 1970.¹ Specifically, recommendations of the subcommittee with respect to the definition of public utility realty, assessment procedures, the timing of tax payments and distributions, and one of two alternative distribution formulas, were incorporated into Act No. 66. Subsequent to the passage of Act No. 66, the recommendations of the Subcommittee on Public Utility Taxation were reviewed and adopted by its parent task force. These recommendations implement social, political, and economic policy considerations suggested on the Constitutional Convention floor but not clearly resolved in the language of Article VIII, Section 4.

¹ Act No. 66 was initially introduced by Representative K. Leroy Irvis on July 14, 1969 as House Bill No. 1412. Its ultimate provisions were first inserted in the bill on February 25, 1970 when it was re-reported from the Senate Finance Committee. In its initial form House Bill No. 1412 amended the Act of June 1, 1889, P. L. 420, to increase the rate of the public utilities gross receipts tax from 20 to 26 mills (effective January 1, 1969) and increase the amount and manner of payment of the tentative tax. As introduced, House Bill No. 1412 did not implement the constitutional alternative. On February 11, 1970, the House of Representatives, on third consideration, struck out all of House Bill No. 1412's provisions, substituting provisions imposing a state real property tax on the "fair market value" of public utility property; as amended by the House, the bill did not implement the constitutional alternative since it contained no provisions for distributing the Commonwealth tax revenues to local governments.

II.

CONSTITUTIONAL PROVISIONS

“The real property of public utilities is subject to real estate taxes imposed by local taxing authorities. Payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility and the distribution by the Commonwealth to the local taxing authorities of the amount as herein provided shall, however, be in lieu of local taxes upon its real property which is used or useful in furnishing its public utility service. The amount raised annually by such gross receipts or other special taxes shall not be less than the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property but for the exemption herein provided. This gross amount shall be determined in the manner provided by law. An amount equivalent to such real estate taxes shall be distributed annually among all local taxing authorities in the proportion which the local tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities, or in such other equitable proportions as may be provided by law.

“Notwithstanding the provisions of this section, any law which presently subjects real property of public utilities to local real estate taxation by local taxing authorities shall remain in full force and effect.”²

Prior to the adoption of the foregoing constitutional amendment, public utility operating property was generally exempt from local assessment and taxation because of the courts' statutory interpretation and the legislature's inaction. As early as 1825,³ the Pennsylvania Supreme Court concluded that since the legislature had not specifically provided for taxation of the real estate of public utilities such authority could not be inferred.

The legislative and judicial development of the exemption of public utility realty from taxation has been detailed elsewhere.⁴ It has been pointed out that the single reason set forth in the first and leading case,

² Pa. Const., Art. VIII, §4, added 1968.

³ *Schuylkill Bridge Company v. Frailey*, 13 S. & R. 422 (1825).

⁴ Walker, "Exemption of Real Property of Public Utilities From Local Taxation in Pennsylvania," 13 U. Pitt. L. Rev. 263 (1952).

which involved excluding from taxation a bridge over the Schuylkill River, was that:

“It might have been thought impolitic to damp that spirit of enterprise, which might lead to the construction of bridges over all our rivers; an object of vast importance to the state . . .”⁵

Within 30 years from this beginning an exemption for foreign and domestically owned canals, railroads, and natural gas companies was so firmly entrenched in Pennsylvania jurisprudence that it was not questioned, except as to the extent of its application.⁶

While the courts were creating and expanding the exemption, the General Assembly, with two significant exceptions, neither specifically included utility real estate within the subjects of taxation nor otherwise modified the exemption status of such property.⁷ In 1858, the General Assembly subjected to city taxation the “. . . offices, depots, car houses and other real property of railroad corporations situated in [Philadelphia], the superstructure of the road and water stations only excepted. . .”⁸ In 1859, the authority was granted to Pittsburgh to tax “. . . all real estate situated in . . . [Pittsburgh], owned or possessed by any railroad company . . . the same as other real estate. . .”⁹ These statutory authorizations to Philadelphia and Pittsburgh to tax certain real property owned or possessed by railroads are expressly preserved by the last sentence of Article VIII, Section 4.¹⁰

A provision of the Constitution of 1873 which reads:

“All laws exempting property from taxation, other than the property above enumerated shall be void.”

had no effect upon the exemption of public utility realty. The Pennsylvania Supreme Court, in a series of cases decided within the decade following adoption of the 1873 Constitution, held that the restriction

⁵ *Schuylkill Bridge Company v. Frailey*, *supra* at 424.

⁶ Walker, *supra* at 266.

⁷ A review of the legislative history for the 20-year period prior to the 1968 convention reveals that in each regular session at least one bill was introduced removing the realty exemption of public utilities; none of these bills were reported out of committee.

⁸ Act of 1858, April 21, P. L. 385, §1.

⁹ Act of 1859, January 4, P. L. 828, §3.

¹⁰ At the convention the proposal of the Committee on Taxation and State Finance (Proposal No. 5) contained no provision for exempting the operating property of public utilities already subject to local taxation. The committee was apparently unaware that railroad operating property had been consistently taxed by Philadelphia and Pittsburgh since the 1850's. Subsequent amendments corrected this oversight.

of exemptions was not self-executing as to public utility realty and applied only to future legislative exemptions if and when they should be unconstitutionally enacted.¹¹

When the Constitutional Convention met in 1968 the legal basis—judicial, legislative and constitutional—for the public utility real estate tax exemption had been established for almost a century.

The debates of the Constitutional Convention make it clear that the provisions of Section 4 authorizing the General Assembly to enact an in-lieu state tax and distribution alternative reflected the concern of the majority of the members of the Convention that simply authorizing local taxation would, as stated by Delegate Pott, “. . . greatly [enrich] a few taxing districts at the expense of consumers everywhere.”¹²

In reporting the Committee Proposal to the floor of the Convention, Delegate Woodring, Co-Chairman of the Committee on Taxation and State Finance, explained the purpose of the public utility taxation provision as follows:

“. . . the committee has added a new provision with respect to taxation of public utilities. Several delegate proposals and considerable testimony at public and committee hearings have been directed at requiring that the property of public utilities, which currently enjoys tax-exempt status by virtue of court decisions and lack of action by the General Assembly, be made taxable by local taxing authorities. Considerable opposition has also been expressed to such proposals on the grounds that the assessment and taxing practices vary widely among the thousands of taxing jurisdictions of the Commonwealth, and that many taxing jurisdictions would receive large tax ‘wind-falls’ because the bulk of utility properties might be located in one or a few jurisdictions while the service areas and those ultimately paying the taxes through the rates of the public utilities involves a much wider territory.”¹³

In subsequent debate, even delegates who supported recognition of the situs of the utility real estate in the distribution formula opposed

¹¹ See *Cootesville Gas Co. v. County of Chester*, 97 Pa. 476, 481 (1881) and cases cited therein; Cf. *Chadwick v. Maginnes*, 94 Pa. 117 (1880) and *County of Erie v. Commissioners of Water Works*, 113 Pa. 368 (1886).

¹² *Debates of the Pennsylvania Constitutional Convention of 1967-1968*, Vol. I, p. 630.

¹³ *Ibid.*, p. 429.

direct local taxation due to the potentiality for "windfalls." Delegate Baldus stated their case as follows:

"The reason that the taxation subcommittee did not make . . . a recommendation [that 'utilities simply be subject to local taxation and let it go at that'] and that the proponents of this amendment have not adopted that position is the concern expressed by many delegates and by many other individuals, that this would permit communities which have a very high proportion of their real estate used for public utility purposes, this direct taxation would permit a windfall to those communities. That is the basis of the theory against the direct taxation by local communities, that this would be disruptive of utility procedures and it would create difficulties at a local level.

"It is for that reason that the committee rejected the theory of direct taxation by local government, and rather it provided in the alternative, for a taxation at the state level with redistribution to the local communities.

"The point of our proposal is that this redistribution should be based on both population and the amount of exempt property."¹⁴

In view of the strong preference of the delegates to the Constitutional Convention for in-lieu taxation and distribution rather than direct local taxation of public utility operating real estate, legislation implementing the constitutional alternative was deemed mandatory.

The major policy issues which are involved in implementing legislation are three: (1) the definition of public utility real estate and the procedure for its valuation, (2) the source of the moneys to be distributed to local taxing jurisdictions and (3) the method of distribution.

¹⁴ *Debates of the Pennsylvania Constitutional Convention of 1967-1968*, Vol. II, p. 692.

III.

PUBLIC UTILITY REALTY: DEFINITION AND VALUATION

The statutory definition of locally taxable real estate is contained in virtually identical provisions of "The General County Assessment Law," and "The Fourth to Eighth Class County Assessment Law." The pertinent section of the latter reads, in part, as follows:

"Section 201. Subjects of Taxation.—The following subjects and property shall as hereinafter provided be valued and assessed and subject to taxation for all county, borough, town, township, school, (except in cities), poor and county institution district purposes, at the annual rate,

"(a) All real estate, to wit: Houses, house trailers and mobilehomes permanently attached to land or connected with water, gas, electric or sewage facilities, buildings, lands, lots of ground and ground rents, trailer parks and parking lots, mills and manufactories of all kinds, and all other real estate not exempt by law from taxation. Machinery, tools, appliances and other equipment contained in any mill, mine, manufactory or industrial establishment shall not be considered or included as a part of the real estate in determining the value of such mill, mine, manufactory or industrial establishment: Provided, That the exclusion of such machinery, tools, appliances and other equipment, in so determining the value of such mill, mine, manufactory or industrial establishment, shall be postponed and shall not become effective until such real estate is valued and assessed for taxes to be levied for the tax or fiscal years beginning on or after the first day of January, one thousand nine hundred fifty-six."¹⁵

While the law generally distinguishes for purposes of taxation between real property and personal property, the distinction in Pennsylvania has long been blurred by the so-called "assembled industrial plant doc-

¹⁵"The Fourth to Eighth Class County Assessment Law," 1943, May 21, P. L. 571, as last amended 1961, September 23, P. L. 1604. For the comparable provisions in "The General County Assessment Law," see the Act of 1933, May 22, P. L. 853, §201, as last amended 1961, September 23, P. L. 1601.

trine”¹⁶ as evolved by the courts of the Commonwealth and by statutory amendments exempting “machinery, tools, appliances and other equipment” from the real property tax base.

In reference to the limits of exclusion from taxation set by the phrase “machinery . . . and other equipment,” it has been stated that the distinction between real and personal property could be determined as follows:

“(1) If the property is loose—like desks, plug-in or ready hook-up appliances, or tools—it is personal property.

“(2) If the property is a building or structure, or if it is something that is ‘so annexed that it cannot be removed without destruction or material injury to the thing itself or to the remaining realty, it is realty even in the face of an expressed intention that it should be considered personalty.’

“(3) If, although connected to the realty it remains identifiable, and is removable without destroying or materially injuring it or the remaining realty, it may be considered ‘part of the realty or remain personalty depending upon the intention of the parties at the time of the annexation; in this class fall such chattels as boilers and machinery affixed for the use of an owner or tenant but readily removable.’ ”¹⁷

The author’s analysis concludes:

“. . . Since the Acts of 1953 exempt ‘equipment’ as well as ‘machinery,’ and do not specify that it be ‘industrial’ in use but only that it be ‘*contained in*’ any industrial establishment, it is argued that not even a functional test is involved in the word ‘equipment’. *In short, that everything, including structures, is ‘equipment’, except perhaps the walls and roof of a building.*”¹⁸

The Supreme Court summarized its conclusions regarding “machinery, tools, appliances and other equipment” as follows:

“. . . In *Jones & Laughlin Tax Assessment Case*, 405 Pa. 421, 175 A 2d 856 (1961), we held that improvements, whether fast or loose, which (1) are used directly in manufacturing the

¹⁶ *Jones & Laughlin Tax Assessment Case*, 405 Pa. 421 (1961); *United Laundries v. Board of Property Assessment*, 359 Pa. 195 (1948); also see *Singer v. Oil City Redevelopment Authority*, 437 Pa. 55, 59 (1970).

¹⁷ Wagner, *Semantic Shrubbery in the Tax Official’s Infield: Ambiguous Exemptions*, 65 Dick. L. Rev. 73, 83 (1961).

¹⁸ *Ibid.*, p. 87.

products that the establishment is intended to produce; (2) are necessary and integral parts of the manufacturing process; and (3) are used solely for effectuating that purpose are excluded from real estate assessment and taxation. On the other hand, we indicated, improvements which benefit the land generally and may serve various users of the land are subject to taxation. Likewise, structures which are not necessary and integral parts of the manufacturing process are subject to taxation. . . .”¹⁹

In attempting to conform the definition of public utility real estate to existing assessment practices with respect to mills, manufactories and other industrial establishments, it must be recognized that certain property of utilities such as pipes, wires and poles is unique and not generally found in other industries. Merely adding the words “public utility” to the existing assessment statutes does not provide sufficient guidance to assessing officials to insure uniformity of assessment. Under these circumstances, a comparable definition of public utility realty would exclude machinery and equipment and pipes, poles and other lines.

In further defining public utility realty, the constitutional specification of “used or useful” is considered to be delineated by the substantial body of case law differentiating utility operating property from nonoperating property. Prior to the constitutional amendment nonoperating property was taxed locally. Under the view either that nonoperating property is not “used or useful” or that its status is retained by the last sentence of Section 4, Article VIII, such property would remain taxable locally.²⁰ The “useful” requirement suggests a distinction between utility-held land actually undergoing development or construction for use as operating property and land held solely for future use or speculation; the latter type would remain taxable locally.

RAILROAD RIGHT-OF-WAY

Special problems are encountered in attempting to incorporate railroad real property into a general definition of public utility realty. To maintain equality with the treatment accorded industrial property requires that the real estate of railroads include only that property which in the words of the supreme court, “. . . may serve various users of

¹⁹ *U. S. Steel Corp. v. Board of Assessment and Revision of Taxes*, 422 Pa. 463, 467 (1966).

²⁰ Nonoperating property once converted into operating property would have its tax treatment changed accordingly.

the land.”²¹ Unlike other utilities, railroads generally hold title to their right-of-way. And to other users a great part of railroad right-of-way has little value. Consisting mainly of narrow strips segmented from the adjoining land by cuts or fills, the marketability of railroad right-of-way with its very limited alternative uses is severely restricted. As a continuous strip of land, it has value only as presently used or, if the location is appropriate, perhaps as a public highway. Otherwise, inaccessibility and lack of potential users as well as topographic unsuitability renders it economically distinguishable from the surrounding land. If such property were to be assessed on a parcel-by-parcel basis in accordance with the valuation assigned to the surrounding land, gross inaccuracies and inequities would arise. Because of the foregoing unique economic aspects of railroad right-of-way, alternatives to direct local assessment of all railroad property were investigated.

Spokesmen for the railroad industry, emphasizing the inapplicability of ordinary local assessment procedures to railroad right-of-way proposed that all railroad real estate in the Commonwealth be assessed by the unit method of valuation. Under this method, which is used in a majority of other states to provide valuations for the ad valorem taxation of railroad property, a value is assigned to the railroad company in its entirety and various allocations or apportionments are made to assign property to categories or localities. The unit valuation is established by some combination of values (generally a simple average) determined by capitalizing earnings, summing the market values of the company’s securities and depreciated cost.

Unit valuation of railroad property has a long history of successful application in other states and has been upheld by the courts in states which have constitutional provisions substantially similar to Pennsylvania’s uniformity requirement. As far as can be determined, however, it has always been restricted to those jurisdictions employing a “general property tax,” that is, a tax base which includes both realty and personalty. No instances could be found where only real property was assessed by the unit valuation method. The reason for this seems clear since the real property of railroads (especially under a definition which excludes practically all real estate except land and buildings) is such a small part of total railroad assets that after many complicated and often arbitrary allocations, the resulting realty valuation may be as much a product of accumulated error as of rational allocation. Additionally, it has been noted that unit valuation in the railroad industry which has

²¹ *U. S. Steel Corp. v. Board of Assessment and Revision of Taxes*, *supra* at 467.

been characterized by low or negative earnings involves a favorable tax treatment which is not accorded establishments with low or negative earnings in other industries such as manufacturing or mining. Furthermore,

“The incentive to hold speculatively segments of property that are of marginal usefulness from the standpoint of rail operations and revenue may be much stronger if a rail carrier is subject to assessment under the unit rule—with substantial weight being placed upon earnings and the stock-and-debt value—than would be the case if the severity of the *ad valorem* tax were not mitigated by explicit recognition of earnings performance and the market value of stock and debt. In particular, rail carriers with substantial amounts of unutilized or appreciably underutilized passenger terminals and trackage may have little pressing incentive to dispose of such holdings or to reduce them, inasmuch as the tax liability marginally ascribable to them may be slight. The possibility that this factor is serving to retard the reclamation and renewal of rail-owned land located in the downtown sections of some of our larger cities may well be worth study.”²²

An alternative approach to the equitable valuation of railroad property involves the outright exclusion of railroad right-of-way. This treatment is suggested by existing practice in Philadelphia and Pittsburgh under the 19th Century statutes which subject all property of railroads to local taxation in those jurisdictions. The 1858 statute applicable to the City of Philadelphia specifies that “. . . offices, depots, car houses and other real property of railroad corporations situated in said city, *the superstructure of the road and water stations only excepted*, are . . . subject to taxation. . .”²³ The courts have construed this provision to hold that the term “superstructure” was intended to mean “the roadbed with whatever had been constructed upon it,”²⁴ now commonly referred to as a railroad right-of-way. The court also noted that the roadbed exempted by law was four rods (66 feet) in width, and that this land with the tracks, sidings, and turnouts located on it is exempted but terminals and yards, for example, are not.

²² Lynn A. Stiles, “Some Aspects of the Ad Valorem Taxation of Railroads,” in *Property Taxation: USA* (Madison: University of Wisconsin Press, 1967), p. 136.

²³ Act of 1858, April 21, P. L. 385, §3. (Emphasis supplied)

²⁴ *Philadelphia v. Phila. & Read. R. R.*, 177 Pa. 292, 297 (1896).

The Act of January 4, 1859, P. L. 828, provides that “. . . all real estate situated in . . . Pittsburgh owned or possessed by any railroad company, shall be and is hereby made subject to taxation for city purposes the same as other real estate. . . .” In 1908 an attempt by the City of Pittsburgh to tax railroad right-of-way under the authority granted by the 1859 statute was rejected by the Pennsylvania Supreme Court which held that “. . . it was not the intention of the legislature to include within the meaning of the words ‘real estate’ as used in the statute, the ground comprised within the rights-of-way.”²⁵ In fact no instance in Pennsylvania law can be found where the words “real estate” have been held to include right-of-way for taxation purposes.

This exclusion of right-of-way from the definition of public utility realty in no way affects the taxation of other railroad land such as stations, terminals and yards. Such property, if used or useful in furnishing transportation service, would, except for operating property in Philadelphia and Pittsburgh, be subject to the in-lieu tax herein recommended. All other railroad realty would remain or become subject to local taxation.

MUNICIPAL UTILITIES

Under the provisions of 1970 Act No. 66, all utility realty including such realty owned by municipalities or municipality authorities is subject to a 30 mill tax on its “state taxable value”—generally defined as depreciated cost. Since municipal utility operations have never been under any requirement to maintain depreciation accounts the actual tax base of such property is unclear.

Aside from one large gas works, municipal utility operations in Pennsylvania are confined mainly to water supply and distribution and, if so defined, sewage collection and treatment. While the number of municipal electric utilities is about twice the number of private electric companies, the municipal utilities account for only 1.2 percent of total statewide electric operating revenues and electric cooperatives account for an additional 1.4 percent. Municipal and municipal authority water utilities account for 64.2 percent of total water operating revenues.

The delegates to the Constitutional Convention were informed by the Chairman of the Committee on Taxation and State Finance that municipally owned utility property would qualify for an exemption from property taxation by virtue of its status as public property used for public purposes.²⁶ A spokesman for the same committee stated in floor

²⁵ *Penna. R. R. Co. v. Pittsburg*, 221 Pa. 90, 97 (1908).

²⁶ See comments of Delegate Woodring, *Debates of the Pennsylvania Constitutional Convention of 1967-1968*, Vol. I, p. 620.

debate that “. . . it was the intent of the Committee that the municipally-owned water works or other utilities, would fit under that section which would be defined as that portion of public property which is actually and regularly used for public purposes. That is to be distinguished from non-municipally-owned utilities which would fit into the section defined as public utilities.”²⁷ In subsequent debate, it was conceded by Delegate Gerber that the public property exemption under which municipal utilities would remain exempt from real estate taxation was “. . . a permissive exemption; . . . that the General Assembly does not have to grant that exemption if it does not wish to do so.”²⁸

The great bulk of municipal utility real estate does not fit the rationale developed by the Constitutional Convention to justify an in-lieu taxation and distribution procedure. Except for reservoirs and dams, most municipal utility real estate is located within the same taxing jurisdiction as the consumers of its services.²⁹ Whatever the merit of taxing municipal utility property for state general revenue purposes, there would seem to be little justification in the collection of tax revenue from some local governments or agencies for distribution to all local governments.³⁰ There is little question that such property would be exempt if the alternative of direct local taxation were invoked.

ASSESSMENT BASE

The various foregoing considerations result in a definition of public utility real estate for tax assessment purposes which:

- (1) Conforms as nearly as possible to the treatment accorded industrial real estate;
- (2) Excludes railroad right-of-way; and
- (3) Excludes any utility real estate owned by a municipality or municipality authority.

The Constitution specifies that the amount to be distributed annually among local taxing authorities shall be equal to “the gross amount of real estate taxes which the local taxing authorities could have imposed”

²⁷ See comments of Delegate Gerber, *Debates of the Pennsylvania Constitutional Convention of 1967-1968*, Vol. II, p. 1327.

²⁸ *Ibid.*, p. 1328.

²⁹ In this connection the last paragraph of Section 23 of the Act of 1889, June 1, P. L. 420, as last amended, 1967, Dec. 29, Act No. 407, specifically includes municipalities within the subjects of the public utilities gross receipts tax but excepts from the tax base “. . . such gross receipts [as] are derived from business done inside the limits of the municipality. . . .”

³⁰ 1970 House Bill No. 2160, Printer's No. 2889, which would have removed from the scope of Act No. 66 the real property of any municipality or municipality authority furnishing public utility service was vetoed by the Governor on July 17, 1970 on the grounds that it was discriminatory, lacking in uniformity and would result in a “substantial loss of the revenue available to the Commonwealth for distribution to local taxing authorities.”

upon the real property of public utilities which is used or useful in furnishing public utility services. The most straightforward and economical method of determining this amount is to provide for local assessment of public utility realty in the same manner and by the same officials as locally taxable realty is assessed.

The alternative of creating a state agency to make special assessments of utility property, is apparently permitted by the Constitution³¹ but would represent an uneconomic duplication of assessment personnel and administration. Great difficulty would be encountered in converting state assessments into "the amount local taxing authorities could have imposed" since the use of statewide average assessment ratios and average tax rates could involve a considerable margin of error which would leave the calculations open to legal attack.

Local assessment, on the same basis as taxable property, serves to assure that the utility realty assessments are uniform with the assessments of all other realty located within the assessing jurisdiction.

Accordingly, the gross amount to be distributed to local taxing authorities can be calculated by the state distribution agency by summing the products of the locally assessed value of each parcel of public utility real estate and the appropriate local millage rates—in most cases the aggregate of the municipal, school, and county tax rates.

³¹ Article VIII, Section 4: ". . . This gross amount shall be determined in the manner provided by law."

IV.

REVENUE SOURCES

Since 1965 local assessing authorities have been required to “. . . make and have supervision of listing and valuation of property excluded or exempted from taxation.”³² Under this directive, assessment officials should maintain on their books the assessed valuation of all public utility operating real estate. Responses to a 1969 questionnaire distributed to county assessment offices indicate that in about 20 counties data on public utility valuations are so incomplete as to be worthless and in many other counties the valuations are described as “nominal” or subject to other qualifications as to accuracy or coverage. Consequently, a realistic estimate of the statewide value of public utility operating realty based upon the values existing on the books of local assessment officials is not possible. The limited data available from supplementary sources indicate that the gross amount of real estate taxes which local taxing authorities could impose upon the operating realty of public utilities is somewhere in the neighborhood of \$33 million if realistic valuations are developed.

The provisions of Act No. 66 require that local assessment authorities on or before October 1, 1970 “. . . assess and value all utility realty in the same manner as is provided by law for the assessment and valuation of real estate.” It is expected that the incentive to increase the amount in the distribution fund will insure revision of the prior unrealistic assessments. Full compliance with the statute, however, may not be accomplished immediately, hence the distribution fund may not reach its constitutional maximum during 1971.

GROSS RECEIPTS TAXES

Delegates to the Constitutional Convention responsible for developing the utility taxation proposals apparently believed that the amount required to be distributed to local taxing authorities to effectuate the in-lieu taxation of utility realty would be made up by additional gross receipts taxes. Speaking on behalf of the Committee on Taxation and State Finance, Delegate Pott stated, “This will not be a tax on the Commonwealth, . . . We rather surmise that the gross receipts tax will possibly be raised to take care of the money which is taken out.”³³

³² Act of 1965, May 12, P. L. 56, amending Section 601 of “The Fourth to Eighth Class County Assessment Law;” Act of 1965, May 5, P. L. 38, amending Section 3, 1931, June 26, P. L. 1379, relating to assessment procedures in third class counties.

³³ *Debates of the Pennsylvania Constitutional Convention of 1967-1968*, Vol. I, pp. 629-630.

The initial committee proposal referred only to gross receipts taxes; a subsequent amendment provided that "other special taxes" on public utilities could be used in place of gross receipts taxes to satisfy the constitutional requirement. This amendment makes it possible to adopt implementing legislation which more nearly meets the major objectives of the Convention—particularly anti-windfall—than would have been possible had the provision been restricted to gross receipts taxes.

It is not widely recognized that a significant part of utility operating realty is owned by companies either not subject to the gross receipts tax or subject to the tax on only a portion of their gross receipts. An extension of the taxing statute to "all utilities" would suffice to bring water utilities and steam heat companies under the tax, but for corporations operating in interstate commerce, this simple solution is not available.³⁴

Many transportation and communications companies operate in both interstate and intrastate commerce with the same real property. In such cases, only the gross receipts from intrastate operations are subject to the tax. Many other utilities, including transportation, communications, and foreign-owned electric utilities, own property used solely in interstate operations, the receipts from which are not taxable. In the absence of extraordinary measures, merely extending the gross receipts tax would not meet the constitutional requirement of "payment to the Commonwealth of gross receipts or other special taxes" by public utilities engaged wholly in interstate operations and accordingly, would subject the property of such utilities to real estate taxes imposed by local taxing authorities. Several mine-mouth electric generating plants are partly owned by out-of-state utilities. If locally taxed, the revenues from these plants would greatly exceed the total current property tax revenues of the municipalities in which they are located.

As a surrogate for local taxation of utility realty the gross receipts tax would produce extreme cases of inter-industry inequity. Even for utility companies engaged wholly in intrastate operations there are wide variations in the relationship between taxable gross receipts and real property holdings. Table 1 shows the industry-wide ratios of selected property values to operating revenues for four types of intrastate utilities in 1968. Column 2 of the table shows the ratio of total utility plant to gross operating revenues while column 3 shows the ratio of land,

³⁴ It would seemingly be constitutionally possible to tax the "fairly apportioned" gross receipts from interstate operations, see *Railway Express Agency v. Virginia*, 358 U.S. 434; 79 S. Ct. 411 (1959), but to achieve equity, such a scheme would involve complex allocation formulas different for each industry.

structures, and other improvements (i.e., real estate) to operating revenues. While the property values in the table are necessarily based upon

TABLE I
RATIOS OF SELECTED PROPERTY VALUES TO
OPERATING REVENUES, PENNSYLVANIA
PUBLIC UTILITIES BY TYPE, 1968

<i>Type of Utility</i>	<i>Ratio of Total Utility Plant to Operating Revenues</i>	<i>Ratio of Land Plus Structures and Improvements to Operating Revenues</i>
(1)	(2)	(3)
Electric	4.61	.66
Gas	1.61	.10
Telephone	3.25	.30
Water	7.24	1.38
Total (4 types)	3.45	.42

SOURCE: Calculated from unpublished summaries of annual reports prepared by the Public Utility Commission and Tables 239, 241, 243, 245 and 247 of the *1970 Pennsylvania Statistical Abstract*.

original cost rather than current market values, the extreme variation among industries is predominantly a function of the characteristics of the different industries. Gas companies, for example, have real property "worth" only one-tenth of their annual operating revenues while the ratio for electric companies is .66 and for water companies, almost 1.40. In other words, the typical gas company would pay a gross receipts tax almost seven times greater in relation to its real property holdings than the typical electric company which in turn would pay twice as much as the typical water company.

ALTERNATIVE TAXES

The 1968 Governor's Tax Study and Revision Commission report recommended that:

"The tax losses to the Commonwealth resulting from diversion of gross receipts tax revenues to local governments be compensated by higher taxes upon corporations generally, namely, the net income taxes on general corporations and the proposed

income taxes on financial institutions, rather than by higher rates upon utility gross receipts.”³⁵

In view of the increases in general corporation taxes enacted in early 1970—an increase in the corporate net income tax from 7 to 12 percent and an increase in the capital stock and franchise tax from 6 to 7 mills—any further increases to replace funds distributed to local governments in lieu of property taxes upon utilities cannot realistically be expected. The recent increases have placed Pennsylvania corporations at state tax levels considerably above the levels prevailing in practically every other state in the nation.

Under the provisions of Act No. 66 a “special tax” is levied upon the “state taxable value” (generally depreciated cost) of utility realty at a rate of 30 mills or such higher rate as is necessary to raise the total sum which could have been imposed in local property taxes. In the aggregate therefore, the constitutional requirement that the amount raised by the Commonwealth in gross receipts or other special taxes not be less than the taxes which local authorities could have imposed upon public utility real estate is satisfied. For individual utility companies, however, there is no assurance that the amount paid in state property taxes or, for that matter, in property taxes plus gross receipts taxes equals or exceeds the amount which that company would otherwise pay in local real estate taxes on its operating property. If the Constitution were interpreted to require in lieu payments by each company in an amount at least equal to the local taxes which could have been imposed on its property, failure to pay such amount would make its property immediately subject to local levies.

If additional tax revenues are to be obtained from public utilities to offset the diversion from the Commonwealth’s General Fund for distribution to local taxing authorities, the tax on “book value” of operating realty is clearly inferior to the simple alternative of levying a “special tax” upon the operating realty of public utilities equal to the precise amount which local taxing authorities could have imposed upon such property. Since these amounts must in any event be calculated and summed to meet the constitutional condition that “an amount equivalent to such real estate taxes shall be distributed annually,” there is little additional administrative cost or complexity involved in making them the basis for taxation. Under this proposal each public utility

³⁵ Commonwealth of Pennsylvania, *Final Long Range Report of the Governor’s Tax Study and Revision Commission* (December 1968) p. 34; strictly speaking, there can be no “diversion of gross receipts tax revenues” since there is no provision either constitutionally or statutorily for segregation of tax receipts.

would pay into the distribution fund the precise amount which it would otherwise pay in local real property taxes. In contrast, under Act No. 66 there is no necessary relationship between the amount a utility company's operating real estate generates in tax liability and the amount the utility actually pays in taxes. Inevitably, some utilities—perhaps a majority—will pay taxes attributable to another company's property.

UTILITY TAX INCIDENCE

Unlike corporation taxes in general, the rapid escalation of taxes on Pennsylvania public utilities over the past several years has not resulted in a level of taxation which is out of line with the levels prevailing in other comparable states. Table 2 shows for Pennsylvania and selected states the most recently published measures of state and local tax impact for three types of public utilities—railroads, telephone companies, and electric companies. It may be observed from these data that Pennsylvania state and local taxes on utilities generally were lower and in some cases substantially lower than the levels of utility taxes prevailing in comparable other states. For electric utilities, in 1968, state and local taxes³⁶ in Pennsylvania amounted to 4.93 percent of operating revenues in contrast to more than 13 percent in New Jersey, more than 19 percent in New York, and 10.5 percent in Ohio. Only in Delaware, of the 13 states shown in the table, were the 1968 state and local taxes on electric utilities lower than in Pennsylvania.

Recent increases in state taxes on public utilities (including increases in general corporation taxes) have resulted in current tax impact measures substantially greater than those shown in Table 2. For telephone carriers, the tax increases probably increased the tax impact measure shown in Table 2 (state and local taxes per mile of wire) from \$1.31 to at least \$2.25, placing Pennsylvania somewhat above the median state as of 1967. For electric companies it is estimated that the tax increases since 1968 have raised the state and local taxes as a percent of operating revenues from 4.93 percent to about 10.3 percent. Even without considering tax increases in other states since 1968, the relative tax impact on Pennsylvania electric companies still places these companies at a lower tax level than the levels prevailing in the majority of the states listed in the table.

While many industrial states have traditionally placed relatively heavy taxes upon public utilities, such tax loads are difficult to justify in terms of widely accepted canons of taxation. It is inescapable that

³⁶ Includes Federal social security taxes estimated at somewhat less than 1 percent of operating revenues.

TABLE 2
MEASURES OF STATE AND LOCAL TAX IMPACT FOR PUBLIC UTILITIES
SELECTED STATES AND VARIOUS YEARS

<i>State</i>	<i>Railroads: State & Local Tax Accruals Per Mile of Road Owned 1968</i>	<i>Telephone Carriers:¹ State & Local Taxes Per Mile of Wire 1967</i>	<i>Electric Utilities:² Taxes Other Than Federal Income Taxes as Percent of Operating Revenues (less resales) 1968</i>
(1)	(2)	(3)	(4)
Pennsylvania	\$1,499 ³	\$1.31 ⁴	4.93% ⁵
New Jersey	5,513	2.26	13.24
New York	3,693	3.63	19.37
Massachusetts	2,398	1.77	17.26
Ohio	3,323	2.25	10.50
Michigan	1,345	1.55	9.14
Indiana	2,427	2.08	11.63
Illinois	2,437	2.80	13.06
California	4,748	2.91	13.69
Georgia	1,203	1.43	7.88

Connecticut	150	1.70	11.52
West Virginia	2,402	1.58	10.33
Maryland	4,453	2.31	12.09
Delaware	708	1.05	3.65

¹ Companies subject to the reporting requirements of the Communications Act of 1934.

² Includes state and local taxes and Federal social security taxes. For six large electric companies in Pennsylvania, social security taxes amounted to an average of 18.3 percent of total taxes other than Federal income taxes.

³ Pennsylvania total state and local tax accruals on Class I railroads amounted to \$11,849,050 in 1968.

⁴ Total state and local taxes for subject Pennsylvania carriers amounted to \$32,214,493 in 1967.

⁵ Taxes other than Federal income taxes for Pennsylvania private electric utilities amounted to \$50,610,274 in 1968.

SOURCES: *Transport Statistics in the United States for the Year Ended December 31, 1968, Part I, Railroads*, Interstate Commerce Commission, 1969; *Statistics of Communications Common Carriers, Year Ended December 31, 1967*, Federal Communications Commission, 1969; *Statistics of Electric Utilities in the United States, 1968*, Federal Power Commission, 1969.

these taxes must be passed on to the consumer of utility services if statutorily "fair" rates of return are to be maintained. Quantitative evidence of such "forward shifting" of state and local taxes can be derived from the available data on electric utilities.³⁷ It is estimated that roughly 70 to 75 percent of total state and local taxes on electric utilities is paid, directly or indirectly, by Pennsylvania households.

Expenditures by households for most public utility services are decidedly regressive if measured against family income. Typically, the percentage of family income spent upon telephone, gas, and electric services is at least twice as high for lower income groups (under \$3,000) as for the highest income groups (over \$15,000). Utility taxes shifted to households appear to be significantly more regressive than the 6 percent Pennsylvania retail sales tax but about equal to the regressivity of residential property taxes.³⁸

³⁷ See Appendix A, p. 33, *et seq.*

³⁸ See Appendix A, particularly p. 35.

V.

METHOD OF DISTRIBUTION

The Constitution requires not only in-lieu taxation to execute the alternative to local taxation, but also that an amount “. . . be distributed annually among all local taxing authorities in the proportion which the total tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities, or in such other equitable proportions as may be provided by law.” The distribution formula expressed in the Constitution was clearly favored by a majority of the delegates to the Constitutional Convention. The formula is simple and favors those areas—chiefly urban centers—that make the greatest local tax effort. Furthermore, initial acceptance of the constitutionally suggested formula would tend to preclude annual reconsideration of the factors in any alternative distribution formula. For these reasons the constitutional formula was preferred by the subcommittee; it is also incorporated in Act No. 66.

The percentages of total local tax collections (based on 1967 data) represented by the collections of all counties, all municipalities, all school districts and selected local taxing authorities are presented in Table 3. School districts as a group account for almost 51 percent of total local tax collections and under this formula will receive 51 percent (estimated at about \$16.8 million) of the total amount to be distributed. Municipalities (cities, boroughs, and townships) in the aggregate will receive 37.8 percent of the total and county governments 11.4 percent. The largest single payment is to the City of Philadelphia which, on the basis of the total taxes formula, will receive 17.6 percent of the amount distributed.

Since the Commonwealth collects and distributes these funds, it is appropriate that it be reimbursed for its actual administrative costs not to exceed 1 percent.

Since a substantial minority of the delegates to the Constitutional Convention—about one-third of those voting—favored a distribution formula giving consideration to the situs of utility realty, alternatives to the constitutional formula were explored.³⁹ It was argued vigorously by some delegates that it would be a “fundamental inequity” for “com-

³⁹ See vote on “Cosetti Amendment,” *Debates of the Pennsylvania Constitutional Convention of 1967-1968*, Vol. II, pp. 701-702.

TABLE 3

TOTAL TAX RECEIPTS OF ALL COUNTIES
ALL MUNICIPALITIES
ALL SCHOOL DISTRICTS AND OF
SELECTED TAXING AUTHORITIES
AS A PERCENTAGE OF TOTAL TAX RECEIPTS OF
ALL LOCAL TAXING AUTHORITIES
1967

<i>Taxing Authority</i>	<i>Percentage of State Total</i>
(1)	(2)
All Counties (except Philadelphia)	11.41%
Allegheny	3.24
Lebanon	.13
Chester	.27
Washington	.21
Bedford	.03
York	.21
Luzerne	.40
All Cities, Boroughs and Townships	37.85
Pittsburgh	3.73
Philadelphia	17.60
Harrisburg	.29
Altoona	.18
Erie	.54
Scranton	.33
Wilkes-Barre	.21
All School Districts	50.74
School District Totals:	
Allegheny	7.59
Philadelphia	7.14
Chester	1.64
Lebanon	.33
Washington	.85
York	1.13
Bedford	.15
Luzerne	1.00

SOURCE: Records of the Pennsylvania Department of Community Affairs.

munities which have a high percentage of utility property” to “receive no greater proportion of the total fund than would a community that had no utility property.”⁴⁰

In the event that the constitutional formula is not acceptable to the General Assembly on the grounds that some recognition should be given to the situs of public utility realty, it is suggested that each locality be allocated the property taxes it could have collected from public utility operating realty up to a maximum of 3 percent of its total collections from all local taxes and that the amount, if any, in excess of 3 percent of the locality’s total tax collections be distributed to all localities on the basis of the constitutional formula. This two-factor formula meets the anti-windfall criterion of the framers of the constitutional provision. Simply taking a proportion of the taxes a locality could have levied upon utility realty would not necessarily meet this criterion. Even one-fifth or one-fourth of the taxes which could have been levied by some localities upon utility operating realty would constitute a very substantial sum—a windfall—in relation to their total tax collections.

It is estimated that the two-factor formula with situs allocation limited to 3 percent of local tax collections would allocate approximately 45 percent of the total amount to be distributed on the basis of the situs of the public utility realty and 55 percent on the basis of each taxing body’s proportion of total local tax collections. This formula would distribute to those localities having a considerable volume of public utility property about twice the amount they would receive under the total taxes formula. Taxing authorities having little or no public utility realty would, of course, receive less under the two-factor formula than under the constitutionally suggested formula.⁴¹

Whichever distribution formula is employed, ascertaining the total amount to be distributed and the allocations therefrom will require considerable administrative and technical implementation. Information concerning the assessed value of each parcel of utility realty, the real estate tax rate, and the total local tax receipts for the last completed fiscal year must be obtained from each local taxing authority.

Act No. 66 provides that the initial assessment of all public utility realty shall be completed on or before October 1, 1970. Each local

⁴⁰ See comments of Delegate Baldus, *supra* at 69.

⁴¹ The division of amounts between the two elements of the formula is critically dependent upon the assessment levels which will emerge subsequent to the October 1, 1970 assessments of utility realty. The 55-45 estimated division is based upon the incomplete valuation reported as on the books in 1969 and may be subject to considerable error.

taxing authority is required to complete initial appeals, if any, and submit the foregoing information to the Commonwealth on or before April 1, 1971. The first distribution is to be made by the Commonwealth on or before the first day of October 1971. In view of the time necessary to permit the orderly collection of data, distribution earlier than this date does not seem feasible. Since these time limitations are mandated by existing law, identical dates are included in the proposed legislation.

Parenthetically, it should be noted that the tax imposed by Act No. 66 and levied "on or before the first day of June 1970" is independent of any constitutionally required distribution "in lieu of local taxes." The first tax receipts collected under Act No. 66 which will be distributed are those for fiscal year 1970-1971 payable on or before the first day of June 1971. Since the Commonwealth's current fiscal year began on the effective date of the constitutional amendment (July 1, 1970) no "gross receipts taxes" or special taxes on utility realty were required to be budgeted, collected and distributed prior to this fiscal period. Accordingly, under Act No. 66 or under the alternative proposed herein, *payment* by the utilities of the special state tax *during* fiscal year 1970-1971 for subsequent distribution (in October) to local taxing authorities effectively precludes exposure of public utility operating realty to local taxation.

APPENDICES

APPENDIX A

MEASURES OF THE INCIDENCE OF PUBLIC UTILITY TAXATION IN PENNSYLVANIA

Under the system of public utility rate regulation which prevails in most states, state and local taxes are operating expenses which are normally reflected in the rate schedules approved by the regulatory commissions. Typical electric bills calculated by the Federal Power Commission and published annually are shown in Table A1 for four types of electric utility service, two residential and two commercial,¹ for the same 14 states for which measures of electric utility tax impact were previously presented.² While typical bills for the four levels of service are not consistently ordered among states, Pennsylvania generally ranks at the lower end of the list.

The rate data in Table A1 are insufficient to demonstrate that the substantially lower state and local taxes in Pennsylvania are fully reflected in the prices paid by consumers of electricity. It is necessary to carry the analysis further to determine whether or not there are differences in other cost items which could explain the differences in rates. Many factors produce variations in public utility rates. For electricity proximity to fuel sources, consumer density, and type and size of generating facilities as well as levels of state and local taxes may be expected to produce differences in rate levels. Cost comparisons for utilities operating in different states can be made by translating each cost component into dollars per thousand kilowatt hour sales. Operating revenues of electric utilities and selected cost items per thousand kwh for Pennsylvania, New York, and New Jersey for 1967 and 1968 are presented in Table A2. By expressing costs and revenues of electric utilities in different states in terms of a common unit of measure—one thousand kwh—cost and revenue differences may be calculated that are directly comparable. If the difference in levels of state and local taxation is fully reflected in rate levels, the difference in revenues less the net difference in other costs must exceed the difference in tax levels. As will be seen, such appears to be the case.

¹ Data to calculate statewide averages for industrial rates are not available.

² See Table 2, p. 20.

TABLE A1
TYPICAL ELECTRIC BILLS
FOR RESIDENTIAL AND COMMERCIAL SERVICE
SELECTED STATES, JANUARY 1, 1969

State	Residential Service		Commercial Service	
	500 KWH	1,000 KWH	12 KW 1,500 KWH	40 KW 10,000 KWH
(1)	(2)	(3)	(4)	(5)
Pennsylvania	\$ 9.45	\$17.61	\$56.00	\$231.21
New Jersey	10.49	19.77	60.07	279.47
New York	13.40	22.18	60.31	315.60
Massachusetts	11.61	21.50	65.10	274.08
Ohio	10.41	18.08	51.02	236.92
Michigan	7.58	17.14	48.06	249.43
Indiana	10.32	18.01	44.41	217.12
Illinois	10.70	18.95	63.30	262.82
California	9.29	15.48	39.95	166.58
Georgia	9.15	14.78	52.86	235.57
Connecticut	10.94	19.45	61.82	257.42
West Virginia	9.51	16.67	44.84	214.13
Maryland	11.61	18.25	49.28	252.64
Delaware	10.99	20.46	53.84	267.42

SOURCE: *Typical Electric Bills, January 1, 1969* (Washington, D.C., Federal Power Commission, 1969).

Cost and revenue differences and the excess of revenues over the net excess of costs calculated from the data in Table A2 are shown in Table A3. From column (2), Table A3, it will be observed that in 1967 the excess of New York revenues over Pennsylvania revenues was \$5.36 per thousand kwh. Differences in operating expenses, depreciation, and Federal income taxes account for \$1.36 of the revenue differential, leaving \$4.00 per thousand kwh as the net excess of revenues. The excess of state and local taxes³ in New York over Pennsylvania accounts

³ The only tax included in "taxes other than Federal income taxes" that is not levied by a state or local government is the Federal social security tax. On the assumption that the relationship between social security taxes and kwh sales of electricity is fairly stable throughout the industry, expressing taxes other than Federal income taxes as differences between states eliminates social security taxes.

for \$3.06 of this net revenue excess. Similarly, in 1968 the excess of revenues less the net excess of costs in New York over Pennsylvania was \$4.26, of which the excess of New York state and local taxes explains \$3.28. Again, columns (4) and (5) of Table A3 demonstrate that the excess of New Jersey state and local taxes over those prevailing in Pennsylvania is less than the differences in revenues adjusted for cost differences.

TABLE A2

ELECTRIC REVENUES AND EXPENSES PER THOUSAND KWH
PENNSYLVANIA, NEW YORK AND NEW JERSEY
1967 AND 1968¹

<i>State and Item</i>	<i>1967</i>	<i>1968</i>
(1)	(2)	(3)
Pennsylvania		
Operating Revenues	\$15.82	\$15.71
Operating Expenses	6.28	6.45
Depreciation	1.91	1.92
Federal Income Taxes	1.43	1.38
Taxes Other Than Federal Income Taxes	.77	.76
New York		
Operating Revenues	21.18	21.23
Operating Expenses	8.02	8.10
Depreciation	2.21	2.19
Federal Income Taxes	.75	.72
Taxes Other Than Federal Income Taxes	3.83	4.04
New Jersey		
Operating Revenues	19.78	19.84
Operating Expenses	7.56	7.59
Depreciation	2.21	2.21
Federal Income Taxes	.93	.99
Taxes Other Than Federal Income Taxes	2.68	2.61

¹ Excludes utilities with less than \$5 million annual revenue.

SOURCE: Computed from *Statistics of Electric Utilities in the United States* (Washington, D.C., Federal Power Commission, 1967 and 1968).

The evidence in Table A3 provides strong support for the conclusion that purchasers of electricity in New York and New Jersey bear the full burden of the higher electric utility taxes in those states and, conversely, that Pennsylvanians benefit fully from the lower level of state and local utility taxes prevailing here. A comprehensive analysis of all interstate difference would have to take into account other factors having an impact on costs and revenues particularly allowable rates of return and some measures of operating efficiency such as size and age of plant.

Expenditures by consumers for most public utility services are decidedly regressive if measured against family income. Data from the 1960-1961 Survey of Consumer Expenditures showing expenditures for public utility services as a percent of family income for telephone and telegraph, electricity and natural gas are presented in Table A4. For each of the utility services shown in the table, the percentage of family income spent upon utility services is at least twice as high for lower income groups as for the highest income groups. For example, the average family at the \$3,000 income level spends 1.84 percent of its income on electricity, whereas at an income level of \$12,500, the comparable percentage is .92.

TABLE A3
EXCESS OF NEW YORK AND
NEW JERSEY ELECTRIC REVENUES AND EXPENSES
OVER PENNSYLVANIA COMPARED WITH DIFFERENCE
IN STATE AND LOCAL TAXES, 1967 AND 1968
(Per 1,000 KWH)

<i>Item</i>	<i>Excess of N. Y. Over Pa.</i>		<i>Excess of N. J. Over Pa.</i>	
	<i>1967</i>	<i>1968</i>	<i>1967</i>	<i>1968</i>
(1)	(2)	(3)	(4)	(5)
Operating Revenues	\$5.36	\$5.52	\$3.96	\$4.13
Operating Expenses	1.74	1.65	1.28	1.14
Depreciation	.30	.27	.30	.29
Federal Income Taxes	-.68	-.66	-.50	-.39
Excess of revenues less net excess of expenses	<u>4.00</u>	<u>4.26</u>	<u>2.88</u>	<u>3.09</u>
Excess of State and Local Taxes	\$3.06	\$3.28	\$1.91	\$1.85

SOURCE: Table A2.

TABLE A4
EXPENDITURES BY CONSUMERS
FOR PUBLIC UTILITY SERVICES
AS PERCENT OF INCOME

<i>Family Income</i>	<i>Telephone and Telegraph</i>	<i>Electricity</i>	<i>Gas</i>	<i>Total Electricity and Gas¹</i>
(1)	(2)	(3)	(4)	(5)
\$2,000	2.42%	2.26%	1.76%	4.56%
3,000	2.02	1.84	1.33	3.64
4,000	1.74	1.56	1.11	3.13
5,000	1.55	1.39	1.13	2.82
6,000	1.49	1.29	1.06	2.67
8,000	1.32	1.15	.78	2.20
10,000	1.16	1.00	.68	1.95
12,500	1.10	.92	.62	1.73
15,000	1.04	.85	.56	1.56

¹ Includes small percentages, not shown separately, for combined electric and gas bills.

SOURCE: Computed from U.S. Department of Labor, Bureau of Labor Statistics, *Survey of Consumer Expenditures 1960-61*, Consumer Expenditures and Income, Detail of Expenditures and Income, Total Northeastern Region, Urban and Rural, 1960-1961, Supplement 3-Part A to BLS, Report 237-89 (May 1966).

A substantial portion of electric utility taxes (as well as taxes on other types of utilities) are paid initially by business firms. Table A5 shows for Pennsylvania electric utilities in 1968 revenue from sales to ultimate consumers distributed by type of customer.

If taxes on electric utilities are shifted forward equally (that is, proportional to sales revenues) among all users of electricity,⁴ an estimate of the final incidence of Pennsylvania electric utility taxes by consumer income groups can be calculated.

Following the accepted theory of tax incidence and the empirical estimates on interstate exporting of state and local taxes developed by McLure⁵ it is assumed:

⁴ This assumption is unlikely to be wholly realistic since industrial demand for electricity tends to be more elastic than residential demand because industry has greater opportunity to shift to alternative sources of energy.

⁵ Charles E. McLure, Jr., "Tax Exporting in the United States: Estimates for 1962," XX *National Tax Journal*, 49-75 (1967).

(1) That all of the electric utility taxes borne initially by commercial firms (the greater part of whom operate in local markets) will be passed on to consumers.

(2) That about 22 percent (representing the estimated proportion of Pennsylvania industrial production sold in local markets) of the electric taxes initially paid by industrial firms will be passed on to Pennsylvania consumers and the remainder borne finally by productive factors or by consumers in other states.

(3) That the portion of electric utility taxes resting on consumers but paid initially by business firms and the portion representing purchases by "public and other" customers (the great part of which is assumed to rest on consumers) are distributed among consumer income groups in relation to expenditures on all goods and services for current consumption.

These assumptions coupled with the previous assumption of proportionality lead to the following estimates of the incidence of Pennsylvania taxes on electric utilities: About 72.8 percent of total electric utility taxes are ultimately paid by Pennsylvania household consumers, 39.5 percent directly through purchases of electricity, and 33.3 percent via purchases of other goods and services or through tax payments. The remaining 27.2 percent of total electric utility taxes are borne by consumers in other states or shifted backward to labor or capital.

TABLE A5

REVENUE FROM SALES TO ULTIMATE CONSUMERS
PENNSYLVANIA ELECTRIC UTILITIES, 1968

<i>Type of Customer</i>	<i>Sales Revenue (in Millions)</i>	<i>Percentage Distribution</i>
(1)	(2)	(3)
Residential	\$ 399.5	39.5%
Commercial	223.9	22.2
Industrial	352.8	34.9
Public and Other	34.2	3.4
Total	\$ 1,010.6	100.0%

SOURCE: Commonwealth of Pennsylvania, Department of Commerce, *Statistics for Electric Utilities, 1968*.

The relative distribution among family income groups of the portion of electric utility taxes ultimately paid by consumers is presented in Table A6. Column (2) of the table is an index of the percentages which were shown in column (3) of Table A4, with the percentages at each income level expressed as a ratio to the percentage at the \$15,000 income level.¹ Column (3) contains a similar index calculated from the percentages of income spent for all items of current consumption. Column (4) shows a similar index of the percentages of income spent directly and indirectly for electricity.⁶ Inspection of column (4) indicates that the lowest income groups pay about twice the percentage of their income in electric utility taxes paid by a family at the \$15,000 income level. At lower middle income levels (\$5,000 to \$8,000), families pay a percentage of their income which is about one-fourth to one-half greater than the percentage paid by the \$15,000 income family.

TABLE A6

INDICES OF SELECTED EXPENDITURES AND TAXES
AS PERCENT OF INCOME

(Percentage at \$15,000 income = 1.00)

<i>Family Income</i>	<i>Direct Expenditure on Electricity</i>	<i>All Expenditures on Current Consumption</i>	<i>Direct and Indirect Expenditures on Electricity</i>	<i>6 Percent Pennsylvania Sales Tax Payments</i>
(1)	(2)	(3)	(4)	(5)
\$2,000	2.66	1.61	2.17	1.2
3,000	2.16	1.47	1.84	1.2
4,000	1.84	1.41	1.64	1.2
5,000	1.64	1.32	1.49	1.2
6,000	1.52	1.26	1.40	1.2
8,000	1.35	1.18	1.28	1.1
10,000	1.18	1.12	1.15	1.1
12,500	1.08	1.06	1.07	1.1
15,000	1.00	1.00	1.00	1.0

SOURCE: Derived from Table A4 and cited source, except for column (5).

⁶ The index presented in column (4) of Table A6 has been calculated on the assumption that indirect expenditures on electricity are proportional to expenditures on total current consumption. The proportion was calculated to be .0108 based upon the estimated indirect purchase of electricity by households (33.3 percent of total Pennsylvania sales) and an estimate (about \$31 billion) of total expenditures on current consumption.

Column (5) of the table contains an index of the estimated percentage of family income represented by payments of the 6 percent Pennsylvania sales tax.⁷ While the percentages of income representing tax payments which underlie the index in column (5) do not take into account the sales tax ultimately borne by consumers but initially paid by business firms (data for which are not available), it would appear that on the basis of any reasonable assumption as to the incidence of such indirect sales tax burdens, electric utility taxes are substantially more regressive, that is, bear more heavily upon lower income groups than the 6 percent Pennsylvania sales tax.

The essential conclusions which emerge from this brief analysis of the incidence of Pennsylvania state and local taxes on electric utilities are as follows:

(1) Somewhat in excess of 70 percent of such taxes are likely to be paid by Pennsylvania household consumers.

(2) These taxes are more regressive (measured against family income) than the 6 percent Pennsylvania sales tax but about equal to the regressivity of local real property taxes.⁸

Except that the percentage of taxes ultimately paid by consumers will be in accordance with the distribution of sales between residential and business customers, these conclusions probably hold as well for those utility services (such as natural gas and local telephone service) which are marketed at intrastate prices. They do not apply, however, to interstate communications and transportation for which rates are established on a regional or national level.

⁷ "The Six Percent Sales Tax for Education: Impact Upon Pennsylvania Families," Joint State Government Commission unpublished memorandum (March 1968).

⁸ Dick Netzer, *Economics of the Property Tax* (Washington, D.C., The Brookings Institute, 1966), pp. 46-56.

APPENDIX B

PROPOSED LEGISLATION

“PUBLIC UTILITY REALTY TAX DISTRIBUTION ACT”

AN ACT

Implementing the provisions of section 4 of Article VIII of the Constitution of Pennsylvania by imposing a special tax upon certain real estate of public utilities and declaring that the payment of such taxes to the State for distribution shall be in lieu of local real estate taxes; providing for the annual distribution by the Commonwealth to local taxing authorities of moneys collected hereunder; and conferring powers and imposing duties upon the Department of Revenue, local assessing and other officials and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Public Utility Realty Tax Distribution Act.”

Section 2. Definitions.—As used in this act:

(1) “Department” means the Department of Revenue of the Commonwealth of Pennsylvania.

(2) “Local taxing authority” means a county, city, borough, town, township or school district having authority to impose taxes on real estate.

(3) “Public utility” means any domestic or foreign person, partnership, association, corporation or other entity furnishing public utility service under the jurisdiction of the Pennsylvania Public Utility Commission or the corresponding regulatory agency of any other state or of the United States, but shall not include a municipality or municipality authority.

(4) “Public utility realty” means all lands, buildings, towers, smokestacks, and other structures located within this Commonwealth and owned by a public utility either directly or by or through a subsidiary, which are used or are in the course of development or construction for use, in the furnishing, including producing, storing, distributing or transporting, of public utility service; but shall not include: (i) easements or similar interest, (ii) railroad rights-of-way and superstructures thereon, (iii) machinery, equipment, poles, and transmission tower, pipe, rail or other lines, whether or not attached to such lands, buildings, towers, smokestacks, or other structures, and (iv) such realty as is subject to local real estate taxation under any law in effect on April 23, 1968.

(5) “Realty tax equivalent” means the total amount of taxes which a local taxing authority could have imposed on public utility realty but for this act and unless otherwise provided shall be the product of the real estate property tax rate and the assessed valuation of public utility realty.

(6) “Total tax receipts” means the actual amount of taxes collected by a local taxing authority under all statutes authorizing the imposition of taxes, but shall not include fines, penalties, additions, fees, licenses, payments for utility services or receipts from any source other than taxes.

Section 3. Imposition of Tax.—(a) All real property of public utilities which by virtue of its use or location is subject to taxation by local taxing authorities under laws in force on April 23, 1968, shall be exempt from taxation under this act so long as such laws shall continue in full force and effect.

(b) All public utility realty is hereby made subject to assessment as provided by law for real estate and subject to a special tax for local taxing authorities' fiscal years beginning in 1970 and each fiscal year thereafter at the rate and to be collected as hereinafter provided. This special tax shall be equal to and in lieu of local taxes upon such public utility realty as authorized by section 4 of Article VIII of the Constitution of Pennsylvania, and payment of the special tax to the Commonwealth for distribution as hereinafter provided is hereby declared to be in lieu of local real estate taxation.

Section 4. Local Assessment of Public Utility Realty; Initial Assessment; Procedure and Appeals.—(a) It shall be the duty of the several elected and appointed assessors of real property to assess and value all public utility realty in the same manner as is provided by law for the assessment and valuation of real estate.

(b) Such property shall be initially assessed on or before October 1, 1970, and thereafter shall be assessed or reassessed at the same time and in the same manner as real estate.

(c) A public utility may appeal from the assessment of its public utility realty in the manner provided by law for appeals from assessment of real estate. In the case of the initial assessment the appeal shall be filed within thirty days after notice thereof. No appeal taken from any assessment hereunder shall prevent the collection of taxes based upon the assessed value stipulated or alleged by the public utility; no appeal shall relieve the public utility from accrued interest on any unpaid taxes based upon the assessment as finally determined. The public utility may pay under protest any tax calculated upon an assessment which it has appealed, and if the assessment is subsequently determined to be in error, the public utility may file for and shall be granted a refund of taxes not properly due as provided by law for refunds of State taxes improperly paid.

Section 5. Reports by Local Taxing Authorities.—(a) On or before April 1, 1971, and each year thereafter, each local taxing authority shall submit to the department the following:

(1) The name and address of each public utility owning public utility realty within its jurisdiction and the assessed values of such realty; if appeals from the assessment of public utility realty are pending, the values reported shall be the amounts which the public utility has stipulated or alleged as the proper assessment.

(2) Its real estate tax rate for the current fiscal year.

(3) Its total tax receipts for the last completed fiscal year.

(4) Any adjustment to the assessed values, or other information previously reported.

(5) Such other information as the department may require or find useful in administering its duties under this act.

(b) If a local taxing authority shall fail to file a report required by subsection (a) by the date therein prescribed or within any extension granted by the department, such local taxing authority shall forfeit its right to share in the next ensuing distribution made pursuant to section 7.

(c) If a local taxing authority does not submit the report required by subsection (a), the department shall obtain the necessary valuations and real estate tax rates from the appropriate county assessment officials who shall certify such information to the department upon its written request.

Section 6. Calculation of Tax; Statements; Payment of Tax.—Each year the department shall apply the real estate tax rate to the public utility realty assessments for each local taxing authority and calculate the realty tax equivalent for each public utility. The department shall on or before June 1, 1971, and each year thereafter, send to each public utility upon whom a tax is imposed under this act, an itemized statement of the amount of taxes due. The tax shall be paid by the public utility to the Commonwealth through the Department of Revenue on or before August 1 of each year.

Section 7. Distribution of Taxes by Department to Local Taxing Authorities.—From the taxes collected under the provisions of this act the department shall retain so much as is necessary to pay for the expenses of collecting the taxes and administering the provisions of this act, including the distribution of the tax proceeds but not to exceed one per cent thereof, and shall distribute the balance on or before October 1 of each year among all reporting local taxing authorities in the proportion which the total tax receipts of each such local taxing authority bears to the total tax receipts of all local taxing authorities.

Section 8. Collection of Taxes.—Payment of the tax hereby imposed may be enforced by any means provided by law for the enforcement of payment of taxes to the State. If the tax is not paid by the date herein prescribed, it shall bear interest at the rate of one per cent per month, and shall in addition be subject to a penalty of five per cent of the amount of the tax, which penalty may be waived or abated in whole or in part by the department unless the public utility has acted in bad faith, negligently, or with intent to defraud.

Section 9. Repeals.—The act of March 10, 1970 (Act No. 66), known as the "Public Utility Realty Tax Act," is repealed absolutely, except that any taxes due under its provisions on the effective date of this act shall be collected by the Commonwealth as provided herein.

Section 10. Effective Date.—This act shall take effect immediately.

“SITUS DISTRIBUTION,” ALTERNATIVE SECTION 7

Section 7. Distribution of Taxes by Department to Local Taxing Authorities.—From the taxes collected under the provisions of this act the department shall retain so much as is necessary to pay for the expenses of collecting the taxes and administering the provisions of this act, including the distribution of the tax proceeds but not to exceed one per cent thereof, and shall distribute the balance on or before October 1 of each year among all reporting local taxing authorities as follows:

(1) Each taxing authority where the realty tax equivalent does not exceed three per cent of total tax receipts shall be paid either its realty tax equivalent or the amount thereof actually collected by the Commonwealth, less, in either case, the administrative costs. Delinquent taxes collected and interest and penalties thereon less the administrative costs shall be paid at the next distribution date to the local taxing authority which would have been entitled thereto if the tax had been paid when due.

(2) Each taxing authority where the realty tax equivalent exceeds three per cent of total tax receipts shall be paid the portion of its realty tax equivalent equal to three per cent of its total tax receipts but not more than the amount actually collected and less the administrative costs. The remaining portion of the realty tax equivalent collected plus the amount of the realty tax equivalent collected attributable to nonreporting taxing authorities less the administrative costs shall be distributed among all reporting local taxing authorities in the proportion which the total tax receipts of each such taxing authority bears to the total tax receipts of all such taxing authorities. Delinquent taxes collected and interest and penalties thereon, less the administrative costs, shall be allocated at the next distribution date as it would have been allocated had the taxes been paid when due.

**AMENDMENT TO
"THE GENERAL COUNTY ASSESSMENT LAW"**

AN ACT

Amending the act of May 22, 1933 (P. L. 853), entitled "An act relating to taxation; designating the subjects, property and persons subject to and exempt from taxation for all local purposes; providing for and regulating the assessment and valuation of persons, property and subjects of taxation for county purposes, and for the use of those municipal and quasi-municipal corporations which levy their taxes on county assessments and valuations; amending, revising and consolidating the law relating thereto; and repealing existing laws," further providing for subjects of local assessment.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of May 22, 1933 (P. L. 853), known as "The General County Assessment Law," is amended by adding a section to read:

Section 201.1. Public Utility Realty.—In addition to the subjects and property enumerated in section 201, public utility realty, to wit: all lands, buildings, towers, smokestacks, and other structures located within this Commonwealth and owned by a public utility either directly or by or through a subsidiary, which are used or are in the course of development or construction for use, in the furnishing, including producing, storing, distributing or transporting, of public utility service; but shall not include (i) easements or similar interests, (ii) railroad rights-of-way and superstructures thereon, (iii) machinery, equipment, poles, and transmission tower, pipe, rail or other lines, whether or not attached to such lands, buildings, towers, smokestacks, or other structures and (iv) such realty as is subject to local real estate taxation under any law in effect on April 23, 1968, shall as hereinafter provided, be valued and assessed and shall be subject to taxation by the Commonwealth as provided in the act of _____, 1970, known as the "Public Utility Realty Tax Distribution Act."

AMENDMENT TO "THE FOURTH TO EIGHTH CLASS COUNTY ASSESSMENT LAW"

AN ACT

Amending the act of May 21, 1943 (P. L. 571), entitled, as amended, "An act relating to assessment for taxation in counties of the fourth, fifth, sixth, seventh and eighth classes; designating the subjects, property and person subject to and exempt from taxation for county, borough, town, township, school, except in cities and county institution district purposes; and providing for and regulating the assessment and valuation thereof for such purposes; creating in each such county a board for the assessment and revision of taxes; defining the powers and duties of such boards; providing for the acceptance of this act by cities; regulating the office of ward, borough, town and township assessors; abolishing the office of assistant triennial assessor in townships of the first class; providing for the appointment of a chief assessor, assistant assessors and other employes; providing for their compensation payable by such counties; prescribing certain duties of and certain fees to be collected by the recorder of deeds and municipal officers who issue building permits; imposing duties on taxables making improvements on land and grantees of land; prescribing penalties; and eliminating the triennial assessment," further providing for subjects of local assessment.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of May 21, 1943 (P. L. 571), known as "The Fourth to Eighth Class County Assessment Law," is amended by adding a section to read:

Section 201.2. Public Utility Realty.—In addition to the subjects and property enumerated in section 201, public utility realty, to wit: all lands, buildings, towers, smokestacks, and other structures located within this Commonwealth and owned by a public utility either directly or by or through a subsidiary, which are used or are in the course of development or construction for use, in the furnishing, including producing, storing, distributing or transporting, of public utility service; but shall not include (i) easements or similar interests, (ii) railroad rights-of-way and superstructures thereon, (iii) machinery, equipment, poles, and transmission tower, pipe, rail or other lines, whether or not attached to such lands, buildings, towers, smokestacks, or other structures and (iv) such realty as is subject to local real estate taxation under any law in effect on April 23, 1968, shall as hereinafter provided, be valued and assessed and shall be subject to taxation by the Commonwealth as provided in the act of _____, 1970, known as the "Public Utility Realty Tax Distribution Act."