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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO: Assessing Officials**

**FROM: Wes Bennett, Commissioner**

**RE: Railroad State Distributable Property – Assessment & Sale of Property**

**DATE: May 12, 2022**

This memo seeks to provide information related to state distributable railroad property related to tax or sheriff’s sales, and assessment, outlining key prohibitions in federal law. **Assessors and local officials should not sell real property owned or previously owned by railroads without consulting and confirming with the railroad owner that the federal Surface Transportation Board (“STB”) has approved a change in property disposition rights and use and that the railroad has followed and completed the necessary steps required by STB. Even when a property appears to be abandoned, local officials must ensure that required legal steps are followed as required by federal law.**

## **Federal Law—Railroads as Strategic Infrastructure**

Railroads are classified as strategic infrastructure in the United States. The Department of Defense works with other federal and state agencies to ensure that the Strategic Rail Corridor Network with 36,000 miles of track, is preserved and ready for use if needed.

Below are reference resources with additional information regarding railroad classification and identification of rail corridors:

### **Transportation Engineering Agency**

<https://www.sddc.army.mil/sites/TEA/Functions/SpecialAssistant/Pages/RailroadsNationalDefense.aspx>

### **Federal Railroad Administration**

<https://railroads.dot.gov/BIL>

Under federal law, railroads may not discontinue routes, remove tracks, sell, or discontinue use of parcels, merge with other railroads, or take any significant action related to ownership of property, without approval from the STB (49 USC § 10903). Previously aligned with and within the jurisdiction of the U.S. Department of Transportation, Congress established the STB as an independent federal agency in 2015, after creating it in 1995 to replace the Interstate Commerce Commission (49 USC § 1301-1326).

To change any aspect of property use, railroads must petition the STB and be granted an order that it can sell, release, or otherwise dispose of, its use and interest in real property, and then the railroad must act upon it, to finalize the transaction. The STB considers specific railroad lines, property locations, and strategic value. If a railroad petitions the STB, and its request is denied, the railroad may not change its ownership. A copy of the case is attached as an example. See <https://www.stb.gov/> to review other case decisions. You will find Indiana-related petitions and orders there.

Thus, a line is abandoned only when the railroad has applied to the STB for abandonment authorization, the STB has issued an order authorizing the abandonment of the line, and the railroad has notified the STB that it has completed the abandonment. It is important to note that even a corridor lacking rail service and appearing to be abandoned may still be active and subject to STB jurisdiction.

### **Additional Background & Challenges**

Local officials have long incurred challenges with these properties partly because most real property land ownership rights by railroads (whether by an easement, in fee simple, lease, through eminent domain, or other ownership variations) can date back to the early part of the 1800s when lines were developed and built across the United States. Thus, parcel ownership records related to these transactions can often also date that far back as well. In addition, ownership of a railroad itself will often have changed many times. These two factors can make it challenging to ascertain which railroad owns the parcel.

### **Railroads & State Distributable Property**

The railroads report state distributable property without identifiable parcel numbers. When the Department of Local Government Finance (“Department”) distributes the property to each county, county assessors often assign their own parcel numbers, which may not correspond with actual individual parcels. In other words, the parcel identification for railroad state distributable property is assigned and is often not connected to an actual real property parcel. Thus, the Department does not have actual identifiable parcel information.

### **Rails to Trails**

Federal law allows for an interim use of railroad property, within the strategic national security framework. State and local governments may convert railroad lines to trails. In other words, the ownership structure remains unchanged and preserves the line for future use if needed but allows for an interim use. The STB must also approve these uses.

### **Release of Property Ownership Rights**

When the STB grants a railroad’s petition to release ownership rights to property, the railroad then may sell, donate, or otherwise dispose of the property if it owns it in fee simple. If it leases the property, it may terminate or otherwise change its contractual relationship with the lessor. If

the railroad has an easement, it may extinguish the easement, and ownership often reverts to the prior owner, who may not be living.

### **Tax Sales**

The Department is aware that some assessors may perceive that a rail line property is abandoned and may then seek to sell it at a tax sale or as abandoned rail property under Ind. Code § 32-23-11 et. seq. or Ind. Code § 8-3-1-24 et. seq. Officials of local units must carefully observe the required procedures under federal law.

### **Additional Research Resources**

It may be helpful to use the extensive database established by the Interstate Commerce Commission (“ICC”) by a team of researchers who compiled land records from across the United States. The ICC created the database to provide detailed documentation of parcels across the county. Most of these records were created during the period 1915 to 1920 by ICC and railroad employees who undertook a massive project to inventory almost every aspect of the existing railroad system in the United States.

The basic valuation records cover the years 1915-20 information about the railroad facilities existing at a particular location, the land owned by a railroad and how it was acquired, the land adjacent to railroad property, and the financial history of the railroad from its earliest operations to the date of basic valuation. Periodic updating was completed through at least the 1960s. This database can be reached here through the National Archives:

<https://www.archives.gov/research/transportation/railroad-valuation>

For information on Indiana’s rail systems, please see:

<https://www.in.gov/indot/multimodal/railroad/>

### **Contact Information**

Questions may be directed to Jennifer Thuma, Deputy General Counsel, at [jthuma@dlgf.in.gov](mailto:jthuma@dlgf.in.gov).