

an explanation of such charge, together with a voucher in payment therefor to the director of budget and accounts who shall forthwith approve such voucher and charge the same to the appropriation of the department, board or commission which failed to submit its pay roll report to the board of trustees on time. The state treasurer shall forthwith issue his check or checks therefor to the Wisconsin retirement fund.

SECTION 35. 66.90 (21) (b) of the statutes as amended by chapters 99 and 206, laws of 1947, is repealed and recreated to read:

66.90 (21) (b) For purposes of determining the interest income for any year, all investments shall be carried at a book value such that yield to maturity, computed as an interest rate compounded annually or semi-annually, as the case may be, will remain uniform. No adjustments shall be made in investment valuations for ordinary current market price fluctuations; but reserves may be provided for possible losses as determined by the board. All investment expenses shall be charged to income resulting from interest and profits on investments.

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No. 594, S.]

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CHAPTER 557.

AN ACT to repeal, amend and renumber and amend various provisions of chapter 71 of the statutes, as revised by chapter 318, laws of 1947 (bill No. 125, S.), removing obsolete material, repealing or deleting unconstitutional provisions, renumbering for better location, and amending for clarification.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.01 (2) (a) and (b) of the statutes are amended to read:

71.01 (2) TEACHERS' RETIREMENT FUND SURTAX.

(a) In addition to any other taxes imposed by chapter 71, * * * there shall be levied, collected, and paid upon the incomes of all * * * persons other than corporations, except as otherwise provided by law, a surtax on taxable income assessable under the provisions of chapter 71 or any amendment that may here-

inafter be made to chapter 71, computed as provided in section 71.09 (3).

(b) In addition to any other taxes imposed by chapter 71, * * * there shall be levied, collected, and paid upon the incomes of corporations, *as defined in section 71.02 (2)* * * *, except as otherwise provided by law, a surtax on taxable income assessable under the provisions of chapter 71 or any amendment that may hereinafter be made to chapter 71, computed as provided in section 71.09 (4).

SECTION 2. 71.01 (3) (f) of the statutes is amended to read:

71.01 (3) (f) Whenever any bank has been placed in the hands of the banking commission for liquidation under the provisions of section 220.08, no tax under this chapter shall be levied, assessed or collected on account of such bank, which shall diminish the assets thereof so that full payment of all depositors cannot be made. Whenever the banking commission certifies to the department of taxation that the tax or any part thereof levied and assessed under this chapter against any such bank will so diminish the assets thereof that full payment of all depositors cannot be made, the said department shall cancel and abate such tax or part thereof, together with any penalty thereon * * *. This subsection shall apply to taxes levied and assessed subsequent to the time the bank was taken over by the banking commission, which taxes have not been paid.

SECTION 3. 71.04 (4) of the statutes is amended to read:

71.04 (4) Dividends, except those provided in section 71.03 (1) (e) and 71.03 (2) (d), received from any corporation conforming to all of the requirements of this subsection. Such corporation must have filed income tax returns as required by law and the income of such corporation must be subject to the income tax law of this state. The principal business of the corporation must be attributable to Wisconsin and for the purpose of this subsection any corporation shall be considered as having its principal business attributable to Wisconsin if fifty per cent or more of the entire net income or loss of such corporation after adjustment for tax purposes (for the year preceding the payment of such dividends) was used in computing the * * * taxable income provided by chapter 71, * * *. If the net incomes of several affiliated corporations have been combined for the purpose of determining the amount of income subject to taxation under the statute, the location of the principal business

of such group shall determine the taxable status of dividends paid, but inter-company dividends passing between affiliated corporations whose incomes are included in the taxable income of the group, shall not be assessed as group income.

SECTION 4. 71.05 (5) of the statutes is amended to read:

71.05 (5) Dividends, except those provided in sections 71.03 (1) (e) and 71.03 (2) (d) received from any corporation conforming to all of the requirements of this subsection. Such corporation must have filed income tax returns as required by law and the income of such corporation must be subject to the income tax law of this state. The principal business of the corporation must be attributable to Wisconsin and for the purpose of this subsection any corporation shall be considered as having its principal business attributable to Wisconsin if fifty per cent or more of the entire net income or loss of such corporation after adjustment for tax purposes (for the year preceding the payment of such dividends) was used in computing the * * * taxable income provided by chapter 71 * * *. If the net incomes of several affiliated corporations have been combined for the purpose of determining the amount of income subject to taxation under the statute, the location of the principal business of such group shall determine the taxable status of dividends paid, but inter-company dividends passing between affiliated corporations whose incomes are included in the taxable income of the group, shall not be assessed as group income.

SECTION 5. 71.08 (1) (c) of the statutes is repealed.

SECTION 6. 71.08 (2) of the statutes is repealed.

SECTION 7. 71.08 (3) of the statutes is amended to read:

71.08 (3) The first return of an executor or administrator shall be filed in the form and manner and within the time that a return should have been filed by the decedent had he survived. Subsequent returns of such executor or administrator shall be filed in the form and within the time that the returns of income are required from persons other than corporations. The first return of such executor or administrator shall include the income received by the decedent during the portion of the year preceding the demise of deceased and also items specified in section 71.08 (1) * * * and * * * (5). In computing the net income of an estate, a deduction shall be allowed for amounts paid as premiums on fidelity bonds of the executor or administrator.

SECTION 8. 71.08 (5) of the statutes is amended to read:

71.08 (5) During the period of the administration of the estate the executor shall include in his return * * * the *earned* income of all children under eighteen years of age * * *.

SECTION 9. 71.08 (11) of the statutes is amended to read:

71.08 (11) An executor, administrator, guardian or trustee applying to a court having jurisdiction for a discharge from his trust and a final settlement of his accounts, before his application shall be granted, shall file with the assessor of incomes of the county in which the trust or estate is being administered a return of all incomes received in his representative capacity during the time between the * * * *close of the preceding income year* and the date of his application for discharge and also similar returns of income received by the deceased during each of the years open to audit under section 71.11 (21) if such returns have not heretofore been filed. Upon the receipt of such returns, the assessor of incomes shall immediately determine the amount of taxes to become due and shall certify such amount to the court and the court shall thereupon enter an order directing the executor, administrator, trustee or guardian, as the case may be, to pay to the department of taxation the amount of tax, if any, found due by the assessor of incomes, and take his receipt therefor. * * * The receipt of the department of taxation shall be evidence of the payment of the tax and shall be filed with the court before a final distribution of the estate is ordered, and the executor, administrator, trustee or guardian is discharged. * * * Any taxes found to be due from the estate for any of the years open to audit under section 71.11 (21) shall be assessed against and paid by the executor or administrator; any taxes found to be due after the executor or administrator is discharged, shall be assessed against and paid by the beneficiaries in the same ratio that their interest in the estate bears to the total estate.

SECTION 10. 71.09 (6) (d) of the statutes is amended to read:

71.09 (6) (d) For each additional person, except persons defined in section 71.09 (6) (c), who is actually supported by and dependent upon the taxpayer for his support an additional \$4, except in case of head of a family. In computing taxes and the amount of taxes payable by persons residing together as members of a family, * * * the *earned* income of each child

under 18 years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family and assessed to him except as hereinafter provided. The taxes levied shall be payable by such husband or head of the family, but if not paid by him may be enforced against any person whose income is included within the tax computation.

SECTION 11. 71.10 (8) of the statutes is repealed.

SECTION 12. 71.10 (9) (d) of the statutes is amended to read:

71.10 (9) (d) Back assessments of income taxes omitted from initial rolls and additional income taxes assessed under section 71.11 (16) and * * * (20) shall become due and payable on entry upon the assessment roll * * *.

SECTION 13. 71.10 (10) (b) of the statutes is amended to read:

71.10 (10) (b) In accordance with the provisions of and subject to the limitations of this subsection, refunds or credits may be made of income taxes and surtaxes assessed on incomes received in any one or more of the * * * *three* calendar or fiscal years next preceding that in which the claim therefor is filed * * * * *

SECTION 14. 71.10 (10) (e) of the statutes is repealed.

SECTION 15. 71.11 (3) of the statutes is amended to read:

71.11 (3) Whenever in the judgment of the assessor of incomes any person other than a corporation shall be subject to income tax in his district under the provisions of this chapter, he shall notify such person to make report to him on or before March fifteenth of each year in such manner and form as the department of taxation shall prescribe, specifying in detail the amounts of income received by him from all sources, together with the amounts of *earned* income received by * * * each child under 18 years of age residing together with him as a member of the family, and such other information as the department shall deem necessary to enforce the provisions of this chapter.

SECTION 16. 71.11 (11) (a) of the statutes is amended to read:

71.11 (11) (a) The department of taxation shall accept payments of income taxes in accordance with the provisions of this chapter, and *upon request* shall give a printed or written receipt therefor.

SECTION 17. 71.11 (11) (b) of the statutes is repealed.

SECTION 18. 71.11 (13) of the statutes is amended to read:

71.11 (13) The department of taxation or the assessor of incomes shall presume the incomes reported on the current return to be correct for the purpose of preparing initial assessment rolls, and shall enter the taxable income on initial assessment rolls by taxation districts. Such assessment rolls and all subsequent assessment rolls shall remain on file in the office of the department of taxation or the assessor of incomes as the case may be. * * * Additional assessment rolls * * * shall be prepared from time to time, which shall include corrections made by office audits of current returns, initial assessments on any return omitted from the first initial roll, initial assessments of fiscal year returns, and corrections made after field audit pursuant to section 71.11.

SECTION 19. 71.11 (14) of the statutes is repealed.

SECTION 20. 71.11 (15) of the statutes is amended to read:

71.11 (15) * * * *The* department of taxation shall notify each taxpayer by mail of the amount of income taxes appearing against him on said rolls, of the amount paid thereon, of the balance due, of the date when such balance shall be paid and of the date when the taxes become delinquent.

SECTION 21. 71.11 (16) of the statutes is amended to read:

71.11 (16) The department of taxation or the assessor of incomes shall as soon as practicable * * * audit each return filed in their respective offices and if it shall be found from such office audit that a person has been over or under-assessed, or if it shall be found that no assessment has been made when one should have been made, the department of taxation or the assessor of incomes shall correct or assess the income of such person. Any assessment, correction or adjustment made as a result of such office audit shall be presumed to be the result of an audit of the return only, and such office audit shall not be deemed a verification of any item in said return unless the amount of such item and the propriety thereof shall have been determined after hearing and review as provided in section 71.12 (1); and such office audit shall not preclude the department of taxation or assessor of incomes from making field audits of the books and records of the taxpayer and from making further adjustment, correction and assessment of income.

SECTION 22. 71.11 (18) of the statutes is amended to read:

71.11 (18) In all cases where there has been no request for hearing, and after decision where a hearing has been requested, the additional tax or over-payment shall be entered on the next * * * roll.

SECTION 23. 71.11 (19) of the statutes is renumbered 71.11 (19) (a) and is amended to read:

71.11 (19) (a) If the tax is increased the department of taxation shall proceed to collect the additional tax in the same manner as other income taxes are collected. If the * * * income * * * taxes are decreased upon direction of the department of taxation or assessor of incomes the state treasurer shall refund to the taxpayer such part of the overpayment as was actually paid in cash, and the * * * certification of such overpayment * * * by the department of taxation or the assessor of incomes shall be sufficient authorization to the treasurer for the refunding of such overpayment. No refund of income tax shall be made by the treasurer unless such refund is so certified. Such part of the overpayment paid to the county and the local taxation district shall be deducted by the state treasurer in his next settlement with the county and local treasurer.

SECTION 24. 71.15 (2) of the statutes is renumbered 71.11 (19) (b) and is amended to read:

71.11 (19) (b) Whenever it shall be certified to the state treasurer by the department of taxation as to corporations * * * or by the proper assessor of incomes as to * * * persons other than corporations that excess payment has been made for * * * teachers' retirement fund surtax within 6 years next preceding the date of such certificate, then the said state treasurer shall within 5 days after receipt of such certificate draw an order against the fund in the state treasury into which such excess was paid, reimbursing such payor for the amount of such excess payment so certified. Provided, however, that * * * such excess payments of surtaxes may be certified only for the period during which corrections in assessments may be done under section 71.10 (10).

SECTION 25. 71.15 (3) of the statutes is renumbered 71.11 (19) (c) and is amended to read:

71.11 (19) (c) No action or proceeding whatsoever shall be brought against * * * the state or the treasurer thereof for the recovery, refund or credit of any income or surtaxes; except in case the state treasurer shall neglect or refuse for a period

of sixty days to refund any overpayment of * * * *any income * * * or surtaxes* certified * * *, the taxpayer may maintain an action to collect the overpayment against the treasurer so neglecting or refusing to refund such overpayment, without filing a claim for refund with such treasurer, provided that such action shall be commenced within one year after the certification of such overpayment * * *.

SECTION 26. 71.11 (21) (b) of the statutes is amended to read:

71.11 (21) (b) * * * *With* respect to assessments of income received in the calendar year 1937, or corresponding fiscal year, and in subsequent years, such notice shall be given within three years after the close of the period covered by the income tax return.

SECTION 27. 71.11 (40) of the statutes is amended to read:

71.11 (40) PENALTIES. If any person required under this chapter to file an income tax return fails to file such return within the time prescribed by law, or as extended under the provisions of section 71.10 (5) the department of taxation or the assessor of incomes shall add to the tax of such person \$10 in the case of corporations and \$5 in the case of persons other than corporations, and if no tax is assessed against such person the amount of this fee shall be * * * collected as income taxes are collected, and no person shall be allowed in any action or proceeding to contest the imposition of such fee.

SECTION 28. 71.12 (6) of the statutes is amended to read:

71.12 (6) Any person who shall contest an assessment before the board of tax appeals or in court shall state in his petition or notice of appeal what portion if any of the tax is admitted to be legally assessable and correct. * * * Within 5 days after * * * *notice by the department* the appellant shall pay to the department of taxation the whole amount of the admitted tax and * * * such tax shall be divided as provided in section 71.14 at the next quarterly settlement provided by section 71.14 (1). Any such payment shall be considered an admission of the legality of the tax thus paid, and such tax so paid cannot be recovered in the pending appeal or in any other action or proceeding. * * *

SECTION 29. 71.12 (7) of the statutes is amended to read:

71.12 (7) After final decision and return of the record to the department of taxation * * *, the department of taxation shall

proceed to collect the taxes in the same manner as other delinquent income taxes are collected.

SECTION 30. 71.13 (4) (b) of the statutes is amended to read:

71.13 (4) (b) Any taxpayer may petition the department of taxation in the case of corporations or the assessor of incomes in the case of other persons to compromise his delinquent income taxes including the penalties and interest thereon. Such petition shall set forth a sworn statement of the taxpayer and shall be in such form as the department shall prescribe and the department or assessor may examine the petitioner under oath concerning the matter. The assessor, in case the petition is to him, shall indorse on said petition his recommendations concerning such compromise and shall transmit the same to the department of taxation. If the department finds that the taxpayer is unable to pay the taxes, penalties and interest in full it shall determine the amount of taxes he is able to pay and shall enter an order reducing such taxes, penalties and interest in accordance therewith. Such order shall provide that such compromise shall be effective only if paid within 10 days. The department or its collection agents upon receipt of such order, a copy of which in case of persons other than corporations shall be forwarded to the assessor, shall accept payment in accordance therewith. The department or the assessor shall thereupon enter the unpaid portion of the principal amount of such taxes on the next credit roll and make appropriate record of the unpaid amount of penalties and interest accrued to the date of such order. If within 3 years of the date of such compromise order the department or assessor shall ascertain that the taxpayer has an income or property sufficient to enable him to pay the remainder of the tax including penalty and interest the department shall reopen said matter and order the payment in full of such taxes, penalties and interest. Before the entry of such order a notice shall be sent to the taxpayer by registered mail advising of the intention of the department of taxation to reopen such matter and fixing a time and place for the appearance of such taxpayer if he desires to be heard in regard thereto. Upon entry of such order the department of taxation shall, in the case of persons other than corporations, forward a copy to the assessor and the department or assessor shall make an entry of the principal amount of such taxes ordered to be paid on the * * * *delinquent* roll and such taxes shall be immediately

due and payable upon entry upon such roll and shall thereafter be subject to the interest provided by subsection (1) * * *, and the department shall immediately proceed to collect the same together with the unpaid portion of penalty and interest accrued to the date of the compromise order.

SECTION 31. 71.14 (5) of the statutes is amended to read:

71.14 (5) This section and the provisions of this chapter relating to the apportionment of taxable income to the several counties, towns, cities and villages and those relating to the collection of the income tax by the department of taxation, shall not apply to telegraph companies, or transportation companies as defined in section 76.02 (4) and in section 76.39, respectively. All such telegraph companies and transportation companies shall pay their taxes under this chapter * * * *to the department of taxation, but such taxes shall not be apportioned or distributed to the taxing districts within which the properties lie, but shall be retained entirely by the state.*

SECTION 32. 71.14 (6) of the statutes is amended to read:

71.14 (6) The entire taxable income of every person deriving income from within and without the state or from within different political subdivisions of the state, when such person resides within the state, shall be combined and aggregated for the purpose of determining the proper rate of taxation. The department of taxation or the assessor of incomes, as the case may be, shall compute the tax on the combined taxable income of such person. The income so computed, in the manner provided in section 71.11 (13) and (16), shall be apportioned, in the manner provided in section 71.07, to the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of the income derived from without the state when taxable as having been derived from the town, city or village in which said person resides. The tax on the combined taxable income shall be apportioned * * * to the various towns, cities and villages in proportion to the respective amounts of taxable income so attributed to each.

SECTION 33. 71.15 (5), (6), (7) and (8) of the statutes are repealed.

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