

No. 113, S.]

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CHAPTER 721.

AN ACT to repeal and recreate 76.38 of the statutes, relating to telephone license fees.

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

SECTION 76.38 of the statutes is repealed and recreated to read:

76.38 TELEPHONE LICENSE FEES. (1) For the purposes of this section the following definitions and provisions shall apply:

(a) "Department" means the department of taxation.

(b) "Telephone company" means any individual, partnership, association, company or corporation operating any telephone line in this state with appliances for the transmission of messages by speech, sound or vision, and engaged in the business of furnishing telephone service to the public.

(c) "Gross revenues" shall include all revenue derived from local and rural exchange service, all toll service revenue, and all other operating revenues from business done or from property located within the state. It shall not include excise taxes on telephone service or facilities nor uncollectible revenues actually written off during the year. It shall include recoveries within the year of all amounts written off in prior years as uncollectible. For a telephone company operating on any form of mutual basis it shall include all amounts assessed against the members for the operation and maintenance of the business.

(d) "Telephone exchange" means that portion of the area served by any telephone company which is included in the exchange rate as fixed by the public service commission.

(2) Every telephone company shall on or before March 1 in each year make and return to the department in such form and upon such blanks as the department shall prescribe, a true statement of the gross revenues from the operation of its business during the preceding calendar year, which statement shall be certified by the president and treasurer of such company so operating, or 2 of the principal officers thereof. For sufficient reason shown the department may upon written request allow such further time for making and filing the report as it may deem necessary but not to exceed 30 days. The report shall show the gross revenues attributable to this state from the service of local and rural exchange property of the telephone company and shall show separately each town, village and city in which any portion of such local or rural exchange property is located and opposite the name of each such municipality the amount of gross revenues derived from the exchange property shall be listed. The report shall also show the total toll service revenue attributable to the state which shall include all toll service revenue from business originating and terminating within the state and a proportion of toll service revenue from all interstate business passing through, into or out of the state, based upon the mileage within the state to the entire mileage over which such business is done, or based upon such other facts and circumstances which in the judgment of the department will produce a substantially just and correct determination of the amount of such interstate toll service revenue attributable to the state. All other operating revenues attributable to this state which can be definitely assigned to one or more municipalities should, for the purposes of this section, be classified as exchange service revenue. If such assignment can not reasonably be made, such other operating revenues should, for the purposes of this section, be classified as toll service revenues.

(3) The department shall compute the license fees due from each telephone company pursuant to the provisions of subsections (4), (5) and (6), and on or before May 1 shall notify each such company of the amount due. On or before May 15 of each year, such license fees shall be paid to the department. Such fees shall become delinquent if not paid when due, and when delinquent shall be subject to a penalty of 2 per cent on the amount of such license fee and interest at the rate of one per cent per month until paid. The department shall transmit all funds received under this section to the state treasurer within 15 days. Upon payment of the license fees herein prescribed, each telephone company shall receive a receipt from the department which shall constitute a license to carry on its business for the period commencing on the date when such license fees were due and ending 12 months later.

(4) Every telephone company operating one or more telephone exchanges shall pay an annual license fee to be computed upon the total gross revenues from each exchange as follows:

(a) Two and one-half per cent of such total gross revenues from local and rural exchange service, if such gross revenues are less than \$10,000.

(b) Three per cent of such total gross revenues from local and rural exchange service, if such gross revenues equal or exceed \$10,000 and are less than \$75,000.

(c) Four per cent of such total gross revenues from local and rural exchange service, if such gross revenues equal or exceed \$75,000 and are less than \$150,000.

(d) Five per cent of such total gross revenues from local and rural exchange service if such gross revenues equal or exceed \$150,000 and are less than \$500,000.

(e) Six per cent of such total gross revenues from local and rural exchange service, if such gross revenues equal or exceed \$500,000.

(5) Every telephone company operating a toll line or toll lines or furnishing toll service shall pay an annual license fee to be computed upon the gross revenues from toll business transacted attributable to Wisconsin, as follows:

(a) Two and one-half per cent of the total gross revenues from toll business, if such gross revenues are less than \$25,000.

(b) Three per cent of the total gross revenues from toll business if such gross revenues equal or exceed \$25,000 and are less than \$50,000.

(c) Three and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$50,000 and are less than \$75,000.

(d) Four per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$75,000 and are less than \$100,000.

(e) Four and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$100,000 and are less than \$200,000.

(f) Five per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$200,000 and are less than \$300,000.

(g) Five and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$300,000 and are less than \$400,000.

(h) Six per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$400,000 and are less than \$500,000.

(i) Six and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$500,000 and are less than \$600,000.

(j) Seven per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$600,000 and are less than \$700,000.

(k) Seven and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$700,000 and are less than \$800,000.

(l) Eight per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$800,000.

(6) When the total gross revenue of any telephone company from exchange and toll service is less than \$300, such company shall pay a minimum license fee of \$5.

(7) The license fee upon the toll line business and 15 per cent of the license fee upon the local and rural exchange business shall be retained by the state. The remaining 85 per cent of the license fee upon the local and rural exchange business shall be apportioned by the department to towns, villages and cities in which all or any portion of any local or rural exchange property of the telephone company may be located and from which any portion of the gross revenues therefrom is derived. Such apportionment shall be certified to the director of budget and accounts and the state treasurer on or before June 15 of each year. The director of budget and accounts shall forthwith audit the amounts payable to each town, village and city and the treasurer shall pay the same. Such payment shall be accompanied by a statement showing the specific source of such funds. Supplementary apportionment rolls shall be prepared and certified from time to time when necessary, which shall include collection of delinquent license fees and collection of additional license fees resulting from audits and correction of reports as originally filed. All penalties and interest collected under this section, together with amounts collected under the provisions of subsection (6), shall be retained by the state. Any error in the distribution roll may be subsequently corrected in the manner provided in section 76.29 (3).

(8) The license fees imposed by this section upon the gross revenues of telephone companies as defined in subsection (1) shall be in lieu of all other taxes on all property used and useful in the operation of the business of such companies in this state, except that the same shall be subject to special assessments for local improvements.

(9) The records, books, accounts, and papers of any telephone company shall be subject to inspection and examination by the commissioner of taxation or by such person as he may designate for that purpose.

(10) If any telephone company required under the provisions of this section to file a report fails to file such report within the time prescribed by law or as extended under the provisions of subsection (2), the department shall add to the license fee due the state from such telephone company the amount of \$5, and no telephone company shall be allowed in any action or proceeding to contest the imposition of such penalty.

(11) In case any telephone company fails to make a report as required by subsection (2) within the time required, the department may enter an assessment against such company in a sum representing the approximate amount of the license fees, together with penalties and interest, for which such company may be liable as estimated by the department. Notice of such assessment shall be given by registered mail, and unless a report conforming to the requirements of this section is filed within 15 days of such notice, such estimated assessment shall become final. Thereafter the telephone company assessed shall be forever barred from questioning the correctness of the same in any action or proceeding.

(12) (a) If after filing the reports specified in subsection (2) it shall subsequently be determined that the amount of gross revenues reported is in error, the department shall compute the additional license fee to be paid or the amount of the overpayment of license fee to be refunded, as the case may be; in case an additional license fee is due, the department shall give notice to the telephone company against whom such license fee is to be levied. All such additional assessments and claims for refunds for excess license fees paid are subject to the same procedure for review and final determination as additional income tax assessments and claims for refunds under the provisions of chapter 71 as far as the same may be applicable, and all additional license fees shall be apportioned in the manner provided in subsection (7). Such additional license fees shall become delinquent 30 days after notice provided in this subsection. All additional license fees shall bear interest at the rate of 6 per cent per annum from the time they should have been paid to the date on which such additional fees shall become delinquent if unpaid.

(b) In case of overpayments of license fees by any telephone company under the provisions of paragraph (a), the department shall certify such overpayments to the director of budget and accounts, who shall audit the amount of such overpayments and the state treasurer shall pay the amount so audited. In case any portion of such overpayment has previously been paid to towns, villages and cities under the provisions of subsection (7), such municipalities shall repay to the state the proper proportion of such license fees so received by them, and the secretary of state, upon information certified to him by the director of budget and accounts, shall certify the amounts to be repaid to the state to the county clerks of the counties in which such municipalities are located for levy and collection from such municipalities as other state taxes are levied and collected. All refunds of license fees under this subsection shall bear interest at the rate of 3 per cent per annum from the date of the original payment to the date when the refund is made. The time for making additional levies of license fees or claims for refunds of excess license fees paid, in respect to any year, shall be limited to 4 years after the time the report for such year was filed.

(13) Delinquent license fees of any telephone company, together with penalties and interest, shall be a lien upon all the property of such company prior to all other liens, claims and demands, which lien may be enforced in an action in the name of the state in any court of competent jurisdiction against the property of such company within the state as an entirety. The remedies for nonpayment of taxes specified in section 76.14 shall apply to nonpayment of license fees, penalties and interest referred to under this section.

(14) In case any telephone company discontinues service through sale, merger, abandonment of its property or otherwise, the telephone company acquiring such property or undertaking to provide service in the area of the former company shall assume the license fees due pursuant to the provisions of this section, provided, however, that the liability of the acquiring company shall be limited to those license fees which may have accrued from January 1 of the previous calendar year to the date of the order of the public service commission approving the sale, merger or discontinuance of service.

SECTION 2. This act shall become effective January 1, 1952.

Approved August 3, 1951.