

Senate Bill 232

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CHAPTER 109, LAWS OF 1967

AN ACT to repeal 76.08 (2), 76.19, 76.20 and 76.21; to renumber and amend 76.08 (3); to amend 20.555 (43), 73.01 (5) (e) and (6) (a), 73.015 (1), 73.03 (22), 76.10 (1), 76.13 (1) (certificate), 2 and (3), 76.18, 76.22 (3), 76.39 (5) and 227.22 (1); to repeal and recreate 76.08 (1); and to create 76.48 (8) and (9) of the statutes, relating to review of railroad and public utility tax assessments.

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

SECTION 1. 20.555 (43) of the statutes is amended to read:

20.555 (43) Taxes collected and paid into the state treasury in excess of lawful taxation, when claims therefor have been established as provided in ss. 71.10 (10) and (11), 71.11 (19), 71.12 (2) and (4), 72.08, 74.73, 76.13 (3), ~~76.19~~, ~~76.20~~, 76.38, 76.39, ~~76.48~~, 78.19, 78.20, 78.75, 139.12, 139.36, 139.39 (4) and 168.12 (2), (3) and (4).

SECTION 2. 73.01 (5) (e) and (6) (a) of the statutes are amended to read:

73.01 (5) (e) The board in each case heard by it shall, irrespective of ~~the provisions of ch. 227~~, make a decision in writing accompanied by

findings of fact and conclusions of law. The board may, ~~in its discretion,~~ issue an opinion in writing in addition to its findings of fact and decision. The decision or order of the board shall become final ~~and conclusive~~ and shall be binding upon the petitioner and upon the department of taxation unless an appeal is taken from the decision or order of the board, ~~as provided in under s. 73.015, or an action to review the decision or order is commenced as provided in chapter 76.~~ If the board construes a statute adversely to the contention of the department of taxation, the department shall be deemed to acquiesce in the construction so adopted unless the department seeks review of the order or decision of the board so construing the statute. The construction so acquiesced in shall thereafter be followed by the department.

(6) (a) Any person who has filed an application for abatement or a claim for refund with the department of taxation or assessor of incomes and who is aggrieved by a determination of the department or assessor denying such application for abatement or claim for refund, may, within 30 days after such denial but not thereafter, file a petition for review of the action of the department or assessor and 4 copies thereof with the clerk of the board and the clerk of the board shall transmit one of the copies to the department of taxation. At the time of filing said petition, the petitioner shall pay to the board of tax appeals a \$5 filing fee which the board shall deposit in the general fund. Within 30 days after such transmission the department of taxation shall file an original and 3 copies of an answer to said petition with the clerk of the board and shall serve one copy thereof on the petitioner or his attorney or agent. Within 30 days after service of such answer, the petitioner may file and serve a reply in the same manner as the petition is filed. Any person entitled to be heard by the board under ~~s. 76.08 or s. 76.39~~ s. 76.38 (12) (a), 76.39 (4) (c) or 76.48 may file a petition with the board within the time specified in said sections and in the manner provided for the filing of petitions in income tax cases. Such papers may be served as a circuit court summons is served or by registered certified mail. For the purposes of this subsection, a petition for review shall be considered timely filed if mailed by registered certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the 30th day.

SECTION 3. 73.015 (1) of the statutes is amended to read:

73.015 (1) ~~The provisions of~~ This section shall ~~be provide~~ the sole and exclusive remedy for review of any decision or order of the ~~Wisconsin~~ board of tax appeals, except as otherwise provided in chapter 76, and no person shall contest, in any action or proceeding, any matter reviewable by the board unless such person ~~shall~~ has first ~~have~~ availed himself of a hearing before the board ~~as provided in under s. 73.01.~~

SECTION 4. 73.03 (22) of the statutes is amended to read:

73.03 (22) To appear by its counsel and represent the state in all matters before the board of tax appeals. Except as provided in ch. 72 and in s. 76.08 (1), the attorney general shall appear for the department of taxation in all courts, but with the consent of the attorney general a member of the staff of the department may appear for the department and in income tax matters involving appeals of persons other than corporations the district attorney shall appear on behalf of the department.

SECTION 5. 76.08 (1) of the statutes is repealed and recreated to read:

76.08 (1) Notice of the assessments determined under s. 76.07 shall be given by certified mail to each company, the property of which has

been assessed, and such notice shall be mailed on or before the assessment date specified in s. 76.07 (1). Any company aggrieved by the assessment of its property thus made may have its assessment redetermined by the Dane county circuit court if an action for such redetermination is commenced by service upon the department of taxation of a summons and complaint within 30 days after notice of assessment has been mailed to the company under s. 76.07 (3). No answer need be filed by the department and the allegations of the complaint in opposition to the assessment shall be deemed denied. Upon the filing of the summons and complaint the court shall set the matter for hearing without a jury at the next term of said court. If the plaintiff fails to file the summons and complaint within 5 days of service upon the department, the department may file a copy thereof with such court in lieu of the original. The department may be named as the defendant in any such action and shall appear and be represented by its counsel in all proceedings connected with the action but, on the request of the commissioner of taxation, the attorney general may participate with or serve in lieu of departmental counsel.

SECTION 6. 76.08 (2) of the statutes is repealed.

SECTION 7. 76.08 (3) of the statutes is renumbered 76.08 (2) and amended to read:

76.08 (2) ~~The petitioner or the department of taxation, if aggrieved by any order or decision of the board upon any matter brought before it under this section, may bring an action in the circuit court for Dane county to redetermine the assessment. If as the result of such an action pursuant to sub. (1) the assessment as found by the board of tax appeals shall be department is increased by the court, any resulting increase in the tax shall be collected upon final determination of the action as other taxes levied and assessed under the provisions of ss. 76.01 to 76.29 are collected.~~

SECTION 8. 76.10 (1) of the statutes is amended to read:

76.10 (1) Every company defined in s. 76.02 shall, on or before October 1 in each year, be entitled, on its own motion, to present evidence before the department relating to the state assessment made in the preceding year pursuant to s. 70.575. On request, in writing, for such hearing or presentation, the department shall fix a time therefor within 60 days after such application is filed, the same to be conducted in such manner as the department ~~shall direct~~ *directs*. Notice of such hearing shall be mailed to any company requesting a hearing and shall be published in the official state paper. Within 30 days after the conclusion of such hearing the department shall enter an order either affirming ~~said~~ the state assessment or ordering correction thereof as provided in sub. (2) of this section. A copy of such order shall be sent by ~~registered certified~~ mail to the company or companies requesting such hearing and to any interested party who has made an appearance in such proceeding. ~~Such hearing shall not impair or affect the right to review of the assessment of any company's property by the board of tax appeals as provided for in section 76.08.~~ The department may, on its own motion, correct such state assessment. Any company having filed application for review of the state assessment pursuant to the provisions of this section, or any other interested party participating in such hearing, if aggrieved by the order entered by the department, may bring an action in the circuit court for Dane county within 30 days after the entry of such order to have said order set aside and a redetermination made of the state assessment. In any such action or in any hearing before the department of taxation pursuant to this section, any interested party may appear and be heard. An interested party includes any division of gov-

ernment whose revenues would be affected by any adjustment of the state assessment.

SECTION 9. 76.13 (1) (certificate), (2) and (3) of the statutes are amended to read:

76.13 (1) (certificate)

"I do hereby certify that the foregoing tax roll includes the property of all railroad, ~~street railway~~, light, heat and power, telegraph companies, express and sleeping car companies, air carrier companies, conservation and regulation companies, or pipeline companies, as the case may be, defined in section 76.02, liable to taxation in this state; that the valuation of the property of each company as set down in said tax roll is the full market value thereof as assessed by the department of taxation, except as changed by ~~order of the board of tax appeals court judgment~~, and that the taxes thereon charged in said tax roll have been assessed and levied at the average rate of taxation in this state, as required by law."

(2) Every tax roll shall thereupon forthwith be delivered to the state treasurer and a copy thereof filed with the commissioner of administration. The state treasurer shall immediately notify, by ~~registered certified~~ mail, the several companies taxed therein to pay the tax extended thereon to the state treasurer, as follows: In the case of companies assessed on or before June 15, not less than one-half of the amount of such tax on or before July 10 and the remainder on or before October 15 of the same year; and in the case of all other companies on or before December 1 of the same year; ~~provided, however, that~~ but the payment of one-half of the 2nd instalment in the case of a company assessed on or before June 15 and the payment of one-fourth of the tax in the case of any other company may, ~~in the event that if~~ said company has filed a petition with the board brought an action in the Dane county circuit court under s. 76.08, be made without penalty ~~any time within 15 days after entry of the decision of the board delinquent interest as provided in s. 76.14 any time prior to the date upon which such appeal becomes final, but any part thereof ultimately required to be paid shall bear interest from the original due date to the date such appeal became final at the rate of 5% per annum and at 15% per annum thereafter until paid.~~ The taxes extended against any company after the same become due, with interest, shall be a lien upon all the property of such company prior to all other liens, claims and demands whatsoever, 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.

(3) ~~In the event~~ If the board of tax appeals Dane county circuit court, after such roll has been delivered to the state treasurer, ~~shall increase increases or decrease decreases~~ the assessment of any company, the department of taxation shall forthwith redetermine the tax of such company on the basis of such revised assessment, and shall certify and deliver the same to the state treasurer as a revision of the tax roll. ~~In case~~ If the amount of tax upon the assessment as determined by the board of tax appeals ~~shall be~~ court is less than the amount paid by the company, the excess shall be refunded to such company *with interest at the rate of 5% per annum upon the certification of the redetermined tax and for that purpose the commissioner of administration, upon the certification and delivery of the revised tax roll, shall draw a warrant upon the state treasurer for the amount to be so refunded. If the amount of the tax upon the assessment as determined by the court is in excess of the amount of the tax as determined by the department, interest shall be paid on the additional amount at the rate of 5% per annum from the date of entry of judgment to the date such judgment becomes final, and at 15% per annum thereafter until paid.*

SECTION 10. 76.18 of the statutes is amended to read:

76.18 The proceedings of the department shall be presumed to be regular and the determination of the department shall not be impaired, vitiated or set aside by ~~the board of tax appeals or the courts~~ *any court* upon any grounds not affecting the substantial justice of the tax. The provisions in this chapter prescribing a date or period at or within which an act shall be performed or determination shall be made by the department shall be deemed directory only, and no failure to perform any such act or make such determination at or within the time prescribed therefor shall affect the validity of such act or of any determination made by the department, unless it ~~shall appear~~ *appears* that substantial injustice has resulted therefrom. ~~Nothing herein contained in this chapter shall be construed as precluding~~ *preclude* the board of tax appeals court in any proceeding before it under s. 76.08 from redetermining the assessment of the property of any company defined in s. 76.02 when in the ~~board's judgment of the court~~ the assessment should be substantially less or more than the assessment as determined by the department of taxation.

SECTION 11. 76.19, 76.20 and 76.21 of the statutes are repealed.

SECTION 12. 76.22 (3) of the statutes is amended to read:

76.22 (3) The state treasurer for and in the name of the state may bid at the sale and the state may become the purchaser of the property of any such company under a judgment for its sale for taxes, interest and costs. If the judge of the court in which such action is commenced ~~shall be~~ *is* disqualified or an affidavit of prejudice is filed, such judge shall call upon some other circuit judge to attend and hold court for the trial of the action ~~according to the mode provided in section 76.21.~~

SECTION 13. 76.39 (5) of the statutes is amended to read:

76.39 (5) Delinquent taxes, penalties, interest and late nning fees shall be a lien upon the property of any railroad company or car line company prior to all other liens, claims and demands, which lien may be enforced in any action in the name of the state in any court of competent jurisdiction. All provisions of law for enforcing payment of *delinquent* income taxes pursuant to ch. 71 or enforcing payment of ~~railroad delinquent ad valorem~~ *delinquent ad valorem* taxes pursuant to ~~ch. 76~~ *this chapter* shall be available to collection of taxes on gross receipts in this state levied pursuant to this section.

SECTION 14. 76.48 (8) and (9) of the statutes are created to read:

76.48 (8) Additional assessments may be made, provided notice thereof is given, within 4 years of the date the annual return was filed, but if no return was filed, or if the return filed was incorrect and was filed with intent to defeat or evade the tax, an additional assessment may be made at any time upon the discovery of gross revenues by the department. Refunds may be made provided claim therefor is filed in writing with the department within 4 years of the date the annual return was filed. Refunds shall bear interest at the rate of 5% per annum and shall be certified by the department to the commissioner of administration who shall audit the amounts of such overpayments and the state treasurer shall pay the amount so audited. Any refund shall be reflected in the next allocation and apportionment of license fees under this section.

(9) All additional assessments and claims for refund shall be subject to the same procedure for review and final determination as is provided with respect to additional assessments and refunds of income taxes under chs. 71 and 73, except as such procedure conflicts with this section.

SECTION 15. 227.22 (1) of the statutes is amended to read:

227.22 APPLICATION OF CHAPTER 227. (1) This chapter applies to cases arising under s. ss. 76.38. ~~Except for cases arising under s. 76.38, the provisions of this chapter relating to proceedings in contested cases and to judicial review of administrative decisions do not apply to assessments made under ch. 76, or to decisions of the board of tax appeals upon the review of such assessments, or to decisions made by the department of taxation pursuant to a hearing under s. 76.10 (1), 76.39 and 76.48.~~

SECTION 16. This act shall become effective for all assessments made after December 31, 1967. SECTION 14 shall be applicable in the determination of license fees based on gross receipts of 1963 and later years.

Approved August 8, 1967.