

CHAPTER 76

TAXATION OF PUBLIC UTILITIES AND INSURERS

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SUBCHAPTER I
PUBLIC UTILITIES

76.001 Initial applicability, telephone companies. This subchapter first applies to telephone companies in regard to taxes due on May 10, 1997.

History: 1991 a. 39

76.01 Railroads and utilities, assessment. The department of revenue shall make an annual assessment of the property of all railroad companies, of all conservation and regulation companies, of all sleeping car companies, of all air carriers, of all telephone companies and of all pipeline companies, within this state, for the purpose of levying and collecting taxes thereon, as provided in this subchapter.

History: 1971 c. 23; 1979 c. 102 s. 236 (1); 1983 a. 27; 1985 a. 29; 1991 a. 39.

Dept. of revenue's formula for determining the portion of an airline system value subject to Wisconsin taxation does not offend the commerce clause, due process, or this section. *Northwest Airlines, Inc. v. State*, 77 W (2d) 152, 252 NW (2d) 337.

76.02 Definitions. For the purposes of ss. 76.01 to 76.26 the following provisions and definitions are made:

(1) The term "department," without other designation, means the department of revenue.

(2) Any person, association, company or corporation, owning and operating a railroad, or operating a railroad in this state, or owning or operating any station, depot, track, terminal, or bridge, in this state, for railroad purposes, shall be deemed a railroad company, except that any such property owned by any county, city, village, town or combination thereof is exempt from taxation under this chapter.

(5) Any person, association, company or corporation (not being a railroad company as defined in sub. (2)) owning any cars known as dining, buffet, chair, parlor or sleeping cars which are used upon railroads within this state, unless the ownership of such cars be identical with that of the railroads on which they are operated, shall be deemed a sleeping car company.

(5a) Any person, association, company or corporation engaged in the business of transportation in aircraft of persons or property for hire on regularly scheduled flights shall be deemed an air carrier company. The term "aircraft" shall mean a completely equipped operating unit, including spare flight equipment, used as a means of conveyance in air commerce.

(5b) Any person, association, company or corporation which is not a light, heat and power company as defined by s. 76.28 (1) and which is engaged in the business of transporting or transmitting gas, gasoline, oils, motor fuels, or other fuels, by means of pipelines shall be deemed a pipeline company.

(7) Any company or corporation organized under the laws of this state for the conservation and regulation of the height and flow of water in public reservoirs within this state, shall be deemed a conservation and regulation company.

(9) "Company", without other designation or qualification, includes any railroad company, any conservation and regulation company, any express company, any air carrier company, any pipeline company, any telephone company and any sleeping car company, as defined in this section, to which "company" is applied.

(9r) "Telecommunications facility" means telephone line, telegraph line, microwave, satellite, cellular radio, fiber optics, coaxial cable and any other transmission facility or switching device used in the provision of telecommunications services.

(9t) "Telecommunications services" means the transmission of voice, video, facsimile or data messages, including telegraph messages, except that "telecommunications services" does not include cable television, radio, one-way radio paging or transmitting messages incidental to transient occupancy in hotels, as defined in s. 50.50 (3).

(9u) "Telephone company" means any person that provides to another person telecommunications services, including the resale of services provided by another telephone company, that originate in one local access and transport area, as defined in s. 76.38 (1) (bd), and terminate in a

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different local access and transport area, as defined in s. 76.38 (1) (bd). "Telephone company" does not include a person who operates a private shared telecommunications system, as defined in s. 196.201 (1), and who is not otherwise a telephone company. "Telephone company" does not include a person who is a cellular mobile radio telecommunications utility, as defined in s. 196.202 (1).

(10) The property taxable under s. 76.13 shall include all franchises, and all real and personal property of the company used or employed in the operation of its business, except such motor vehicles as are exempt under s. 70.112 (5) and treatment plant and pollution abatement equipment exempt under s. 70.11 (21) (a). The taxable property shall include all title and interest of the company referred to in such property as owner, lessee or otherwise, and in case any portion of the property is jointly used by 2 or more companies, the unit assessment shall include and cover a proportionate share of that portion of the property jointly used so that the assessments of the property of all companies having any rights, title or interest of any kind or nature whatsoever in any such property jointly used shall, in the aggregate, include only one total full value of such property.

(11) If the property of any company defined in s. 76.28 (1) is located entirely within a single town, village or city, it shall be subject to local assessment and taxation.

(11a) Any air carrier as defined in sub. (5a) engaged solely in intrastate transportation using the facilities of only one airport within the state, shall be excepted from taxation under this subchapter and shall be subject to local assessment and taxation.

(12) The property of the public utilities enumerated in this section and assessed under ss. 76.01 to 76.26 shall be known as special property.

(13) Nothing in this subchapter contained shall be construed to result in the levy, assessment, or collection of taxes on property of a municipal water utility created under s. 198.22.

History: 1971 c. 23; 1971 c. 125 s. 521; 1977 c. 29; 1979 c. 102 s. 236 (1); 1981 c. 20; 1983 a. 27 ss. 1268j, 1268L, 2202 (45); 1985 a. 29; 1989 a. 31; 1991 a. 39.

Freight houses constructed on railroad property by a railroad, and used by various companies for unloading and loading freight cars, where no storage took place, were necessarily used in the operation of the railroad and not subject to local taxation. *Chicago, M., St. P. & P. R.R. Co. v. Milwaukee*, 47 W (2d) 88, 176 NW (2d) 580.

The exemption for water and air pollution equipment is to be allowed a public utility after November 16, 1969 even as to equipment purchased or constructed before that date if it was approved under 70.11 (21) (a) prior to that date. *Wisconsin Electric P. Co. v. Dept. of Revenue*, 59 W (2d) 106, 207 NW (2d) 841.

76.03 Unit assessment and situs for taxation. (1) The property, both real and personal, including all rights, franchises and privileges used in and necessary to the prosecution of the business of any company enumerated in s. 76.02 shall be deemed personal property for the purposes of taxation, and shall be valued and assessed together as a unit.

(2) In case any of the property used in the business of a company defined in s. 76.02 is operated in connection with the property used in the same business or any other business therein described, all such property, rights, franchises and privileges shall be valued and assessed together as a unit, unless, in the opinion of the department of revenue, such properties are so segregated that separate assessments thereof should be made.

(3) The place of assessment and taxation of property subject to taxation under the provisions of this subchapter is fixed at the capitol of the state.

(4) Every person, company or companies, as defined in s. 76.02, shall be the representative of every title and interest in the property so operated or used either as owner, lessee or

otherwise, and notice to the operating and using company or companies shall be notice to all interests in the property for the purposes of taxation. The assessment and taxation of the property of any company in the name of the operating or using company or companies shall be deemed and held an assessment and taxation of all the title and interest in such property of any kind or nature. Nothing herein contained shall be deemed to authorize the assessment and taxation of the interests of the state or of any county, city, village or town in any property used for highways or elevated roads and leased to or used by another.

History: 1977 c. 418; 1979 c. 102 s. 236 (1); 1983 a. 27.

76.04 Reports of companies; penalty. (1) Every company defined in s. 76.02 shall, annually, file a true and accurate statement in such manner and form and setting forth such facts as the department shall deem necessary to enforce ss. 76.01 to 76.26. The annual reports for railroad companies, sleeping car companies and express companies shall be filed on or before April 15 and for conservation and regulation companies, air carriers, telephone companies and pipeline companies on or before May 1. 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. If any company fails to file such report within the time prescribed or as extended under this subsection, the department shall add to the taxes due from such company \$250 if the report is not filed within 15 days after the due date or extended due date and an additional \$250 for each month or part of a month thereafter during which the report is not filed, except that the total penalty may not exceed \$2,500. No company may in any action or proceeding contest the imposition of such penalty.

(2) The forms for all reports required by ss. 76.01 to 76.26 shall be prescribed and furnished by the department of revenue.

History: 1971 c. 125 s. 521; 1983 a. 27; 1985 a. 29; 1991 a. 39.

76.05 Refusal or neglect to report. (1) If any company defined in s. 76.02 or its officers or agents shall refuse or neglect to make any reports required by s. 76.04 or by the department, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by the department, or shall refuse or neglect to appear before the department in obedience to a summons, such company shall be estopped to question or impeach the action or determination of the department except upon satisfactory proof of fraud or mistake injurious to the company.

(2) No company shall be allowed in any action or proceeding to question the amount or valuation of its property as assessed by the department unless such company shall have made and filed with the department a full and complete report of the facts and information prescribed by s. 76.04 and called for by the department thereunder, provided that the refusal or neglect of such company to file the report in time may on application of the company and for good cause shown be excused by the department on condition that such company shall make a full and complete report of all facts and information mentioned in said s. 76.04 within 15 days after notice by mail of the amount of the assessment of the property of such company, and shall appear before the department at a time designated by it and make a full disclosure of all property liable to assessment and taxation under this subchapter and show the full value of such property to the satisfaction of the department.

History: 1979 c. 102 s. 236 (1)

76.06 General powers of investigation. In any matter material to the valuation, assessment or taxation of property under this subchapter, the department may, in its discretion, exercise any and all of the powers conferred upon it by ss. 73.03 and 73.04 (1); and every state, county, city, village, town and other public officer shall make return to the department in such form as it shall prescribe, of all information it shall call for. Persons serving the process of the department shall receive the same compensation allowed by law to sheriffs for similar service; and persons appearing before the department in obedience to its summons shall, in the discretion of the department, receive the same compensation as a witness in the circuit court; such fees and compensation to be audited by the department of administration on the certificate of the department, and charged to the proper appropriation for the department of revenue. The records, books, accounts and papers of any company defined in s. 76.02 to be assessed under this subchapter, except as otherwise provided, shall be subject to the visitation, inspection and examination by said department or by such person as it may designate for that purpose.

History: 1979 c. 102 s. 236 (1).

76.07 Assessment. (1) DUTY OF DEPARTMENT. The department on or before August 1 in each year in the case of railroad companies and sleeping car companies, and on or before September 15 in the case of air carrier companies, telephone companies, conservation and regulation companies and pipeline companies, shall, according to its best knowledge and judgment, ascertain and determine the full market value of the property of each company within the state.

(2) RELATION TO STATE VALUATION; DESCRIPTION. The value of the property of each of said companies for assessment shall be made on the same basis and for the same period of time, as near as may be, as the value of the general property of the state is ascertained and determined. The department shall prepare an assessment roll and place thereon after the name of each of said companies assessed, the following general description of the property of such company, to wit: "Real estate, right of way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises and all other real estate and personal property of said company," in the case of railroads, and "Real estate, right of way, poles, wires, conduits, cables, devices, appliances, instruments, franchises and all other real and personal property of said company," in the case of conservation and regulation companies, and "Real estate, appurtenances, rolling stock, equipment, franchises, and all other real estate and personal property of said company," in the case of sleeping car and air carrier companies, and "Land and land rights, structures, improvements, mains, pumping and regulation equipment, services, appliances, instruments, franchises and all other real and personal property of said company," in the case of pipeline companies, and "All property of the company used in the operation of the company's telephone business" in the case of telephone companies, which description shall be deemed and held to include the entire property and franchises of the company specified and all title and interest therein.

(3) ASSESSMENT. For the purpose of determining the full market value of the property of each company appearing on the assessment roll, the department may view and inspect the property of such company and shall consider the reports filed in compliance with s. 76.04 and the reports and returns of the company filed in the office of any officer of this state, and other evidence or information bearing upon the full market value of the property of the company assessed. In case of companies which own or use property lying partly within and partly without the state, the department shall value and assess

only the property within this state, using the methods under subs. (4g) and (4r). When the full market value of the property of a company within this state has been determined, the amount shall be entered upon the assessment roll opposite the name of the company and shall be the assessment of the entire property of such company within this state for the levy of taxes thereon, subject to review and correction. The department shall thereupon give notice by registered mail to each company assessed of the amount of its assessment as entered upon such roll.

(4g) DETERMINING THE PROPERTY IN THIS STATE. The department shall determine the property in this state of railroad companies, air carrier companies, pipeline companies and telephone companies in the following manner:

(a) Railroad companies. For railroad companies:

1. Determine the ton miles of revenue freight handled in this state.
2. Divide the amount under subd. 1 by the ton miles of revenue freight handled everywhere.
3. Divide the fraction under subd. 2 by 3.
4. Determine the number of cars originated, terminated, received at connections, delivered at connections or otherwise handled in this state.
5. Divide the amount under subd. 4 by the number of cars originated, terminated, received at connections, delivered at connections or otherwise handled everywhere.
6. Divide the fraction under subd. 5 by 6.
7. Determine the tons of revenue freight on line, both originated and terminated, and at connections, both received and delivered, in this state.
8. Divide the amount under subd. 7 by the tons of revenue freight on line, both originated and terminated, and at connections, both received and delivered, everywhere.
9. Divide the fraction under subd. 8 by 6.
10. Determine the depreciated cost of road property owned or rented by the company and used in the operation of the company's business in this state.
11. Determine the depreciated cost of migratory road property owned or rented by the company and used in the operation of the company's business.
12. Multiply the amount under subd. 11 by a fraction the numerator of which is the unit miles in this state and the denominator of which is the unit miles everywhere.
13. Divide the sum of the amounts under subs. 10 and 12 by the depreciated cost of road property everywhere.
14. Divide the fraction under subd. 13 by 3.
15. Add the fractions under subs. 3, 6, 9 and 14.
16. Multiply the fraction under subd. 15 by the full market value of the company's property everywhere.

(b) Air carrier companies. For air carrier companies:

1. Determine the depreciated original cost of the real and tangible personal property owned or rented by the company in this state and used in the operation of the company's business.
2. Determine the depreciated original cost of the company's migratory tangible personal property owned or rented by the company and used in the operation of the company's business.
3. Multiply the amount under subd. 2 by a fraction the numerator of which is the total of flight hours in this state and the denominator of which is the flight hours everywhere.
4. Add the amounts under subs. 1 and 3.
5. Divide the amount under subd. 4 by the depreciated original cost of the real and tangible personal property owned or rented by the company everywhere and used in the operation of the company's business.
6. Divide the fraction under subd. 5 by 3.0.

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7. Determine transport revenue by adding revenue received for transporting passengers and property on flights either originating at, or connecting at, airports in this state.

8. Determine transport-related revenue by adding public service revenue allocated to this state on the basis of routes for which the company is authorized to receive subsidy payments, mutual aid allocated to this state on the basis of the ratio of transport revenues allocated to this state to transport revenues everywhere in the previous year, in-flight sales allocated to this state as they are allocated under s. 77.51 (14r) and all other transport-related revenues from sales made in this state.

9. Divide the sum of the amounts under subds. 7 and 8 by the transport and transport-related revenues everywhere.

10. Divide the fraction under subd. 9 by 3.0.

11. Determine the tons of revenue passengers and revenue cargo first received either as originating traffic or as connecting traffic in this state or finally discharged by the company in this state.

12. Determine the tons of revenue passengers and revenue cargo received or finally discharged at airports everywhere.

13. Divide the amount under subd. 11 by the amount under subd. 12.

14. Divide the fraction under subd. 13 by 3.0.

15. Add the fractions under subds. 6, 10 and 14.

16. Multiply the fraction under subd. 15 by the full market value of the company's property everywhere.

(c) *Natural gas pipelines.* For natural gas pipelines, except liquefied gas pipelines:

1. Determine the gross cost of gas plant in service in this state, except motor vehicles exempt from the property tax under s. 70.112 (5), and of all other property owned or rented by the company and used in the operation of the company's business in this state and included in the base for purposes of rate regulation by the federal energy regulatory commission.

2. Determine the gross cost of gas plant in service everywhere, except motor vehicles specified under s. 70.112 (5), and of all other property owned or rented by the company and used in the operation of the company's business everywhere and included in the base for purposes of rate regulation by the federal energy regulatory commission.

3. Divide the amount under subd. 1 by the amount under subd. 2.

4. Multiply the fraction under subd. 3 by the full market value of the company's property everywhere.

(d) *Other pipeline companies.* For pipeline companies except those under par. (c):

1. Determine the gross cost of line of pipe owned or rented by the company and used in the operation of the company's business in this state.

2. Determine the gross cost of line of pipe owned or rented by the company and used in the operation of the company's business everywhere.

3. Divide the amount under subd. 1 by the amount under subd. 2.

4. Multiply the fraction under subd. 3 by 3.

5. Divide the fraction under subd. 4 by 4.

6. Determine the barrel miles transported in this state.

7. Determine the barrel miles transported everywhere.

8. Divide the amount under subd. 6 by the amount under subd. 7.

9. Divide the fraction under subd. 8 by 5.

10. Determine the number of barrels received and delivered in this state.

11. Determine the number of barrels received and delivered everywhere.

12. Divide the amount under subd. 10 by the amount under subd. 11.

13. Divide the fraction under subd. 12 by 20.

14. Determine the gross cost of line of pipe everywhere.

15. Determine the gross cost of all property owned or rented by the company and used in the company's business everywhere.

16. Divide the amount under subd. 14 by the amount under subd. 15.

17. Add the fractions under subds. 5, 9 and 13 and multiply that result by the fraction under subd. 16.

18. Determine the gross cost of property owned or rented by the company and used in the operation of the company's business other than pipe in this state.

19. Determine the gross cost of all property owned or rented by the company and used in the operation of the company's business everywhere.

20. Divide the amount under subd. 18 by the amount under subd. 19.

21. Add the fraction under subd. 17 to the fraction under subd. 20.

22. Multiply the fraction under subd. 21 by the full market value of the company's property everywhere.

(e) *Telephone companies.* For telephone companies:

1. Determine the gross original cost of the tangible property in this state owned or leased by the company and used in the operation of the company's telephone business. In this subdivision, the gross original cost of leased property is 8 times the annual rent paid by the company for that property.

2. Determine the gross original cost of the company's property everywhere owned or leased by the company and used in the operation of the company's telephone business. In this subdivision, the gross original cost of leased property is 8 times the annual rent paid by the company for that property.

3. Divide the amount under subd. 1 by the amount under subd. 2.

4. Determine the revenues derived from the operation of the company's telephone business that originated from customer premises equipment in this state, regardless of the location to which the billing is sent.

5. Determine the total revenues derived from the operation of the company's telephone business everywhere.

6. Divide the amount under subd. 4 by the amount under subd. 5.

7. Add the fractions under subds. 3 and 6.

8. Divide the fraction under subd. 7 by 2.

9. Multiply the fraction under subd. 8 by the full market value of the telephone company's property everywhere.

(4r) **ADJUSTMENT OF FACTORS.** In making the determinations under sub. (4g), the department may adjust any factor or use any other factor in order to reflect more accurately the company's property in this state if in the department's judgment the factor or combination of factors does not produce a substantially just and correct determination or if during the 12 months preceding the assessment date any of the following conditions applies:

(a) The company began operating in this state and the results of its operations during the first year materially distort the allocation of property to this state.

(b) The company's service was interrupted so that the allocation of property to this state is materially distorted.

(c) The company acquired or disposed of assets having a substantial value that are situated so as materially to distort the allocation of property to this state.

(d) Another event occurred which materially distorted the allocation of property to this state.

(5) FULL MARKET VALUE. (a) The full market value of the operating property of a company listed in s. 76.01 shall be determined by applying recognized appraisal methods, which may include, but are not limited to, the capitalized income, cost, and stock and debt indicators of value, regardless of the method of accounting for legitimate business purposes used by the taxpayer. The department shall give due consideration to generally accepted accounting principles and regulated accounting practices.

(b) The department shall promulgate rules relating to the general principles of the indicators of value under par. (a).

History: 1971 c. 23; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1989 a. 31; 1991 a. 39.

Railroad's working capital was properly assessed as operating property. Valuation of railroads discussed. *Soo Line R. Co. v. Department of Revenue*, 97 W (2d) 56, 292 NW (2d) 869 (1980).

76.075 Adjustments of assessments. Within 4 years after the due date, or extended due date, of the report under s. 76.04, any person subject to taxation under this subchapter may request the department to make, or the department may make, an adjustment to the data under s. 76.07 (4g) or (4r) submitted by the person. If an adjustment under this section results in an increase in the tax due under this subchapter, the person shall pay the amount of the tax increase plus interest on that amount at the rate of 1% per month from the due date or extended due date of the report under s. 76.04 until the date of final determination and interest at the rate of 1.5% per month from the date of final determination until the date of payment. If an adjustment under this section results in a decrease in the tax due under this subchapter, the department shall refund the appropriate amount plus interest at the rate of 0.75% per month from the due date or extended due date under s. 76.04 until the date of refund. Sections 71.74 (1) and (2) and 71.75 (6) and (7), as they apply to income and franchise tax adjustments, apply to adjustments under this section. Review of the adjustments is as stated in s. 76.08.

History: 1989 a. 31.

76.08 Review of assessment. (1) Notice of the assessments determined under s. 76.07 and of adjustments under s. 76.075 shall be given by certified mail to each company the property of which has been assessed, and the notice of assessment shall be mailed on or before the assessment date specified in s. 76.07 (1). Any company aggrieved by the assessment or adjustment of its property thus made may have its assessment or adjustment redetermined by the Dane county circuit court if within 30 days after notice of assessment or adjustment is mailed to the company under s. 76.07 (3) an action for the redetermination is commenced by filing a summons and complaint with that court, and service of authenticated copies of the summons and complaint is made upon the department of revenue. No answer need be filed by the department and the allegations of the complaint in opposition to the assessment or adjustment shall be deemed denied. Upon the filing of the summons and complaint the court shall set the matter for hearing without a jury. 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 the 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 secretary of revenue, the attorney general may participate with or serve in lieu of departmental counsel. In an action for redetermination of an adjustment, only the issues raised in the department's adjustment under s. 76.075 may be raised.

(2) If as the result of an action pursuant to sub. (1) the assessment as found by the 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 ss. 76.01 to 76.26 are collected.

History: 1971 c. 125 s. 521; Sup. Ct. Order, 67 W (2d) 751; 1977 c. 449; 1989 a. 31.

Judicial Council Committee Note, 1974: Sub (1) amended to conform to the new mode of commencement of action under s. 801.02. As amended, this section would require both the filing and the service on the department within 30 days after the mailing of the notice of assessment [Re Order effective Jan. 1, 1976].

76.09 Assessment of omitted property. Any property subject to assessment under this subchapter which has been omitted from assessment or which has not been included in any assessment already made in any of the 5 next previous years by mistake or inadvertence unless previously reassessed for the same year or years, shall be entered by the department upon its assessment and tax roll once additionally for each year so omitted, designating each such additional entry as omitted for the year 19____, (giving year of omission) and fixing the valuation and tax to each entry for a former year as the same should then have been assessed according to the best judgment of the department. The proceedings related to such assessment shall be had and hearings given as far as practicable in accordance with this subchapter.

History: 1979 c. 102 s. 236 (1)

76.10 Review of state assessment; notice of hearing; decision; time limits; notice of decision; action to review decision; error adjusted. (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 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 the state assessment or ordering correction thereof as provided in sub. (2). A copy of such order shall be sent by certified mail to the company or companies requesting such hearing and to any interested party who has made an appearance in such proceeding. The department may, on its own motion, correct such state assessment. Any company having filed application for review of the state assessment pursuant to 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 pursuant to this section, any interested party may appear and be heard. An interested party includes any division of government whose revenues would be affected by any adjustment of the state assessment.

(2) Whenever, in reviewing the valuation of the general property of the state, under the provisions of this section, the department shall determine that the valuation last made by it of the general property of the state under s. 70.575 was too high or too low, it shall adjust the next state assessment to correct such error; and any mistake discovered in any return, either by omission or otherwise, of any tax reported, or because of failure to report, shall be considered by the department in fixing the average tax rate for the year following, by adding to or deducting from the total tax returned the amount of such mistake or omission.

76.11 Aggregate of all general property taxes. (1) The department on or before August 15, upon returns from the secretary of state or from county, town, city and village officers, or both, shall ascertain and determine the aggregate tax in the whole state for state, county and local purposes levied on the general property of the state, excluding special assessments on property for local improvements, and when the aggregate of all taxes, state, county and local consolidated is thus ascertained and determined, the amount thereof shall be entered on the records of the department.

(2) When the officers of any county, town, city or village shall have failed to return the amount of state, county and local taxes, levied on property therein within the time required by law, the department may inspect and examine or cause an inspection and examination of the records of such officers, to procure the required information, and when no return is made and no information can be procured, the state, county and local taxes levied in such town, city or village in the prior year may be used in determining the aggregate taxes specified in sub. (1). Any county, town, city or village officer who shall fail to make the report or reports required by this subchapter shall be subject to a penalty of not less than \$25 nor more than \$150, to be recovered in a proper action in the name of the state of Wisconsin in any court of competent jurisdiction; and any expense necessarily incurred by the department in procuring the information not reported as required by law by any such officer shall be a special charge against the county, town, city or village whose officer shall have so failed to furnish the required information and shall be collected in the same manner as other special charges.

History: 1979 c. 102 s. 236 (1); 1985 a. 29

76.125 Net tax rate for commercial and manufacturing property. (1) Using the statement of assessments under s. 70.53 and the statement of taxes under s. 69.61, the department shall determine the net rate of taxation of commercial property under s. 70.32 (2) (a) 2 and (b) 2, of manufacturing property under s. 70.32 (2) (a) 3 and (b) 3 and of personal property under s. 70.30 as provided in subs. (2) to (6). The department shall enter that rate on the records of the department.

(2) For each taxation district add the assessed values of the property specified in sub. (1).

(3) Multiply the amount under sub. (2) by the taxation district's net tax rate.

(4) Add the amounts under sub. (3) for all taxation districts.

(5) Determine the value, as equalized under s. 70.57, of all the property in this state of the types specified in sub. (1).

(6) Divide the amount under sub. (4) by the amount under sub. (5).

History: 1985 a. 29; 1987 a. 399.

76.126 Average net rate of taxation. The department shall compute the average net rate of taxation by subtracting the aggregate state property tax credits paid under s. 79.10 from the aggregate tax determined under s. 76.11 and dividing that result by the state assessment of the general property of the state upon which those taxes were levied. The department shall enter that rate upon the department's records.

History: 1987 a. 399.

76.13 Levy; tax roll; lien. (1) The department shall compute and levy a tax upon the property of each company defined in s. 76.02, as assessed in the manner specified in ss. 76.07 and 76.08, at the average net rate of taxation determined under s. 76.126. The amount of tax to be paid by each such company shall be extended upon a tax roll opposite the description of

the property of the respective companies. The tax rolls for all companies required to be assessed on or before August 1 in each year under s. 76.07 (1) shall be completed on or before August 10, and for all companies required to be assessed on or before September 15 in each year under s. 76.07 (1) shall be completed on or before October 1; and the department shall thereupon attach to each such roll a certificate signed by the secretary of revenue, which shall be as follows:

"I do hereby certify that the foregoing tax roll includes the property of all railroad companies, sleeping car companies, air carrier companies, conservation and regulation companies, telephone companies or pipeline companies, as the case may be, defined in s. 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 revenue, except as changed by court judgment, and that the taxes thereon charged in said tax roll have been assessed and levied at the average net rate of taxation in this state, as required by law"

(2) Every tax roll upon completion shall be delivered to the state treasurer and a copy of the tax roll filed with the secretary of administration. The department shall notify, by certified mail, all companies listed on the tax roll of the amount of tax due, which shall be paid to the department. The payment dates provided for in sub. (2a) shall apply. The payment of one-fourth of the tax of any company may, if the company has brought an action in the Dane county circuit court under s. 76.08, be made without delinquent interest as provided in s. 76.14 any time prior to the date upon which the appeal becomes final, but any part of the tax ultimately required to be paid shall bear interest from the original due date to the date the appeal became final at the rate of 12% per year and at 1.5% per month 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 the 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 the company within the state as an entirety.

(2a) Taxes levied under this section shall be paid to the department in semiannual instalments, on May 10 and November 10, on a partially estimated basis. The May 10 payment shall be at least 50% of the total tax assessed for the previous calendar year or 40% of the tax assessed for the current calendar year. Any amounts not paid when due shall become delinquent and shall be subject to interest under s. 76.14. The payment of 25% of the tax of any company may, if the company has brought an action in the Dane county circuit court under s. 76.08, be made without delinquent interest as provided in s. 76.14 any time prior to the date upon which the appeal becomes final, but any part thereof ultimately required to be paid shall bear interest from the original due date to the date the appeal becomes final at the rate of 12% per year and at 1.5% per month thereafter until paid. Companies with a tax liability under this section of less than \$2,000 are not required to make semiannual payments but shall pay the full amount of taxes due on or before November 10.

(3) If the Dane county circuit court, after such roll is delivered to the state treasurer, increases or decreases the assessment of any company, the department shall immediately redetermine the tax of the company on the basis of the revised assessment, and shall certify and deliver the revised assessment to the state treasurer as a revision of the tax roll. If the amount of tax upon the assessment as determined by the court is less than the amount paid by the company, the excess shall be refunded to the company with interest at the rate of

9% per year upon the certification of the redetermined tax and for that purpose the secretary 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 12% per year from the date of entry of judgment to the date the judgment becomes final, and at 1.5% per month thereafter until paid.

History: 1971 c. 23, 125, 215; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 110 ss. 60 (11), (13); 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1989 a. 336; 1991 a. 39.

76.14 Remedies for nonpayment of taxes. All taxes levied under this subchapter upon the property of any company defined in s. 76.02, which are not paid at the time provided by law, shall thereupon become delinquent and bear interest at the rate of 1.5% per month until actually paid. The neglect of any such company to pay the taxes and interest so required of the company within 60 days after the entry of final judgment dismissing in whole or in part any action of the company to restrain or set aside a tax, or the neglect of the company within 60 days after the entry of final judgment in favor of the state for the taxes and interest to pay the judgment shall be cause for forfeiture of all the rights, privileges and franchises granted by special charter or obtained under general laws, by or under which the company is organized and its business is operated. The attorney general upon such neglect shall proceed by action to have forfeiture of such rights, privileges and franchises of the company duly declared. Any such company, at any time before the final judgment for forfeiture of such rights, privileges and franchises is rendered, may be permitted upon good cause shown to pay the taxes, interest and the costs of the action upon special application to the court in which the action is pending upon such terms as the court directs.

History: 1971 c. 215; 1977 c. 29; 1979 c. 102 s. 236 (1).

76.15 Reassessment. (1) If any tax levied under the provisions of s. 76.13 shall be adjudged illegal and nonenforceable, or shall be set aside by any court of the state of competent jurisdiction, it shall be the duty of the department, whether any part of the taxes assessed and levied have been paid or not, to forthwith reascertain and redetermine the value of the property of the companies or the value of the general property of the state or the average rate of taxation throughout the state as may be required; and when such reascertainment and redetermination has been made, to make a duplicate of the original assessment roll and to extend the taxes thereon according to such reassessment, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as the original assessment made in accordance with law. The proceedings for such reassessment and for the extension, payment and collection of taxes upon such duplicate assessment roll shall be conducted in the method originally provided for as near as may be. The department shall fix the time and place for the hearings or proceedings for the reassessment and give notice thereof by mail to the companies.

(2) The power to reassess the property of any company defined in s. 76.02 and the general property of the state, and to redetermine the average rate of taxation, may be exercised under sub. (1) as often as may be necessary until the amount of taxes legally due from any such company for any year under ss. 76.01 to 76.26 has been finally and definitely determined. Whenever any sum or part thereof, levied upon any property subject to taxation under ss. 76.01 to 76.26 so set aside has been paid and not refunded, the payment so

made shall be applied upon the reassessment upon the property, and the reassessment of taxes to that extent shall be deemed to be satisfied. When the tax roll on the reassessment is completed and delivered to the state treasurer, the department shall immediately notify by registered mail each of the several companies taxed to pay the amount of the taxes extended on the tax roll within 30 days.

History: 1977 c. 418

76.16 Separate valuation of docks, piers, wharves, ore yards, elevators, car ferries and pipeline terminal facilities. After the property of a company is first valued as a whole, if any docks, ore yards, piers, wharves, grain elevators or car ferries used in transferring freight or passengers between cars and vessels or transfer of freight cars located on car ferries, or if any terminal storage facilities, docks, pipelines and pumping equipment used in transferring oil from pipelines to vessels shall be included in such valuation, then for the purpose of accounting to the proper taxation districts, the department shall make a separate valuation of each such dock, ore yard, pier, wharf, grain elevator, including the approaches thereto, or car ferries and of each such terminal storage facility, dock, pipeline and pumping equipment. As used herein, an approach shall be an immediate access facility commencing at the switching point which leads primarily to the terminal facility. For the purpose of defining the pipeline terminal facilities affected by this section, such facilities shall begin where the incoming pipeline enters the terminal storage facility site used in the transfer of oil to vessels.

History: 1973 c. 333

76.17 Immaterial irregularities. No tax assessed upon any of the general property of the state and no average rate determined by said department as herein required, shall be held invalid on account of any assessment or tax roll not having been made or proceedings had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this state is in substantial accordance with law.

76.18 Presumption of regularity. 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 any court upon any grounds not affecting the substantial justice of the tax. The provisions in this subchapter prescribing a date or period at or within which an act shall be performed or determination 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 appears that substantial injustice has resulted therefrom. Nothing in this subchapter shall preclude the 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 judgment of the court the assessment should be substantially less or more than the assessment as determined by the department.

History: 1979 c. 102 s. 236 (1)

76.22 Tax lien; sale. (1) The taxes levied upon and extended against the property of any company defined in s. 76.02, after the same become due, with interest thereon, shall become a lien upon the property of such company within the state prior to all other liens, debts, claims or demands whatsoever, which

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lien may be enforced in an action in the name of the state in any state court of competent jurisdiction against such company and against the property of such company within the state. The place of the trial shall not be changed from the county in which any such action is commenced, except upon consent of parties.

(2) The action to recover taxes and interest and to enforce the same as a lien shall be an action in equity and shall be commenced and carried on and judgment entered according to the laws of the state and the rules and practice of courts of equity so far as applicable. No reference shall be made to take testimony or to hear, try and determine the issues of fact in the action. The judgment shall fix the amount of taxes and interest, adjudge the same a lien on the property of the company and provide for the sale of such property in 90 days after the entry of judgment upon publication of the notice of sale as a class 3 notice, under ch. 985. The judgment shall bear interest at the rate of 10% per year from the date of entry until finally paid.

(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.

History: 1977 c. 135; 1979 c. 110 s. 60 (13)

76.23 Exemption from other taxation. The taxes imposed by this chapter upon the property of the companies defined in s. 76.02 shall be in lieu of all other taxes on such property necessarily used in the operation of the business of such companies in this state, except that the same shall be subject to special assessment for local improvements in cities and villages. If a general structure is used in part for operating the business of any company defined in s. 76.02 and in part for nonoperating purposes, that general structure shall be assessed for taxation under this chapter at the percentage of its full market value that fairly measures and represents the extent of its use for operating purposes and the balance shall be subject to local assessment and taxation, except that the entire general structure is subject to special assessments for local improvements. All property not necessarily used in operating the business of any company defined in s. 76.02 is exempted from taxation under this chapter and is subject to local assessment and taxation. The taxes so imposed and paid by such companies shall also be in lieu of all taxes on the shares of stock of such companies owned or held by individuals of this state and such shares of stock in the hands of individuals shall be exempt from further taxation.

History: 1981 c. 20.

76.24 Distribution of revenue. (1) All taxes collected from companies defined in s. 76.02 under this subchapter shall be transmitted by the department to the state treasurer and become a part of the general fund for the use of the state, except that taxes paid into the state treasury by any air carrier or railroad company shall be deposited in the transportation fund.

(2) (a) All taxes paid by any railroad company derived from or apportionable to docks, ore yards, piers, wharves, grain elevators, and their approaches, or car ferries or terminal storage facilities, docks, pipelines and pumping equipment used in transferring oil from pipelines to vessels on the basis of the separate valuation provided for in s. 76.16, shall be distributed annually from the transportation fund to the towns, villages and cities in which they are located, pursuant to certification made by the department of revenue on or before August 15.

(b) If the state is compelled to refund in whole or in part any of the taxes which have been distributed to municipalities

under par. (a), such municipalities shall repay to the state for deposit in the transportation fund the amount of such tax so received by them, and the department of administration 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 the municipalities as other state taxes are levied and collected.

(c) If an error in any past distribution roll is discovered, the same may be corrected by making the proper addition to or subtraction from any of the 3 subsequent distribution rolls.

History: 1971 c. 125, 215; 1973 c. 90; 1973 c. 243 s. 82; 1973 c. 333, 336; 1975 c. 39, 224; 1977 c. 29, 142, 272, 418; 1979 c. 34; 1979 c. 102 s. 236 (1); 1981 c. 20.

76.25 Experts and employes. The department is authorized and empowered to employ expert engineers, expert accountants and such clerks and assistants as may be necessary to properly perform the duties imposed by this subchapter and in the work of the valuation and taxation of the property of the companies.

History: 1979 c. 102 s. 236 (1).

76.26 Court fees. The fees of the sheriff and one deputy, and of the clerk of the court and one deputy, for attendance upon the court for the trial of any action under ss. 76.01 to 76.26 shall be audited by the department of administration upon the certification of said clerk and approval by the attorney general, paid out of the state treasury and charged to the appropriation for circuit courts.

History: 1971 c. 125 s. 521

76.28 License fee for light, heat and power companies. (1) DEFINITIONS. In this section:

(a) "Apportionment factor" means a fraction the numerator of which is the sum of the property factor, the payroll factor and the sales factor and the denominator of which is the number 3.

(b) "Book cost of utility plant" has the meaning set forth in the uniform system of accounts established by the public service commission.

(c) "Department" means the department of revenue.

(d) "Gross revenues" means total operating revenues as reported to the public service commission except revenues for interdepartmental sales and for interdepartmental rents as reported to the public service commission and deductions from the sales and use tax under s. 77.61 (4), except that the company may subtract from revenues either the actual cost of power purchased for resale, as reported to the public service commission, by a light, heat and power company, except a municipal light, heat and power company, that purchases under federal or state approved wholesale rates more than 50% of its electric power from a person other than an affiliated interest, as defined in s. 196.52 (1), if the revenue from that purchased electric power is included in the seller's gross revenues or the following percentages of the actual cost of power purchased for resale, as reported to the public service commission, by a light, heat and power company, except a municipal light, heat and power company, that purchases more than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50% for the fee assessed on May 1, 1990, and thereafter.

(e) "Light, heat and power companies" means any person, association, company or corporation, including corporations described in s. 66.069 (2) and except only business enterprises carried on exclusively either for the private use of the person, association, company or corporation engaged in them, or for the private use of a person, association, company or corporation owning a majority of all outstanding capital stock or who control the operation of business enterprises and except

electric cooperatives taxed under s. 76.48 that engage in any of the following businesses:

1. Generating and furnishing gas for lighting or fuel or both.
2. Supplying water for domestic or public use or for power or manufacturing purposes.
3. Generating, transforming, transmitting or furnishing electric current for light, heat or power.
4. Generating and furnishing steam or supplying hot water for heat, power or manufacturing purposes.

(f) "Payroll factor" means a fraction the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period, except that compensation solely related to the production of nonoperating revenues shall be excluded from the numerator and denominator of the payroll factor and except that compensation related to the production of both operating and nonoperating revenue shall be partially excluded from the numerator and denominator of the payroll factor so as to exclude as near as possible the portion of compensation related to the production of nonoperating revenue. Compensation is paid in this state if the individual's service is performed entirely within this state, or if the individual's service is performed both within and outside this state but the service performed outside this state is incidental to the individual's service within this state, or if some of the service is performed in this state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state or the base of operations or the place from which the service is directed or controlled is not in any state in which part of the service is performed and the individual's residence is in this state.

(g) "Property factor" means a fraction the numerator of which is the average book cost of utility plant located in this state for the tax period and the denominator of which is the average book cost of utility plant located everywhere for the tax period. The average book cost of utility plant shall be determined by averaging the beginning and year end balances at original cost, including construction work in progress, but the secretary of revenue may require the averaging of monthly book costs during the tax period if that is reasonably required to reflect properly the average value of the taxpayer's property.

(h) "Sales factor" means a fraction the numerator of which is the taxpayer's total sales of electricity, gas, water and steam in this state reported to the public service commission for the tax period and the denominator of which is the taxpayer's total sales of electricity, gas, water and steam everywhere as reported to the public service commission for the tax period.

(i) "Tax period" means the calendar year preceding the year for which the license fee is assessed.

(2) IMPOSITION. (a) There is imposed on every light, heat and power company an annual license fee to be assessed by the department on or before May 1, 1985, and every May 1 thereafter measured by the gross revenues of the preceding year at the rates and by the methods set forth under pars. (b) to (d). The fee shall become delinquent if not paid when due and when delinquent shall be subject to interest at the rate of 1.5% per month until paid. Payment in full of the May 1 assessment constitutes a license to carry on business for the 12-month period commencing on the preceding January 1.

(b) For private light, heat and power companies, for 1985, an amount equal to the apportionment factor multiplied by the sum of:

1. Gross revenues from the sale of gas services multiplied by 0.47%; and

2. All other gross revenues multiplied by 1.63%.

(c) For private light, heat and power companies for 1986 and thereafter, an amount equal to the apportionment factor multiplied by the sum of:

1. Gross revenues from the sale of gas services multiplied by 0.97%; and

2. All other gross revenues multiplied by 3.19%.

(d) For municipal light, heat and power companies, an amount equal to the gross revenues, except gross revenues from operations within the municipality that operates the company, multiplied by the rates under par. (b) or (c).

(3) PAYMENTS. (a) On or before May 10, 1985, each light, heat and power company shall pay to the department a license fee for 1985 as imposed under sub. (2).

(b) Beginning with calendar year 1985, a portion of the license fees imposed under sub. (2) shall be paid to the department on an estimated basis. Payment of 45% of the total estimated liability of the May 1, 1986, assessment is due on or before May 10, 1985. The remainder of the May 1, 1986, assessment is due on or before November 10, 1985. Settlement for overpayments and underpayments of the May 1, 1986, assessment shall be made by the methods under par. (c).

(c) Beginning with calendar year 1986, the license fees prescribed by sub. (2) shall be paid to the department on an estimated basis. Remittances of semiannual instalments of the total estimated payments for the then current calendar year shall be due on or before May 10 and November 10 of the current year. With respect to the license fee assessment under sub. (2) (a), each light, heat and power company shall, on each May 10, pay or be credited an amount which is equal to the difference between the May 1 assessment and the sum of the semiannual instalment payments made in the preceding calendar year. The additional amount shall be added to the semiannual instalment due on May 10; if there has been an overpayment the amount of the overpayment shall be credited to the semiannual instalment due May 10. If any light, heat and power company that has a liability for the current year fails to make semiannual payments of at least 55% of the assessed liability for the current calendar year or 50% of the assessed liability for the subsequent calendar year, any amounts not paid when due shall become delinquent and shall be subject to interest at the rate of 1.5% per month.

(d) Light, heat and power companies with a liability under this section of less than \$2,000 are not required to make an instalment payment but shall pay the full amount of the license fees due on or before May 10 of the year of assessment.

(4) REDETERMINATION. The procedures for redetermination that apply to telephone companies under s. 76.38 (12) apply to light, heat and power companies in regard to the fee under this section.

(5) REMEDIES. The remedies that apply to telephone companies under s. 76.38 (13) apply to light, heat and power companies in regard to the fee under this section.

(6) ADMINISTRATION. The administrative provisions that apply to telephone companies under s. 76.38 (9) to (11) apply to light, heat and power companies in regard to the fee under this section.

(7) REPORTS. Every light, heat and power company shall, on or before March 1 in each year, make and return to the department in the form and upon the blanks the department prescribes a true statement of the operation of its business during the preceding calendar year, including provision of the "amount shown in the account plus leased property" for purposes of the payment to municipalities and counties under s. 79.04. That statement shall be certified by the president and treasurer of the company or 2 of the company's principal

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officers. For sufficient reason shown, the department may, upon written request, allow any further time for making and filing the report that it deems necessary but not to exceed 30 days. If any company fails to file that report within the time prescribed or as extended under this subsection, the department shall add to the taxes due from that company \$25, and no company may contest the imposition of that penalty in any action or proceeding.

(8) TRANSFER OF OWNERSHIP. If any light, heat or power company discontinues service through sale, merger or abandonment of its property or otherwise, the company acquiring that property or undertaking to provide service in the area of the former company shall assume the license fees due under this section, but the liability of the acquiring company is limited to those license fees which 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.

(9) PROPERTY SUBJECT TO LOCAL TAX. The license fees imposed by this section upon the gross revenues of light, heat and power companies as defined in sub. (1) (e) 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. If a general structure is used and useful in part in the operation of the business of those companies in this state and in part for nonoperating purposes, the license fees imposed by this section are in place of the percentage of all other taxes on the property that fairly measures and represents the extent of the use and usefulness in the operation of the business of those companies in this state, and the balance is subject to local assessment and taxation, except that the entire general structure is subject to special assessments for local improvements. Property defined in s. 76.02 (11) shall not be taxed under this section, but shall be subject to local assessment and taxation.

(10) STANDING TO CHALLENGE ASSESSMENT. In case any light, heat or power company fails to make a report as required by sub. (7) within the time required, the department may enter an assessment against that company in a sum representing the approximate amount of the license fees, together with penalties and interest, for which that company may be liable as estimated by the department. Notice of that assessment shall be given by registered mail, and unless a report conforming to the requirements of this section is filed within 15 days of that notice, that estimated assessment shall become final. Thereafter the light, heat or power company assessed shall be forever barred from questioning the correctness of the assessment in any action or proceeding.

(11) PAYMENT BEFORE CONTESTING. No action or proceeding, except a petition for redetermination under sub. (4), may be brought by a light, heat or power company against this state to contest any assessment of a tax under this section unless the taxpayer first pays to this state the amount of tax assessed. If the taxpayer prevails in an action or proceeding, this state shall settle with the taxpayer, including payment of interest at 9% per year on the amount of the money paid from the date of payment until the date of judgment.

History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27

76.30 Confidentiality provisions. (1) DIVULGING INFORMATION. Except as provided in sub. (2), no person may divulge or circulate or offer to obtain, divulge or circulate any information provided by a company taxed under this subchapter, except a company taxed under s. 76.28, to the department, including information which may be furnished by the department as provided in this section. This subsection does not

prohibit publication by any newspaper of information lawfully derived from that information for purposes of argument or prohibit any public speaker from referring to such information in any address. This subsection does not prohibit the department from publishing statistics classified so as not to disclose the identity of particular taxpayers. This subsection does not prohibit employes or agents of the department from offering or submitting any return, claim, schedule, exhibit, writing or audit report or a copy of, and any information derived from, any of those documents as evidence into the record of any contested matter involving the department in proceedings or litigation on state tax matters if that evidence has reasonable probative value.

(2) PERSONS QUALIFIED TO EXAMINE RETURNS FOR SPECIFIED PURPOSES. Subject to sub. (3) and to rules of the department, any information under sub. (1) is open to examination by only the following persons and the contents thereof may be divulged or used only as follows:

(a) The secretary of revenue or any officer, agent or employe of the department.

(b) The attorney general and department of justice employes.

(c) Members of any legislative committee or organization or its authorized agents provided the examination is approved by a majority vote of a quorum of its members and the tax return or claim information is disclosed only in a meeting closed to the public. The committee may disclose information to the senate or assembly or to other legislative committees if the information does not disclose the identity of particular returns, claims or reports and the items thereof. The department shall provide assistance to the committees or their authorized agents in order to identify returns and claims deemed necessary by them to accomplish the review and analysis of tax policy.

(d) Public officers of the federal government or other state governments or the authorized agents of such officers, where necessary in the administration of the tax laws of such governments, to the extent that such government accords similar rights of examination or information to officials of this state.

(e) The person who filed or submitted the information, or to whom the information relates or by the person's authorized agent or attorney.

(f) Any person examining information pursuant to a court order duly obtained upon a showing to the court that the information is relevant to a pending court action or pursuant to a subpoena signed by a judge of a court of record ordering the department's custodian of returns or claims to produce information in open court in a court action pending before the judge.

(g) Employes of the legislative fiscal bureau to the extent that the department considers the examination necessary for those employes to perform their duties under contracts or agreements between the department and the bureau relating to the review and analysis of tax policy and the analysis of state revenue collections.

(h) Employes and members of the public service commission, and employes of the department of transportation, to the extent that the department of revenue considers the examination necessary for those members and employes to perform their duties.

(3) RESTRICTION ON USE OF INFORMATION. The use of information obtained under sub. (2) is restricted to the discharge of duties imposed upon the persons by law or by the duties of their office or by order of a court as provided under sub. (2) (f).

(4) **CHARGE FOR COSTS.** The department may charge for the reasonable cost of divulging information under this section.

(5) **DISTRICT ATTORNEYS.** District attorneys may examine information under sub. (1) as follows:

(a) Such information may be examined for use in preparation for any judicial proceeding or any investigation which may result in a judicial proceeding involving the taxes under this subchapter if any of the following applies:

1. The taxpayer is or may be a party to such proceeding.

2. The treatment of an item reflected in such information is or may be related to the resolution of an issue in the proceeding or investigation.

3. The information relates or may relate to a transactional relationship between the taxpayer and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in such proceeding or investigation.

(b) When the department allows examination of information under par. (a):

1. If the department has referred the case to a district attorney, the department may make disclosure on its own motion.

2. If a district attorney requests examination of information relating to a person, the request must be in writing, clearly identify the requester and the person to whom the information relates and explain the need for the information. The department may then allow the examination of information so requested and the information may be examined and used solely for the proceeding or investigation for which it was requested.

(c) Such information may be examined for use in preparation for any administrative or judicial proceeding or an investigation which may result in such proceeding pertaining to the enforcement of a specifically designated state criminal statute not involving tax administration to which this state or a governmental subdivision thereof is a party. Such information may be used solely for the proceeding or investigation for which it is requested.

(d) The department may allow an examination of information under par. (c) only if a district attorney petitions a court of record in this state for an order allowing the examination and the court issues an order after finding all of the following:

1. There is reasonable cause to believe, based on information believed to be reliable, that a specific criminal act has been committed.

2. There is reason to believe that such information is probative evidence of a matter in issue related to the commission of the criminal act.

3. The information sought to be examined cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the information constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

(e) If the department determines that examination of information ordered under par. (d) would identify a confidential informant or seriously impair a civil or criminal tax investigation, the department may deny access and shall certify the reason therefor to the court.

History: 1991 a 39.

SUBCHAPTER II

TELEPHONE COMPANIES LICENSE FEES; CAR LINE COMPANIES; ELECTRIC COOPERATIVE ASSOCIATIONS

76.38 Telephone license fees. (1) In this section:

(aa) "Access expense" means any charge paid by a telephone company to another telephone company for telecommunications services and facilities that permit subscriber origination or termination of telecommunications between a point or points in one telephone exchange and a point or points in another telephone exchange.

(ab) "Access revenues" means revenues of telephone companies resulting from charges to persons, including other telephone companies, for provision of telecommunications services or facilities that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange and revenues of telephone companies resulting from customer access to the telecommunications services and facilities of a telephone exchange.

(ac) "Allocable share of approved reselling services" means actual costs incurred for services under par. (bkm) 1 actually utilized in providing the telecommunications services for which the gross revenues are received multiplied by the amount obtained by dividing the sum of the property factor and the originating revenues factor by 2, except that the department may determine the allocable share of approved reselling services based on other facts and circumstances if, in the department's judgment, the formula under this paragraph does not produce a substantially just and correct determination.

(ad) "Average value" means the average of the values at the beginning and end of the calendar year unless the secretary of revenue reasonably determines that averaging monthly values is required to reflect properly the average value.

(am) "Customer premises equipment" means equipment employed on the premises of a person, other than a telephone company, to originate, route or terminate telecommunications but does not include equipment used to multiplex, maintain or terminate access lines.

(an) "Department" means the department of revenue.

(b) "Gross revenues" includes all revenue derived from local and rural exchange service, all toll business gross revenue, and all other operating revenues from telecommunications business. It does not include excise taxes on telephone service or facilities nor uncollectible telecommunications revenues actually written off during the year. "Gross revenues" includes recoveries within the year of all telecommunications revenues written off in prior years as uncollectible. For a telephone company operating on any form of mutual basis, "gross revenues" includes all amounts assessed against the members for the operation and maintenance of the business. "Gross revenues" also includes access revenues and revenues from directory advertising. For qualifying telecommunications resellers, "gross revenues" does not include the allocable share of approved reselling services sold to the public. "Gross revenues" does not include any revenues collected from service users under s. 146.70 (3). For fees assessed on May 1, 1989, and thereafter, telecommunications companies may deduct 100% of access expenses that arise from services or facilities that permit origination or termination of telecommunications from a point or points in this state to a point or points in the same local access and transport area incurred during the previous year and 14.5% of all other access expenses incurred during the previous year.

(bd) "Local access and transport area" means a geographic area that encompasses one telephone exchange or 2 or more contiguous telephone exchanges that serve common social, economic and other purposes and that are established pursuant to the modification of final judgment in *United States v. Western Electric Company*, civil action no. 82-0192

in the U.S. district court for the District of Columbia and approved by that court as an exchange area within the meaning of section IV. G. of that modification of final judgment.

(bf) "Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business originated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.

(bg) "Person" means any individual, partnership, firm, association, company or corporation.

(bk) "Property" does not include cash, evidences of indebtedness, special privileges, franchises, goodwill or property located in space.

(bkm) "Qualifying telecommunications reseller" means a company that provides local or rural exchange service and does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized them to provide local or rural services or a telephone company that fulfills all the following requirements:

1. Resells message telecommunications service, wide-area telecommunications services or other telecommunications services which have been approved for reselling by the public service commission or by the federal communications commission.

2. Does not own, operate, manage or control transmission facilities that have the technological capability to provide telecommunications service within this state.

3. Is not a person at least 50% of the voting stock of which is owned directly or indirectly by another person which directly or indirectly owns, operates, manages or controls transmission facilities that have the technological capability to provide telecommunications service within the state unless that latter person is a company that provides local or rural exchange service and does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized it to provide local or rural services or unless that latter person:

a. Owns at least 50% of the voting stock of a company that provides local or rural exchange service and that does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized it to provide local or rural services; and

b. Does not own directly or indirectly at least 50% of the voting stock of another company that owns, operates, manages or controls transmission facilities that have the technological capability to provide telecommunication services within this state.

(bL) "Property factor" means a fraction the numerator of which is the average value of the property owned or rented by the telephone company and used in operating its telecommunications business in this state and the denominator of which is the average value of the property owned or rented by the telephone company and used in operating its telecommunications business everywhere.

(bm) "Telecommunications facility" means telephone line, telegraph line, microwave, satellite, cellular radio, fiber optics, coaxial cable or any other transmission facility or any switching device used in the provision of telecommunications services.

(br) "Telecommunications services" means the transmissions of voice, video, facsimile or data messages, including

telegraph messages. "Telecommunications services" does not include cable television, broadcast television, radio, one-way radio paging and the transmission of messages incidental to transient occupancy in hotels, as defined in s. 50.50 (3).

(c) "Telephone company" means any person operating a telecommunications facility or providing telecommunications services to another person, including the resale of those services provided by another telephone company. "Telephone company" does not include any person who operates a private shared telecommunications system as defined in s. 196.201 (1) and who is not otherwise a telephone company. Beginning with the assessment on May 1, 1998, "telephone company" does not include a person described in s. 76.02 (9u).

(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.

(e) "Toll business gross revenues" means gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.

(f) "Toll business gross revenues attributable to this state" means the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of the property factor and the originating revenues factor by 2, except that the department may determine toll business gross revenues attributable to this state based on other facts and circumstances if, in the department's judgment, the formula under this paragraph does not produce a substantially just and correct determination.

(fm) "Transmission facilities" means facilities for the carriage of telecommunications services by wire, optics, radio signal or other means.

(g) "Value" means, for property owned by the telephone company, original cost and, for property rented by the telephone company, 8 times the amount obtained by subtracting from annual rent paid by the telephone company annual rent received by the telephone company for subletting that property.

(2) (a) 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 prescribes, a true statement of its access expenses and 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 deems necessary but not to exceed 30 days.

(b) The report shall show the gross revenues attributable to this state from the service of local and rural exchange property of the telephone company. The report shall also show the toll business gross revenues.

(c) All other operating revenues attributable to this state which can be definitely assigned to a telephone exchange operated by that telephone company in this state shall be classified as exchange service revenue, but if assignment cannot reasonably be made, those other operating revenues shall be classified as toll business gross revenues. All access revenues are exchange service revenues.

(3) On or before May 1 the department shall compute and assess the license fees imposed by subs. (4), (5m) and (6), with respect to gross revenues of the preceding calendar year and on or before May 1 shall notify each person that was carrying on business as a telephone company on the preceding January 1 of the amount of the license fee assessed. Any person who

pays the May 1 assessment in full has a license to carry on business as a telephone company in this state for the 12-month period beginning on the preceding January 1. The fees assessed by the department shall become delinquent if not paid when due, and when delinquent shall be subject to interest at the rate of 1.5% per month until paid. The department shall transmit all funds received under this section to the state treasurer within 15 days after receipt. The payment dates provided for in sub. (3a) shall apply.

NOTE: Sub. (3) is repealed and recreated eff. 1-1-94 by 1991 Wis. Act 39 to read:

(3) On or before May 1 the department shall compute and assess the license fees imposed by subs. (4) and (6), with respect to gross revenues of the preceding calendar year and on or before May 1 shall notify each person that was carrying on business as a telephone company on the preceding January 1 of the amount of the license fee assessed. Any person who pays the May 1 assessment in full has a license to carry on business as a telephone company in this state for the 12-month period beginning on the preceding January 1. The fees assessed by the department shall become delinquent if not paid when due, and when delinquent shall be subject to interest at the rate of 1.5% per month until paid. The department shall transmit all funds received under this section to the state treasurer within 15 days after receipt. The payment dates provided for in sub. (3a) shall apply.

(3a) The license fees prescribed by this section shall be paid to the department on an estimated basis. Remittances of semiannual instalments of the total estimated payments for the then current calendar year shall be due on or before May 10, and November 10 of the current year. With respect to the license fee assessment by the department under sub. (3), each telephone company shall on each May 10 pay or be credited an amount which is equal to the difference between the May 1 assessment by the department and the sum of the semiannual instalment payments made in the preceding calendar year. The additional amount shall be added to the semiannual instalment due on May 10; if there has been an overpayment the amount of the overpayment shall be credited to the semiannual instalment due May 10. If any telephone company that has a liability for the current year fails to make semiannual payments of 60% of the liability assessed by the department for the current calendar year, any amounts not paid when due shall become delinquent and shall be subject to interest under sub. (3). If any company that has no liability for the current year fails to make semiannual payments of at least 50% of the liability assessed by the department for the subsequent calendar year or 100% of the liability in respect to revenue earned through April of the current year, any amounts not paid when due shall become delinquent and shall be subject to interest under sub. (3). Companies with a liability assessed by the department under this section of less than \$2,000 are not required to make semiannual payments but shall pay the full amount of license fees due on or before May 10 of the year of assessment.

(4) Every telephone company operating one or more telephone exchanges shall pay an annual license fee equal to the following percentages of the total gross revenues in this state from each exchange for local and rural exchange service:

(a) For fees assessed on May 1, 1990:

1. If the total of those gross revenues is less than \$10,000, 2.813%.
2. If the total of those gross revenues is at least \$10,000 but less than \$75,000, 3.375%.
3. If the total of those gross revenues is at least \$75,000 but less than \$150,000, 4.5%.
4. If the total of those gross revenues is at least \$150,000 but less than \$500,000, 5.625%.
5. If the total of those gross revenues is at least \$500,000, 5.75%.

(b) For fees assessed on May 1, 1991:

1. If the total of those gross revenues is less than \$10,000, 2.813%.

2. If the total of those gross revenues is at least \$10,000 but less than \$75,000, 3.375%.

3. If the total of those gross revenues is at least \$75,000 but less than \$150,000, 4.5%.

4. If the total of those gross revenues is at least \$150,000 but less than \$500,000, 5.625%.

5. If the total of those gross revenues is at least \$500,000, 5.65%.

(c) For fees assessed May 1, 1992, and thereafter:

1. If the total of those gross revenues is less than \$10,000, 2.813%.

2. If the total of those gross revenues is at least \$10,000 but less than \$75,000, 3.375%.

3. If the total of those gross revenues is at least \$75,000 but less than \$150,000, 4.5%.

4. If the total of those gross revenues is at least \$150,000, 5.6%.

NOTE: Sub. (4) is repealed and recreated eff. 1-1-94 by 1991 Wis. Act 39 to read:

(4) (a) Except as provided in sub. (6), every telephone company operating one or more telephone exchanges shall pay an annual license fee equal to the following percentages of its total gross revenues in this state for local and rural exchange service:

1. For fees assessed on May 1, 1994, 5.80%.
2. For fees assessed on May 1, 1995, 5.75%.
3. For fees assessed on May 1, 1996, 5.70%.
4. For fees assessed on May 1, 1997, and on each May 1 thereafter, 5.40%.

(b) Except as provided in sub. (6), every telephone company operating a toll line or toll lines or furnishing toll service shall pay an annual license fee equal to the following percentages of its total gross revenues in this state for toll business:

1. For fees assessed on May 1, 1994, 6.60%.
2. For fees assessed on May 1, 1995, 5.80%.
3. For fees assessed on May 1, 1996, 5.70%.
4. For fees assessed on May 1, 1997, and on each May 1 thereafter, 5.40%.

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

(a) For fees assessed on May 1, 1990:

1. If the total of those gross revenues is less than \$25,000, 2.813%.
2. If the total of those gross revenues is at least \$25,000 but less than \$50,000, 3.375%.
3. If the total of those gross revenues is at least \$50,000 but less than \$75,000, 3.938%.
4. If the total of those gross revenues is at least \$75,000 but less than \$100,000, 4.5%.
5. If the total of those gross revenues is at least \$100,000 but less than \$200,000, 5.063%.
6. If the total of those gross revenues is at least \$200,000 but less than \$300,000, 5.625%.
7. If the total of those gross revenues is at least \$300,000 but less than \$400,000, 6.188%.
8. If the total of those gross revenues is at least \$400,000 but less than \$500,000, 6.75%.
9. If the total of those gross revenues is at least \$500,000 but less than \$600,000, 7.313%.
10. If the total of those gross revenues is at least \$600,000 but less than \$700,000, 7.875%.
11. If the total of those gross revenues is at least \$700,000, 7.975%.

(b) For fees assessed on May 1, 1991:

1. If the total of those gross revenues is less than \$25,000, 2.813%.
2. If the total of those gross revenues is at least \$25,000 but less than \$50,000, 3.375%.
3. If the total of those gross revenues is at least \$50,000 but less than \$75,000, 3.938%.
4. If the total of those gross revenues is at least \$75,000 but less than \$100,000, 4.5%.
5. If the total of those gross revenues is at least \$100,000 but less than \$200,000, 5.063%.

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6. If the total of those gross revenues is at least \$200,000 but less than \$300,000, 5.625%.

7. If the total of those gross revenues is at least \$300,000 but less than \$400,000, 6.188%.

8. If the total of those gross revenues is at least \$400,000 but less than \$500,000, 6.75%.

9. If the total of those gross revenues is at least \$500,000 but less than \$600,000, 7.313%.

10. If the total of those gross revenues is at least \$600,000 but less than \$700,000, 7.875%.

11. If the total of those gross revenues is at least \$700,000, 7.9%.

(c) For fees assessed on May 1, 1992, and thereafter:

1. If the total of those gross revenues is less than \$25,000, 2.813%.

2. If the total of those gross revenues is at least \$25,000 but less than \$50,000, 3.375%.

3. If the total of those gross revenues is at least \$50,000 but less than \$75,000, 3.938%.

4. If the total of those gross revenues is at least \$75,000 but less than \$100,000, 4.5%.

5. If the total of those gross revenues is at least \$100,000 but less than \$200,000, 5.063%.

6. If the total of those gross revenues is at least \$200,000 but less than \$300,000, 5.625%.

7. If the total of those gross revenues is at least \$300,000 but less than \$400,000, 6.188%.

8. If the total of those gross revenues is at least \$400,000 but less than \$500,000, 6.75%.

9. If the total of those gross revenues is at least \$500,000 but less than \$600,000, 7.313%.

10. If the total of those gross revenues is at least \$600,000, 7.8%.

NOTE: Sub. (5m) is repealed eff. 1-1-94 by 1991 Wis. Act 39.

(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) Any net decrease in a telephone company's tax under this section because of changes to sub. (1) (b) under 1987 Wisconsin Act 27, section 1564cm, and sub. (4) (e) under 1987 Wisconsin Act 27, section 1567m, shall be reflected in rates charged to the company's customers, as determined by the appropriate regulatory agency.

(7m) The legislature intends that telecommunications companies pass on to their customers, in the form of rate reductions and surcharge reductions, the tax reductions created by the treatment of sub. (4) under 1989 Wisconsin Act 31, section 2138 and by the changes in the taxation of telecommunications companies made by 1991 Wisconsin Act 39.

(8) The license fees imposed by this section upon the gross revenues of telephone companies as defined in sub. (1) shall be in lieu of all other taxes on all property used and useful in the companies' operation as telephone companies in this state, except that the same shall be subject to special assessments for local improvements. If a general structure is used and useful in part in the operation of the business of those companies as telephone companies in this state and in part for nonoperating purposes, the license fees imposed by this section are in place of the percentage of all other taxes on the property that fairly measures and represents the extent of the use and usefulness in the operation of the business of those companies as telephone companies in this state, and the balance is subject to local assessment and taxation, except that the entire general structure is 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 secretary of revenue or by such person as the secretary may designate for that purpose.

(10) If any telephone company required under this section to file a report fails to file a report within the time prescribed by law or as extended under sub. (2), unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as license fees on the report 5% of the amount of such fees if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate.

(11) In case any telephone company fails to make a report as required by sub. (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 sub. (2) and after the department's computation and assessment of license fees under sub. (3) it is subsequently 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. If an additional license fee is due, the department shall give notice to the telephone company against whom the 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 or franchise tax assessments and claims for refunds under ch. 71 as far as the same may be applicable, except that appeals of denials of claims for refunds shall be made directly to the tax appeals commission and except that the additional license fees shall become delinquent 60 days after notice provided in this subsection or, if review proceedings are held, 60 days following final determination of the review proceedings. All additional license fees shall bear interest at the rate of 12% per year from the time they should have been paid to the date on which the additional fees shall become delinquent if unpaid.

(b) In the case of overpayments of license fees by any telephone company under par. (a), the department shall certify the overpayments to the department of administration, which shall audit the amount of the overpayments and the state treasurer shall pay the amounts determined by means of the audit. All refunds of license fees under this subsection shall bear interest at the annual rate of 9% 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 s.

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 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, except that the liability of the acquiring company shall be limited to those license fees which have accrued from January 1 of the previous calendar year to the date of the sale or merger.

History: 1971 c. 125, 215; 1975 c. 39, 200, 224; 1977 c. 29 ss. 829 to 832, 1648 (1); 1977 c. 142, 272, 418; 1979 c. 110 ss. 60 (11), (13); 1981 c. 20; 1983 a. 27, 189, 212; 1985 a. 29, 120, 297, 332; 1987 a. 27, 399; 1989 a. 31, 336; 1991 a. 39, 316.

Under 70.112 (4) and 76.38 (8), leased property "used and useful" in telephone utility's business is exempt from ad valorem tax. *Wisconsin Tel. Co. v. City of Milwaukee*, 85 W (2d) 447, 271 NW (2d) 362 (1978).

76.39 Car line taxes. (1) For the purposes of this section:

(b) "Car line company" means any person, not operating a railroad, engaged in whole or in part in the business of leasing or furnishing car line equipment to a railroad.

(c) "Car line equipment" means any railroad car or other equipment used in railroad transportation under an agreement providing for rental of such car or other equipment.

(cm) "Department" means the department of revenue.

(d) "Gross earnings" means all receipts by a car line company from operation of car line equipment.

(e) "Gross earnings in this state" means all gross earnings on intrastate business of a car line company from operation of car line equipment, and also gross earnings on interstate business in the proportion that the Wisconsin car miles are of the total car miles of such interstate business. The gross earnings not based on mileage shall be allocated to this state in the ratio of each carrier's average annual freight car miles in Wisconsin to the carrier's total freight car miles in all states.

(2) There is levied annually a gross earnings tax in lieu of all property taxes on the car line equipment of a car line company equal to 6 per cent of the gross earnings in this state. Every railroad company operating in this state shall, upon making payment to each car line company for use of its cars, withhold 6 per cent of the amount constituting the gross earnings in this state of such car line company.

(3) Every railroad company operating in this state shall file annually with the department, on or before March 15, on a form prepared by the department, a true and accurate statement of all rentals paid to each car line company during the previous calendar year and shall remit to the department the amount of the tax required to be withheld under sub. (2). Every car line company, which during the previous calendar year has received gross earnings in this state from a source other than a railroad company operating in this state, shall, on or before March 15, on a form prepared by the department, file with the department a true and accurate statement of such gross earnings in this state and the name of the company from which received and shall remit to the department the amount of the tax imposed under sub. (2) on such gross earnings in this state. The payment dates provided for in sub. (3a) shall apply. Upon written request received by the department before March 15, the department may grant an extension of not to exceed 30 days for the filing of the report and the payment of the taxes levied in this section. If any railroad company or car line company fails to file such report when due, or as extended by the department, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as gross earnings tax on the report 5% of the

amount thereof if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. If any railroad company or car line company fails to pay all taxes due within the time prescribed or as extended by the department, the unpaid taxes shall be delinquent, and shall be subject to interest under sub. (4). All taxes, late filing fees, penalties and interest shall be deposited in the general fund.

(3a) Tax due under this section shall be paid to the department on an estimated basis. Payments of semiannual instalments of the total estimated liability for the calendar year shall be due on or before May 10 and November 10 of the year prior to assessment. On every May 10 each railroad company and car line company shall pay any additional amounts due or be credited for any overpayment based upon the actual liability of the current year. If any railroad company or car line company fails to make semiannual payments of at least 55% of the tax liability for the current calendar year or 50% of the tax liability for the subsequent calendar year, any amounts not paid when due shall become delinquent and shall be subject to interest under sub. (4) (c). Companies with a tax liability under this section of less than \$2,000 are not required to make semiannual payments but shall pay the full amount of taxes due on or before May 10 of the year of assessment.

(4) (a) The records, books, leases and all accounts pertaining to the car line business of any railroad or car line company shall be subject to audit by the department. In any case in which it is determined that the amount of tax paid was in error, the department shall determine the additional tax or refund, as the case may be.

(b) Additional assessments may be made provided notice thereof is given within 4 years of the date the annual statement was filed; however, if no statement was filed or if the statement 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 earnings in this state 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 statement was filed.

(c) 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 or franchise taxes in chs. 71 and 73, except that appeals of denials of claims for refunds shall be made directly to the tax appeals commission and except as the same may conflict with this section. Delinquent taxes shall be subject to interest at the rate of 1.5% per month until paid.

(d) All refunds shall be certified by the department to the department of administration which shall audit the amount of the refunds and the state treasurer shall pay the amount, together with interest at the rate of 9% per year from the date payment was made. All additional taxes shall bear interest at the rate of 12% per year from the time they should have been paid to the date upon which the additional taxes shall become delinquent if unpaid.

(5) Delinquent taxes, penalties, interest and late filing 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 or franchise taxes under ch. 71 or enforcing payment of delinquent taxes based on the value of property under this chapter shall be

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available to collection of taxes on gross receipts in this state levied under this section.

History: 1971 c. 215; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 110 ss. 21, 60 (13); 1981 c. 20; 1983 a. 27, 189; 1985 a. 120; 1987 a. 399; 1991 a. 39.

76.46 Powers of investigation. (1) The department may, whenever in its opinion such action is necessary, examine or cause to be examined the books and records of any railroad company or car line company in order to verify the accuracy of the reports submitted to the department.

(2) If any railroad company defined in s. 76.02, or any car line company defined in s. 76.39, refuses or neglects to make any reports required under subch. I, or refuses or neglects to permit an examination of its books and records, accounts and papers, when requested so to do by the department, or refuses or neglects to appear before the department in obedience to its summons, it shall be estopped to question or impeach the action or determination of the department, or validity of any assessment made by the department.

(3) No such company shall be allowed in any action or proceeding to question the assessment and taxation of its property as determined by the department, unless it has made and filed with such department a full and complete report of the facts and information prescribed by law and called for by the department.

History: 1979 c. 102 s. 237.

76.48 License fees, electric cooperatives. (1g) In this section:

(a) "Apportionment factor" has the meaning under s. 76.28 (1) (a).

(b) "Book cost of utility plant" has the meaning set forth in the uniform system of accounts prescribed by the U.S. rural electrification administration in bulletin 181-1, dated January 1, 1978.

(c) "Electric cooperative" means a cooperative association organized under ch. 185 that carries on the business of generating, transmitting or distributing electric energy to its members at wholesale or retail.

(d) "Gross revenues" means total operating revenues, except revenues for interdepartmental sales and for interdepartmental rents, less deductions from the sales and use tax under s. 77.61 (4) and, in respect to any electric cooperative that purchases more than 50% of the power it sells, less the actual cost of power purchased for resale by an electric cooperative, if the revenue from that purchased electric power is included in the seller's gross revenues or if the electric cooperative purchased more than 50% of the power it sold in the year prior to January 1, 1988, from a seller located outside this state.

(e) "Payroll factor" has the meaning under s. 76.28 (1) (f).

(f) "Property factor" has the meaning under s. 76.28 (1) (g).

(g) "Sales factor" means a fraction the numerator of which is the electric cooperative's total sales of electricity in this state, not including sales to out-of-state purchasers that are delivered to transmission facilities in this state, for the tax period and the denominator of which is the electric cooperative's total sales of electricity for the tax period.

(h) "Tax period" has the meaning under s. 76.28 (1) (i).

(1r) Every electric cooperative shall pay, in lieu of other general property and income or franchise taxes, an annual license fee equal to its apportionment factor multiplied by its gross revenues multiplied by 3.19%. Real estate and personal property not used primarily for the purpose of generating, transmitting or distributing electric energy are subject to general property taxes. If a general structure is used in part to generate, transmit or distribute electric energy and in part for

nonoperating purposes, the license fee imposed by this section is in place of the percentage of all other general property taxes that fairly measures and represents the extent of the use in generating, transmitting or distributing electric energy, and the balance is subject to local assessment and taxation, except that the entire general structure is subject to special assessments for local improvements.

(2) Every electric cooperative shall on or before March 15 in each year make and return to the department of revenue, in the form and upon the blanks that the department prescribes and furnishes, a true statement of the gross receipts from the operation of its business during the preceding calendar year together with such other information that the department requires to enforce this section. The statement shall be verified by the president and treasurer of the electric cooperative making the return. Upon written request, the department may grant an extension of not to exceed 30 days within which to file the return. If any electric cooperative fails to file the return within the time prescribed by law, or as extended by the department, the department shall add to the taxes due from the electric cooperative \$25, and the electric cooperative may not contest the imposition of that penalty in any action or proceeding.

(3) On or before May 1 in each year, the department of revenue shall compute and assess the license fees provided for in sub. (1r) and certify the amounts due to the state treasurer and file a duplicate thereof with the department of administration. The department shall notify each electric cooperative of the amount of the license fees so assessed. The fees shall become delinquent if not paid when due and when delinquent shall be subject to interest at the rate of 1.5% per month on the amount of license fee until paid. The interest shall be collected by the department and, upon collection, forwarded to the state treasurer and retained by the state. The payment dates provided for in sub. (3a) shall apply.

(3a) License fees due under this section shall be paid to the department on an estimated basis. Payments of semiannual instalments of the estimated tax liability for the subsequent year shall be due on or before May 10 and November 10 of the current year. With respect to the license fee assessment under sub. (3), each electric cooperative shall on each May 10 pay or be credited an amount which is equal to the difference between the May 1 assessment and the sum of the semiannual instalment payments made in the preceding calendar year. The additional amount shall be added to the semiannual instalment due on May 10. If there has been an overpayment the amount of the overpayment shall be credited to the semiannual instalment due May 10. If any electric cooperative fails to make semiannual payments of at least 55% of the tax assessed for the current calendar year or 50% of the tax assessed for the subsequent calendar year, any amounts not paid when due shall become delinquent and shall be subject to interest under sub. (3). Associations with a liability under this section of less than \$2,000 are not required to make semiannual payments but shall pay the full amount of license fees due on or before May 10 of the year of assessment.

(4) All license fees provided in sub. (1r) shall be deposited in the general fund for use of the state.

(5) Additional assessments may be made, if notice of such assessment 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 if a claim for the refund 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 9% per

year and shall be certified by the department to the secretary of administration who shall audit the amounts of such overpayments and the state treasurer shall pay the amount audited. Additional assessments shall bear interest at the rate of 12% per year from the time they should have been paid to the date upon which they shall become delinquent if unpaid.

(6) 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 or franchise taxes under chs. 71 and 73, except that appeals of denials of claims for refunds shall be made directly to the tax appeals commission and except as such procedure conflicts with this section.

History: 1971 c. 125, 215; 1973 c. 12; 1975 c. 39, 224; 1977 c. 29, 142, 272, 418; 1979 c. 110 s. 60 (11), (13); 1979 c. 207; 1981 c. 20; 1983 a. 27; 1985 a. 120; 1987 a. 27, 399; 1991 a. 39.

76.54 Motor carriers and urban transit companies; municipal taxation. No city, village or town shall impose a license tax upon either of the following:

(1) Any common motor carrier of property or of passengers, any contract motor carrier or any private motor carrier on account of any operation of a motor vehicle which is subject to registration or taxation under ch. 341.

(2) Any corporation or other person engaged in urban mass transportation of passengers as defined in s. 71.38.

History: 1987 a. 312 s. 17.

SUBCHAPTER III

INSURERS

76.60 Fire and marine insurers; license fees. Every insurer doing a fire or marine insurance business, other than domestic insurers and insurers excepted under s. 76.61, shall pay to the state, in respect to marine insurance a tax of 0.5% and in respect to fire insurance a tax of 2.375% on the amount of its gross premiums, as calculated under s. 76.62. In case any insurer discontinues business in this state and reinsures the whole or a part of its risks without making payment of this tax, the insurer accepting such reinsurance shall pay the tax. If several insurers make such reinsurance the tax shall be apportioned among the insurers in proportion to the original premiums upon the business in this state so reinsured by each such insurer. Upon the payment of the tax provided in this section, and the fees required by s. 601.31, such insurer may be licensed to transact its business until May 1 in the ensuing year, unless before then its license is revoked or forfeited according to law.

History: 1971 c. 125; 1979 c. 102 s. 20; Stats. 1979 s. 76.60; 1989 a. 31.

76.61 Town mutual insurers; taxes, charges, dues and license fees. No town mutual insurer organized under or subject to ch. 612 shall be required to pay any taxes, charges, dues or license fees to the state except those charges and dues provided for in ss. 601.31, 601.32, 601.45 and 601.93.

History: 1971 c. 125; 1973 c. 243; 1975 c. 372 s. 41; 1979 c. 102 ss. 21, 236 (3), (4); Stats. 1979 s. 76.61.

76.62 License fees; calculation of. All license fees and taxes levied under any provision of law upon gross premiums other than life insurance premiums against any insurer shall be uniformly calculated on the amount of gross premiums received for direct insurance less return premiums and cancellations and returns from savings and gains on all insurance other than reinsurance by the insurer during the preceding year in this state.

History: 1979 c. 102 s. 22; Stats. 1979 s. 76.62; 1989 a. 31.

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76.63 Casualty insurance; license fees. (1) Every insurer doing a casualty or surety business, other than domestic insurers and insurers exempted under s. 76.61, shall pay to the state 2% of its gross premiums, as calculated under s. 76.62, on all policies or contracts which have been written on the lives of residents or on property in this state.

(2) Every domestic stock insurer which insures against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate shall pay to the state on or before March 1 in each year 2% of its gross premiums, as calculated under s. 76.62, on all policies or contracts which have been written on the lives of residents or on property in this state.

History: 1971 c. 125; 1975 c. 372; 1979 c. 102 s. 23; Stats. 1979 s. 76.63; 1989 a. 31.

76.64 Quarterly instalments. Insurers shall pay instalments of the total estimated payment under ss. 76.60, 76.63, 76.65 and 76.66 on or before April 15, June 15, September 15 and December 15. Every insurer shall make a return for the preceding calendar year on or before March 1 setting forth the information that the commissioner of insurance reasonably requires, on forms prescribed by the commissioner. On or before March 1, the insurer shall pay any additional amount due for the preceding calendar year. Overpayment will be credited on the amount due April 15.

History: 1979 c. 102 s. 24; Stats. 1979 s. 76.64; 1981 c. 20; 1985 a. 29; 1989 a. 31.

76.645 Penalties. (1) LATE PAYMENT. An insurer that fails to make quarterly payments under s. 76.64 of at least 25% of either the total tax paid for the previous calendar year or 80% of the actual tax for the current calendar year is liable, in addition to the amount due, for interest of 1.5% of the amount due and unpaid for each month or part of a month that the amount due, together with any interest, remains unpaid.

(2) **NEGLIGENCE.** An insurer that fails to pay an amount due, or file a return required, under s. 76.64, unless the insurer shows that the failure is due to reasonable cause and not due to wilful neglect, is liable for the greater of the following amounts:

(a) Five hundred dollars.

(b) Five percent of the amount due for each month or fraction of a month during which the failure continues, but not more than 25% of the amount due.

History: 1985 a. 29.

76.65 Life insurers; license fee. Every insurer doing a life insurance business within this state, except fraternal as defined in s. 614.01, shall pay into the state treasury as an annual license fee for transacting such business the amounts following:

(1) **DOMESTIC INSURERS.** (a) If such insurer is organized under the laws of this state, it shall pay as an annual license fee 3.5% upon its gross income from all sources for the preceding calendar year except interest required to provide and maintain reserves according to the laws of this state, and except premiums collected on policies of insurance and contracts for annuities. No domestic insurer shall, however, in any year pay in the aggregate for license fee as prescribed in this paragraph an amount in excess of the annual license fee which would have been payable by it in such year under sub. (2) had it been operating as a foreign insurer subject to sub. (2). Any domestic insurer having in excess of \$750,000,000 of insurance in force as of December 31 of the preceding calendar year, excluding therefrom any reinsurance assumed

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on which premium taxes are payable by the ceding insurer, shall not pay less in the aggregate for a license fee as prescribed in this paragraph than the amount of the annual license fee which would have been payable by it in such year under sub. (2) had it been operating as a foreign insurer subject to sub. (2). Payments under this paragraph shall be made annually on or before March 1.

(b) In computing the fee under par. (a), the amount of such gross income shall, after deducting the excepted portions thereof, be multiplied by a fraction the numerator of which is the net investment income applicable to life insurance and annuities and the denominator of which is the total net investment income, as set forth in the annual statement forms for such year as approved by the commissioner of insurance.

(2) **FOREIGN INSURERS.** If any such insurer is organized outside of this state, it shall pay into the state treasury, as such annual license fee, 2% upon the excess of the gross premiums received in money or otherwise during the preceding calendar year on all policies or contracts of insurance on the lives of residents of this state after deducting all sums apportioned to premium paying policies on the lives of residents of this state from annual distribution of profits, savings, earnings or surplus which before the expiration of the calendar year next succeeding such apportionment have been either paid in cash or applied in part payment of premiums.

History: 1971 c. 215, 289; 1975 c. 373; 1979 c. 102 s. 25; Stats. 1979 s. 76.65; 1981 c. 20

Life insurance policy dividends left with the insurance to accumulate at interest beyond the expiration of the calendar year are not to be treated as dividends "paid in cash" under 76.34 (2), Stats. 1969. Because of long-standing administrative construction, current dividends applied to purchase additional paid-up insurance are not reportable as gross premiums and thus, not taxable under 76.34 (2). However, accumulated dividends so applied are reportable and taxable. 59 Atty Gen. 152

76.66 Retailatory taxation of nondomestic insurers. (1) In this section, "taxes" means the taxes imposed on nondomestic insurers under ss. 76.60, 76.63, 76.65 (2) and 601.93 less offsets allowed against those taxes under s. 646.51 (7) or the amounts imposed on domestic insurers by another state or foreign country for similar purposes.

(2) If another state or foreign country requires a domestic insurer doing business in that state or country to pay taxes greater in the aggregate than the aggregate amount of taxes that a nondomestic insurer doing business in this state would pay, each insurer domiciled in that state or foreign country shall pay to this state for the same year the amount that a domestic insurer doing a similar business would be required to pay to the other state or foreign country.

History: 1979 c. 102 s. 26; Stats. 1979 s. 76.66; 1983 a. 27; 1989 a. 31
See note to 646.51, citing 72 Atty. Gen. 17.

76.67 Reciprocal taxation of foreign insurers. (1) In this section, "taxes" means the taxes imposed on foreign insurers under ss. 76.60, 76.63, 76.65 (2) and 601.93 less offsets

allowed against those taxes under s. 646.51 (7) or the amounts imposed on domestic insurers by another state for similar purposes.

(2) If any domestic insurer is licensed to transact insurance business in another state, this state may not require similar insurers domiciled in that other state to pay taxes greater in the aggregate than the aggregate amount of taxes that a domestic insurer is required to pay to that other state for the same year, except that the amount imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums, as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) against that total.

History: 1975 c. 372 s. 41; 1979 c. 34; 1979 c. 102 s. 26; 1979 c. 177; Stats. 1979 s. 76.67; 1983 a. 27; 1989 a. 31.

76.68 License; issuance; collection of fees. (1) Every license issued under this subchapter and chs. 600 to 646 shall certify that payment of the license fee or tax and the fee required by s. 601.31 (1) (b) has been made, be signed by the commissioner of insurance and be in a form approved by the attorney general.

(2) No suit may be brought to restrain or enjoin the collection of any license fee or tax imposed or provided for by this subchapter, and the fees required by s. 601.31. Any insurer aggrieved by the payment of any such license or other fee or tax may maintain a suit against the state for the recovery thereof in the circuit court for Dane county within 6 months from the time of the payment. The state may be served in the suit as provided in s. 801.11 (3).

(3) No action may be commenced to compel the issuance of the certificate of authority provided for by chs. 600 to 646 until the license fee imposed by this subchapter and the fees under s. 601.31 have been fully paid.

(4) The attorney general shall institute suit in the circuit court for Dane county to recover any license fees or tax not paid within the time prescribed by this subchapter, and the fees required by s. 601.31. Nothing in this subsection shall be construed as amending or modifying in any respect ch. 775.

History: 1971 c. 40 s. 93; 1971 c. 260; Sup. Ct. Order, 67 W (2d) 774; 1977 c. 339; 1979 c. 32 s. 92 (5); 1979 c. 89 s. 543; 1979 c. 102 ss. 26, 237; 1979 c. 177; Stats. 1979 s. 76.68

76.69 Deduction for personal property taxes. Any domestic insurer may deduct from the license fee imposed on the insurer for any year under s. 76.65 (1) an amount equal to one-half of the general property taxes paid for the previous year on personal property in this state which is used in the operation of its business and not held primarily for investment purposes, but no such deduction may exceed 25% of the license fee.

History: 1971 c. 289; 1979 c. 102 s. 26; Stats. 1979 s. 76.69