75.67; 1941 c. 13; 1943 c. 115; 1945 c. 353; 1963 c. 506.

75.68 History: 1939 c. 386; Stats. 1939 s. 75.68; 1945 c. 353; 1947 c. 490.

Where the city, for the purpose of showing that the property owner, whose property had been assessed for benefits, was still interested in owning property on the widened street, introduced evidence relating to a sale of certain property by the city, but did not offer evidence as to the sale price, the admission of evidence offered by the property owner as to the price was not error. Nakina Realty Co. v. Milwaukee, 249 W 355, 24 NW (2d) 610, 25 NW (2d) 257.

75.69 History: 1947 c. 490; Stats. 1947 s. 75.69; 1953 c. 61; 1955 c. 47; 1959 c. 95; 1965 c. 252; 1967 c. 77 s. 4; 1969 c. 55.

Persons to make the appraisal to be published under 75.69, Stats. 1947, should be appointed by the county board. Unless the appraisal is made the duty of a committee as provided in 59.06, the county board may not appoint any of its members as appraisers. 36 Atty. Gen. 454.

When a county takes a tax deed to land and conveys the same to a town in exchange for real estate tax credit, such land continues to be "tax delinquent real estate." Where the town board attempted to sell such land without complying with the provisions of 75.69 (1), Stats. 1951, which require that the land be appraised and advertised, the sale was invalid. 42 Atty. Gen. 73.

75.70 History: 1933 c. 292; Stats. 1933 s. 59.07 (21); 1935 c. 279; 1937 c. 147; Stats. 1937 s. 59.07 (21), 59.08 (27); 1939 c. 513 s. 13; 1955 c. 651 s. 21; Stats. 1955 s. 75.70.

A county board has no power to authorize or direct the county treasurer to satisfy a village's equity in delinquent taxes returned from said village by assigning tax certificates upon such delinquent taxes to the village in return for payment by the village to the county of the amount of the county's claim for unpaid state special taxes and county school tax liability which the village disputes. 22 Atty. Gen. 950.

59.07 (21), Stats. 1933, does not authorize the transfer by the county of one year's tax certificates in exchange for a town's credit on delinquent real estate taxes. 22 Atty. Gen. 984.

A county and city may, in compromising excess of delinquent real estate taxes under 59.07 (21), Stats. 1935, include the value of tax deeds for years other than those years from which the excess is computed. 25 Atty. Gen. 584.

CHAPTER 76.

Taxation of Public Utilities and Insurance Companies.

76.01 History: 1860 c. 174 s. 1; 1862 c. 22 s. 1, 4; R. S. 1878 s. 1212; 1882 c. 320; Ann. Stats. 1889 s. 1212, 1216a; Stats. 1898 s. 1212, 1216; 1899 c. 308 s. 4; 1903 c. 315 s. 1, 2; 1905 c. 380 s. 1, 11, 12; 1905 c. 427 s. 1; 1905 c. 493 s. 1; 1905 c. 494 s. 1; Supl. 1906 s. 1212, 1216, 1222—1; 1911 c. 540; 1911 c. 664 s. 114; 1913 c. 768 s. 1a; Stats. 1913 s. 51.01; 1915 c. 526 s. 3; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—1; 1921 c. 59 s. 2; Stats. 1921 s. 76.01; 1929 c. 529 s. 11; 1931 c. 483 s. 4; 1933 c. 349 s. 4; 1943 c. 20; 1945 c. 512; 1947 c. 488; 1969 c. 55; 1969 c. 276 s. 590 (1).

On equality and exercises of taxing power see notes to sec. 1, art. I; on legislative power generally and delegation of power see notes to sec. 1, art. IV; on judicial power generally see notes to sec. 2, art. VII; and on the rule of taxation (property taxes) see notes to sec. 1, art. VIII.

The purpose of ch. 315, Laws 1903, is to tax the property of public service corporations at the same rate as the property of individuals is taxed for state, county, city, towns, village, school, and road district purposes. Chicago & Northwestern R. Co. v. State, 128 W 553, 108 NW 557.

The principles and methods that ought to guide the assessment of public utilities are not prescribed by statute and courts will not suggest them. Those guides must be discovered and applied by the railroad commission. The result only will be reviewed by the courts, and for a confiscatory assessment they will afford relief as violative of the Fourteenth Amendment, U. S. constitution. Wisconsin-Minnesota L. & P. Co. v. Railroad Comm. 183 W 96, 197 NW 359.

Where one railroad company is operating the property of another for the benefit of both companies, ch. 76, Stats. 1933, requires that a separate assessment of, and levy of taxes upon, the property so operated be made; and especially should such separate assessment and levy be made where the nonoperating company is in receivership, so as to apprise the receiver of the amount that he should pay. Minneapolis, St. P. & S. S. M. R. Co. v. Henry, 215 W 668, 255 NW 896.

76.02 History: R. S. 1858 c. 77 s. 4; 1860 c. 174 s. 1; 1862 c. 22 s. 1, 4; R. S. 1878 s. 1212, 1217; Stats. 1898 s. 1212, 1217; 1899 c. 308 s. 4; 1903 c. 315 s. 1, 2; 1905 c. 380 s. 1, 11, 12; 1905 c. 427 s. 1; 1905 c. 493 s. 2; 1905 c. 494; Supl. 1906 s. 1212, 1217, 1222—2; 1911 c. 540, 612; 1911 c. 664 s. 114, 144; 1913 c. 768 s. 2; Stats. 1913 s. 76.02; 1915 c. 526 s. 2; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—2; 1921 c. 59 s. 3; Stats. 1921 s. 76.02; 1927 c. 379; 1929 c. 448 s. 1, 4; 1931 c. 483 s. 1, 2, 3, 5; 1933 c. 285; 1933 c. 349 s. 3, 4; 1943 c. 20; 1945 c. 512; 1947 c. 362, 488; 1955 c. 77, 660; 1963 c. 11; 1967 c. 17; 1969 c. 55, 206; 1969 c. 276 s. 590 (1).

Legislative Council Note, 1967: Substituting "property" for "real estate" in sub. (11) allows local assessment of personal property not directly related to operating the utility. For example, the inventory of appliances held for sale at retail by a utility. Presently this is done by administrative interpretation. [Bill No. 3-A]

1. Light, heat and power companies.
2. Local assessment and taxation.

1. Light, Heat and Power Companies.

That part of ch. 76, relating to taxation of public utilities does not apply to every company engaged in the business of furnishing light, heat or power, but only to public utilities. Whether a corporation is a public

utility for taxation purposes depends upon what it does rather than what it has power to do. The test of whether a power company is a public utility does not depend on the number of its customers, but on whether its plant was built and operated to furnish power to the public generally. A hydroelectric power company, exclusively owned and operated for the sole benefit of a motor company in another state and furnishing power to it and not to the public generally, and not engaged in furnishing light, heat or power to any residents of this state or maintaining any facilities for that purpose, is not a public utility, and therefore is subject to local taxation. Ford Hydro-Electric Co. v. Aurora, 206 W 489, 240 NW 418.

A corporation producing electrical energy, a part of which is sold to a city for distribution by the latter to the public, and the remainder of which is absorbed by a parent company, and which does not hold itself out to serve the public and has no schedule of rates to be charged for service to the public, is not a public utility within 76.02 (8), Stats. 1929 and 1931, and therefore is subject to local taxation, notwithstanding its articles of incorporation declare such corporation to be a public utility, and that it has been so treated by the public service commission and the tax commission. Union Falls P. Co. v. Oconto Falls, 221 W 457, 265 NW 722.

2. Local Assessment and Taxation.

The jurisdictional error of including local property not assessed by local assessors cannot be urged as a defense to the tax by public service corporations because they are in fact benefited by such inclusion. Neither will omissions of property, referable to mere error of judgment or inadvertence, nor differences between assessors or other mere errors of judgment or mistakes without fraud, affect the validity of the tax. Chicago & Northwestern R. Co. v. State, 128 W 553, 108 NW 557.

See note to 71.01, citing Wisconsin E. P. Co. v. Lake, 186 W 199, 202 NW 195.

A holding company is not exempt from taxation on income from stock and bonds of a public utility because the latter's taxes are paid direct to the state treasurer. Wisconsin P. S. Corp. v. Tax Comm. 198 W 259, 224 NW 130.

Railroad property which is principally used in the operation of railroads is not taxable locally and whether it is necessarily used in operating a railroad is determined by the present use. Terminal W. Co. v. Milwaukee, 205 W 607, 238 NW 513.

The business of a warehouse owner in breaking up carload lots and removing the freight to other cars for further shipment is not "railroad business," nor does the fact that a private warehouse business is conducted on railroad property make it railroad business or property "necessarily used in railroad operations," so as to remove it from local taxation, within 76.02. Lincoln F. W. Co. v. Milwaukee, 208 W 70, 241 NW 623.

By-products which are necessarily produced in generation of gas by a light, heat and power company are part of "property of the company" subject to unit assessment and taxation and are not subject to local taxation under ch. 70, Stats. 1931. 21 Atty. Gen. 688.

Waterfront land owned by a railway company and improvements placed thereon by and at the expense of licensee industry, exclusive of office building and land, consisting of office building, track, trestle, dock and dredging, used for unloading logs from barge to rail for further transportation, the railway company to own trestle and dock upon the expiration of the license unless it elected otherwise and to have use of the track for all purposes, is property "necessarily used" in operating the business of a railroad company within the meaning of 76.02 (11), Stats. 1937, and assessable to the company by the tax commission as railroad property; it is otherwise with respect to the office building and land upon which it stands. Only those improvements classified as dock property and its approaches and appurtenances are subject to separate valuation under 76.16 and 76.28 (4). None of the licensed land is subject to such separate valuation under said sections. 27 Atty. Gen. 586.

76.03 History: 1931 c. 483 s. 5; Stats. 1931 s. 76.03; 1933 c. 349 s. 4; 1943 c. 20; 1945 c. 512; 1969 c. 276 s. 590 (1).

The legislative power to fix the situs of railway property has regard to the nature of such property as personalty, and is not limited to the territory in which the visible part of the railroad and its office or offices are located. If the situs is not fixed by statute it will be determined by common law. The tangible and intangible property of a public service corporation, real and movable, must be valued for taxation as an inseparable unit, and with reference to its use, situation and all that concerns the same. Good will and corporate rights must be given no values except such as inhere in the physical property. This inseparable unit must be valued in its entirety and as a whole, not by aggregating any supposed separate values of its various elements. Chicago & Northwestern R. Co. v. State, 128 W 553, 108 NW 557.

76.04 History: 1931 c. 483 s. 5; Stats. 1931 s. 76.04; 1943 c. 20; 1951 c. 239; 1953 c. 61; 1969 c. 55; 1969 c. 276 s. 590 (1).

76.05 History: 1903 c. 315 s. 6; 1905 c. 216 s. 12; 1905 c. 493 s. 7; 1905 c. 494 s. 7; Supl. 1906 s. 1215—6, 1218—7, 1222—7; 1913 c. 768 s. 8; Stats. 1913 s. 51.07; 1915 c. 526 s. 3; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—7; 1921 c. 59 s. 8; Stats. 1921 s. 76.07; 1931 c. 483 s. 3; Stats. 1931 s. 76.05; 1933 c. 349 s. 4; 1943 c. 20.

76.06 History: 1860 c. 174 s. 1, 2; 1862 c. 22; 1873 c. 228; 1874 c. 315; 1876 c. 97, 113; R. S. 1878 s. 1213, 1218; 1897 c. 182; Stats. 1898 s. 1213, 1218; 1903 c. 315 s. 3, 4; 1905 c. 493 s. 3, 4; 1905 c. 494 s. 3, 4; Supl. 1906 s. 1213, 1215—4, 1218, 1218—4, 1222—3, 1222—4; 1913 c. 768 s. 3; Stats. 1913 s. 51.03; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—3; 1921 c. 59 s. 4; Stats. 1921 s. 76.03; 1931 c. 483 s. 3; Stats. 1931 s. 76.06; 1939 c. 412; 1943 c. 20; 1945 c. 512; 1947 c. 9 s. 31; 1963 c. 343; 1969 c. 276 s. 590 (1).

76.07 History: 1903 c. 315 s. 7; 1905 c. 493

s. 8; 1905 c. 494 s. 8; Supl. 1906 s. 1215—7, 1218—8, 1222—8; 1913 c. 768 s. 9; Stats. 1913 s. 51.08; 1915 c. 407; 1915 c. 526 s. 3; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—8; 1921 c. 59 s. 9; Stats. 1921 s. 76.08; 1923 c. 207 s. 3; 1931 c. 483 s. 2, 3; Stats. 1931 s. 76.07; 1933 c. 349 s. 4; 1939 c. 412; 1941 c. 8; 1943 c. 20; 1945 c. 512; 1947 c. 488; 1951 c. 239; 1967 c. 317; 1969 c. 55.

On assessment of public utility properties under secs. 1037a-1037c, Stats. 1911, see Burkhardt M. & E. P. Co. v. Hudson, 162 W 361, 156 NW 1011, and 165 W 412, 162 NW 429.

The rules for an ad valorem assessment of a public utility are stated in Wisconsin G. & E. Co. v. Tax Comm. 221 W 487, 266 NW 186, 268 NW 121.

76.08 History: 1931 c. 483 s. 5; Stats. 1931 s. 76.08; 1933 c. 349 s. 4; 1939 c. 412; 1941 c. 182; 1943 c. 20; 1945 c. 512; 1949 c. 77; 1951 c. 239; 1967 c. 109; 1969 c. 276 s. 590 (1), (2).

76.09 History: 1905 c. 28; Supl. 1906 s. 1087—44; 1913 c. 769 s. 25; 1921 c. 11 s. 13; Stats. 1921 s. 73.05 (1); 1929 c. 263 s. 1, 1a; 1929 c. 530 s. 8; Stats. 1929 s. 76.47; 1943 c. 20; 1963 c. 255; Stats. 1963 s. 76.09.

Under the public policy of this state as declared in the statutes, property, including that of public utilities, omitted from assessment or taxation must be reassessed within the next 3 years, and cannot be reassessed thereafter. Village of Niagara v. Town of Niagara, 209 W 529, 245 NW 699.

76.10 History: 1903 c. 315 s. 9; 1905 c. 493 s. 10; 1905 c. 494 s. 10; Spl. S. 1905 c. 8 s. 1; Supl. 1906 s. 1215—9, 1215—10a, 1218—10, 1222—10; 1911 c. 206; 1913 c. 768 s. 12, 14; Stats. 1913 s. 51.09, 51.11; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—9, 1211—11; 1921 c. 59 s. 10, 12; Stats. 1921 s. 76.09, 76.11; 1923 c. 207 s. 4; 1931 c. 427 s. 3; 1931 c. 483 s. 3, 5; Stats. 1931 s. 76.10; 1933 c. 349 s. 2, 4; 1943 c. 20; 1949 c. 77; 1967 c. 109.

76.11 History: 1903 c. 315 s. 11, 13; 1905 c. 493 s. 12, 13; 1905 c. 494 s. 12, 13; Supl. 1906 s. 1215—11, 1215—13, 1218—12, 1218—13, 1222—12, 1222—13; 1913 c. 768 s. 15, 16; Stats. 1913 s. 51.12, 51.13; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—12, 1211—13; 1921 c. 59 s. 13, 14; Stats. 1921 s. 76.12, 76.13; 1931 c. 427 s. 3; 1931 c. 483 s. 3; Stats. 1931 s. 76.11; 1943 c. 20.

76.12 History: 1903 c. 315 s. 14; 1905 c. 493 s. 14; 1905 c. 494 s. 14; Supl. 1906 s. 1215—14, 1218—14, 1222—14; 1913 c. 768 s. 17; Stats. 1913 s. 51.14; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—14; 1921 c. 59 s. 15; Stats. 1921 s. 76.14; 1931 c. 427 s. 3; 1931 c. 483 s. 3; Stats. 1931 s. 76.12; 1943 c. 20.

76.13 History: 1903 c. 315 s. 15; 1905 c. 216 s. 1; 1905 c. 493 s. 15; 1905 c. 494 s. 15; Supl. 1906 s. 1215—15, 1218—15, 1222—15; 1913 c. 768 s. 18; Stats. 1913 s. 51.15; 1915 c. 445; 1915 c. 526 s. 3; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—15; 1921 c. 59 s. 16; Stats. 1921 s. 76.15; 1929 c. 529 s. 11; 1931 c. 483 s. 3; Stats. 1931 s. 76.13; 1933 c. 349 s. 4; 1939 c. 412; 1939 c. 517 s. 8; 1941 c. 182; 1943 c. 20; 1945 c. 512; 1947 c. 488; 1949 c. 77; 1951 c. 239; 1959 c. 659 s. 80; 1967 c. 109; 1969 c. 276 ss. 582 (17), 590 (1), (2).

76.14 History: 1854 c. 54 s. 4; R. S. 1858 c. 18 s. 184; 1860 c. 174 s. 3; 1876 c. 113 s. 2; R. S. 1878 s. 1214; Stats. 1898 s. 1214; 1903 c. 315 s. 21; 1905 c. 216 s. 6, 13; 1905 c. 493 s. 22; 1905 c. 494 s. 22; Spl. S. 1905 c. 3 s. 1; Supl. 1906 s. 1214, 1215—28, 1218—22, 1222—22; 1913 c. 768 s. 4; Stats. 1913 s. 51.04; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—4; 1921 c. 59 s. 5; Stats. 1921 s. 76.04; 1931 c. 483 s. 2; Stats. 1931 s. 76.14.

A telegraph company is not in default for taxes so long as the tax roll has not been delivered to the state treasurer. 10 Atty. Gen. 1001.

76.15 History: 1903 c. 315 s. 16; 1905 c. 216 s. 2; 1905 c. 493 s. 16; 1905 c. 494 s. 16; Supl. 1906 s. 1215—16, 1218—16, 1222—16; 1913 c. 768 s. 19; Stats. 1913 s. 51.16; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—16; 1921 c. 59 s. 17; Stats. 1921 s. 76.16; 1931 c. 483 s. 2, 3; Stats. 1931 s. 76.15; 1933 c. 349 s. 4; 1943 c. 20.

76.16 History: 1915 c. 407; Stats. 1915 s. 51.08 (4); 1919 c. 353 s. 5; Stats. 1919 s. 1211—8 (4); 1921 c. 59 s. 9; Stats. 1921 s. 76.08 (4); 1931 c. 483 s. 2; Stats. 1931 s. 76.16; 1943 c. 20; 1949 c. 407; 1955 c. 348.

The separate valuation of docks, piers, wharves and grain elevators of public utilities should not be included in the county board's equalization. State ex rel. Ashland v. Ashland County, 174 W 49, 182 NW 342.

A warehouse company which was located on railroad property, and which had been erroneously assessed for taxes under 76.16 and had paid the amount into the state treasury, was not relieved from the foreclosure of tax certificates for taxes locally and rightfully assessed and levied by the city of Milwaukee; and the warehouse company was not entitled to any credit against the taxes locally assessed in the absence of any showing that some portion of the taxes erroneously paid into the state treasury had been remitted to the city. Milwaukee v. Chicago, M., St. P. & P. R. Co. 223 W 73, 269 NW 688.

76.17 History: 1903 c. 315 s. 17; Spl. S. 1905 c. 6 s. 1; 1905 c. 493 s. 17; 1905 c. 494 s. 17; Supl. 1906 s. 1215—17, 1218—17, 1222—17; 1913 c. 768 s. 20; Stats. 1913 s. 51.17; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—17; 1921 c. 59 s. 18; Stats. 1921 s. 76.17; 1943 c. 20.

76.18 History: 1903 c. 315 s. 18; 1905 c. 493 s. 18; 1905 c. 494 s. 18; Supl. 1906 s. 1215—18, 1218—18, 1222—18; 1913 c. 768 s. 21; Stats. 1913 s. 51.18; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—18; 1921 c. 59 s. 19; Stats. 1921 s. 76.18; 1943 c. 20; 1949 c. 77; 1967 c. 109.

Under ch. 76, an ad valorem assessment made pursuant thereto by the tax commission is the result of the commission's judgment as to the market value of the property assessed; and the commission's judgment in the matter is presumptively correct and not subject to being overthrown on review except by evidence clearly showing that it was exercised on some gravely erroneous basis. A review of an ad valorem assessment made by the commission on utility property must consist of a rationalization of the assessment by application

to the facts of approved methods of valuing such properties. If, by the application of such methods to the facts, the assessment is shown to be grossly excessive because substantially out of line with all of them, after allowing a reasonable margin for the exercise of judgment, the tax collected on the excess must be held to have been inequitably and unjustly levied. Wisconsin G. & E. Co. v. Tax Comm. 221 W 487, 266 NW 186, 268 NW 121.

76.22 History: 1905 c. 216 s. 7; 1905 c. 493 s. 23; 1905 c. 495 s. 23; Supl. 1906 s. 1215—21a, 1218—23, 1222—23; 1913 c. 768 s. 25; Stats. 1913 s. 51.22; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—22; 1921 c. 59 s. 23; Stats. 1921 s. 76.22; 1965 c. 252; 1967 c. 109.

76.23 History: 1903 c. 315 s. 25; 1905 c. 493 s. 25; 1905 c. 494 s. 25; Supl. 1906 s. 1215—25, 1218—25, 1222—25; 1913 c. 768 s. 28; Stats. 1913 s. 51.24; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—24; 1921 c. 59 s. 25; Stats. 1921 s. 76.23.

76.24 History: 1903 c. 315 s. 26; 1905 c. 493 s. 26; 1905 c. 494 s. 26; Supl. 1906 s. 1215—26, 1218—26, 1222—26; 1913 c. 768 s. 29; Stats. 1913 s. 51.25; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—25; 1921 c. 59 s. 26; Stats. 1921 s. 76.24.

76.25 History: 1903 c. 315 s. 17; 1905 c. 493 s. 27; 1905 c. 494 s. 27; Supl. 1906 s. 1215—27, 1218—27, 1222—27; 1913 c. 768 s. 30; Stats. 1913 s. 51.26; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—26; 1921 c. 59 s. 27; Stats. 1921 s. 76.25; 1943 c. 20.

76.26 History: 1905 c. 216 s. 14; 1905 c. 493 s. 28; 1905 c. 494 s. 28; Supl. 1906 s. 1215—29, 1218—28, 1222—28; 1913 c. 592; 1913 c. 768 s. 31; Stats. 1913 s. 51.27; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—27; 1921 c. 59 s. 28; Stats. 1921 s. 76.26; 1947 c. 9 s. 31; 1959 c. 659 s. 79.

76.27 History: 1905 c. 493 s. 29; Supl. 1906 s. 1222—29; 1911 c. 612; 1913 c. 768 s. 32; Stats. 1913 s. 51.28; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—28; 1921 c. 59 s. 29; Stats. 1921 s. 76.27; 1931 c. 483 s. 4; 1933 c. 349 s. 4; 1945 c. 512; 1951 c. 239; 1959 c. 228 s. 66.

76.28 History: 1905 c. 493 s. 30; Supl. 1906 s. 1222—30; 1911 c. 612; 1911 c. 664 s. 144; 1913 c. 768 s. 33; Stats. 1913 s. 51.29; 1915 c. 407 s. 2; 1915 c. 526 s. 3; 1915 c. 634 s. 14; 1917 c. 667; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—29; 1921 c. 59 s. 30; Stats. 1921 s. 76.28; 1925 c. 423, 441; 1929 c. 529 s. 11; 1931 c. 483 s. 1, 2, 4, 5; 1933 c. 415; 1935 c. 317; 1939 c. 516; 1945 c. 481, 512; 1947 c. 237, 488, 601; 1949 c. 407; 1951 c. 481; 1953 c. 542, 632; 1955 c. 348; 1959 c. 260; 1961 c. 191 ss. 71, 109; 1963 c. 6, 224; 1965 c. 433 s. 121; 1967 c. 17; 1967 c. 291 s. 14; 1969 c. 500 s. 30 (1) (b).

Legislative Council Notes, 1967: In (1), removes "street railway" since there are none in Wisconsin, and adds "oil pipeline" which is presently included for taxation and distribution under sub. (8). The words "book value of the" are added. Since book value is the only available measure of property, this represents present usage. By deleting the words "electrical energy delivered" and adding "sales" the law is broadened to include all utilities.

Present sub. (2) is repealed as obsolete since there are no towns in counties of 250,000 or more (Milwaukee county). New sub. (2) adopts the distribution of present sub. (7). As written, sub. (7) is no longer possible to administer. It has been rewritten (in new sub. (2)) to conform to present practice since all the gas transmission companies have interconnected their pipelines so that the gas sold by each can no longer be traced to any specific municipality.

Present sub. (3) is repealed since it is "incomprehensible" and because it is difficult and expensive to administer. The only substantial change made is in the basis of distribution to school districts in new sub. (3). Present law requires that if there is more than one school district in a municipality, the distribution is made according to the *value of the utility property* in the school district in relationship to the value of the utility property in the entire municipality. New sub. (3) requires that the tax be distributed according to the relationship which the assessed *value of the taxable property* in the school district bears to the taxable property in the entire municipality. A new provision requires that the distribution to the school district be made on or before January 15th. The present classification based upon population of counties and whether a joint school district includes a city are retained. The present distribution in Milwaukee is retained under sub. (5).

Sub. (3a) is repealed as obsolete because the single school district once eligible has been consolidated.

Sub. (7) is repealed, but is substantially reproduced in new sub. (2).

Sub. (8) is repealed, but "oil pipelines" are included in sub. (1). The terminal facilities applying to oil pipeline companies have become obsolete and no longer are being used to transfer oil from pipeline to vessel. [Bill 3-A]

The city in which the docks, piers, wharves and grain elevators of a public utility are situated is entitled to the full benefit of the taxes derived from such property which are based upon the separate valuation thereof by the state tax commission, without any direct or indirect impairment. State ex rel. Ashland v. Ashland County, 174 W 49, 182 NW 342.

Under 76.28 (1a), Stats. 1925, the amount of taxes received by the town should be apportioned and paid to the school district treasurers, although the school districts are not entirely within the town. State ex rel. Joint School Dist. v. Becker, 194 W 464, 215 NW 902.

In a submission on an agreed statement of facts arising out of a controversy between a city operating a joint school district (which lay in different counties having more or less population than 50,000) against certain towns, each of which included a part of the territory of the district, the city was entitled to an apportionment from the towns of the utility tax receipts received by them for the period during which taxpaying utilities operated and had property in the towns, upon the basis set forth in 76.28, Stats. 1961. Marshfield v. Cameron, 24 W (2d) 56, 127 NW (2d) 809.

All school districts (common school, free high school, etc.) within the territorial limits of which is located a public utility are entitled to distribution of public utility taxes provided for by 76.28, Stats. 1925. 15 Atty. Gen. 166.

The distribution of proceeds of the public utility tax to school districts is not related to or controlled by distribution to such districts of public school fund income. 19 Atty. Gen. 397.

Electors of a school district may not authorize annual compromise of the school district's equitable proportion of utility taxes under 76.28. Any agreement based thereon is void and the school district treasurer has the duty, under 40.10 (2) (a), Stats. 1937, to collect the difference between the amounts due the school district and those which the district received under such agreement and with respect to which a cause of action accrued within 6 years. 27 Atty. Gen. 537.

The amendment, by ch. 237, Laws 1947, does not limit the effect of the provision added by ch. 516, Laws 1939; but the later amendment applies only to cases where some of the municipalities in a joint school district would otherwise be required to make apportionment and some would not. 36 Atty. Gen. 566.

A school district may bring proceedings to enforce payment by a town, city or village of unpaid utility taxes to which it is entitled under 76.28 (3), Stats. 1957, in prior years. The six-year statute of limitations applies thereto. 48 Atty. Gen. 136.

76.29 History: 1905 c. 493 s. 31; Supl. 1906 s. 1222—31; 1913 c. 768 s. 34; Stats. 1913 s. 51.30; 1915 c. 407 s. 2; 1915 c. 526 s. 3; 1915 c. 634 s. 15; 1919 c. 110 s. 2; 1919 c. 353 s. 5; 1919 c. 679 s. 58; Stats. 1919 s. 1211—30; 1921 c. 59 s. 31, 32; Stats. 1921 s. 76.29; 1929 c. 529 s. 11; 1931 c. 483 s. 4; 1933 c. 409; 1947 c. 472, 488; 1955 c. 348; 1959 c. 659 s. 79; 1969 c. 55.

The state treasurer may not advance money to a municipality on account of terminal taxes in anticipation of payment thereof to the state treasurer. State funds, other than state trust funds, may not be loaned to cities or invested in city securities. 9 Atty. Gen. 403.

76.30 History: 1870 c. 56 s. 33; 1873 c. 299; 1876 c. 300; R. S. 1878 s. 1219; 1879 c. 138; Ann. Stats. 1889 s. 1219; Stats. 1898 s. 1219; 1905 c. 325 s. 1; Supl. 1906 s. 1219; 1909 c. 290; 1913 c. 638; 1913 c. 768 s. 37; 1913 c. 773 s. 78; Stats. 1913 s. 51.31; 1915 c. 132 s. 2; 1915 c. 603; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—31; 1921 c. 59 s. 33; Stats. 1921 s. 76.30; 1929 c. 412; 1929 c. 530 s. 9; 1933 c. 34; 1947 c. 276; 1957 c. 330; 1961 c. 463, 562, 624; 1969 c. 154; 1969 c. 337 s. 88.

On equality, exercises of police power, and exercises of taxing power see notes to sec. 1, art. I; and on the rule of taxation (privilege taxes) see notes to sec. 1, art. VIII.

Ch. 56, Laws 1870, as amended by ch. 299, Laws 1873, in effect repealed all special charter provisions on the same subject. Fire Dept. of Oshkosh v. Tuttle, 48 W 91, 4 NW 134.

The percentage of premiums required to be paid by sec. 1219, Stats. 1898, to the state cannot be deducted from or considered as part of the license fee required by sec. 1926 to be paid to a municipality. 1904 Atty. Gen. 146.

License fees upon insurance companies are levied on business transacted and not on the company. Companies transacting more than one class of business must pay the license fee for each class. 38 Atty. Gen. 474.

76.305 History: 1961 c. 562; Stats. 1961 s. 76.305; 1969 c. 337.

76.31 History: 1913 c. 638; 1913 c. 768 s. 37; 1913 c. 773 s. 78; Stats. 1913 s. 51.31 (3); 1915 c. 132 s. 2; Stats. 1915 s. 51.311; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—32; 1921 c. 59 s. 34; Stats. 1921 s. 76.31; 1927 c. 331.

76.32 History: 1909 c. 460; Stats. 1911 s. 1219e; 1913 c. 768 s. 37b; 1913 c. 773 s. 78; Stats. 1913 s. 51.313; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—33; 1921 c. 59 s. 35; Stats. 1921 s. 76.32; 1937 c. 177; 1969 c. 154.

An insurance company which insures only against injuries to plate glass from causes other than fire is within the meaning of ch. 105, Laws 1880. State ex rel. Metropolitan P. G. Ins. Co. v. Fricke, 102 W 117, 77 NW 734.

See note to 76.30, citing 38 Atty. Gen. 474.

76.33 History: 1969 c. 154; Stats. 1969 s. 76.33.

76.34 History: 1870 c. 59 s. 57; 1878 c. 256; R. S. 1878 s. 1220; Stats. 1898 s. 1220; 1899 c. 326 s. 1, 2; 1901 c. 21 s. 1 to 6; 1905 c. 455 s. 1; Supl. 1906 s. 1220 to 1220c; 1907 c. 656; 1913 c. 768 s. 37d, 38 to 40; Stats. 1913 s. 51.32; 1915 c. 132 s. 3; 1915 c. 434; 1915 c. 604 s. 81; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—35; 1921 c. 59 s. 37; Stats. 1921 s. 76.34; 1927 c. 411; 1931 c. 12; 1933 c. 34; 1941 c. 274; 1953 c. 215; 1961 c. 562; 1969 c. 109, 154; 1969 c. 337 s. 88.

On equality, exercises of police power, and exercises of taxing power see notes to sec. 1, art. I; and on the rule of taxation (privilege taxes) see notes to sec. 1, art. VIII.

The license fee required by ch. 59, Laws 1870, is levied upon the business transacted and not upon the company transacting the business, so that ch. 105, Laws 1880, was an amendment to this section and added to the fees previously required. Travelers' Ins. Co. v. Fricke, 94 W 258, 68 NW 958. See also Travelers' Ins. Co. v. Fricke, 99 W 367, 74 NW 372, 78 NW 407.

A foreign company furnishing life or casualty insurance in consideration, in whole or part, of contributions of its members on the basis of equality, sufficient to meet its expenses and matured memberships, is a benefit or beneficiary corporation within the meaning of ch. 418, Laws 1891, exempting such companies from the insurance laws. State v. National A. Society, 103 W 208, 79 NW 220.

The license fees imposed by sec. 1220, Stats. 1911, are privilege or occupational taxes. Assuming that the foreign investment business done by a domestic life insurance company constitutes interstate commerce, no burden is placed upon such commerce by requiring the company to pay as a license fee a certain percentage of its gross income, excepting rentals of real estate and premiums derived from foreign business. Such license fees are not levied upon the foreign investment business nor on the receipts therefrom but on the business

of life insurance, and said receipts are simply used in measuring in part the amount of the tax. The gross income includes receipts of interest on premium notes and on policy loans. A tax on life insurance business is not a tax on interstate commerce. Northwestern Mut. Life Ins. Co. v. State, 163 W 484, 155 NW 609, 158 NW 328, affirmed Northwestern Mut. Life Ins. Co. v. Wisconsin, 247 US 132.

A foreign fraternal benefit society, exempt while it was such a society, but reorganized as, and licensed in this state as, solely a legal-reserve level-premium life insurance company, must pay the license fee not only on the basis of the premiums received by it on such life policies, but also on the basis of premiums or assessments received by it on the outstanding fraternal certificates carried over by it under the reorganization. Lutheran Mut. Life Ins. Co. v. State, 242 W 598, 9 NW (2d) 82.

A state tax on domestic insurance companies, called an annual license fee, of 3% annually upon the gross income of the corporation, is void pro tanto where the income is in part interest from United States bonds. (Northwestern Mut. Life Ins. Co. v. State, 189 W 114, 207 NW 434, reversed.) Northwestern Mut. Life Ins. Co. v. Wisconsin, 275 US 136.

A foreign mutual benefit society licensed as a legal reserve life insurance company must pay the license fee imposed by 76.34 (2) on renewal premiums collected on old form of fraternal certificates. 20 Atty. Gen. 228.

Dividends received by domestic insurance companies on share certificates issued by federal savings and loan associations are to be included in gross income upon which the license fee imposed by 76.34 (1) is computed. 31 Atty. Gen. 329.

The annual license fee for a domestic insurance company is computed on gross premiums received without deduction for dividends applied to purchase of additional paid-up insurance. 54 Atty. Gen. 201.

76.35 History: 1870 c. 56 s. 29; 1870 c. 59 s. 20; R. S. 1878 s. 1221; Stats. 1898 s. 1221; 1913 c. 768 s. 40a; Stats. 1913 s. 51.33; 1919 c. 110 s. 2; 1919 c. 353 s. 5; 1919 c. 425 s. 1; Stats. 1919 s. 1211—36; 1921 c. 59 s. 38; Stats. 1921 s. 76.35.

Part of the money paid by a New York insurance company as license fees to the state of Wisconsin, and based on rulings of the administrative officials of New York as to the rate to be applied against Wisconsin corporations doing business in New York, cannot be recovered after 6 years from the date of payment, although within said period the courts of New York had held that the rulings required excessive fees to be paid. New York Life Ins. Co. v. State, 192 W 404, 211 NW 288, 212 NW 801.

In computing the license fees payable by a foreign life insurance corporation doing business in Wisconsin, examination fees paid by such corporation to its home state are not deductible where the license tax statutes of its home state would not allow a Wisconsin corporation doing business in that state to deduct fees paid by it to Wisconsin. Kansas City Life Ins. Co. v. State, 265 W 414, 61 NW (2d) 816.

Overpayment by a foreign insurance company to the insurance commissioner in their adjustments under sec. 1221, Stats. 1898, cannot be allowed the next year by his successor as an offset to the license fees required for the coming year. The recovery must be through the courts or the legislature. 1904 Atty. Gen. 162.

The state treasurer should release securities deposited in lieu of a surety bond and held by him in trust for Wisconsin policyholders of a Texas fire insurance company when such deposit was required by, and such release has been approved by, the commissioner of insurance in the administration of 76.35, Stats. 1945. 35 Atty. Gen. 387.

76.36 History: 1915 c. 132; Stats. 1915 s. 51.331; 1917 c. 639; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—37; 1921 c. 59 s. 39; 1921 c. 510; 1921 c. 590 s. 103; Stats. 1921 s. 76.36; 1969 c. 337 s. 88.

76.37 History: R. S. 1878 s. 1222; Stats. 1898 s. 1222; 1913 c. 411; 1913 c. 768 s. 41; Stats. 1913 s. 51.34; 1915 c. 283; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—38; 1921 c. 59 s. 40; Stats. 1921 s. 76.37; 1937 c. 89; 1961 c. 562; 1969 c. 276; 1969 c. 337 ss. 10, 88.

A foreign insurance company which pays an excessive tax may pursue the remedy under ch. 285 or commence the action provided by 76.37. New York Life Ins. Co. v. State, 192 W 404, 211 NW 288, 212 NW 801.

76.38 History: 1883 c. 345; 1885 c. 337; 1887 c. 232; Ann. Stats. 1889 s. 1222a, 1222c; 1891 c. 166; 1897 c. 309; Stats. 1898 s. 1222a; 1905 c. 488 s. 1, 2, 4; Supl. 1906 s. 1222a; 1909 c. 535; 1911 c. 651; 1913 c. 768 s. 41a; Stats. 1913 s. 51.35; 1915 c. 604 s. 4; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—39; 1921 c. 59 s. 41; Stats. 1921 s. 76.38; 1927 c. 306; 1927 c. 541 s. 19; 1931 c. 377; 1933 c. 276; 1949 c. 18 s. 1 (76.385 (4)); 1949 c. 634 s. 13; 1951 c. 721; 1953 c. 277; 1959 c. 659 s. 79; 1969 c. 276 s. 590 (1), (2).

Telephone companies being required by ch. 345, Laws 1883, to pay to the state annually a license fee for carrying on their business, and it being provided that such fee should be in lieu of all taxes authorized by the laws of the state, a city could not, without legislative authority, exact an additional license fee from such a company, for purposes of revenue only. Wisconsin T. Co. v. Oshkosh, 62 W 32, 21 NW 828.

The license fee of a telephone company bears interest at the legal rate when due, if not paid, and the state treasurer should collect it. 3 Atty. Gen. 828.

The license fee paid by a telephone company under 76.38, Stats. 1921, is in lieu of all other taxes, except taxes on real estate not used in carrying on that business. 12 Atty. Gen. 63.

A small local telephone company is not required to pay a gross receipts license fee upon sums collected by it for toll service, kept separate from its other receipts and turned over in toto to the Wisconsin Telephone Company, which pays a fee thereon. 13 Atty. Gen. 266.

Small local telephone companies operating on the so-called "mutual" plan are within the purview of 76.38 and must file reports and pay a gross receipts tax. Several features of statute discussed. 13 Atty. Gen. 267.

A telephone company which does not operate its own central office, but obtains switching service from other companies, is not entitled to deduct the amount paid to other companies for switching service in determining gross receipts on which license fees are paid to the state. 15 Atty. Gen. 139.

A telephone company having exchange contract relation with another telephone company for service in connection with toll and exchange services should report income from each service for the purpose of determining proper license tax fees. It is not double taxation although the same money may constitute part of the income of several or many persons or companies during taxation year. 16 Atty. Gen. 349.

Taxes paid by a telephone company are to be apportioned among municipalities on the basis of gross revenue derived from such municipalities. 20 Atty. Gen. 191.

Under 76.38 the term "gross receipts" is not confined to cash but means total amount of billings for services rendered during the preceding calendar year, even though not actually paid for by the end of the year. 22 Atty. Gen. 90, 450.

The word "income", as used in 76.38 (1) and (5), Stats. 1933, means gross income. 23 Atty. Gen. 188.

The term "gross receipts" used in 76.38, Stats. 1949, includes the total amount of billings for all services rendered during the preceding calendar year, even though not actually paid for by the end of the year, and includes all miscellaneous operating revenues of every kind whatsoever. The commissioner of taxation as successor to the state treasurer has power to enforce compliance by withholding the annual license. 38 Atty. Gen. 528.

76.39 History: 1931 c. 483 s. 5; Stats. 1931 s. 76.39; 1933 c. 349 s. 4; 1943 c. 20; 1963 c. 280; 1965 c. 329; 1967 c. 109; 1969 c. 276 s. 590 (1).

The Railway Express Agency is not a "freight line" company by reason of furnishing cars to a railroad for the latter's use solely in hauling the express company's business, and the gross earnings of the express company from the railroad for such cars are not subject to the 6% gross earnings tax. 20 Atty. Gen. 951.

76.46 History: 1931 c. 483 s. 5; Stats. 1931 s. 76.46; 1933 c. 349 s. 4; 1943 c. 20; 1963 c. 280; 1969 c. 55.

76.48 History: 1939 c. 132; Stats. 1939 s. 76.48; 1941 c. 199; 1943 c. 20; 1947 c. 332; 1949 c. 314; 1951 c. 239; 1951 c. 319 s. 207; 1951 c. 734; 1959 c. 659 s. 79; 1965 c. 433 s. 121; 1967 c. 17, 109; 1969 c. 276 ss. 582 (17), 590 (1).

76.54 History: 1955 c. 240; Stats. 1955 s. 76.54; 1957 c. 260.

Where a city having authority to impose both a tax for revenue and fees for regulation, imposed annual fees which were not shown to bear a relation to or an approximation of expenses suffered and services rendered by the city in maintenance and repair of streets, directly attributable to the operation of trackless trolley service, the charges imposed are deemed to have constituted a tax for revenue, which became invalid on the enactment of ch. 240, Laws 1955. Milwaukee v. Milwaukee & S. T. Corp. 6 W (2d) 299, 94 NW (2d) 584.

See note to sec. 12, art. I, on impairment of contracts, citing Milwaukee v. Milwaukee & S. T. Corp. 6 W (2d) 299, 94 NW (2d) 584.

CHAPTER 77.

Taxation of Forest Crop Land; Selective Sales and Use Tax Law.

77.01 History: 1927 c. 454; Stats. 1927 s. 77.01; 1929 c. 343.

On equality and exercises of taxing power see notes to sec. 1, art. I; on the rule of taxation (property taxes) see notes to sec. 1, art. VIII; and on internal improvements see notes to sec. 10, art. VIII.

77.015 History: 1937 c. 413; Stats. 1937 s. 77.015.

77.02 History: 1927 c. 454; Stats. 1927 s. 77.02; 1929 c. 343; 1933 c. 327 s. 2, 3; 1935 c. 27; 1943 c. 20; 1943 c. 275 s. 33; 1947 c. 109; 1963 c. 228; 1965 c. 252; 1969 c. 276 ss. 588 (1), 590 (1).

Ch. 327, Laws 1933, amending 77.02, relating to the approval of lands as forest crop lands, so as to provide that the action of trustees under a mortgage incumbering land in joining in the petition shall be deemed the action of all holders of the mortgage bonds, has no retroactive effect. Wabeno v. Conservation Comm. 220 W 502, 264 NW 497.

77.03 History: 1927 c. 454; Stats. 1927 s. 77.03; 1929 c. 343; 1955 c. 10; 1969 c. 392 s. 87 (16).

The state is not bound by any contract with a county if the legislature chooses to change the procedure provided. State v. Mutter, 23 W (2d) 407, 127 NW (2d) 15.

Forest crop lands within the provisions of ch. 77, Stats. 1927, are exempt from taxes under an irrepealable levy made by a school district or other municipality at the time of obtaining a loan from state trust funds under ch. 25, or incurring indebtedness under ch. 67, and from other general taxes. 17 Atty. Gen. 615.

A private logging railroad located on forest crop lands is not subject to assessment for taxation. 21 Atty. Gen. 660.

Provisions of 7703, Stats. 1935, whereby the owner of forest crop lands consents that the public may hunt and fish thereon, subject to regulations by the conservation commission, apply to county forest crop lands included in a county forest reserve. 25 Atty. Gen. 655.

When a contract between a county and the state for entry of lands under the forest crop law is not renewed at the termination of the 50-year period, the county is liable to the state for 10% of the appraised value of the stumpage. 46 Atty. Gen. 16.

77.04 History: 1927 c. 454; Stats. 1927 s. 77.04; 1929 c. 343; 1931 c. 39; 1933 c. 327 s. 2; 1935 c. 83; 1937 c. 282; 1939 c. 329; 1943 c. 20; 1947 c. 109; 1955 c. 174; 1961 c. 295; 1963 c. 345; 1969 c. 276 ss. 588 (1), 590 (1).

Forest crop lands are exempt from general taxation, but are subject to public assessments for special improvements such as taxes of a drainage district, for weed cutting, etc. A town treasurer is not obligated to notify the owner of the fact that a tax is due, giving the