

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

time when it should be paid. 18 Atty. Gen. 108.

Amounts received by a town pursuant to ch. 29, Laws 1937, were "on account of forest crop lands" and 20% thereof is payable to the county under 77.04 (3). 31 Atty. Gen. 19.

**77.05 History:** 1927 c. 454; Stats. 1927 s. 77.05; 1929 c. 343; 1931 c. 39; 1933 c. 327 s. 2; 1935 c. 83, 109, 477; 1937 c. 282; 1953 c. 319; 1961 c. 349 s. 7; 1963 c. 345; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 s. 588 (1).

Acreage canceled from entry of forest crop lands in March should not be included in the following apportionment and payment made to towns under 77.05, Stats. 1941. Cancellation of forest crop land entries completed prior to April 20 in any year should exclude such acreage from the next payment of state contributions. 31 Atty. Gen. 228.

**77.06 History:** 1927 c. 454; Stats. 1927 s. 77.06; 1929 c. 343; 1933 c. 327 s. 2; 1935 c. 83, 109; 1935 c. 477 s. 10; 1937 c. 282; 1939 c. 346; 1943 c. 20; 1947 c. 109; 1959 c. 195; 1961 c. 349 s. 7; 1963 c. 345; 1969 c. 276 s. 588 (1).

**77.07 History:** 1927 c. 454; Stats. 1927 s. 77.07; 1929 c. 343; 1933 c. 327 s. 3; 1935 c. 83; 1955 c. 174; 1969 c. 276 s. 588 (1).

**77.08 History:** 1927 c. 454; Stats. 1927 s. 77.08; 1929 c. 343; 1943 c. 20; 1947 c. 109; 1969 c. 276 s. 588 (1).

**77.09 History:** 1927 c. 454; Stats. 1927 s. 77.09; 1929 c. 343; 1969 c. 276 s. 588 (1).

Enforcement of 77.09, Stats. 1933, is upon the conservation commission. Prosecution must be brought through the office of the district attorney of the county where unauthorized cutting of timber was done. The penalty clause does not apply to those who trespass in cutting timber, but only to the owner. 22 Atty. Gen. 515.

**77.10 History:** 1927 c. 454; Stats. 1927 s. 77.10; 1929 c. 343; 1933 c. 327 s. 2, 3; 1933 c. 411; 1933 c. 491 s. 4; 1935 c. 83, 109, 477; 1937 c. 282; 1939 c. 513 s. 26; 1943 c. 20; 1947 c. 109; 1955 c. 10; 1959 c. 195; 1961 c. 349 s. 7; 1963 c. 345; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 ss. 588 (1), 590 (1).

**Editor's Note:** In connection with the amendatory legislation of 1963 see State v. Mutter, 23 W (2d) 407, 127 NW (2d) 15, and 50 Atty. Gen. 157.

Withdrawal of forest crop lands cannot be completed until the taxes mentioned in 77.10 (2), Stats. 1933, have been paid. 23 Atty. Gen. 790.

When lands are withdrawn from operation of the forest crop law pursuant to provisions of 77.10 (2) (a), Stats. 1937, such lands are to be taxed for the years during which they were under the law at the same rate as was applied to other lands in taxing the district for the same years. 26 Atty. Gen. 529.

A county has no power to lease lands registered under the forest crop law. 40 Atty. Gen. 481.

Granting an easement for purposes not inconsistent with the forest crop law does not necessitate a withdrawal of lands covered by the easement from the provisions of the forest crop law. 45 Atty. Gen. 16.

An option and easement agreement for the exploration for iron ores underlying forest crop lands which does not interfere with the surface for forest crop purposes does not require a withdrawal of the lands affected from registration under the forest crop law. 47 Atty. Gen. 11.

**77.11 History:** 1927 c. 454; Stats. 1927 s. 77.11; 1929 c. 343; 1935 c. 83; 1969 c. 276 s. 588 (1).

**77.12 History:** 1927 c. 454; Stats. 1927 s. 77.12; 1929 c. 343.

Delinquent tax lands owned by counties may be entered under the forest crop law. 17 Atty. Gen. 184.

A county has no authority to appropriate funds to towns to make up a deficit resulting from the sale of county forest crop lands. 35 Atty. Gen. 226.

**77.14 History:** 1929 c. 343; Stats. 1929 s. 77.14; 1943 c. 20; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276.

**77.16 History:** 1953 c. 384; Stats. 1953 s. 77.16; 1963 c. 229; 1969 c. 276 s. 588 (1); 1969 c. 392 s. 87 (25); 1969 c. 433.

**77.21 History:** 1969 c. 154; Stats. 1969 s. 77.21.

**77.22 History:** 1969 c. 154; Stats. 1969 s. 77.22.

**77.23 History:** 1969 c. 154; Stats. 1969 s. 77.23.

**77.24 History:** 1969 c. 154; Stats. 1969 s. 77.24.

**77.25 History:** 1969 c. 154; Stats. 1969 s. 77.25.

**77.26 History:** 1969 c. 154; Stats. 1969 s. 77.26.

**77.27 History:** 1969 c. 154; Stats. 1969 s. 77.27.

**77.28 History:** 1969 c. 154; Stats. 1969 s. 77.28.

**77.29 History:** 1969 c. 154; Stats. 1969 s. 77.29.

**77.30 History:** 1969 c. 154; Stats. 1969 s. 77.30.

**77.51 History:** 1961 c. 620; Stats. 1961 s. 77.51; 1963 c. 223, 224, 249, 496; 1969 c. 154, 257; 1969 c. 276 s. 590 (1); 1969 c. 392.

On equality 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 effect of 77.51 (12) (b), Stats. 1965, is to impose the sales tax, when an article of taxable tangible personal property is traded toward the purchase of an article of greater value, only upon the difference between the full purchase price of the new article and the amount allowed for the article traded. If, however, the customer sells the old article to a third party and pays the full purchase price of the new article in cash, the sales tax is imposed upon the full purchase price. 54 Atty. Gen. 176.

**77.52 History:** 1961 c. 620, 652; Stats. 1961 s. 77.52; 1963 c. 19, 141, 209, 223, 224, 250, 254, 352, 432; 1963 c. 459 ss. 27, 28; 1963 c. 477, 494, 556, 558; 1965 c. 147, 626, 634; 1969 c. 154, 286, 392, 454; 1969 c. 500 s. 31.

**Editor's Note:** The following decisions construed provisions of 77.52 in effect prior to the effective date of the amendatory legislation of 1969: Telemark Co. v. Dept. of Taxation, 28 W (2d) 637, 137 NW (2d) 407; and National Amusement Co. v. Dept. of Revenue, 41 W (2d) 261, 163 NW (2d) 625. See also 52 Atty. Gen. 432.

**77.53 History:** 1961 c. 620; 1961 c. 652 s. 14; Stats. 1961 s. 77.53; 1963 c. 19; 1965 c. 299, 634; 1969 c. 154.

**77.54 History:** 1961 c. 620, 652; 1963 c. 123, 224, 245, 447, 513; 1965 c. 147, 382; 1967 c. 49; 1969 c. 154; 1969 c. 158 s. 106; 1969 c. 257, 277, 477.

**77.55 History:** 1961 c. 620; Stats. 1961 s. 77.55; 1969 c. 154.

**77.56 History:** 1961 c. 620; Stats. 1961 s. 77.56; 1969 c. 154.

**77.57 History:** 1961 c. 620; Stats. 1961 s. 77.57; 1969 c. 154.

**77.58 History:** 1961 c. 620; Stats. 1961 s. 77.58; 1963 c. 224, 519, 562; 1967 c. 43; 1969 c. 55, 154.

**77.59 History:** 1961 c. 620; Stats. 1961 s. 77.59; 1965 c. 252; 1969 c. 84, 154.

**77.60 History:** 1961 c. 620; Stats. 1961 s. 77.60; 1963 c. 557; 1969 c. 154.

**77.61 History:** 1961 c. 620, 652; Stats. 1961 s. 77.61; 1963 c. 224, 519; 1969 c. 84, 154; 1969 c. 276 s. 590 (1), (2).

**77.62 History:** 1961 c. 652; Stats. 1961 s. 77.62; 1963 c. 275; 1969 c. 84, 154, 202; 1969 c. 276 s. 590 (1), (2).

**77.621 History:** 1969 c. 154; Stats. 1969 s. 77.621.

**77.625 History:** 1963 c. 73; Stats. 1963 s. 77.625.

**77.63 History:** 1961 c. 620, 652; Stats. 1961 s. 77.63; 1963 c. 173, 566; 1965 c. 433 s. 121; 1967 c. 43; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 590 (1).

**77.64 History:** 1961 c. 620, 652; Stats. 1961 s. 77.64; 1963 c. 12, 83; 1965 c. 163; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 590 (1).

On items constituting "merchants' stock in trade, manufacturers' materials and finished products, and livestock" for purposes of tax credit provisions of 77.64 see 52 Atty. Gen. 387.

**77.67 History:** 1963 c. 83; Stats. 1963 s. 77.67.

**77.68 History:** 1963 c. 83; Stats. 1963 s. 77.68; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 590 (1).

**77.69 History:** 1963 c. 83; Stats. 1963 s. 77.69.

**77.70 History:** 1969 c. 154; Stats. 1969 s. 77.70.

**77.71 History:** 1969 c. 154; Stats. 1969 s. 77.71.

**77.72 History:** 1969 c. 154; Stats. 1969 s. 77.72.

**77.73 History:** 1969 c. 154; Stats. 1969 s. 77.73.

**77.74 History:** 1969 c. 154; Stats. 1969 s. 77.74.

**77.75 History:** 1969 c. 154; Stats. 1969 s. 77.75.

**77.76 History:** 1969 c. 154; Stats. 1969 s. 77.76.

**77.77 History:** 1969 c. 154; Stats. 1969 s. 77.77.

## CHAPTER 78.

### Motor Vehicle Fuel Taxes.

**Legislative Council Note, 1953:** This bill proposes to repeal and recreate Chapter 78 of the Wisconsin statutes, better known as the Motor Fuel Tax Law, and was prepared by a representative committee of the petroleum industry and the department, with the assistance of John E. Conway, revisor of statutes.

The present motor fuel tax law was enacted in 1933. It has been amended from time to time since its enactment, but it has not been kept abreast of the changes in marketing methods of the petroleum industry and the development of motor fuels which have occurred over the past nineteen years.

The department and the industry have avoided, insofar as possible, any controversial matters of policy and other matters which are viewed as legislative prerogatives. The revisions are therefore primarily made from the standpoint of administration.

Under the present law "motor fuel" means and includes Class 1 and Class 2 motor fuels. Class 1 motor fuel includes the gasoline fractions of petroleum products which are subject to tax upon receipt in this state. Class 2 motor fuel includes any other liquid or gas which may be used in motor vehicles and is subject to tax only when used or sold for use in motor vehicles.

Under the proposed law "motor fuel" would mean only the gasoline fractions. Class 2 motor fuel would be known as "special fuel" in keeping with a more or less generally accepted use of the term.

The proposed revision would refer to Chapter 78 as the Motor Vehicle Fuel Tax Law and would divide it into three subchapters. Subchapter I refers to Motor Fuel Tax; Subchapter II refers to Special Fuel Tax; Subchapter III refers to Provisions Common to Motor Fuel Tax and Special Fuel Tax. It is thought that such arrangement would facilitate ready reference and make the chapter more understandable.

The purpose of this bill is substantially twofold.

First is an attempt to clarify language, to re-locate provisions to make the chapter more readable, and to modernize administrative