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CHAPTER 76

TAXATION OF PUBLIC UTILITIES AND INSURERS

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SUBCHAPTER I

PUBLIC UTILITIES

76.01 Railroads and utilities, assessment. The department of revenue shall make an annual assessment of the property of all railroad companies, of all light, heat and power companies, of all telegraph companies, of all conservation and regulation companies, of all sleeping car companies, of all air carriers, 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).

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.

(4) Any person, copartnership, association, company or corporation owning or operating any telegraph or cable line in this state with appliances for the transmission of messages and engaged in the business of furnishing telegraph service for compensation as owner, lessee or otherwise shall be deemed, held and known as a telegraph company.

(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. 76.02 (8) and which is engaged in the business of transporting or trans-

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mitting 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.

(8) Any person, association, company or corporation engaged in this state in any business enumerated in pars. (a) to (e), including corporations described in s. 66.069 (2), and excepting only business enterprises carried on exclusively either for the private use of the person, association, company or corporation engaged therein, 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 such business enterprises shall be deemed a light, heat and power company.

(a) Generating and furnishing gas for lighting or fuel or both;

(b) Supplying water for domestic or public use or for power or manufacturing purposes;

(c) Generating, transforming, transmitting or furnishing electric current for light, heat or power;

(d) Generating and furnishing steam or supplying hot water for heat, power or manufacturing purposes;

(e) The improvement of navigation of public streams or other public waters.

(9) The word "company" without other designation or qualification, shall mean and include any railroad company, any light, heat and power company, any telegraph company, any conservation and regulation company, any express company, and any sleeping car company, as defined in this section, to which the word is applied.

(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 sub. (8) is located entirely within a single town, village or city, it shall be subject to local assessment and taxation. All property not necessarily used in operating the business of any company defined in this section is excepted from taxation under this subchapter and 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).

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,

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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.

(5) Except as provided in s. 66.073 (16) (b), commencing with calendar year 1978 and thereafter, any electric generating or transmission utility plant located in this state which is owned or leased, wholly or in undivided interests, by any person, which is used in or necessary for the generation or transmission of power for use in this or any other state, shall be subject to taxation under ss. 76.01 to 76.26, except such generating or transmission plant or portion thereof as is owned or leased by a cooperative association subject to taxation under s. 76.48 and is used for the furnishing of electric power to members within this state. An electric generating or transmission plant subject to taxation shall be assessed to each owner or lessee, whether or not such owner or lessee is organized in this state, according to the proportionate interest in such property.

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

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, telegraph companies, sleeping car companies and express companies shall be filed on or before April 15 and for light, heat and power companies, conservation and regulation companies, air carriers 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 the amount of $25, and no company shall be allowed in any action or proceeding to 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.

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

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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 June 15 in each year in the case of railroad companies, telegraph companies and sleeping car companies, and on or before August 15 in the case of light, heat and power companies, air carrier 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 telegraph, light, heat and power companies and 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, 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 OF PROPORTION WITHIN STATE. For the purpose of determining the full market value of the property of each company, appearing on the assessment roll, the department may, if deemed necessary, 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 such other evidence or information as may have been taken or obtained bearing upon the full market value of the property of the company assessed. In case of companies which own or operate lines or roads lying partly within and partly without the state, the said department shall only value and assess the property within this state. In determining the value of the portion within the state the department may take into consideration the value of the entire system, the mileage of the whole system and of the part within this state, together with such other information, facts and circumstances as will enable it to make a substantially just and correct determination. When the full market value of the property of a company within this state shall have been ascertained and determined the amount thereof shall be entered upon the assessment roll opposite the name of the company and shall be, and constitute, the assessment of the entire property of such company within this state for the levy of taxes thereon, subject to review and correction, as hereinafter provided. The department shall thereupon give notice by registered mail to each company assessed of the amount of its assessment as entered upon such roll.

(4) ASSESSMENT ON BASIS OF MILEAGE. If the property of a company, which company is not a railroad as defined in s. 76.02 (2), includes freight cars that do not constitute car line equipment as defined in s. 76.39 (1) (c), but which cars operate both within and without this state, the department shall determine the value of and assess such cars within this state on the basis of the ratio of time or mileage of the cars within this state as the same bears respectively to the total time or mileage within and without this state.

History: 1971 c. 23.

Railroad's working capital was properly assessed as operating property. Valuation of railroads discussed. Soo Line R. Co. v. Department of Revenue, 89 W (2d) 331, 278 NW (2d) 487 (Ct. App. 1979).

76.08 Review of assessment. (1) Notice of the assessments determined under s. 76.07 shall be given by certified mail to each company, the property of which has been assessed, and the notice shall be mailed on or before the assessment date specified in s. 76.07 (1). Any company aggrieved by the assessment of its property thus made may have its assessment redetermined by the Dane county circuit court if within 30 days after notice of assessment 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

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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 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.

(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.

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 section 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 between the first Monday in December and the fifteenth day of March in each year, 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

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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)

76.12 Average rate of taxation. From the state assessment of the general property of the state and the aggregate of taxes so determined and entered on the records, the department shall compute and determine the average rate of taxation, state, county and local consolidated, by dividing the aggregate taxes by the state assessment of the general property of the state upon which said taxes were levied. Said rate so arrived at and determined shall be entered upon the records of the department and shall constitute the rate of taxation on the full market value of the property of the companies defined in s. 76.02.

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 rate of taxation determined as aforesaid, and 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 June 15 in each year under s. 76.07 (1) shall be completed on or before June 20, and for all companies required to be assessed on or before August 15 in each year under s. 76.07 (1) shall be completed on or before September 15; 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, light, heat and power, telegraph companies, sleeping car companies, air carrier companies, conservation and regulation 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 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, as follows: In the case of companies assessed on or before June 15, not less than one-half of the amount of the tax on or before July 10 and the remainder on or before October 15 of the same year; and in the case of all other companies on or before December 1 in the year 1971, and thereafter November 10 of each year. The payment dates in this subsection shall be applicable to the calendar year 1975 and prior years. Thereafter, the payment dates provided for in sub. (2a) shall apply. The payment of one-half of the 2nd instalment in the case of a company assessed on or before June 15 and the payment of one-fourth of the tax in the case of any other company may, 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 9% 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) Beginning with the calendar year 1976, 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. Companies assessed under s. 76.07

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(1) in calendar year 1976 on or before June 15, 1976, and thereafter shall adjust the remaining semiannual payment made on November 10 so as to properly reflect and pay the total amount of tax assessed. Companies assessed under s. 76.07 (1) in calendar year 1976 on or before August 15, 1976, and thereafter shall adjust the remaining semiannual payment made on November 10 so as to properly reflect and pay the total amount of tax assessed. The semiannual installments may be reduced by a proportional share of the property tax credit provided by s. 79.10 (1a) (c) and any difference between the credit certified under s. 79.10 (1a) (c) and the total tax credit reductions in prior semiannual payments for the year shall be added to or subtracted from the November 10 payment in each year. If any company fails to make semiannual payments, prior to the assessment date, of at least 50% of either the total tax assessed less tax credit under s. 79.10 (1a) (c) for the previous calendar year or 80% of the tax assessed before applying the tax credit under s. 79.10 (1a) (c) 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 9% per year and at 1.5% per month thereafter until paid. Commencing with calendar year 1978 and thereafter 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 9% 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).

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 section 76.13 shall be adjudged illegal and nonenforcible, 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

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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 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.

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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. 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.

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 July 10.

(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).

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.

SUBCHAPTER II

TELEPHONE COMPANIES; CAR LINE COMPANIES; ELECTRIC COOPERATIVE ASSOCIATIONS

76.38 Telephone license fees. (1) For the purposes of this section the following definitions and provisions shall apply:

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

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

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

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against the members for the operation and maintenance of the business.

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

(2) (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 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 total toll service revenue attributable to this state which shall include all toll service revenue from business originating and terminating within this state and a proportion of toll service revenue from all interstate business passing through, into or out of this state, based upon the mileage within this state to the entire mileage over which such business is done, or based upon such other facts and circumstances which in the judgment of the department will produce a substantially just and correct determination of the amount of such interstate toll service revenue attributable to this state.

(c) For purposes of this section, all other operating revenues attributable to this state which can be definitely assigned to one or more municipalities shall be classified as exchange service revenue, but if such assignment can not reasonably be made, such other operating revenues shall be classified as toll service revenues.

(3) On or before May 1 the department shall compute and assess the license fees imposed by subs. (4), (5) and (6), with respect to gross revenues of the preceding calendar year and on or before May 1 shall notify each telephone company of the amount of the license fee assessed. On or before May 15 of each year, the license fees shall be paid to the department. 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 until paid. The department shall transmit all funds received under this section to the state treasurer within 15 days. Upon payment in full as determined by the May 1 assessment of the license fees prescribed in this section, each telephone company shall receive a receipt from the department which shall constitute a license to carry on its business for the 12-month period commencing with May 15 or May 10 as the case may be except that the receipt received by each telephone company with respect to the May 15, 1976, payment date shall constitute a license to carry on its business for a period commencing May 15, 1976, and ending May 10, 1977. With respect to the license fees assessed May 1, 1977, and each May 1 thereafter the payment dates provided for in sub. (3a) shall apply.

(3a) Beginning with the calendar year 1976, the license fees prescribed by this section shall be paid to the department on an estimated basis. Payment of the first instalment for 50% of the total estimated liability of the May 1, 1977, assessment is due on or before May 10, 1976, and payment of semiannual instalments of the total estimated liability for the year 1977 shall be due on or before May 10, 1976, and November 10, 1976. Thereafter, 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 May 1, 1977, license fee assessment under sub. (3) and each May 1 assessment thereafter each telephone company shall on May 10, 1977, and each May 10 thereafter 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. The semiannual instalments may be reduced by a proportional share of the property tax credits provided by s. 79.10 (1a) (c) and any difference between the credit certified under s. 79.10 (1a) (c) and the sum of the property tax credit reductions reflected in the semiannual instalment payments, made the preceding calendar year, shall be added to or subtracted from the semiannual instalment due May 10. The receipt received by each telephone company with respect to the May 10, 1977, payment date and each May 10 payment date thereafter shall constitute the license provided by sub. (3). If any telephone company fails to make semiannual payments of at least 50% of either the total assessed liability less tax credit under s. 79.10 (1a) (c) for the current calendar year or 80% of the actual assessed liability computed before applying the tax credit under s. 79.10 (1a) (c) for the subsequent calendar year, any amounts not paid when due shall become delinquent and shall be subject to interest under sub. (3). Commencing with calendar year 1979 and thereafter compa-

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

(a) On the total gross revenues from local and rural exchange service, if such gross revenues are less than $10,000, 2.813%.

(b) On the total gross revenues from local and rural exchange service, if such gross revenues equal or exceed $10,000 and are less than $75,000, 3.375%.

(c) On the total gross revenues from local and rural exchange service, if such gross revenues equal or exceed $75,000 and are less than $150,000, 4.5%.

(d) On the total gross revenues from local and rural exchange service, if such gross revenues equal or exceed $150,000 and are less than $500,000, 5.625%.

(e) On the total gross revenues from local and rural exchange service, if such gross revenues equal or exceed $500,000, 6.75%.

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

(a) On the total gross revenues from toll business, if such gross revenues are less than $25,000, 2.813%.

(b) On the total gross revenues from toll business, if such gross revenues equal or exceed $25,000 and are less than $50,000, 3.375%.

(c) On the total gross revenues from toll business, if such gross revenues equal or exceed $50,000 and are less than $75,000, 3.938%.

(d) On the total gross revenues from toll business, if such gross revenues equal or exceed $75,000 and are less than $100,000, 4.5%.

(e) On the total gross revenues from toll business, if such gross revenues equal or exceed $100,000 and are less than $200,000, 5.063%.

(f) On the total gross revenues from toll business, if such gross revenues equal or exceed $200,000 and are less than $300,000, 5.625%.

(g) On the total gross revenues from toll business, if such gross revenues equal or exceed $300,000 and are less than $400,000, 6.188%.

(h) On the total gross revenues from toll business, if such gross revenues equal or exceed $400,000 and are less than $500,000, 6.75%.

(i) On the total gross revenues from toll business, if such gross revenues equal or exceed $500,000 and are less than $600,000, 7.313%.

(j) On the total gross revenues from toll business, if such gross revenues equal or exceed $600,000 and are less than $700,000, 7.875%.

(k) On the total gross revenues from toll business, if such gross revenues equal or exceed $700,000 and are less than $800,000, 8.438%.

(l) On the total gross revenues from toll business, if such gross revenues equal or exceed $800,000, 9%.

(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) All telephone license fees shall be deposited in the general fund for use of the state, except that until June 30, 1977, 77.5% of the license fees on exchange business shall be entered in the municipal and county shared tax account and distributed under subch. I of ch. 79. For purposes of distributions to municipalities and counties in July and November 1976 and July 1977 under subch. I of ch. 79, the allocation under this subsection to the municipal and county shared tax account shall be determined by applying the 77.5% to the amount of fees such companies would have paid to the state if the provision for semiannual payments under sub. (3a) had not been enacted.

(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 operation of the business of such companies in this state, except that the same shall be subject to special assessments for local improvements.

(9) The records, books, accounts and papers of any telephone company shall be subject to inspection and examination by the secretary of revenue or by such person as he 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 esti-

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mated 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) 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 tax assessments and claims for refunds under ch. 71 as far as the same may be applicable, and all additional license fees shall be apportioned in the manner provided in sub. (7). The additional license fees shall become delinquent 30 days after notice provided in this subsection, except that when timely review proceedings are taken from an additional assessment, the fees shall not become delinquent until 30 days following final determination of the review proceedings. All additional license fees shall bear interest at the rate of 9% 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 audited. The amount of the overpayment previously paid into the municipal and county shared revenue account, plus interest on the overpayment, shall, upon refund of the overpayment and interest, be deducted from the amount in the municipal and county shared revenue account. 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 section 76.14 shall apply to nonpayment of license fees, penalties and interest referred to under this section.

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

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).

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:

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

(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.

(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

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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. With respect to remittance due subsequent to March 15, 1976, 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) Beginning with the calendar year 1976, 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 1977 and thereafter shall be due on or before May 10 and November 10 of the year prior to assessment. On May 10, 1977, and on every May 10 thereafter 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 50% of either the actual tax liability for the current calendar year or 80% of the actual 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). Commencing with calendar year 1979 and thereafter 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 taxes in chs. 71 and 73, 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 9% 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 taxes under ch. 71 or enforcing payment of delinquent taxes based on the value of property under this chapter shall be available to collection of taxes on

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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).

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 cooperative associations. (1) Every cooperative association organized under ch. 185 which carries on the business of generating, transmitting or distributing electric energy to its members at wholesale or retail shall pay in lieu of all other general property and income taxes an annual license fee of 2.6% to be computed on that portion of its total gross revenues from the sale of electric energy and from rentals of electric property derived by multiplying total gross revenues by a fraction, the numerator of which is the average book cost of utility plant located in this state, and the denominator of which is the average book cost of utility plant located everywhere. The average book cost shall be determined by averaging the beginning and year end balances at original cost, including construction work in progress. In this subsection "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. Real estate and personal property not used primarily for the purpose of generating, transmitting or distributing electric energy shall be subject to general property taxes.

(2) Every such association shall on or before March 15 in each year make and return to the department of revenue, in such form and upon such blanks as it shall prescribe and furnish, a true statement of the gross receipts from the operation of its business during the preceding calendar year together with such other information as the department may require to enforce this section. The statement shall be verified by the president and treasurer of the association 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 association fails to file the return within the time prescribed by law, 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 the license fee on the return 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.

(3) On or before June 1 in each year, the department of revenue shall compute and assess the license fees provided for in sub. (1) and certify the amounts due to the state treasurer and file a duplicate thereof with the department of administration. The department shall notify each association of the amount of the license fees so assessed. On or before July 10 in each year, the fees shall be paid to the department and, upon collection, shall be forwarded to the state treasurer, except that for the year 1976 and thereafter the department shall compute and assess the fees on or before May 1 and the fees due for the year 1976 shall be paid on or before May 10, 1976. 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. With respect to taxes assessed for the year 1977 and thereafter the payment dates provided for in sub. (3a) shall apply.

(3a) Beginning with the calendar year 1976, license fees due under this section shall be paid to the department on an estimated basis. Payment of the first instalment for 50% of the total estimated liability for the year 1977 shall be due on or before May 10, 1976, and the remaining 50% on November 10, 1976. Thereafter, 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 May 1,

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1977, license fee assessment under sub. (3) and each May 1 assessment thereafter each association shall on May 10, 1977, and each May 10 thereafter pay or be credited an amount which is equal to the difference between the May 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. The semiannual instalments may be reduced by a proportional share of the property tax credits provided by s. 79.10 (1a) (c) and any difference between the credit certified under s. 79.10 (1a) (c) and the sum of the property tax credit reductions reflected in the semiannual instalment payments, made in the preceding calendar year, shall be added to or subtracted from the semiannual instalment due May 10. If any association fails to make semiannual payments at least 50% of either the actual tax assessed less tax credit under s. 79.10 (1a) (c) for the current calendar year or 80% of the actual tax assessed before applying the tax credit under s. 79.10 (1a) (c) for the subsequent calendar year, any amounts not paid when due shall become delinquent and shall be subject to interest under sub. (3). Commencing with calendar year 1979 and thereafter 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. (1) shall be deposited in the general fund for use of the state, except that until June 30, 1977, 100% of the fees shall be entered in the municipal and county shared tax account and distributed under subch. I of ch. 79. For purposes of distributions to municipalities and counties in July and November 1976 and July 1977 under subch. I of ch. 79, the allocation under this subsection to the municipal and county shared tax account shall be in the amount of the license fees such associations would have paid to the state if the provision for semiannual payments under sub. (3a) had not been enacted.

(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. Any refund, and interest on the refund, shall be deducted from the municipal and county shared tax account under ch. 79. Additional assessments shall bear interest at the rate of 9% 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 taxes under chs. 71 and 73, except as such prodedure conflits 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.

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. 71.18 (2) (a).

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 .5% and in respect to fire insurance a tax of 2.375% on the amount of the gross premiums received for direct insurance, less return premiums and cancellations on direct insurance, by the insurer during each calendar year in this state. Direct insurance includes all insurance other than reinsurance. 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 between 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

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may be licensed to transact its business until May 1 in the ensuing year, unless sooner revoked or forfeited according to law.

History: 1971 c. 125; 1979 c. 102 s. 20.

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).

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 direct insurance by the insurer during the preceding year in this state.

History: 1979 c. 102 s. 22.

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% upon the gross premiums during each calendar year 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% upon the gross premiums received during the preceding year 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.

76.64 Quarterly instalments. Payments of quarterly instalments of the total estimated payment for the then current calendar year under ss. 76.60, 76.63 (1) and 76.65 (2) shall be due on or before April 15, June 15, September 15 and December 15. Every company shall make an annual return for the preceding calendar year on or before March 1 setting forth such information as the commissioner of insurance may reasonably require on forms prescribed by the commissioner. On March 1, the company shall pay any additional amount due for the preceding calendar year. Overpayment will be credited on the amount due April 15. If any company fails to make quarterly payments 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, it shall be liable in addition to the amount due for interest in the amount of one percent of the amount due and unpaid for each month or part of a month that the amount due together with any interest remains unpaid.

History: 1979 c. 102 s. 24.

76.65 Life insurers to pay annual license. Every insurer doing a life insurance business within this state, except fraternals 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, income from rents of real estate upon which the insurer has paid the taxes assessed thereon, 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 and valuation fee as set forth in s. 601.31 (1) (v) 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 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 and valuation fee as set forth in s. 601.31 (1) (v) 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.

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(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.

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 Increase of fee of foreign insurer. Whenever the laws of any other state or of any foreign country, or the rules, regulations, requirements or impositions thereof, or of any department or officer thereof require of insurers organized under the laws of this state and doing business in such state or foreign country or of their agents, any deposit of securities for the protection of their policyholders or otherwise, or any payment of taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required by the laws of this state for the same purposes from similar insurers organized under the laws of such other state or foreign country and doing business in this state, or shall impose other obligations, prohibitions or restrictions additional to or in excess of those imposed by the laws of this state upon insurers of such other state or foreign country or their agents, then all such insurers of such other states or foreign country doing business within this state shall make the same deposit with the state treasurer and shall pay the state treasurer the same sum for taxes, fines, penalties, certificates of authority, license fees or otherwise, and the same obligations, prohibitions or restrictions of whatever kind shall be imposed upon them and their agents as a condition to the issuance of a license to them, as is required to be made or paid or is imposed upon insurers of this state or their agents by the laws of such other state or foreign country, or the rules, regulations, requirements or impositions thereof, or of any department or officer thereof.

History: 1979 c. 102 s. 26.

76.67 Nondomestic insurers; reciprocal taxation. When any domestic insurer is licensed to transact insurance in any other state, like insurers from the other state, territory or district shall pay no other or greater taxes, fees or licenses than are or would lawfully be imposed upon and collected from like insurers of this state by such other state, territory or district. The amount of the taxes or fees paid by insurers subject to ss. 76.65, 601.31 and 601.93 shall not be less than the amount required and applied as provided in those sections, and the amount of the taxes paid by insurers under s. 76.60 shall not be less than .375% on the amount of the gross premiums received for direct insurance, less the deductions provided in s. 76.62, by the insurers during the preceding year in this state. This section does not apply to alien insurers, as defined in s. 600.03 (2).

History: 1975 c. 372 s. 41; 1979 c. 34; 1979 c. 102 s. 26; 1979 c. 177.

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.

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

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no such deduction may exceed 25% of the license fee.

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