

CHAPTER 76.

TAXATION OF PUBLIC UTILITIES AND INSURANCE COMPANIES.

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76.01 Railroads and utilities, assessment. The department of taxation shall make an annual assessment of the property of all railroad companies, of all street railway companies, of all light, heat and power companies, of all telegraph companies, of all conservation and regulation companies, of all sleeping car companies, and of all express companies, within this state, for the purpose of levying and collecting taxes thereon, as provided in this chapter. [1931 c. 485 s. 4; 1933 c. 349 s. 4; 1943 c. 20]

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

By-products which are necessarily produced in generation of gas by light, heat and power company are part of "property of the company" subject to unit assessment and taxation and are not subject to local taxation under chapter 70. 21 Atty. Gen. 638.

76.02 Definitions. For the purposes of sections 76.01 to 76.29 the following provisions and definitions are made:

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

(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.

(3) Any corporation organized under the laws of this state for constructing, maintaining and operating a street railway with the power of accepting and operating under street railway franchises granted by municipalities and owning and operating a street railway, or operating as lessee or otherwise a street railway within, through, or between one or more towns, villages or cities of this state, shall be deemed a street railway company.

(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 subsection (2) of this section) 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.

(6) Any person, association, company or corporation (not being a railroad company as defined in subsection (2) of this section), engaged in the business of conveying to, from or in this state, money or property of any kind by express (excepting railroad and steamship companies engaged in ordinary transportation), shall be deemed an express 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 paragraphs (a) to (e) of this subsection, including corporations described in subsection (12) of section 66.06, 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 street railway 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 terms "property of a company," or "property of the company," or "property of any company," or "property of each company" or "property of all companies" shall include all franchises, and all real and personal property of the company or companies used or employed in the operation of its business, except automobiles, motor trucks, motor delivery wagons, passenger automobile busses, motor cycles and similar vehicles for the operation of which a motor vehicle gas tax shall be paid pursuant to the provisions of chapter 78, and shall include all title and interest of the company or companies referred to in such property as owner, lessee or otherwise, and in case any portion of property is jointly used by two or more companies, the unit assessment of the "property of each company" 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) In case the property of any company defined in subsections (3), (7) and (8) of section 76.02 is located entirely within a single town, village or city, it shall be subject to local assessment and taxation. All real estate not necessarily used in operating the business of any company defined in this section is excepted from taxation under this chapter and shall be subject to local assessment and taxation.

(12) The property of the public utilities enumerated in this section and assessed under the provisions of sections 76.01 to 76.29, inclusive, of this chapter shall be known as special property. [1931 c. 483 s. 1, 2, 3, 5; 1933 c. 285; 1933 c. 349 s. 3, 4; 1943 c. 20]

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

That part of chapter 76, relating to taxation of public utilities does not apply to every company engaged in the business of furnishing light, heat or power, but only to public utilities. Whether a corporation is a public utility for taxation purposes depends upon what it does rather than what it has power to do. The test of whether a power company is a public utility does not depend on number of its customers, but on whether its plant was built and operated to furnish power to the public generally. A hydroelectric power company, exclusively owned and operated for the sole benefit of a motor company in another state and furnishing power to it and not to the public generally, and not

engaged in furnishing light, heat or power to any residents of this state or maintaining any facilities for that purpose, is not a public utility, and therefore is subject to local taxation. *Ford Hydro-Electric Co. v. Aurora*, 206 W 489, 240 NW 418.

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

A corporation producing electrical energy a part of which is sold to a city for distribution by the latter to the public, and the remainder of which is absorbed by a parent company, and which producing corporation

does not hold itself out to serve the public and has no schedule of rates to be charged for service to the public, is not a public utility within (8), and therefore is subject to local taxation, notwithstanding its articles of incorporation declare such corporation to be a public utility, and that it has been so treated by the public service commission and the tax commission. *Union Falls Power Co. v. Oconto Falls*, 221 W 457, 265 NW 722.

Tax for support of common schools authorized by 59.075, tax for county superintendent of schools, as well as taxes to be raised by county for settlement of special changes certified by state, are county taxes which are limited to one per centum of valuation of county for preceding year. 19 Atty. Gen. 552.

Waterfront land owned by railway company and improvements placed thereon by

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

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 section 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 section 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 taxation, 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 chapter is fixed at the capitol of the state.

(4) Every person, company or companies, operating or using a railroad or street railway or the property of a light, heat and power company or a line or lines of telegraph property or property of any conservation and regulation company or the property of any express company or any sleeping car company in this state with all appliances and property connected and used therewith in the operation of the railroad, street railway, telegraph, light, heat, and power, conservation and regulation, express or sleeping car business, as the case may be, shall be the representative of every title and interest in the property so operated or used either as owner, lessee or otherwise, and notice to the operating and using company or companies shall be notice to all interests in the property for the purposes of taxation. The assessment and taxation of the property of any company in the name of the operating or using company or companies shall be deemed and held an assessment and taxation of all the title and interest in such property of any kind or nature. Nothing herein contained shall be deemed to authorize the assessment and taxation of the interests of the state or of any county, city, village or town in any property used for highways or elevated roads and leased to or used by another. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1943 c. 20]

76.04 Reports of companies. (1) Every company defined in section 76.02 shall, annually, file a true and accurate statement at such time and in such manner and form and setting forth such facts as the department shall deem necessary to enforce the provisions of sections 76.01 to 76.29, inclusive, of this chapter.

(2) The forms for all reports required by the provisions of sections 76.01 to 76.29 shall be prescribed and furnished by the department of taxation. [1931 c. 483 s. 5; 1943 c. 20]

76.05 Refusal or neglect to report. (1) If any company defined in section 76.02 or its officers or agents shall refuse or neglect to make any reports required by section 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 section 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 section 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 chapter and show the full value of such property to the satisfaction of the department. [1931 c. 483 s. 3; 1933 c. 349 s. 4; 1943 c. 20]

76.06 General powers of investigation. In any matter material to the valuation, assessment or taxation of property under this chapter, the department may, in its discretion, exercise any and all of the powers conferred upon it by section 73.03 and subsection (1) of section 73.04; 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 secretary of state on the certificate of the department, and charged to the proper appropriation for the department of taxation. The records, books, accounts and papers of any person, association or corporation, owning or operating railroad property, street railway property, telegraph property, property of any light, heat and power company, conservation and regulation company, sleeping car company, or express company to be assessed under this chapter, 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. [1931 c. 483 s. 3; 1939 c. 412; 1943 c. 20]

76.07 Assessment. (1) **DUTY OF DEPARTMENT.** The department on or before May 1 in each year in the case of railroad companies, telegraph companies, sleeping car companies and express companies, and on or before August 1 in the case of street railway companies, light, heat and power companies and conservation and regulation 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 street railways, 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 express 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 section 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. [1931 c. 483 s. 2, 3; 1933 c. 349 s. 4; 1939 c. 412; 1941 c. 8; 1943 c. 20]

Note: The rules for an ad valorem assessment of a public utility are stated in *Wison G. & E. Co. v. Tax Commission*, 221 Wis. W 487, 266 NW 186, 268 NW 121.

76.08 Review of assessment. (1) Notice of the assessments determined as provided in section 76.07 shall be given by registered mail to each company the property of which has been assessed, and such notice shall be mailed on or before the assessment date

specified in subsection (1) of section 76.07. Any company aggrieved by the assessment of its property thus made may have a hearing before the board of tax appeals if a petition is filed with the board within 10 days after such assessment date. No answer need be filed by the department, but upon the filing of the petition the board shall forthwith set the matter for hearing. All matters thus brought before the board shall be heard and decided by it within 40 days after the assessment date.

(2) No action to cancel or set aside, to enjoin the collection of, or to recover back any taxes levied or assessed under the provisions of sections 76.01 to 76.29 shall be brought unless the company shall first have been heard by the board of tax appeals under this section.

(3) The petitioner or the department of taxation, if aggrieved by any order or decision of the board upon any matter brought before it under this section, may bring an action in the circuit court for Dane county to redetermine the assessment. If as the result of any such action the tax as found by the board of tax appeals shall be increased such increase shall be collected upon final determination of the action as other taxes levied and assessed under the provisions of sections 76.01 to 76.29 are collected. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1939 c. 412; 1941 c. 182; 1943 c. 20]

76.09 [Repealed by 1933 c. 349 s. 1]

76.10 Review of state assessment. (1) Every company defined in section 76.02 shall, on or before the first day of October 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 section 70.575. On request, in writing, for such hearing, or presentation, the department shall appoint a time therefor within the period aforesaid, the same to be conducted in such manner as the department shall direct. Such hearing shall not impair or affect the right to hearing provided for in section 76.08. The department may, on such application, or on its own motion, correct such 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. [1931 c. 427 s. 3; 1931 c. 483 s. 3, 5; 1933 c. 349 s. 2, 4; 1943 c. 20]

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 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 subsection (1) of this section. Any county, town, city or village officer who shall fail to make the report or reports required by this chapter shall be subject to a penalty of not less than 25 nor more than 150 dollars, 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. [1931 c. 427 s. 3; 1931 c. 483 s. 3; 1943 c. 20]

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 section 76.02. [1931 c. 427 s. 3; 1931 c. 483 s. 3; 1943 c. 20]

76.13 Levy; tax roll; lien. (1) The department shall compute and levy a tax upon the property of each company defined in section 76.02, as assessed in the manner specified in sections 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 roll for railroad, telegraph, express and sleeping car companies shall be completed on or before June 15 of each year, and for street railway companies, light, heat and power companies and conservation and regulation companies on or before September 15 of each year; and the department shall thereupon attach to each such roll a certificate signed by the commissioner of taxation, which shall be as follows:

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

(2) Every tax roll shall thereupon forthwith be delivered to the state treasurer, who shall immediately notify, by registered mail, the several companies taxed therein to pay the tax extended thereon to the state treasurer, as follows: In the case of railroad, telegraph, express and sleeping car companies, one-half of the amount of such tax on or before June 30 and one-half on or before October 15 of the same year; and in the case of all other companies on or before December 1 of the same year. The taxes extended against any company after the same becomes due, with interest, shall be a lien upon all the property of such company prior to all other liens, claims and demands whatsoever, which lien may be enforced in an action in the name of the state in any court of competent jurisdiction against the property of such company within the state as an entirety. [1931 c. 483 s. 3; 1933 c. 349 s. 4; 1939 c. 412; 1939 c. 517 s. 8; 1941 c. 182; 1943 c. 20]

76.14 Remedies for nonpayment of taxes. All taxes levied pursuant to this chapter upon the property of any company defined in section 76.02, which shall not be paid at the time provided by law, shall thereupon become delinquent and bear interest at the rate of fifteen per cent per annum until actually paid. The neglect of any such company to pay the taxes and interest so required of it within sixty days after the entry of final judgment dismissing in whole or in part any action of such company to restrain or set aside a tax, or the neglect of any such company within sixty 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 such 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 such 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 such 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 shall direct. [1931 c. 483 s. 2]

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

(2) The power to reassess the property of any company defined in section 76.02 and the general property of the state, and to redetermine the average rate of taxation, may be exercised as aforesaid and as often as may be necessary until the amount of taxes legally due from any such company for any year under the provisions of this chapter, has been finally and definitely determined. Whenever any sum or part thereof, levied upon any

property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment upon said 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, he shall immediately notify by registered mail each of the several companies taxed therein to pay the amount of the taxes extended thereon within 30 days. [1931 c. 483 s. 2, 3; 1933 c. 349 s. 4; 1943 c. 20]

76.16 Separate valuation of docks, piers, wharves and elevators. After the property of a company shall first have been valued as a whole, if any docks, piers, wharves or grain elevators used in transferring freight or passengers between cars and vessels, shall have been included in such valuation, then for the purpose of accounting to the proper assessment districts, the department shall make a separate valuation of each such dock, pier, wharf and grain elevator, including the approaches and appurtenances thereto. [1931 c. 483 s. 2; 1943 c. 20]

Note: For effect of paying a tax erroneously assessed under 76.16 as a defense to local taxes on the same property, see note to 75.19, citing *Milwaukee v. Chicago, M., St. P. & P. R. Co.*, 223 W 73, 269 NW 688. See note to 76.02, citing 27 Atty. Gen. 586.

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. [1943 c. 20]

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 upon any grounds not affecting the substantial justice of the tax. The provisions in this chapter prescribing a date or period at or within which an act shall be performed or determination shall be made by the department shall be deemed directory only, and no failure to perform any such act or make such determination at or within the time prescribed therefor shall affect the validity of such act or of any determination made by the department, unless it shall appear that substantial injustice has resulted therefrom. [1943 c. 20]

76.19 Actions; preliminary determination of amount due. In any action, suit or proceeding brought by any company defined in section 76.02 in the state court to set aside, restrain or postpone the payment or collection of any tax levied upon the property of such company, no injunction, order or writ to enjoin or restrain the payment or collection of the tax shall issue, or be continued in force, unless said company shall pay to the state treasurer for the use of the state the amount of taxes which the court shall determine primarily to be justly and equitably due from such company. Such primary determination shall be made by the state court in which the action, suit or proceeding is pending, upon motion, summarily and without delay. In case the amount of tax justly and equitably due from such company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court, and for that purpose the secretary of state, upon the filing in his office of a certified copy of such final determination, shall draw a warrant upon the state treasurer for the amount to be so refunded.

76.20 Action against state; limitation. Any company defined in section 76.02 claiming to be aggrieved by the levy of a tax upon its property, and alleging facts showing substantial injustice in the determination of the department, may within 6 months from the payment of the tax, and not thereafter, commence and maintain an action against the state in the circuit court for the county of Dane to recover such part of the tax as shall exceed the amount the company should have paid. The state may be served with a summons in such action by delivering a copy to the attorney-general or leaving it at his office in the capitol with one of his assistants. The attorney-general shall appear and defend the action in behalf of the state. [1933 c. 349 s. 4; 1943 c. 20]

Note: Under chapter 76, an ad valorem assessment made pursuant thereto by the tax commission is the result of the commission's judgment as to the market value of the property assessed; and the commission's judgment in the matter is presumptively correct and not subject to being overthrown on review except by evidence clearly showing that it was exercised on some gravely erroneous basis. A review of an ad valorem assessment made by the commission on utility property must consist of a rationalization of the assessment by application to the facts of approved methods of valuing such properties. If, by the application of such methods to the facts, the assessment is shown to be grossly excessive because substantially out of line with all of them, after allowing a reasonable margin for the exercise of judgment, the tax collected on the excess must be held to have been inequitably and unjustly levied. *Wisconsin G. & E. Co. v. Tax Commission*, 221 W 487, 266 NW 186, 268 NW 121.

76.21 Venue; calling in judge; adjournment. Any action brought by any company defined in section 76.02 to cancel or set aside any tax or enjoin the collection thereof under the provisions of section 76.15 or 76.19 or to recover back any taxes under the provisions of section 76.20 shall be commenced and tried in the circuit court for the county of Dane, and the place of trial thereof shall not be changed except upon consent of parties. If the judge of said court shall be disqualified, or if the statutory affidavit of prejudice be filed, such judge shall call upon some other circuit judge of the state to attend and hold court for the trial of such action in accordance with the provisions of section 261.08, except as hereinafter provided; and it is hereby made the duty of said circuit judge so called upon to attend and conduct the trial of such action. The power to call in another judge and the jurisdiction of such judge to attend and hold court for the trial of any such action shall continue from time to time and from term to term until the action is tried and final judgment entered. Said court, after the trial of any such action is commenced, may in its discretion, for proper cause, adjourn the trial thereof from time to time beyond the date fixed by statute for the terms of such court. [1931 c. 483 s. 4]

76.22 Tax lien; sale. (1) The taxes levied upon and extended against the property of any company defined in section 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. 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 ninety days after the entry of judgment upon publication of the notice of sale in the official state paper for four consecutive weeks prior to such sale. The judgment shall bear interest at the rate of ten per cent per annum 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. If the judge of the court in which such action is commenced shall be disqualified or an affidavit of prejudice is filed, such judge shall call upon some other circuit judge to attend and hold court for the trial of the action according to the mode provided in section 76.21.

76.23 Exemption from other taxation. The taxes imposed by this chapter upon the property of the companies defined in section 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 Payment into general fund. All taxes collected from companies defined in section 76.02 under the provisions of this chapter shall be paid to the state treasurer and become a part of the general fund for the use of the state, except as otherwise specifically provided by law.

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 chapter and in the work of the valuation and taxation of the property of the companies. [1943 c. 20]

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 sections 76.01 to 76.29, inclusive, shall be audited by the secretary of state 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.

76.27 Distribution tax rolls. Within fifteen days after the certification of the railroad tax roll and within thirty days after certification of other tax rolls referred to in section 76.13, distribution tax rolls shall be certified to the state treasurer showing the proper

amount of tax payable to each town, city, village, and county, and the amount to be retained by the state pursuant to section 76.28. [1931 c. 483 s. 4; 1933 c. 349 s. 4]

76.28 Apportionment of tax receipts; terminals. (1) The state shall retain fifteen per cent of the taxes paid into the treasury by any street railway company, light, heat and power company or conservation and regulation company defined by section 76.02, and twenty per cent of such taxes shall be distributed to the counties and sixty-five per cent shall be distributed to the towns, cities and villages, within or through which the business of such company was carried on and operated in proportion, as near as may be, to the property located and business transacted within each such town, city and village; provided, however, that in determining the amount of business transacted, receipts derived from current delivered at wholesale to another utility, not municipally owned, shall not be taken into consideration in determining such proportion. Receipts derived from current delivered at wholesale to a municipally owned utility shall be construed as business transacted within the municipality owning such utility.

(2) The amount of tax received by any town, in any county having a population of two hundred fifty thousand or more, from the state treasurer, on account of any street railway company, light, heat and power company, or conservation company, may be apportioned as follows, if the town board of any such town shall by resolution so determine: Eighty per cent shall be retained by the town treasurer and the remaining twenty per cent shall be immediately apportioned to the various school districts or parts of school districts within said town on the basis of the last school census by the town board.

(3) In all counties having a population of fifty thousand or less, fifty per cent of the amount of taxes received by any town or village from the state treasurer on account of the assessment of any street railway, light, heat, power or conservation company shall be retained by the treasurer thereof for general town or village purposes, and the remaining fifty per cent shall be equitably apportioned by the town board or village trustees to the various school districts or parts of school districts in which the property of such company is located, in proportion to the amount which the property of such company within each such school district bears to the total valuation of the property of such company in the town or village or part thereof; provided, that no such school districts shall in any event receive from this fund an amount, which when added to all other aids received from both county and state, shall exceed the actual cost of operating and maintaining its school. Where any joint school district lies partly in a county having a population of fifty thousand or less and partly in a county having a population of more than fifty thousand such apportionment shall be made to the district by the governing body of every city, village and town in which a portion of such joint school district lies. Any excess above this amount shall be retained by and is allotted to the town or village. Where property of any such company is situated on a highway which divides two districts, the value of such property shall be apportioned equally between such two districts.

(4) All taxes paid by any company defined by section 76.02 derived from or apportionable to docks, piers, wharves or grain elevators and their approaches and appurtenances, on the basis of the separate valuation provided for in section 76.16 shall be distributed to the towns, cities and villages in which they are located.

(5) The city treasurer of each city of the first class annually shall pay into the general city school fund for school operation and maintenance purposes twenty-five per centum of the amount of tax revenues distributed to and received by each such city under the provisions of this section. No such payment shall be required to be made in the year in which this subsection first takes effect. [1931 c. 483 s. 1, 2, 4, 5; 1933 c. 415; 1935 c. 317; 1939 c. 516]

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

This section makes no provision for redistribution to school districts of public utility taxes in counties of more than fifty thousand or less than two hundred and fifty thousand. 20 Atty. Gen. 46.

Electors of school district may not authorize annual compromise of school district's equitable proportion of utility taxes under

76.28. Any agreement based thereon is void and school district treasurer has duty, under 40.10, (2) (a) to collect difference between amounts due school district and those which district received under such agreement and with respect to which cause of action accrued within six years. 27 Atty. Gen. 537.

Common school district composed of fourth class city does not share in redistribution of utility taxes under (3). 27 Atty. Gen. 561.

See note to 76.02, citing 27 Atty. Gen. 586.

76.29 Distribution tax to municipalities. (1) When the taxes due from any street railway company, light, heat and power company or conservation and regulation company defined in section 76.02, or the taxes due from any company on account of any dock, pier, wharf or grain elevator separately valued under section 76.16, shall be paid in whole or in part to the state treasurer, he shall forthwith notify the secretary of state of the name of such company and the amount of the payment, and the secretary of state shall audit the amounts payable to each municipality and the treasurer shall pay the

same. In case only a part of the tax due from any such company is paid, a proportionate part shall be audited and paid to the municipalities. If a tax due from any such company becomes delinquent and is subsequently collected or paid into the state treasury with interest thereon, the interest on the amount to be distributed to municipalities shall also be distributed to the municipalities in the same proportion as herein provided for payment of the tax itself.

(2) If the state is compelled to refund the whole or any part of the tax received from any such company, and a part of such tax has been distributed to municipalities under the provisions of sections 76.28 and 76.29, such municipalities shall repay to the state the proper proportion of such tax so received by them, and the secretary of state 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 said municipalities as other state taxes are levied and collected.

(3) If in any case after the distribution tax rolls referred to in section 76.27 have been certified to the state treasurer, an error is found to have been made in any report, statement or computation, materially affecting the apportionment of the tax, the same may be corrected in any of the three years next following, by making the proper addition to or deduction from the tax payable to any district, as the case may be.

(4) Any street railway company, light, heat and power company or conservation and regulation company defined by section 76.02, shall be entitled in the payment of all taxes on operating property assessed to it under this chapter to pay over to the state treasurer the public orders of any county, town, city or village received by it in the regular course of its business as established by the affidavit of its treasurer or assistant treasurer to an amount equal to that portion of the tax of such company which is distributable to the respective towns, cities, villages and counties, the orders of which are offered in payment of such tax. In the event the state treasurer shall receive from any such company an amount of such orders issued by any such municipality in excess of the amount of the tax distributable to such municipality the company paying the same shall receive back such orders to the amount of such excess and pay to the state treasurer other suitable funds in lieu thereof. [1931 c. 483 s. 4; 1933 c. 409]

76.30 Fire and marine companies; license fees. (1) Every company transacting the business of insurance against fire, marine or sprinkler leakage loss, other than companies excepted under subsection (2) hereof, shall pay to the state on or before the first day of March in each year, a tax of two and three-eighths per centum on the amount of the gross premiums received for direct insurance, less return premiums and cancellations on direct insurance, by such company during the preceding year, in this state. Direct insurance shall include all insurance other than reinsurance. In case any company shall discontinue business in this state and reinsure the whole or a part of its risks without making payment of this tax, the company accepting such reinsurance shall pay the tax; and if several companies shall make such reinsurance the tax shall be apportioned between such companies in proportion to the original premiums upon the business, in this state, so re-insured by each such company. Upon the payment of the tax herein provided, such company may be licensed to transact its business until the first day of May in the ensuing year, unless sooner revoked or forfeited according to law.

(2) Excepting domestic mutual insurance companies included in section 76.34 and companies heretofore organized under sections 201.02 to 201.19, inclusive, no domestic mutual insurance company shall be required to pay any taxes, fees, or charges to the state. [1933 c. 34]

76.31 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 insurance company or other 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 such company or other insurer during the preceding year in this state.

76.32 Casualty companies; license fee. Every corporation transacting the business of casualty or suretyship insurance shall pay to the state on or before the first day of March in each year, two per centum upon the gross premiums received during the preceding year on all policies or contracts which have been written on the lives of residents or property in this state. [1937 c. 177]

76.33 Unlicensed insurance companies; license fees; reports by insured. Any company not authorized to do business in this state, which shall transact an insurance business in this state shall pay to this state a tax computed upon the same basis as prescribed in this chapter for authorized insurance companies doing the same kind of business, and on default of any such company in the payment of such tax before the first day of March

next succeeding, the insured shall pay such tax. Every person paying more than one hundred dollars premiums to any one such company in any year shall report the same in writing by mail to the commissioner of insurance before the first day of March next succeeding, and if such report be not made and such tax remains unpaid for sixty days after the said first day of March, the tax shall be increased by one-tenth for every month during which such tax remains unpaid after the expiration of said sixty days.

76.34 Life insurance companies to pay annual license. Every company, corporation or association transacting the business of life insurance within this state, excepting only such fraternal societies as have lodge organizations and insure the lives of their own members, and no others, shall, on or before the first day of March, in each year, pay into the state treasury as an annual license fee for transacting such business the amounts following:

(1) **DOMESTIC COMPANIES.** If such company, corporation or association is organized under the laws of this state, it shall pay as a license fee for the year 1931 and annually thereafter, three and one-half per centum upon its gross income from all sources for the year ending December thirty-first, next prior to said first day of March, excepting therefrom interest required to provide and maintain reserves according to the laws of this state, income from rents of real estate upon which said company, corporation or association has paid the taxes assessed thereon, and excepting also premiums collected on policies of insurance and contracts for annuities.

(2) **FOREIGN COMPANIES.** If any such company, corporation or association is organized without the state of Wisconsin, it shall pay into the state treasury, as such annual license fee, two per centum 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 therefrom 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 (1) paid in cash or (2) applied in part payment of premiums.

(3) **POWER GRANTED BY LICENSE; LICENSE FEE IN LIEU OF OTHER TAXES.** Such license, when granted, shall authorize the company, corporation or association to whom it is issued to transact business until May 1 of the ensuing year, unless sooner revoked or forfeited. The payment of such license fee shall be in lieu of all taxes for any purpose authorized by the laws of this state, except taxes on such real estate as may be owned by such company, corporation or association and except taxes on personal property of any such company, corporation or association owned by it and used on any farm.

(4) **TAXES DEDUCTED FROM LICENSE FEE.** Any life insurance company, foreign or domestic, may deduct from such license fee the amount of taxes paid on personal property owned by it and used on any farm. [1931 c. 12; 1933 c. 34; 1941 c. 274]

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

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

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

76.35 Increase of fee of foreign company. Whenever the laws of any other state of the United States or of any foreign country, or the rules, regulations, requirements or impositions thereof, or of any department or officer thereof shall require of insurance companies or fraternal benefit societies 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 companies or fraternal societies 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 insurance companies or fraternal benefit societies of such other state or foreign country or their agents, then all such companies or fraternal benefit societies of such other states or foreign country doing business within this state shall make the same deposit with the state treasurer and shall pay him 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 companies or societies 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.

76.36 Foreign insurance companies; reciprocal taxation. When any insurance corporation or other insurer of this state shall be licensed to transact insurance in any other state, territory, or district of the United States, like insurance corporations or insurers from such 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 insurance corporations or insurers of this state by such other state, territory or district; but the amount of such taxes or fees paid by insurance corporations or insurers subject to sections 76.34, 200.13 and 201.59, shall not be less than the amount required and applied as provided in said sections, and the amount of such taxes paid by insurance corporations or insurers under the provisions of subsection (1) of section 76.30 shall not be less than three-eighths of one per centum on the amount of the gross premiums received for direct insurance, less the deductions provided in section 76.31, by such corporations or insurers during the preceding year in this state. This section shall not apply to insurance corporations or other insurers of any foreign country.

76.37 License; issuance; collection of fees. (1) Every license issued pursuant to sections 76.30 to 76.37, inclusive shall certify that payment of the license fee or tax has been made, be attested by the great or lesser seal thereto affixed, and shall be in such form as shall be approved by the attorney-general.

(2) No suit shall be brought to restrain or enjoin the collection of any license fee or tax imposed or provided for by sections 76.30 to 76.37, inclusive. Any company, corporation or association, aggrieved by the payment of any such license fee or tax, may maintain a suit against the state for the recovery thereof in the circuit court for Dane county within six months from the time of the payment thereof. The state may be served with a summons in such suit by delivering a copy to the attorney-general or leaving it at his office in the capitol with one of his assistants.

(3) No action shall be commenced to compel the issuance of the license provided for by subsection (5) of section 206.02 until the fee imposed by sections 76.30 to 76.37, inclusive, shall have been fully paid.

(4) It shall be the duty of the attorney-general to institute suit in the circuit court for Dane county to recover any such license fees or tax not paid within the time prescribed by sections 76.30 to 76.37, inclusive. Nothing in this act shall be construed as amending or modifying in any respect the provisions of chapter 285 of the statutes. [1937 c. 89]

76.38 Telephone fees. (1) Any person, copartnership, association, company or corporation operating any telephone line in this state with appliances for the transmission of messages of speech or sound, and engaged in the business of furnishing telephone service for compensation as owner, lessee or otherwise, shall be deemed and held a telephone company, and such companies, excepting companies having no income during the preceding calendar year, shall on or before the first day of March, in each year make and return to the state treasurer, in such form and upon such blanks as he shall prescribe and furnish, a true statement of the gross receipts from the operation of the business during the preceding calendar year, which statement shall be verified by the president and the treasurer of such company so operating, or two of the principal officers thereof, of the person so operating the telephone business. The statement shall show separately the amounts of gross receipts from the toll line service, which shall include all receipts on toll line business, beginning and ending within the state, and a proportion based upon the mileage within the state to the entire mileage over which such business is done, of receipts on all interstate business passing through, into or out of the state, and from the service of the local and rural exchange property of the company and the town, city, or village in which any portion of such local or rural exchange property is located, and any portion of the gross receipts therefrom are derived, with the true amount of the gross receipts of each such local or rural exchange derived from such exchange business in each town, city or village.

(1a) A statement showing the gross receipts received from the operation of the local and/or rural exchange property shall be filed with the treasurer of each town, city or village in which all or any portion of any local or rural exchange of the company may be located and any portion of the gross receipts therefrom are derived.

(1b) The state treasurer shall on or before the first day of June of each year, notify the treasurer of each taxing district the amount of tax due from each telephone utility operating in said tax district.

(2) For the purpose of assessing taxes under this section of the statutes a telephone exchange shall be defined as follows: That portion of the area served by any person,

copartnership, association, company, or corporation which is included in the exchange rate as fixed by the public service commission.

(3) Every person, copartnership, association, company, or corporation operating one or more telephone exchanges shall pay an annual license fee to be computed upon the total gross receipts from each exchange as follows:

(a) Two and one-half per cent of such total gross receipts from local and rural exchange service, if such gross receipts are less than ten thousand dollars.

(b) Three per cent of such total gross receipts from local and rural exchange service, if such gross receipts equal or exceed ten thousand dollars and are less than seventy-five thousand dollars.

(c) Four per cent of such total gross receipts from local and rural exchange service, if such gross receipts equal or exceed seventy-five thousand dollars and are less than one hundred fifty thousand dollars.

(d) Five per cent of such total gross receipts from local and rural exchange service, if such gross receipts equal or exceed one hundred fifty thousand dollars and are less than five hundred thousand dollars.

(e) Six per cent of such total gross receipts from local and rural exchange service, if such gross receipts equal or exceed five hundred thousand dollars.

(4) Every person, copartnership, association, company, or corporation operating a toll line or toll lines or furnishing toll service shall pay an annual license fee to be computed upon the gross receipts from toll business transacted attributable to Wisconsin, as follows:

(a) Two and one-half per cent of the total gross receipts from toll business, if such gross receipts are less than twenty-five thousand dollars.

(b) Three per cent of the total gross receipts from toll business if such gross receipts equal or exceed twenty-five thousand dollars and are less than fifty thousand dollars.

(c) Three and one-half per cent of the total gross receipts from toll business, if such gross receipts equal or exceed fifty thousand dollars and are less than seventy-five thousand dollars.

(d) Four per cent of the total gross receipts from toll business, if such gross receipts equal or exceed seventy-five thousand dollars and are less than one hundred thousand dollars.

(e) Four and one-half per cent of the total gross receipts from toll business, if such gross receipts equal or exceed one hundred thousand dollars and are less than two hundred thousand dollars.

(f) Five per cent of the total gross receipts from toll business, if such gross receipts equal or exceed two hundred thousand dollars and are less than three hundred thousand dollars.

(g) Five and one-half per cent of the total gross receipts from toll business, if such gross receipts equal or exceed three hundred thousand dollars and are less than four hundred thousand dollars.

(h) Six per cent of the total gross receipts from toll business, if such gross receipts equal or exceed four hundred thousand dollars and are less than five hundred thousand dollars.

(i) Six and one-half per cent of the total gross receipts from toll business, if such gross receipts equal or exceed five hundred thousand dollars and are less than six hundred thousand dollars.

(j) Seven per cent of the total gross receipts from toll business, if such gross receipts equal or exceed six hundred thousand dollars and are less than seven hundred thousand dollars.

(k) Seven and one-half per cent of the total gross receipts from toll business, if such gross receipts equal or exceed seven hundred thousand dollars and are less than eight hundred thousand dollars.

(l) Eight per cent of the total gross receipts from toll business, if such gross receipts equal or exceed eight hundred thousand dollars.

(5) When the annual license fee upon the total gross receipts as computed at the rates specified in this section is less than five cents for each telephone instrument owned and operated, or operated within this state by any person, copartnership, association, company or corporation, a sum equal to five cents for each telephone instrument shall be paid as an annual license fee by such company, except that no license fee shall be paid by any telephone company having no income during the preceding calendar year. Any amount paid under the provisions of this subsection shall be retained in the state treasury.

(6) The license fee upon the toll line business and fifteen per cent of the license fee upon the local and rural exchange business shall be retained by the state. The license fee upon eighty-five per cent of the gross receipts from local and rural exchange business shall be distributed to the towns, villages, and cities in which all or any portion of any

local or rural exchange of the company may be located and from which any portion of the gross receipts therefrom are derived.

(7) The records, books, accounts, and papers of any person, copartnership, association, company or corporation shall be subject to inspection and examination by the state treasurer or by such person as he may designate for that purpose.

(8) Subject to the foregoing provisions, the amount arising from such license fees based upon gross receipts shall be paid by the company as follows, viz.: The license fee upon eighty-five per cent of the gross receipts from the local and rural exchange service or business in each such town, village or city, respectively, shall, on or before the first day of March, in each year, be paid to the respective treasurer of each town, city or village in which any portion of the local or rural exchange property is located, and any portion of the gross receipts therefrom are derived, for the use and benefit of each such town, city or village; the balance of the license fee upon fifteen per cent of such gross receipts from local and rural exchange service shall be paid to the state treasurer and become a part of the general fund for the use of the state. The license fees on all of the gross receipts from the toll line service and the alternative five cents tax for each telephone instrument provided for in subsection (5) shall be paid to the state treasurer and become a part of the general fund for the use of the state. Every such person, copartnership, association, company or corporation, upon filing such verified statement with the state treasurer and the filing of statement as provided in subsection (1a) and upon the payment of the license fees herein prescribed to the state treasurer and to the respective town, city and village treasurers shall apply for and receive from the state treasurer a license to carry on such business for the calendar year commencing on the first day of January preceding and ending on the succeeding thirty-first day of December, unless sooner revoked. [1931 c. 377; 1933 c. 276]

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

Under this section term "gross receipts" is not confined to cash but means total amount of billings for services rendered dur-

ing preceding calendar year, even though not actually paid for by end of year. 22 Atty. Gen. 90, 450.

Word "income," as used in (1) and (5) is construed to mean gross income. 23 Atty. Gen. 188.

76.39 Freight line companies; definitions. (1) The term "department" without other designation means the department of taxation.

(2) Any person, association, company or corporation (not being the owner or lessee of a railroad or street railway company), engaged in the business of furnishing or leasing any railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, which are used in the operation of any railroad or street railway company wholly or partly within this state, or when owning and operating, or operating, any railroad freight, refrigerator or tank car on railway lines in this state for the transportation of his or its goods, wares, merchandise or products, shall be deemed a freight line company.

(3) The term "gross earnings" as used in sections 76.39 to 76.46 shall mean and include all earnings on business received from all sources from the operation of such freight line property, and the term "gross earnings in this state" shall be construed to mean all gross earnings on intrastate business, and a portion of gross earnings on all interstate business passing through or into or out of the state, based in each instance upon the proportion of mileage over which such business is done within this state. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1943 c. 20]

Note: Railway express agency is not "freight line" company by reason of furnishing cars to railroad for latter's use solely in hauling express company's business, and

gross earnings of express company from railroad for such cars are not subject to six per cent gross earnings tax. 20 Atty. Gen. 951.

76.40 Reports. (1) The forms for all reports required by the provisions of sections 76.39 and 76.40 shall be prescribed and furnished by the department of taxation.

(2) Every railroad company and street railway company defined in section 76.02 shall file, semiannually, a true and accurate statement at such time and in such manner and form, and setting forth such facts as said department shall prescribe in order to enforce the provisions of sections 76.39 to 76.46 of this chapter.

(3) In addition to the reports required under subsection (2) of this section, each freight line company defined in section 76.39 shall file supplementary information at such time and in such manner as said department shall prescribe. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1943 c. 20]

76.41 Six per cent of gross earnings in this state to be withheld by railroad company or street railway company. Every railroad company or street railway company operating in this state shall, upon making payment to each freight line company for the use of its cars, withhold six per cent of the amount constituting the gross earnings in this

state of each freight line company for the semiannual period covered by the report specified in section 76.40. [1931 c. 483 s. 5; 1933 c. 349 s. 4]

76.42 Assessment of taxes and situs for taxation. (1) Not less than 15 days nor more than 20 days after the receipt of the reports of the railroad companies and street railway companies specified in section 76.40, it shall be the duty of the department to inspect and verify the same and to assess on the property of each freight line company a tax equivalent to 6 per cent on the gross earnings of that company within this state. Such taxes, when levied, shall be in lieu of all other taxes upon all property necessarily used in the operation of the business of each such company within this state. After the taxes have been levied as herein prescribed, the commission shall thereupon certify the tax roll to the state treasurer and file a duplicate thereof with the secretary of state.

(2) The place of assessment and taxation of the property of all companies defined in section 76.39 is fixed at the capital of the state. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1943 c. 20]

76.43 Hearing and review. (1) Any freight line company against which a tax is assessed under the provisions of section 76.42 may at any time within 15 days after notice has been given to it as provided in section 76.44 file a petition with the board of tax appeals requesting a hearing upon its assessment. No answer need be filed by the department, but upon the filing of the petition the board shall forthwith set the matter for hearing.

(2) The petitioner or the department of taxation, if aggrieved by any order or decision of the board upon any matter brought before it under this section may bring an action in the circuit court for Dane county to redetermine such tax. If as the result of any such action the tax as found by the board shall be increased, such increase shall be collected upon final determination of the action as provided in sections 76.44 and 76.45.

(3) Any company filing a petition with the board of tax appeals under this section shall state in the petition the portion, if any, of the tax which is admitted to be correct and shall pay such admitted portion within the time provided in section 76.44. Proceedings under this section shall not postpone the due date of any tax or relieve the taxpayer from the penalties provided in section 76.45 with respect to any tax ultimately found to be due. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1939 c. 412; 1943 c. 20]

76.44 Collection of taxes. (1) Upon receipt of the tax roll specified in section 76.42, the state treasurer shall thereupon notify, by registered mail, each railroad company and street railway company of the amount of taxes due from each freight line company on account of gross earnings within this state on the lines of such railroad company and street railway company, and direct each such company to pay to the state treasurer the total amount of such taxes. Such taxes shall be due and payable to the state treasurer within fifteen days from the date upon which the state treasurer notified such railroad company and street railway company of the amount of such taxes.

(2) All taxes collected under the provisions of this chapter shall become a part of the general fund for the use of the state. [1931 c. 483 s. 5; 1933 c. 349 s. 4]

76.45 Penalty for nonpayment of tax. If any such railroad company or street railway company shall fail to pay such tax when due, a penalty of ten per cent thereof shall immediately accrue, and thereafter one per cent per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of law for enforcing payment of railroad and street railway taxes as specified in sections 76.01 to 76.29 shall be applicable to the collection of the taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this chapter may appear and defend in any action brought for the collection of such tax, provided that no freight line company shall be allowed in any action or proceeding to question any such assessment unless such company shall have availed itself of the opportunity to be heard in relation to such assessment as provided in section 76.43. [1931 c. 483 s. 5; 1933 c. 349 s. 4]

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

(2) If any railroad company or street railway company defined in section 76.02, or any freight line company defined in section 76.39, shall refuse or neglect to make any reports required under this chapter, or shall refuse or neglect to permit an examination of its books and records, accounts and papers, when requested so to do by the department, or shall refuse or neglect 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 shall have 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. [1931 c. 483 s. 5; 1933 c. 349 s. 4; 1943 c. 20]

76.47 Assessment of omitted property. Any property subject to assessment by the department of taxation omitted from assessment in any of the 3 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 admitted, 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 relating to such assessment shall be had and hearings given as far as practicable in accordance with the provisions of chapter 76 of the statutes. [1943 c. 20]

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

76.48 to 76.52 [Repealed by 1929 c. 448 s. 1]

76.48 License fees, electric co-operative association. (1) Every co-operative association organized under chapter 185 which carries on the business of generating, transmitting, distributing or furnishing 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 3 per cent to be computed upon its total gross revenues from the sale of electric energy to members. Revenues as used herein shall not include revenues from the sale of appliances, repayment of loans and interest thereon, or other like revenues not directly derived from the sale of electric energy. Real and personal property not used for the exclusive purpose of so generating, transmitting, distributing or furnishing electric energy shall be subject to general property taxes.

(2) Every such association shall on or before the first day of March in each year make and return to the state department of taxation, 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 the number of miles of line owned and operated by it in each taxing district. Such statement shall contain such other and further information as the department may require, and shall be verified by the president and treasurer of the association making the return.

(3) On or before June first in each year the license fee provided for in subsection (1) shall be computed and assessed by the department of taxation and the associations notified of the amount of the license fees so assessed. On or before June thirtieth in each year such fees shall be paid to the state treasurer.

(4) Such fees shall be apportioned by the department of taxation and paid by the state treasurer as follows:

(a) A sum not to exceed \$2,000 shall be retained by the state treasurer to replenish the treasury for the expenses of the department of taxation in administering the provisions of this section.

(b) Fifteen per cent thereof shall be transmitted to the several counties in which each such co-operative association operates in the ratio that the total miles of line of the association operated within the county bears to the total miles of line owned and operated by the association.

(c) The remainder thereof shall be transmitted to the several local taxing districts in the ratio that the total miles of line of the association operated within the taxing district bears to the total miles of line owned and operated by the association.

(5) Where lines of any such association are situated on a highway which divides two local taxing districts or counties, the mileage of such lines shall be deemed to be equally apportioned between such two districts or counties.

(6) All amounts apportioned and paid to any village or city shall be paid over to the treasurer of the school district for high school purposes if there be a high school, and if there be no high school said amount shall be turned over to the treasurer of the common school district for elementary school purposes. In the event that the amount payable in any year to the treasurer of the high school district or common school district is in excess of the amount needed for the purpose for which it is payable the excess shall be paid into the treasury of the village or city as the case may be.

(7) All amounts apportioned and paid to any town shall be divided as follows:

(a) Fifty per cent thereof shall remain in the general fund of the town.

(b) The remainder thereof shall be applied toward the payment of high school tuition

payable by the town, except in cases where a portion or all of the town is included within a high school district, in which case the high school district shall be paid its pro rata share based on the ratio that the taxable property in that portion of the high school district that lies in the town bears to the taxable property in the balance of the town. In the event that there are no children in the town outside of a high school district who are attending high school all amounts apportioned to that part of the town that lies outside of a high school district shall be paid into the general fund of the town. [1939 c. 132; 1941 c. 199; 1943 c. 20]

76.525 [Repealed by 1929 c. 448 s. 1; re-enacted section 76.47 by 1929 c. 530 s. 8]

76.53 [Repealed by 1929 c. 448 s. 1]

76.54 Motor carriers; municipal taxation. (17) TAXATION BY CITIES AND VILLAGES.

No city or village shall impose a license tax upon 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 taxation under the provisions of sections 194.48 and 194.49. But any such city or village may require reasonable compensation for the repair and maintenance of pavements and bridges, and compensation for the regulation of street traffic, and for any further expense occasioned by the operation of such motor vehicles upon the streets or highways of such city or village to be paid by the owners or operators of motor vehicles which are not subject to taxation under the provisions of sections 194.48 and 194.49, but the compensation for each motor vehicle to be required by any city or village in which said vehicle is operated shall not exceed for any one year the following schedule of fees:

(a) For busses having the largest seating capacity regularly operated by the owner or operator of such vehicles in any such city or village the following maximum annual license fee:

Cities of the first class, five hundred dollars;

Cities of the second class, three hundred dollars;

Cities of the third class, two hundred dollars;

Cities of the fourth class and villages, one hundred dollars.

(b) For all other busses having a smaller seating capacity the annual license fee charged shall not exceed a proportionate sum based on the ratio of the seating capacity thereof to the seating capacity of the largest bus regularly operated in such municipality by such owner or operator.

(c) For busses operated in local passenger service over a regular route which extends from one city into one or more adjoining or successive cities or villages in one county and the traversed territory intervening between any such municipality and the next such municipality served does not exceed 6,000 feet, the license fee to be paid to each such city or village for the operation of busses over such route shall be that portion of the regular license fee for each such bus fixed under the limitations of paragraphs (a) and (b) represented by the proportion which the number of bus miles operated in such city or village bears to the total number of bus miles operated over such route by the operator seeking license, except that mileage traveled by such busses through any municipality or municipalities not permitted by law to receive bus license fees, shall not be included in computing the fee due each municipality. Any such city or village may require any such operator to submit at designated intervals verified or other reports relating to bus miles operated on such route and the division thereof as between such cities and villages and may estimate such bus miles and the proportion thereof to be operated in any city or village for the purpose of collecting license fees in advance, subject to correction and adjustment when the actual bus mileage operated upon the route and the portion thereof operated in such municipality shall be available. Whenever any dispute arises between a municipality or municipalities and the operator regarding computation of bus mileage under this paragraph, any party aggrieved, may, within 30 days after the submission of verified reports by the operator to the municipalities entitled to a fee, submit the matter for a final determination to the public service commission. [1933 c. 488 s. 3; 1935 c. 116; 1937 c. 424; 1937 c. 339 s. 1, 3, 4, effective Jan. 1, 1938; 1939 c. 488; 1943 c. 78, 340]

Note: The statute (sec. 76.54, Stats. 1931) which imposed a ton mile tax on trucks is discussed at length and construed in Wisconsin Truck Owners Ass'n v. Public Service Commission, 207 W 664, 242 NW 668. See note to 85.01, citing 23 Atty. Gen. 114.

76.55 Tax on use of natural gas. (1) Except when the context clearly indicates a different meaning the words, terms and phrases used in this section shall be construed for the purposes thereof as follows:

(a) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas, which is transported in gaseous form by means of pipeline to the place of distribution or sale.

(b) "Cubic foot of natural gas" means that quantity of natural gas which measured

at a temperature of 60 degrees Fahrenheit and at an absolute pressure of 30 inches of mercury (32 degrees Fahrenheit) occupies a space having the fixed capacity of one cubic foot.

(c) "Use" means the consumption, whether beneficial or otherwise, of natural gas through the destruction of its substance by changes in its physical or chemical properties.

(d) "User" means any person who uses natural gas as said use is defined in this section.

(e) "Distributor" means a person who has natural gas on hand or in his possession for the purpose of supplying it for use in this state.

(f) "Person" means and includes any individual, firm, co-partnership, joint adventure, association, corporation, estate, trust, receiver, assignee, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number.

(2) (a) An excise tax of 7 cents for each 1,000 cubic feet, or fraction thereof, is imposed on the use or other consumption in this state of natural gas, except as herein otherwise provided.

(b) In the event that gas supplied by any distributor for use in this state is a mixture of natural and other gases, the tax imposed shall apply only to the use of the natural gas included in such mixture.

(c) The tax imposed by this section shall be collected by distributors from users, who shall pay the amount thereof to distributors (except no distributor shall collect the tax from any user who is also a distributor) and shall be paid to the state treasurer as hereinafter provided. Each distributor shall be responsible for the collection of all taxes on the use of all natural gas distributed for use in this state by such distributor (except natural gas distributed to users who are also distributors) and shall be liable for the payment of all such taxes to the state treasurer.

(d) Users of natural gas shall be directly liable for the payment of all taxes due on their use of natural gas which are not so collected by a distributor, and such taxes shall be collectible in the same manner as provided in this section for the collection of taxes from distributors.

(3) The tax imposed by this section shall not apply to the following:

(a) The use or consumption of natural gas in public buildings or institutions by this state or any of its political subdivisions or agencies.

(b) The use or consumption of natural gas by the United States of America, or any of its agencies.

(c) Any use or consumption of natural gas which may not, under the constitution and statutes of the United States, be made the subject of taxation by this state.

(4) (a) For the purpose of determining the amount of its liability to the state for the tax herein imposed, and for the purpose of supplying information to the state treasurer, each distributor shall, not later than the twentieth day of each calendar month, file with the state treasurer, on forms prescribed by him, sworn monthly reports which shall include a statement of the number of thousands of cubic feet and fractions thereof of all natural gas supplied by such distributor to users in the state, or supplied to other distributors, during the next preceding calendar month, the amounts used by the distributor itself, and such other information as the state treasurer may require.

(b) Each distributor, at the time of making every monthly return, shall compute and pay to the state treasurer in lawful money of the United States the full amount of all taxes which such distributor is required by paragraph (c) of subsection (2) to collect for the unexempt use of natural gas in the next preceding calendar month, and all taxes due upon the use of natural gas during the preceding calendar month by such distributor itself.

(5) In the case the tax imposed by this section is not paid by a distributor when due, a penalty of 10 per cent thereof shall immediately accrue. If such tax remains delinquent and unpaid for a period of one month from the date due, the state treasurer shall add interest at the rate of 2 per cent for each month or fraction thereof that such tax remains delinquent and unpaid. The amount so added shall become a part of the tax and shall be collected from the distributor at the same time and in the same manner as such delinquent taxes by action in the name of the state of Wisconsin, and the attorney-general or proper district attorney is authorized and directed to institute suits therefor in any court of competent jurisdiction. In the event such suit is instituted, the court may, on application by the attorney-general or district attorney, issue a writ of injunction enjoining the defendant from distributing or using natural gas until any judgment with costs recovered in said suit, has been paid.

(6) If any distributor shall fail, neglect or refuse to make any report or return, or shall make and file any false or fraudulent report or return for any calendar month as required by this section, the state treasurer shall estimate the number of thousands of cubic feet of gas supplied for use or used by said distributor during said calendar months,

shall make and file such report or return on behalf of said distributor, based upon such information as is readily available, and shall determine the amount of taxes due from said distributor, including a penalty and interest as provided in subsection (5). The state treasurer shall send to such distributor by registered mail, a notification of the amount of taxes so determined, and if such distributor shall not file true and correct statements for the period covered by the state treasurer's estimates, and pay all taxes due within 20 days after the mailing of such notice, the tax determined by the state treasurer shall become due and payable, including penalty and interest, and shall be collected as provided in subsection (5) above.

(7) No suit shall be maintained in any court to restrain or delay the collection by or payment to the state treasurer of the tax herein imposed upon any ground whatsoever, but the aggrieved distributor shall pay all taxes when due, and if paid under protest the distributor may at any time within 90 days from the date of such payment, sue the state in the circuit court of any county in which said distributor conducts his business, in an action at law to recover the tax so paid with legal interest thereon from the date of payment. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the state treasurer then in office, to pay the amount of such tax adjudged to have been wrongfully collected, together with interest thereon as herein provided, out of the general fund of the state to the distributor entitled thereto. Recovery may be had in any one suit for as many payments as may have been made prior to the entry of judgment, which are not barred by the limitation herein imposed.

(8) The state treasurer or his duly authorized representatives are authorized to examine at all reasonable times the books and records of every distributor and user which pertain to natural gas.

(9) All tax moneys collected pursuant to the provisions of this section shall become part of the general fund and be apportioned in the manner provided by section 76.28 (1) upon the basis of the consumption in each city, village and town.

(10) Nothing herein contained shall be deemed to revoke any of the provisions of the statutes of Wisconsin heretofore [before June 22, 1943] in force and effect with respect to gas companies and utilities, except and to the extent that the same, or any of them, be repugnant to the provisions of this section.

(11) If any subsection or paragraph of this section or its application to any person or circumstance shall be held unconstitutional, such decision shall not affect the constitutionality of any other subsection or paragraph, or its application to other persons or circumstances. [1943 c. 339]

76.75 [Repealed by 1943 c. 179]