

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, of all air carriers, of all express companies, and of all pipe-line companies, within this state, for the purpose of levying and collecting taxes thereon, as provided in this chapter.

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.

(5a) Any person, association, company or corporation engaged in the business of transportation in aircraft of persons or property for hire on regularly scheduled flights shall be deemed an air carrier company. The term "aircraft" shall mean a completely

equipped operating unit, including spare flight equipment, used as a means of conveyance in air commerce.

(5b) Any person, association, company or corporation which is not a light, heat and power company as defined by section 76.02 (8) and which is engaged in the business of transporting or transmitting gas, gasoline, oils, motor fuels, or other fuels, by means of pipe lines shall be deemed a pipe-line 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 section 66.069 (2), and excepting only business enterprises carried on exclusively either for the private use of the person, association, company or corporation engaged therein, or for the private use of a person, association, company or corporation owning a majority of all outstanding capital stock or who control the operation of such business enterprises shall be deemed a light, heat and power company.

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

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

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

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

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

(9) The word "company" without other designation or qualification, shall mean and include any railroad company, any 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.

(11a) Any air carrier as defined in subsection (5a) engaged solely in intrastate transportation using the facilities of only one airport within the state, shall be 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.

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 val-

ued 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, as defined in section 76.02, shall be the representative of every title and interest in the property so operated or used either as owner, lessee or otherwise, and notice to the operating and using company or companies shall be notice to all interests in the property for the purposes of taxation. The assessment and taxation of the property of any company in the name of the operating or using company or companies shall be deemed and held an assessment and taxation of all the title and interest in such property of any kind or nature. Nothing herein contained shall be deemed to authorize the assessment and taxation of the interests of the state or of any county, city, village or town in any property used for highways or elevated roads and leased to or used by another.

76.04 Reports of companies; penalty. (1) Every company defined in s. 76.02 shall, annually, file a true and accurate statement in such manner and form and setting forth such facts as the department shall deem necessary to enforce the provisions of ss. 76.01 to 76.29. The annual reports for railroad companies, telegraph companies, sleeping car companies and express companies shall be filed on or before April 15 and for street railway companies, light, heat and power companies, conservation and regulation companies, air carriers and pipe-line companies on or before May 1. For sufficient reason shown the department may upon written request allow such further time for making and filing the report as it may deem necessary but not to exceed 30 days. If any company fails to file such report within the time prescribed or as extended under the provisions of this subsection, the department shall add to the taxes due from such company the amount of \$25, and no company shall be allowed in any action or proceeding to contest the imposition of such penalty.

(2) The forms for all reports required by the provisions of ss. 76.01 to 76.29 shall be prescribed and furnished by the department of taxation.

History: 1951 c. 239; 1953 c. 61.

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.

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 sections 73.03 and 73.04 (1); and every state, county, city, village, town and other public officer shall make return to the department in such form as it shall prescribe, of all information it shall call for. Persons serving the process of the department shall receive the same compensation allowed by law to sheriffs for similar service; and persons appearing before the department in obedience to its summons shall, in the discretion of the department receive the same compensation as a witness in the circuit court; such fees and compensation to be audited by the director of budget and accounts 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 company defined in section 76.02 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.

76.07 Assessment. (1) **DUTY OF DEPARTMENT.** The department on or before June 15 in each year in the case of railroad companies, telegraph companies, sleeping car companies and express companies, and on or before August 15 in the case of street railway companies, light, heat and power companies, air carrier companies, conservation and regulation companies, and pipe-line 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, air carrier and express companies, and "Land and land rights, structures, improvements, mains, pumping and regulation equipment, services, appliances, instruments, franchises and all other real and personal property of said company," in the case of pipe-line 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.

History: 1951 c. 239.

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 section 76.07 (1). Any company aggrieved by the assessment of its property thus made may have its assessment reviewed in a hearing before the board of tax appeals if a petition is filed with the board within 15 days after notice of assessment has been mailed to the company as provided in section 76.07 (3). No answer need be filed by the department of taxation, 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 after August 15 following the assessment and decided by it within a reasonable period of time thereafter.

(2) No action to redetermine an assessment made by the department of taxation 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. The right of review herein provided shall not be prejudiced by the payment of all or any part of the tax levied upon such assessment.

(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 such action the assessment as found by the board of tax appeals shall be increased

any resulting increase in the tax 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.

History: 1951 c. 239.

76.10 Review of state assessment; notice of hearing; decision; time limits; notice of decision; action to review decision; error adjusted. (1) Every company defined in 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 fix a time therefor within 60 days after such application is filed, the same to be conducted in such manner as the department shall direct. Notice of such hearing shall be mailed to any company requesting a hearing and shall be published in the official state paper. Within 30 days after the conclusion of such hearing the department shall enter an order either affirming said state assessment or ordering correction thereof as provided in subsection (2) of this section. A copy of such order shall be sent by registered mail to the company or companies requesting such hearing and to any interested party who has made an appearance in such proceeding. Such hearing shall not impair or affect the right to review of the assessment of any company's property by the board of tax appeals as provided for in section 76.08. The department may, on its own motion, correct such state assessment. Any company having filed application for review of the state assessment pursuant to the provisions of this section, or any other interested party participating in such hearing, if aggrieved by the order entered by the department, may bring an action in the circuit court for Dane county within 30 days after the entry of such order to have said order set aside and a redetermination made of the state assessment. In any such action or in any hearing before the department of taxation pursuant to this section, any interested party may appear and be heard. An interested party includes any division of government whose revenues would be affected by any adjustment of the state assessment.

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

76.11 Aggregate of all general property taxes. (1) The department on or between the first Monday in December and the fifteenth day of March in each year, upon returns from the secretary of state or from county, town, city and village officers, or both, shall ascertain and determine the aggregate tax in the whole state for state, county and local purposes levied on the general property of the state, excluding special assessments on property for local improvements, and when the aggregate of all taxes, state, county and local consolidated is thus ascertained 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.

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.

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 rolls for all companies required to be assessed on or before June 15 in each year under section 76.07 (1) shall be completed on or before June 20, and for all companies required to be assessed on or before August 15 in each year under section 76.07 (1) shall be completed on or before September 15; and the department shall thereupon attach to each such roll a certificate signed by the 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, air carrier companies, conservation and regulation companies, or pipe-line 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 and a copy thereof filed with the director of budget and accounts. The state treasurer 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 companies assessed on or before June 15, not less than one-half of the amount of such tax on or before July 10 and the remainder on or before October 15 of the same year; and in the case of all other companies on or before December 1 of the same year; provided, however, that the payment of one-half of the second instalment in the case of a company assessed on or before June 15 and the payment of one-fourth of the tax in the case of any other company may, in the event that said company has filed a petition with the board under section 76.08, be made without penalty any time within 15 days after entry of the decision of the board. The taxes extended against any company after the same become 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.

(3) In the event the board of tax appeals, after such roll has been delivered to the state treasurer, shall increase or decrease the assessment of any company, the department of taxation shall forthwith redetermine the tax of such company on the basis of such revised assessment, and shall certify and deliver the same to the state treasurer as a revision of the tax roll. In case the amount of tax upon the assessment as determined by the board of tax appeals shall be less than the amount paid by the company, the excess shall be refunded to such company upon the certification of the redetermined tax and for that purpose the director of budget and accounts, upon the certification and delivery of the revised tax roll, shall draw a warrant upon the state treasurer for the amount to be so refunded.

History: 1951 c. 239.

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.

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.

76.16 Separate valuation of docks, piers, wharves, ore yards and elevators. After the property of a company shall first have been valued as a whole, if any docks, ore yards, 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 taxation districts, the department shall make a separate valuation of each such dock, ore yard, pier, wharf and grain elevator, including the approaches thereto. As used herein, an approach shall be an immediate access facility commencing at the switching point which leads primarily to the terminal facility.

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

76.18 Presumption of regularity. The proceedings of the department shall be presumed to be regular and the determination of the department shall not be impaired, vitiated or set aside by the board of tax appeals or the courts 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. Nothing herein contained shall be construed as precluding the board of tax appeals in any proceeding before it under section 76.08 from redetermining the assessment of the property of any company defined in section 76.02 when in the board's judgment the assessment should be substantially less or more than the assessment as determined by the department of taxation.

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 or to determine an assessment of 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 any company shall be finally determined by the court 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 director of budget and accounts, 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. In case the amount of tax justly and equitably due from any company shall be finally determined by the court to be more than the amount theretofore paid, the tax roll shall be accordingly corrected by the department of taxation and such excess shall be collected in the manner provided in section 76.15.

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.

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.

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.

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 director of budget and accounts 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. Distribution tax rolls shall be certified to the director of budget and accounts and 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. The distribution tax roll required by section 76.28 (4) shall be certified on or before July 10, and all other distribution tax rolls shall be certified on or before November 1 of each year.

History: 1951 c. 239.

76.28 Apportionment of tax receipts; terminals. (1) The state shall retain 15 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 20 per cent of such taxes shall be distributed to the counties and 65 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. In determining the amount of business transacted, receipts derived from electrical energy delivered at wholesale to another utility, electric co-operative association or power district for purposes of distribution and resale, shall not be taken into consideration in determining such proportion.

(2) The amount of tax received by any town, in any county having a population of 250,000 or more, from the state treasurer, as specified in subsection (1), 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 20 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 50,000 or less, 50 per cent of the amount of taxes received by any town or village from the state treasurer as specified in subsection (1) shall be retained by the treasurer thereof for general town or village purposes, and the remaining 50 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 50,000 or less and partly in a county having a population of more than 50,000 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; provided, however, no such apportionment shall be made by the governing body of any town, village or city to a joint school district unless the governing body of every other town, village and city located within such joint school district is required by law to likewise make such apportionment of its share of such taxes to the joint school district, and in such case the amount which otherwise would have been apportioned to the joint school district shall be retained by the town, village or city for its general purpose. Where property of any such company is situated on a highway which divides 2 districts, the value of such property shall be apportioned equally between such 2 districts.

(3a) In counties having a population of more than 50,000 and less than 250,000 whenever the assessed valuation of a school district has been reduced because of land flowage for public utility purposes since 1942 the town in which such district is situated shall pay to such district annually beginning with the year 1945 from the moneys re-

ceived under this section an amount equivalent to the tax on the valuation by which reduced.

(4) All taxes paid by any company defined by section 76.02 derived from or apportionable to docks, ore yards, piers, wharves or grain elevators and their approaches, 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.

(6) The taxes paid into the state treasury by any air carrier defined in s. 76.02 shall be deposited in the general fund and appropriated therefrom to the state aeronautics commission for the purpose specified in s. 20.053 (1) (b).

(7) Twenty-five per cent of the taxes paid into the treasury by any gas pipe-line company defined by s. 76.02 shall be allocated to the areas served by the distributing gas utilities in proportion that the wholesale sales to each such gas utility bear to the total wholesale sales within the state. The taxes thus allocated shall be paid to the towns, villages and cities in each such area in proportion to the retail sales in each town, village and city. The remainder of the taxes shall be distributed as follows: Fifteen per cent thereof shall be retained by the state and 65 per cent shall be distributed to the towns, villages and cities and 20 per cent shall be distributed to the counties within which the property of the company is located, in proportion as near as may be to the property located in each such town, village, city and county. The provisions of s. 76.28 (2) and (3) relating to distribution of taxes to school districts shall apply to the taxes of gas pipe-line companies.

(8) After the property of any oil pipe-line company shall first have been valued as a whole, if any terminal storage facilities, docks, and pipe-lines and pumping equipment used in transferring oil from pipe-lines to vessels shall have been included in such valuation, then for the purpose of accounting to the proper taxation districts, the department shall make a separate valuation of each such storage facility, dock, pipe-line and pumping equipment. For the purpose of defining the terminal facility affected by this section, such terminal facility shall begin at the header gate of the main line. All taxes, paid by any oil pipe-line company defined by s. 76.02, derived from such terminal facilities shall be distributed to the towns, villages and cities in which they are located on the basis of the separate valuations so determined by the department of taxation. The remainder of the taxes shall be distributed as follows: Fifteen per cent thereof shall be retained by the state, and 65 per cent shall be distributed to the towns, villages and cities and 20 per cent shall be distributed to the counties within which the remainder of the property of the company is located, in proportion as near as may be to the remaining property located in each such town, village, city and county. The provisions of s. 76.28 (2) and (3) relating to distribution of taxes to school districts shall apply to taxes of oil pipe-line companies.

History: 1951 c. 481; 1953 c. 542, 632.

76.29 Distribution tax to municipalities. (1) When the taxes due from any street railway company, light, heat and power company, conservation and regulation company, or pipe-line 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 director of budget and accounts of the name of such company and the amount of the payment, and the director of budget and accounts 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, upon information certified to him by the director of budget and accounts, 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, conservation and regulation company, or pipe-line 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.

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 subsections (2) and (3) hereof, shall pay to the state on or before March 1 in each year, a tax of $2\frac{3}{8}$ per cent 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 reinsured by each such company. Upon the payment of the tax herein provided, such company may be licensed to transact its business until May 1 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.

(3) Every domestic stock fire insurance company transacting the business of insurance against fire, marine or sprinkler leakage loss, shall pay to the state on or before March 1 in each year $1\frac{1}{4}$ per cent upon 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.

See note to 201.05, citing 38 Atty. Gen. 474.

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.

See note to 201.05, citing 38 Atty. Gen. 474.

76.33 Unlicensed insurance companies; reports by insured. Any company not licensed to do business in this state which shall transact an insurance business in this state shall pay to the commissioner of insurance before March 1 next succeeding, a tax of 3 per cent on the amount of the gross premiums received for direct insurance, less return premiums and cancellations on direct insurance on risks in this state, which tax shall be in lieu of all taxes and fire department dues. On default of any such company in the payment of such tax the insured shall pay the tax. Every person paying more than \$100 premiums to any one such company in any year shall report the same in writing to the commissioner of insurance before March 1 next succeeding. If the tax prescribed by this section is not paid before March 1 next succeeding the date of premium payment, the

tax shall be increased by a penalty of 25 per cent and by the amount of an additional penalty computed at the rate of one per cent per month or any part thereof from the date such payment was due to the date paid.

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 1954 and annually thereafter, 3½ per cent upon its gross income from all sources for the year ending December 31, next prior to said March 1, 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. No domestic company, corporation or association shall, however, in any year pay in the aggregate for license fee as prescribed herein and valuation fee as set forth in s. 206.21 an amount in excess of the following percentages of the annual license fee which would have been payable by it in such year under sub. (2) had it been operating as a foreign company subject to said sub. (2):

- (a) In the year 1954, 150 per cent of the annual license fee under said sub. (2).
- (b) In the year 1955, 125 per cent of the annual license fee under said sub. (2), and
- (c) In the year 1956 and each year thereafter, 100 per cent of the annual license fee under said sub. (2).

(d) Any domestic company, corporation or association having in excess of \$750,000,000 of insurance in force as of the year ending December 31 next prior to said March 1, shall not pay less than said percentages specified above.

(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.

History: 1953 c. 215.

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 section 206.02 (11) 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.

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

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

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

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

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

(2) Every telephone company shall on or before March 1 in each year make and return to the department in such form and upon such blanks as the department shall prescribe, a true statement of the gross revenues from the operation of its business during the preceding calendar year, which statement shall be certified by the president and treasurer of such company so operating, or 2 of the principal officers thereof. For sufficient reason shown the department may upon written request allow such further time for making and filing the report as it may deem necessary but not to exceed 30 days. The report shall show the gross revenues attributable to this state from the service of local and rural exchange property of the telephone company and shall show separately each town, village and city in which any portion of such local or rural exchange property is located and opposite the name of each such municipality the amount of gross revenues derived from

the exchange property shall be listed. The report shall also show the total toll service revenue attributable to the state which shall include all toll service revenue from business originating and terminating within the state and a proportion of toll service revenue from all interstate business passing through, into or out of the state, based upon the mileage within the state to the entire mileage over which such business is done, or based upon such other facts and circumstances which in the judgment of the department will produce a substantially just and correct determination of the amount of such interstate toll service revenue attributable to the state. All other operating revenues attributable to this state which can be definitely assigned to one or more municipalities should, for the purposes of this section, be classified as exchange service revenue. If such assignment can not reasonably be made, such other operating revenues should, for the purposes of this section, be classified as toll service revenues.

(3) The department shall compute the license fees due from each telephone company pursuant to the provisions of subsections (4), (5) and (6), and on or before May 1 shall notify each such company of the amount due. On or before May 15 of each year, such license fees shall be paid to the department. Such fees shall become delinquent if not paid when due, and when delinquent shall be subject to a penalty of 2 per cent on the amount of such license fee and interest at the rate of one per cent per month until paid. The department shall transmit all funds received under this section to the state treasurer within 15 days. Upon payment of the license fees herein prescribed, each telephone company shall receive a receipt from the department which shall constitute a license to carry on its business for the period commencing on the date when such license fees were due and ending 12 months later.

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

(a) Two and one-half per cent of such total gross revenues from local and rural exchange service, if such gross revenues are less than \$10,000.

(b) Three per cent of such total gross revenues from local and rural exchange service, if such gross revenues equal or exceed \$10,000 and are less than \$75,000.

(c) Four per cent of such total gross revenues from local and rural exchange service, if such gross revenues equal or exceed \$75,000 and are less than \$150,000.

(d) Five per cent of such total gross revenues from local and rural exchange service if such gross revenues equal or exceed \$150,000 and are less than \$500,000.

(e) Six per cent of such total gross revenues from local and rural exchange service, if such gross revenues equal or exceed \$500,000.

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

(a) Two and one-half per cent of the total gross revenues from toll business, if such gross revenues are less than \$25,000.

(b) Three per cent of the total gross revenues from toll business if such gross revenues equal or exceed \$25,000 and are less than \$50,000.

(c) Three and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$50,000 and are less than \$75,000.

(d) Four per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$75,000 and are less than \$100,000.

(e) Four and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$100,000 and are less than \$200,000.

(f) Five per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$200,000 and are less than \$300,000.

(g) Five and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$300,000 and are less than \$400,000.

(h) Six per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$400,000 and are less than \$500,000.

(i) Six and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$500,000 and are less than \$600,000.

(j) Seven per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$600,000 and are less than \$700,000.

(k) Seven and one-half per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$700,000 and are less than \$800,000.

(l) Eight per cent of the total gross revenues from toll business, if such gross revenues equal or exceed \$800,000.

(6) When the total gross revenue of any telephone company from exchange and toll service is less than \$300, such company shall pay a minimum license fee of \$5.

(7) The license fee upon the toll line business and 15 per cent of the license fee upon the local and rural exchange business shall be retained by the state. The remaining 85 per cent of the license fee upon the local and rural exchange business shall be apportioned by the department to towns, villages and cities in which all or any portion of any local or rural exchange property of the telephone company may be located and from which any portion of the gross revenues therefrom is derived. Such apportionment shall be certified to the director of budget and accounts and the state treasurer on or before June 15 of each year. The director of budget and accounts shall forthwith audit the amounts payable to each town, village and city and the treasurer shall pay the same. Such payment shall be accompanied by a statement showing the specific source of such funds. Supplementary apportionment rolls shall be prepared and certified from time to time when necessary, which shall include collection of delinquent license fees and collection of additional license fees resulting from audits and correction of reports as originally filed. All penalties and interest collected under this section, together with amounts collected under the provisions of subsection (6), shall be retained by the state. Any error in the distribution roll may be subsequently corrected in the manner provided in section 76.29 (3).

(8) The license fees imposed by this section upon the gross revenues of telephone companies as defined in subsection (1) shall be in lieu of all other taxes on all property used and useful in the operation of the business of such companies in this state, except that the same shall be subject to special assessments for local improvements.

(9) The records, books, accounts and papers of any telephone company shall be subject to inspection and examination by the commissioner of taxation or by such person as he may designate for that purpose.

(10) If any telephone company required under the provisions of this section to file a report fails to file such report within the time prescribed by law or as extended under the provisions of subsection (2), the department shall add to the license fee due the state from such telephone company the amount of \$5, and no telephone company shall be allowed in any action or proceeding to contest the imposition of such penalty.

(11) In case any telephone company fails to make a report as required by subsection (2) within the time required, the department may enter an assessment against such company in a sum representing the approximate amount of the license fees, together with penalties and interest, for which such company may be liable as estimated by the department. Notice of such assessment shall be given by registered mail, and unless a report conforming to the requirements of this section is filed within 15 days of such notice, such estimated assessment shall become final. Thereafter the telephone company assessed shall be forever barred from questioning the correctness of the same in any action or proceeding.

(12) (a) If after filing the reports specified in sub. (2) it shall subsequently be determined that the amount of gross revenues reported is in error, the department shall compute the additional license fee to be paid or the amount of the overpayment of license fee to be refunded, as the case may be; in case an additional license fee is due, the department shall give notice to the telephone company against whom such license fee is to be levied. All such additional assessments and claims for refunds for excess license fees paid are subject to the same procedure for review and final determination as additional income tax assessments and claims for refunds under the provisions of ch. 71 as far as the same may be applicable, and all additional license fees shall be apportioned in the manner provided in sub. (7). Such additional license fees shall become delinquent 30 days after notice provided in this subsection, except that when timely review proceedings are taken from an additional assessment, such fees shall not become delinquent until 30 days following final determination of such review proceedings. All additional license fees shall bear interest at the rate of 6 per cent per annum from the time they should have been paid to the date on which such additional fees shall become delinquent if unpaid.

(b) In case of overpayments of license fees by any telephone company under the provisions of paragraph (a), the department shall certify such overpayments to the director of budget and accounts, who shall audit the amount of such overpayments and the state treasurer shall pay the amount so audited. In case any portion of such overpayment has previously been paid to towns, villages and cities under the provisions of subsection (7), such municipalities shall repay to the state the proper proportion of such license fees so received by them, and the secretary of state, upon information certified to him by the director of budget and accounts, 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 such municipalities as other state taxes are levied and collected. All refunds of license fees under this subsection shall bear interest at the rate of 3 per cent per annum from the date of the original payment to the date when the refund is made. The time for making additional levies of license fees or claims for refunds of excess

license fees paid, in respect to any year, shall be limited to 4 years after the time the report for such year was filed.

(13) Delinquent license fees of any telephone company, together with penalties and interest, shall be a lien upon all the property of such company prior to all other liens, claims and demands, which lien may be enforced in an action in the name of the state in any court of competent jurisdiction against the property of such company within the state as an entirety. The remedies for nonpayment of taxes specified in section 76.14 shall apply to nonpayment of license fees, penalties and interest referred to under this section.

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

History: 1951 c. 721; 1953 c. 277.

The term "gross receipts" used in 76.38 (Stats. 1949) includes the total amount of billings for all services rendered during the preceding calendar year, even though not actually paid for by the end of the year, and includes all miscellaneous operating reve-

nues of every kind whatsoever. Commissioner of taxation as successor to the state treasurer has power to enforce compliance by withholding annual license. 38 Atty. Gen. 528.

76.385. Telephone fees; collection transferred to department of taxation. (1)

The powers, duties and functions vested in the state treasurer under section 76.38 relating to the collection of telephone company fees are transferred to and vested in the state department of taxation.

(2) The personnel in the office of the state treasurer whose principal duties relate to the collection of telephone company fees may be selected in whole or in part by the commissioner of taxation, such personnel to have the same classification, status and salary as before transfer; or the commissioner of taxation may select personnel in whole or in part from eligible civil service lists.

(3) All records, equipment and property maintained or used in the office of the state treasurer in connection with the collection of telephone company fees are transferred to the department of taxation. In case of dispute arising under this subsection, determination shall be made by the governor.

(4) The revisor of statutes shall make the necessary changes in the language of the statutes to give effect to this transfer.

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.

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, annually, 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.

History: 1951 c. 239.

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.

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 director of budget and accounts.

(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.

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.

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.

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.

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.

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.

76.48 License fees, electric co-operative associations. (1) Every co-operative association organized under chapter 185 which carries on the business of generating, transmitting or distributing electric energy to its members at wholesale or retail shall pay in lieu of all other general property and income taxes an annual license fee of 3 per cent to be computed upon its total gross revenues from the sale of electric energy to members. Revenues as used herein shall include all operating revenues, including rentals from electric property, but 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 estate and personal property not used primarily for the purpose of so generating, transmitting or distributing electric energy shall be subject to general property taxes.

(2) Every such association shall on or before March 15 in each year make and return to the department of 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 such other information as the department may require to enforce the provisions of this section. Such statement shall be verified by the president and treasurer of the association making the return. Upon written request, the department of taxation may grant an extension of not to exceed 30 days within which to file the return required under this subsection. If any association shall fail to file such return within the time prescribed by law, or as extended by the department, there shall be added to the license fee of such association the sum of \$25.

(3) On or before June 1 in each year, the department of taxation shall compute and assess the license fees provided for in subsection (1) and certify the amounts due to the state treasurer and file a duplicate thereof with the director of budget and accounts. The state treasurer shall forthwith notify each association of the amount of the license fees so assessed. On or before July 10 in each year such fees shall be paid to the state treasurer. Such fees shall become delinquent if not paid when due and when delinquent shall be subject to a penalty of 2 per cent on the amount of license fee and interest at the rate of one per cent per month on the amount of license fee until paid. Such penalties and interest shall be collected by the state treasurer and retained by the state.

(4) A sum not to exceed the actual costs incurred from the appropriation made by section 20.09 (1) for administering the provisions of this section as certified July 1 on the cash basis by the director of the department of budget and accounts for the prior fiscal year shall be deducted pro rata from the license fees paid for said fiscal period by the several electric co-operative associations and retained by the state treasurer in the general fund. The remainder of such fees shall be apportioned by the department of taxation on or before September 15 in the manner provided in subsections (5) and (6).

(5) License fees paid by any electric co-operative association engaged primarily in the distribution of electrical energy to members at retail, after the deduction provided in subsection (4) shall be apportioned as follows:

(a) An amount equivalent to one per cent of the value of any general office building, service building and pole yard, including the value of operating and maintenance supplies and equipment, excepting motor vehicle equipment, owned by the association, shall be allocated to towns, villages and cities in which such property is located.

(b) Eighty per cent of the remainder shall be apportioned to the towns, villages and cities within or through which the business was carried on and operated in proportion, as near as may be, to the value of all other property located and business transacted within each such municipal subdivision. In determining the amount of business transacted, re-

ceipts derived from electrical energy delivered at wholesale to another co-operative association, utility or power district for purpose of distribution and resale shall not be taken into consideration in determining such proportion.

(e) Twenty per cent of the remainder shall be apportioned to the counties in which the property of the association is located in proportion to the license fees allocated to the towns, villages and cities in each county under the provisions of paragraphs (a) and (b).

(6) The license fees paid by an electric co-operative association engaged primarily in generating, transmitting and selling electrical energy at wholesale, after the deduction provided in subsection (4) shall be apportioned as follows:

(a) An amount equivalent to one per cent of the value of any general office building, service building and pole yard, including the value of operating and maintenance supplies and equipment, excepting motor vehicle equipment, owned by the association, shall be allocated to the towns, villages and cities in which such property is located. Production supplies and equipment and buildings used primarily for production purposes shall not be included in property under this paragraph.

(b) Twenty per cent of the remainder shall be apportioned to the towns, villages and cities in which transmission lines are located in proportion, as near as may be, to the value of transmission lines within each such town, village and city.

(c) Thirty-five per cent of the remainder shall be apportioned to the towns, villages and cities in proportion, as near as may be, to the value of production and conversion property located within each such municipal subdivision.

(d) Fifteen per cent of the remainder shall be apportioned to the counties in which the property of the association is located in proportion to the license fees allocated to the towns, villages and cities in each county under the provisions of paragraphs (a), (b) and (c).

(e) Thirty per cent of the remainder shall be first divided in the proportion that sales at wholesale to each electric co-operative association in Wisconsin for purposes of resale to its members bears to the total sales at wholesale to all such electric co-operative associations in Wisconsin. The amount so allocated shall be apportioned to the towns, villages and cities in which all such electric co-operative associations operate in the same proportion as their own license fees are apportioned as required under subsection (5) (b).

(f) Subsequent to the year 1949 the license fees apportionable to any town, village or city under the provisions of paragraphs (a), (b) and (c) shall not in the aggregate exceed three-fourths of one per cent of the last equalized value of the general property in any such town, village or city as determined by the department of taxation. Any excess over and above said three-fourths of one per cent of said last equalized value shall be added to and apportioned under the provisions of paragraph (e).

(7) When lines of any such association are situated on a highway which divides 2 local taxing districts, the value of such lines shall be deemed to be equally apportioned between such 2 districts.

History: 1951 c. 239; 1951 c. 319 s. 207; 1951 c. 734.

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.