

officer or officers whose title of office is specified in such petition. Such petition may include one or more or all the officers of such city, and the notice of and the order for the election shall follow and include the officer or officers named in the petition, and upon like petition, signed by a majority of the electors asking therefor, any common council, by ordinance duly passed, may provide for the appointment by the mayor, with the concurrence of the council, of any officers of such city excepting the offices of mayor, alderman, assessor, treasurer, supervisor or justice of the peace, *provided that the city clerk in every city adopting this sub-section shall be chosen in the manner in force in such city at the time of adopting the same, unless the common council in such city shall provide by ordinance for an election by the people to such office.*

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved May 16, 1905.

No. 506, A.]

[Published May 16, 1905.

CHAPTER 216.

AN ACT to amend chapter 315 of the laws of 1903, relating to the taxation of railroads.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Assessment and tax roll; extension of tax on roll against railroad companies; duties of state treasurer; taxes, when due.
SECTION 1. Section 15 of said chapter 315 of the laws of 1903 is hereby amended to read as follows: Section 15. The board shall compute and levy a tax upon the property of each railroad company as assessed at the average rate of taxation determined as aforesaid, and the amount of tax to be paid by each railroad company shall be extended upon the assessment roll opposite the description of the property of the respective companies. After the completion of said tax roll, and prior to the first day of February in each year *except as hereinafter otherwise provided,*

the board shall attach thereto a certificate signed by the members of said board, or a majority thereof, which shall be as follows: We do hereby certify that the foregoing tax roll includes the properties of all railroad companies liable to taxation in this state; that the valuation of the property of each railroad company as set down in said tax roll is the true cash value thereof according to our best knowledge and judgment, and that we have assessed and levied the taxes thereon charged in said tax roll at the average rate of taxation in this state as required by law. The said tax roll shall thereupon forthwith be delivered to the state treasurer, who shall immediately notify by registered mail the several railroad companies taxed therein to pay the taxes extended thereon, to the state treasurer, as follows: One-half of the amount of such tax on or before the fifteenth day of February and one-half on or before the tenth day of August in each year. The taxes extended against any railroad company after the same become due, 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 railroad company within the state as an entirety.

Taxes adjudged illegal; re-assessment. SECTION 2. Section 16 of said chapter 315 is hereby amended to read as follows: Section 16. If any tax levied under the provisions of this act shall be adjudged illegal and non-enforceable, or shall be set aside by any court of the state of competent jurisdiction, * * * it shall be the duty of said board, whether any part of the taxes assessed and levied have been paid or not, to forthwith reascertain and re-determine the value of the property of railroad 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 an original assessment made in accordance with law. All proceedings for such reassessment and for the extension and collection of taxes upon such duplicate assessment roll shall be conducted in the method originally provided for as near as may be. *The board shall fix the time and place for the hearing or proceedings for the reassessment and give notice thereof by mail to the railroad companies. The*

power to reassess the property of railroad companies 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 railroad company for any year under the provisions of this act, 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.

Action to set aside or restrain collection of tax; condition of granting injunction. SECTION 3. Section 19 of said chapter 315 is hereby amended to read as follows: Section 19. In any action, suit or proceeding brought by such company *in the state court* * * * to set aside, restrain, or postpone the payment or collection of any tax levied upon the property of the railroad company, no injunction, order or writ to enjoin or restrain the payment or collection of the tax shall issue, or be continued in force, unless said company shall pay to the state treasurer for the use of the state the amount of taxes which the court shall determine primarily to be justly and equitably due from such company. Such primary determination shall be made by the *state court* in which the action, suit or proceeding is pending, upon motion, summarily and without delay. In case the amount of tax justly and equitably due from such company, shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court, and for that purpose the secretary of state, upon the filing in his office of a certified copy of such final determination, shall draw a warrant upon the state treasurer for the amount to be so refunded.

Action to recover illegal tax; limitation of; attorney general to appear for state. SECTION 4. Section 20 of said chapter 315 is hereby amended to read as follows: Section 20. Any railroad company claiming to be aggrieved by the levy of a tax upon its property, and alleging facts showing substantial injustice in the determination of the board, may within six months from the payment of the tax, and not thereafter, bring and maintain an action against the state in the circuit court *of the state* 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.

Action, where tried; prejudice of judge; adjournment. SECTION 5. Said chapter 315 is hereby amended by adding after section 20 a new section to be known as section 20a which shall read as follows: Section 20a. Any action brought by any railroad company to cancel or set aside any tax or enjoin the collection thereof under the provisions of sections 16 or 19 or to recover back any taxes under the provisions of section 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 2625, statutes of 1898, as amended by chapter 101 of the laws of 1901, except as hereinafter provided; and it is hereby made the duty of such 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 not expire with the term at which the application is made or affidavit of prejudice is filed nor at any subsequent term of court, but shall continue until the action is tried and final judgment entered. The said circuit 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 dates fixed by statute for the terms of court in said county.

Delinquent taxes and license fees to bear interest; forfeiture for failure to pay taxes and license fees. SECTION 6. Section 21 of said chapter 315 is hereby amended to read as follows: Section 21.* *All taxes and license fees which shall not be paid at the time provided in this act shall thereupon become delinquent and shall bear interest at the rate of fifteen per cent per annum from the time the same become delinquent until actually paid. The neglect of any company to pay the taxes, license fees, and interest thereon 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 license fee or the neg-*

*Entire section is rewritten.

lect of any company within sixty days after the entry of final judgment in favor of the state for the taxes, license fees, and interest to pay the judgment shall be cause for forfeiture of all the rights, privileges and franchises, whether granted by special charter or obtained under general laws, by or under which such railroad 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 make payment of the taxes, license fees, interest and costs herein provided, upon special application to the court in which the action to declare such forfeiture is pending upon such terms as the court shall direct.

Taxes and license fees due to constitute lien; judgment; sale.

SECTION 7. Said chapter 315 is hereby amended by adding after section 21 a new section to be known as section 21a which shall read as follows: Section 21a. The taxes levied upon and extended against the property of any railroad company, after the same become due, with interest thereon, and all license fees, 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 railroad 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. The action to recover taxes, license fees 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, license fees and interest, adjudge the same a lien on the property of the railroad 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. 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 a railroad company un-

der a judgment for its sale for taxes, license fees, 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 20a.

Assessments of 1904 and 1905; assessments thereafter. SECTION 8. Section 22 of said chapter 315 is hereby amended to read as follows: Section 22. The first assessment of the property of railroad companies under this act shall be commenced in the year 1903 and be completed in the year 1904, and shall be known as the assessment of 1904, and the second assessment of the property of railroad companies under this act shall be commenced in the year 1904 and completed in the year 1905 and shall be known as the assessment of 1905. *Assessments thereafter shall be commenced and completed in a similar manner.*

License fees to be paid in 1904, 1905, 1906, 1907, 1908, and 1909. SECTION 9. Section 23 of said chapter 315 is hereby amended to read as follows: Section 23. (1) Every railroad company operating a railroad in this state except street railways operated by horse power or mechanical power, shall on or before the tenth day of February in each of the years 1904, 1905, 1906, 1907, 1908 and 1909, make and return to the state treasurer in such form and upon such blanks as shall be furnished by him, a true statement of the gross earnings of their respective roads for the preceding calendar year, of the number of miles of railroad operated by each such company and the gross earnings per mile per annum during such year, which statement shall be verified by the oath of the secretary and the treasurer of such companies so operating such railroad.

(2) Each such railroad company so operating any railroad, shall on returning such statement, apply for a license to operate the railroad mentioned in such statement, and shall pay the license fee therefor provided in the next subdivision of this section, and thereupon shall receive from the state treasurer a license to operate such railroad for the calendar year commencing on the first day of January preceding and terminating on the next succeeding thirty-first day of December unless sooner revoked.

(3) The annual license fees for the operation of such railroads within the state for each of the years 1903, 1904, 1905, 1906, 1907, 1908 and 1909 shall be as follows:

1. Four percentum of the gross earnings of all railroads, except those operated on pile and pontoon or pontoon bridges, whose gross earnings equal or exceed three thousand dollars per mile per annum of operated railroad.

2. Three and one-half percentum of the gross earnings of all railroads, except those operated on pile and pontoon, or pontoon bridges, whose gross earnings equal or exceed two thousand five hundred dollars and are less than three thousand dollars per mile per annum of operated railroad.

3. Three percentum of the gross earnings of all railroads, except those operated on pile and pontoon, or pontoon bridges, whose gross earnings equal or exceed two thousand dollars and are less than two thousand five hundred dollars per mile per annum of operated railroad.

4. Five dollars per mile of all operated railroads, except those operated on pile and pontoon, or pontoon bridges, whose gross earnings equal one thousand five hundred dollars per mile per annum and are less than two thousand dollars per mile per annum of operated railroad, and in addition two and one-half per centum of their gross earnings in excess of one thousand five hundred dollars per mile per annum and under two thousand dollars per mile per annum.

5. Five dollars per mile of operated railroad by all companies whose gross earnings are less than fifteen hundred dollars per mile per annum.

6. Two per centum of the gross earnings of all railroads which are operated on pile and pontoon, or pontoon bridges, which gross earnings shall be returned as to such parts thereof as are within the state. One-half of the license fee shall be paid at the time the license so issues and one-half on or before the tenth day of August in each year. * * * The property of all railroad companies shall be expressly subject and liable to such further taxes in addition to such license fee as may be ascertained, determined and levied by said board as in the next section provided.

Assessment and taxes of 1904, 1905, 1906, 1907, 1908, and 1909; tax roll; refund of excessive license fee; tax to be lien on property; notice to companies. SECTION 10. Section 24 of said chapter 315 is hereby amended to read as follows: Section 24. When the assessment of the property of railroad companies and the taxes levied upon such property shall have been ascertained and determined as herein prescribed for the years 1904, 1905, 1906, 1907, 1908 and 1909, the assessment and tax

roll of the property of such railroad companies for said years shall not be certified or delivered to the state treasurer until after the license fees paid and to be paid for the then present year have been ascertained and deducted from such taxes. The said board, on and between the tenth day of February and the fourteenth day of May in each of the years 1904, 1905, 1906, 1907, 1908 and 1909, from the statements made and returned by the railroad companies to the state treasurer and from all other information obtained by it, shall ascertain and determine the amount of the license fees paid and to be paid in the then present calendar year and enter the amount of such license fees in its record and in a separate column in the tax roll opposite the name of the proper company. If the amount of the license fees which any company has paid and will be required to pay for a license to operate during the then present year is less than the amount of the tax thus levied upon the property of such railroad company, the amount of such license fee shall be deducted from the amount of the tax entered on the tax roll against the property of such company and the balance entered in a separate column opposite the name of the proper company. The amount of such balance shall be the tax finally levied upon the property of such railroad company and shall be the tax certified to the state treasurer on said tax roll for collection and payment. If the amount of the license fee which any company has paid and will be required to pay for a license to operate during the then current year is more than the amount of the tax levied upon the property of such company, the amount of such tax shall be deducted from the amount of the license fee, and the balance entered in a separate column on the tax roll, shall be the amount which shall be refunded by the state treasurer to such company. The board, after ascertaining and determining the amount of excess of taxes above the license fee or the excess of license fees above the taxes, as the case may be, shall correct the tax roll of the property of the railroad companies according to the facts so as to show in a separate column, the true amount of taxes each company shall pay after the deduction of the license fee and the amount any company may be entitled to have refunded for excess of license fees over taxes levied. The roll thus revised and corrected shall be certified to the state treasurer on or before the fifteenth day of May in each of the years 1904, 1905, 1906, 1907, 1908 and 1909. After the completion and correction of said tax roll for each of the years 1904, 1905, 1906, 1907, 1908 and 1909, and on or before May fifteenth, the board shall

attach thereto a certificate signed by said board or a majority thereof which shall be as follows: We hereby certify that the foregoing tax roll includes the property of all the railroad companies liable to taxation in this state for the present year; that the valuation of the property of each railroad company as set down in said tax roll is the true cash value thereof according to our best knowledge and judgment; that we have assessed and levied taxes thereon at the average rate of taxation in the state as required by law; that we have ascertained and determined the amount of license fee paid and to be paid by each railroad company for the present year; that when the taxes levied upon the property of a railroad company exceeded the license fees the amount of license fees has been deducted from the amount of taxes and the balance entered in a column under the head, "Taxes levied and to be collected," and when the license fees exceeded the taxes levied upon the property of a railroad company, the amount of taxes has been deducted from the amount of license fees and the balance entered in a column under the head, "License fees to be refunded." The said tax roll with such certificate shall thereupon forthwith be delivered to the state treasurer and shall be his warrant for the collection of the taxes therein specified, and levied upon the property of railroad companies. The state treasurer shall immediately notify by registered mail any company taxed therein to pay the taxes extended thereon to the state treasurer, as follows: One-half the amount of such tax within thirty days and one-half on or before the tenth day of August following: *If the tax roll shall be delivered to the state treasurer after the eleventh day of July, all of the taxes shall be payable thirty days after notice given by the state treasurer.* * * * Whenever it appears from said tax roll that any railroad company is entitled to a refund of the license fee, the board at the time of the delivery of the tax roll to the state treasurer shall make and deliver to the secretary of state a statement certified by said board showing the name of any railroad company entitled to a refund for excess of license fees and the amount thereof. The secretary of state shall forthwith draw his warrant on the state treasurer in behalf of such railroad company for one-half of the amount to be refunded, and the state treasurer shall pay such warrant within thirty days from its date. The remaining one-half of the amount to be refunded shall be deducted when any company entitled thereto shall pay the remainder of its license fee on or before the tenth day of August. For the purposes of the assessments of the years 1904, 1905,

1906, 1907, 1908 and 1909 to be made as in this section provided, the time for determining the value of the property of railroad companies as provided in section seven shall be extended to the first day of December, the time for making the determination of the value of the general property of the state as provided in section 9 shall be extended to the first day of December, and the time for the meeting of the board and for reviewing the assessment as provided in section 10, shall be the second Tuesday of December and extend to the fifteenth day of January following.

Property subject to taxation declared to be personal property; place of assessment. SECTION 11. Said chapter 315 is hereby amended by adding after section 24 a new section to be known as section 24a which shall read as follows: Section 24a. The property of a railroad company subject to taxation under the provisions of this act as defined in subdivision 3 of section 2 of this act is hereby declared to be personal property and the place of assessment and taxation of such property is hereby fixed at the capital of the state.

Refusal to report. SECTION 12. Section 6 of said chapter 315 is hereby amended to read as follows: Section 6. If any railroad company or its officers or agents shall refuse or neglect to make any reports required by this act or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determination of the board upon any grounds not affecting the substantial justice of the tax, *but no railroad company shall be allowed in any action or proceeding to question the amount or valuation of its property as assessed by the board unless such company shall have made and filed with such board a full and complete report of the facts and information prescribed by section 5 of this act and called for by the board thereunder, provided 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 board on condition that such company shall make a full and complete report of all facts and information mentioned in said section 5 within fifteen days after notice by mail of the amount of the preliminary valuation of the property of such company and shall appear before the board before the time of the final hear-*

ing and make a full disclosure of all property liable to assessment and taxation under this act and show the value of such property to the satisfaction of the board.

Tax of 1904 not paid held delinquent. SECTION 13. The taxes assessed and levied upon the property of railroad companies in the year 1904 and which have not been paid shall be held delinquent and shall bear interest at the rate of fifteen per cent per annum from and after this act shall take effect and be in force until such taxes are actually paid.

Expenses of judge and fees of sheriff and clerk of court, how paid. SECTION 14. The railroad fare and other expenses of any judge who may be called in and shall attend and hold court for the trial of any action under the provisions of this act, not exceeding five dollars per day for such expenses, shall be paid out of the state treasury from the certified statement of such judge filed with the secretary of state and audited by him. The fees of the sheriff and one deputy, the clerk of the court and one deputy, and the official stenographer for attendance upon the court for the trial of any action under this act, upon the certification of said clerk and approval by the attorney general shall be audited by the secretary of state and paid out of the state treasury.

Limitations upon effect of amendments. SECTION 15. The amendments hereby made to said chapter 315 shall not defeat, remit or affect the license fees paid or to be paid for the years 1904 and 1905, nor defeat, remit or in any way affect the assessment of railway property made in the year 1904 or the taxes levied upon such property in said year. Nor shall it defeat, remit or affect any suit pending or any penalty or forfeiture incurred under any law of this state prior to the passage of this act.

SECTION 16. This act shall take effect and be in force from and after its passage and publication.

Approved May 16, 1905.