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CHAPTER 280

AN ACT to repeal 76.40 to 76.45 and 76.471; to amend 70.112 (4), 71.01 (3) (a) and 76.46; and to repeal and recreate 76.39 of the statutes, relating to the taxation of freight line companies.

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

SECTION 1. 70.112 (4) of the statutes is amended to read:

70.112 (4) All special property assessed under * * * ch. 76 and such property of any telephone company, * * * car line company, and electric co-operative association as is used and useful in the operation of the business of such company or association. Nothing herein provided shall * * * exclude any real estate from special assessments for local improvements under * * * s. 66.94, nor any property which is separately accounted for under * * * s. 196.59.

SECTION 2. 71.01 (3) (a) of the statutes is amended to read:

71.01 (3) (a) Income of insurance companies, * * * railroad corporations * * * and sleeping car companies, * * * of car line companies from operation of car line equipment as defined in s. 76.39, and corporations organized under ch. 185, and of all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit. This paragraph does not apply to the income of mutual savings banks, mutual loan corporations, savings and loan associations or credit unions except credit unions the membership of which is limited to groups having a common bond of occupation, or association, or to groups within a well-defined neighborhood, community * * * or rural district. The amendment (1961) to this paragraph shall be applicable to taxation of income of the calendar year 1962, or corresponding fiscal years and thereafter.

SECTION 3. 76.39 of the statutes is repealed and recreated to read:

76.39 CAR LINE TAXES. (1) For the purposes of this section:

- (a) "Department" means the department of taxation.
- (b) "Car line company" means any person, not operating a railroad, engaged in whole or in part in the business of leasing or furnishing car line equipment to a railroad.

(c) "Car line equipment" means any railroad car or other equipment used in railroad transportation under an agreement providing for rental of such car or other equipment based in whole or in part on the mileage such car or other equipment travels.

(d) "Gross earnings" means all receipts by a car line company from operation of car line equipment.

(e) "Gross earnings in this state" means all gross earnings on intrastate business of a car line company from operation of car line equipment, and also gross earnings on interstate business in the proportion that the Wisconsin car miles are of the total car miles of such interstate business. That portion of gross earnings not based on mileage shall be allocated to this state in the ratio of each carrier's average annual freight car miles in Wisconsin to the carrier's total freight car miles in all states.

(f) A railroad car or other equipment leased or furnished to a railroad by any person, regardless of whether or not such person is a defined "car line company" shall not be deemed "car line equipment" when no part of the rental is based upon mileage traveled. Such car or equipment shall be assessed to the lessee under s. 76.13, and shall be deemed property of the lessee company within the meaning of s. 76.02 (10).

(2) There is levied annually a gross earnings tax in lieu of all property taxes on the car line equipment of a car line company equal to 6 per cent of the gross earnings in this state. Every railroad company operating in this state shall, upon making payment to each car line company for use of its cars, withhold 6 per cent of the amount constituting the gross earnings in this state of such car line company.

(3) Every railroad company operating in this state shall file annually with the department, on or before March 15, on a form prepared by the department, a true and accurate statement of all rentals paid to each car line company during the previous calendar year and shall remit to the department the amount of the tax required to be withheld under sub. (2). Every car line company, which, during the previous calendar year has received gross earnings in this state from a source other than a railroad company operating in this state, shall, on or before March 15, on a form prepared by the department, file with the department a true and accurate statement of such gross earnings in this state and the name of the company from which received and shall remit to the department the amount of the tax imposed under sub. (2) on such gross earnings in this state. Upon written request received by the department before March 15, the department may grant an extension of not to exceed 30 days for the filing of the report and the payment of the taxes levied in this section. If any railroad company or car line company fails to file such report when due, or as extended by the department, there shall be imposed a late filing fee of \$10. If any railroad company or car line company fails to pay all taxes due within the time prescribed or as extended by the department, the unpaid taxes shall be delinquent, and shall be subject to interest and penalty under sub. (4). All taxes, late filing fees, penalties and interest shall be deposited in the general fund.

(4) (a) The records, books, leases and all accounts pertaining to the car line business of any railroad or car line company shall be subject to audit by the department. In any case in which it is determined that the amount of tax paid was in error, the department shall determine the additional tax or refund, as the case may be.

(b) Additional assessments may be made provided notice thereof is given within 4 years of the date the annual statement was filed; however, if no statement was filed or if the statement filed was incorrect and was filed with intent to defeat or evade the tax, an additional assessment may be made at any time upon the discovery of gross earnings in this state by the department. Refunds may be made provided claim therefor is filed in

writing with the department within 4 years of the date the annual statement was filed.

(c) All additional assessments and claims for refund shall be subject to the same procedure for review and final determination as is provided with respect to additional assessments and refunds of income taxes in chs. 71 and 73, except as the same may conflict with this section. Delinquent taxes shall be subject to a penalty of 2 per cent plus interest at the rate of one per cent per month on tax and penalty until paid.

(d) All refunds shall be certified by the department to the department of administration which shall audit the amount thereof and the state treasurer shall pay the amount thereof, together with interest at the rate of 5 per cent per annum from the date payment was made.

(5) Delinquent taxes, penalties, interest and late filing fees shall be a lien upon the property of any railroad company or car line company prior to all other liens, claims and demands, which lien may be enforced in any action in the name of the state in any court of competent jurisdiction. All provisions of law for enforcing payment of income taxes pursuant to ch. 71 or enforcing payment of railroad taxes pursuant to ch. 76 shall be available to collection of taxes on gross receipts in this state levied pursuant to this section.

SECTION 4. 76.40 to 76.45 and 76.471 of the statutes are repealed.

SECTION 5. 76.46 of the statutes is amended to read:

76.46 (1) The department * * * , *may* whenever in its opinion such action is necessary, * * * examine or cause to be examined the books and records of any railroad company, * * * *car* 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 s. 76.02, or any * * * *car* line company defined in s. 76.39, * * * *refuses or neglects* to make any reports required under this chapter, or * * * *refuses or neglects* to permit an examination of its books and records, accounts and papers, when requested so to do by the department, or * * * *refuses or neglects* to appear before the department in obedience to its summons, it shall be estopped to question or impeach the action or determination of the department, or validity of any assessment made by the department.

(3) No such company shall be allowed in any action or proceeding to question the assessment and taxation of its property as determined by the department, unless it * * * *has* made and filed with such department a full and complete report of the facts and information prescribed by law and called for by the department.

SECTION 6. The reference to section "76.43" in sections 20.555 (43) and 73.01 (6) (a) of the statutes is deleted and "76.39" is substituted. The revisor of statutes shall show the change in printing the statutes.

Approved August 27, 1963.