

## 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.

(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 property taxable under s. 76.13 shall include all franchises, and all real and personal property of the company used or employed in the operation of its business, except such motor vehicles as are exempt under s. 70.112 (5). The taxable property shall include all title and interest of the company referred to in such property as owner, lessee or otherwise, and in case any portion of the property is jointly used by 2 or more companies, the unit assessment shall include and cover a proportionate share of that portion of the property jointly used so that the assessments of the property of all companies having any rights, title or interest of any kind or nature whatsoever in any such property jointly used shall, in the aggregate, include only one total full value of such property.

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

(13) Nothing in this chapter contained shall be construed to result in the levy, assessment, or collection of taxes on property of a municipal water utility created under s. 198.22.

**History:** 1963 c. 11; 1967 c. 17.

**Legislative Council Note, 1967:** Substituting "property" for "real estate" in sub. (11) allows local assessment of personal property not directly related to operating the utility. For example, the inventory of appliances held for sale at retail by a utility. Presently this is done by administrative interpretation. (Bill No. 3-A)

**76.03 Unit assessment and situs for taxation.** (1) The property, both real and personal, including all rights, franchises and privileges used in and necessary to the prosecution of the business of any company enumerated in section 76.02 shall be deemed personal property for the purposes of taxation, and shall be valued and assessed together as a unit.

(2) In case any of the property used in the business of a company defined in section 76.02 is operated in connection with the property used in the same business or any other business therein described, all such property, rights, franchises and privileges shall be valued and assessed together as a unit, unless, in the opinion of the department of taxation, such properties are so segregated that separate assessments thereof should be made.

(3) The place of assessment and taxation of property subject to taxation under the provisions of this chapter is fixed at the capitol of the state.

(4) Every person, company or companies, 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.

**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 ss. 73.03 and 73.04 (1); and every state, county, city, village, town and other public officer shall make return to the department in such form as it shall prescribe, of all information it shall call for. Persons serving the process of the department shall receive the same compensation allowed by law to sheriffs for similar service; and persons appearing before the department in obedience to its summons shall, in the discretion of the department, receive the same compensation as a witness in the circuit court; such fees and compensation to be audited by the department of administration on the certificate of the department, and charged to the proper appropriation for the department of taxation. The records, books, accounts and papers of any company defined in s. 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.

**History:** 1963 c. 343.

**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 regu-

lation 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.

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

History: 1967 c. 317.

**76.08 Review of assessment.** (1) Notice of the assessments determined under s. 76.07 shall be given by certified mail to each company, the property of which has been assessed, and such notice shall be mailed on or before the assessment date specified in s. 76.07 (1). Any company aggrieved by the assessment of its property thus made may have its assessment redetermined by the Dane county circuit court if an action for such redetermination is commenced by service upon the department of taxation of a summons and complaint within 30 days after notice of assessment has been mailed to the company under s. 76.07 (3). No answer need be filed by the department and the allegations of the complaint in opposition to the assessment shall be deemed denied. Upon the filing of the summons and complaint the court shall set the matter for hearing without a jury at the next term of said court. If the plaintiff fails to file the summons and complaint within 5 days of service upon the department, the department may file a copy thereof with such court in lieu of the original. The department may be named as the defendant in any such action and shall appear and be represented by its counsel in all proceedings connected with the action but, on the request of the commissioner of taxation, the attorney general may participate with or serve in lieu of departmental counsel.

(2) If as the result of an action pursuant to sub. (1) the assessment as found by the department is increased by the court, any resulting increase in the tax shall be collected upon final determination of the action as other taxes levied and assessed under ss. 76.01 to 76.29 are collected.

**History:** 1967 c. 109.

**76.09 Assessment of omitted property.** Any property subject to assessment under this chapter which has been omitted from assessment or which has not been included in any assessment already made in any of the 5 next previous years by mistake or inadvertence unless previously reassessed for the same year or years, shall be entered by the department upon its assessment and tax roll once additionally for each year so omitted, designating each such additional entry as omitted for the year 19. ., (giving year of omission) and fixing the valuation and tax to each entry for a former year as the same should then have been assessed according to the best judgment of the department. The proceedings related to such assessment shall be had and hearings given as far as practicable in accordance with this chapter.

**History:** 1963 c. 255.

**76.10 Review of state assessment; notice of hearing; decision; time limits; notice of decision; action to review decision; error adjusted.** (1) Every company defined in s. 76.02 shall, on or before October 1 in each year, be entitled, on its own motion, to present evidence before the department relating to the state assessment made in the preceding year pursuant to s. 70.575. On request, in writing, for such hearing or presentation, the department shall fix a time therefor within 60 days after such application is filed, the same to be conducted in such manner as the department directs. Notice of such hearing shall be mailed to any company requesting a hearing and shall be published in the official state paper. Within 30 days after the conclusion of such hearing the department shall enter an order either affirming the state assessment or ordering correction thereof as provided in sub. (2). A copy of such order shall be sent by certified mail to the company or companies requesting such hearing and to any interested party who has made an appearance in such proceeding. The department may, on its own motion, correct such state assessment. Any company having filed application for review of the state assessment pursuant to this section, or any other interested party participating in such hearing, if aggrieved by the order entered by the department, may bring an action in the circuit court for Dane county within 30 days after the entry of such order to have said order set aside and a redetermination made of the state assessment. In any such action or in any hearing before the department pursuant to this section, any interested party may appear and be heard. An interested party includes any division of government whose revenues would be affected by any adjustment of the state assessment.

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

**History:** 1967 c. 109.

**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 sub-

ject 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, light, heat and power, telegraph companies, express and sleeping car companies, air carrier companies, conservation and regulation companies, or pipeline 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 court judgment, and that the taxes thereon charged in said tax roll have been assessed and levied at the average rate of taxation in this state, as required by law."

(2) Every tax roll shall thereupon forthwith be delivered to the state treasurer and a copy thereof filed with the commissioner of administration. The state treasurer shall immediately notify, by certified 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; but the payment of one-half of the 2nd instalment in the case of a company assessed on or before June 15 and the payment of one-fourth of the tax in the case of any other company may, if said company has brought an action in the Dane county circuit court under s. 76.08, be made without delinquent interest as provided in s. 76.14 any time prior to the date upon which such appeal becomes final, but any part thereof ultimately required to be paid shall bear interest from the original due date to the date such appeal became final at the rate of 5% per annum and at 15% per annum thereafter until paid. The taxes extended against any company after the same become due, with interest, shall be a lien upon all the property of 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) If the Dane county circuit court, after such roll has been delivered to the state treasurer, increases or decreases the assessment of any company, the department 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. If the amount of tax upon the assessment as determined by the court is less than the amount paid by the company, the excess shall be refunded to such company with interest at the rate of 5% per annum upon the certification of the redetermined tax and for that purpose the commissioner of administration, upon the certification and delivery of the revised tax roll, shall draw a warrant upon the state treasurer for the amount to be so refunded. If the amount of the tax upon the assessment as determined by the court is in excess of the amount of the tax as determined by the department, interest shall be paid on the additional amount at the rate of 5% per annum from the

date of entry of judgment to the date such judgment becomes final, and at 15% per annum thereafter until paid.

**History:** 1967 c. 109.

**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, elevators and car ferries.** After the property of a company is first valued as a whole, if any docks, ore yards, piers, wharves, grain elevators or car ferries used in transferring freight or passengers between cars and vessels or transfer of freight cars located on car ferries, shall be included in such valuation, then for the purpose of accounting to the proper taxation districts, the department shall make a separate valuation of each such dock, ore yard, pier, wharf, grain elevator, including the approaches thereto, or car ferries. 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 any court 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 made by the department shall be deemed directory only, and no failure to perform any such act or make such determination at or within the time prescribed therefor shall affect the validity of such act or of any determination made by the department, unless it appears that substantial injustice has resulted therefrom. Nothing in this chapter shall preclude the court in any proceeding before it under s. 76.08 from redetermining the assessment of the property of any company defined in s. 76.02 when in the judgment of the court the assessment should be substantially less or more than the assessment as determined by the department.

**History:** 1967 c. 109.

**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 90 days after the entry of judgment upon publication of the notice of sale as a class 3 notice, under ch. 985. The judgment shall bear interest at the rate of 10% per 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 is 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.

**History:** 1965 c. 252; 1967 c. 109.

**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 employees.** 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 ss. 76.01 to 76.29, inclusive, shall be audited by the department of administration upon the certification of said clerk and approval by the attorney general, paid out of the state treasury and charged to the appropriation for circuit courts.

**76.27 Distribution tax rolls.** Distribution tax rolls shall be certified to the department of administration 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 pur-



suant to s. 76.28. The distribution tax roll required by s. 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.

**76.28. Apportionment of tax receipts.** (1) The state shall retain 17% of the taxes paid into the treasury by any oil pipeline company, light, heat and power company or conservation and regulation company defined by s. 76.02, and 19½% of such taxes shall be distributed to the counties and 63½% 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 book value of the property located and business transacted within each town, city and village. In determining the amount of business transacted, receipts derived from sales 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) Twenty-five per cent of the taxes paid by any gas pipeline company defined by s. 76.02 shall be allocated to municipalities in the proportion which the distributing company's retail sales of natural gas in each municipality bears to the total retail sales by all distributing companies in the state. The remainder of the taxes shall be apportioned as follows: 17% thereof shall be retained by the state and 63½% shall be distributed to the towns, villages and cities and 19½% shall be distributed to the counties within which the property is located, in proportion, as near as may be, to the book value of the property located in each town, village and city.

(3) (a) In all counties whose latest decennial census population is 50,000 or less the municipal clerk of any town or village shall on or before January 15 apportion 50% of the taxes received pursuant to subs. (1) and (2) to the various school districts or parts thereof in the proportion which the taxable property of the school district within the municipality bears to the total valuation of the taxable property of the entire municipality according to the last assessment roll. No apportionment to a joint school district shall be made if par. (c) applies.

(b) If the town or village includes area in a union high school district, the amount allotted to the area of the union high school shall be equally divided between the union high school district and the elementary school district comprising the area. When there is more than one elementary district in the union high school area, each elementary district shall receive an amount in the proportion which the valuation of the taxable property of the elementary district within the municipality bears to the total valuation of the union high school within the municipality according to the last assessment roll.

(c) If any joint school district lying wholly within counties with a population of 50,000 or less includes a city, then all towns, villages and cities which are a part of the joint district are excused from apportioning 50% of the utility tax to the joint district and may retain the tax which might otherwise have been shared with the joint district.

(d) In all counties whose latest decennial census population is more than 50,000, no utility tax apportioning is required except under sub. (5) and except in joint school districts having territory which extends into counties having a population of 50,000 or less. Every town, village and city lying wholly or partially within such joint school district is required to apportion in the same manner as in pars. (a) and (b).

(4) All taxes paid by any company defined by s. 76.02 derived from or apportionable to docks, ore yards, piers, wharves, grain elevators and their approaches or car ferries, on the basis of the separate valuation provided for in s. 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 25 per cent 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 1933.

(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. 20.395 (1).

**History:** 1961 c. 191 ss. 71, 109; 1963 c. 6, 224; 1965 c. 433 s. 121; 1967 c. 17, 291 s. 14.

**Legislative Council Notes, 1967:** In (1), removes "street railway" since there are none in Wisconsin, and adds "oil pipeline" which is presently included for taxation and distribution under sub. (8). The words "book value of the" are added. Since book value is the only available measure of property, this represents present usage. By deleting the words "electrical energy delivered" and adding "sales" the law is broadened to include all utilities.

Present sub. (2) is repealed as obsolete since there are no towns in counties of 250,000 or more (Milwaukee county). New sub. (2) adopts the distribution of present sub. (7). As written, sub. (7) is no longer possible to administer. It has been rewritten (in new sub. (2)) to conform to present practice since all the gas transmission companies have interconnected their pipelines so that the gas sold by each can no longer be traced to any specific municipality.

Present sub. (3) is repealed since it is "incomprehensible" and because it is difficult and expensive to administer. The only substantial change made is in the basis of distribution to school districts in new sub. (3). Present law requires that if there is more than one school district in a municipality, the distribution is made according to the value of the utility property in the school district in relationship to the value of the utility property in the entire municipality. New sub. (3) requires that the tax be distributed according to the relationship which the assessed value of the taxable property in the school district bears to the taxable property in the entire municipality. A new provision requires that the distribution to the school district be made on or before January 15th. The present classification based upon population of counties and whether a

joint school district includes a city are retained. The present distribution in Milwaukee is retained under sub. (5).

Sub. (3a) is repealed as obsolete because the single school district once eligible has been consolidated.

Sub. (7) is repealed, but is substantially reproduced in new sub. (2).

Sub. (8) is repealed, but "oil pipelines" are included in sub. (1). The terminal facilities applying to oil pipeline companies have become obsolete and no longer are being used to transfer oil from pipeline to vessel. (Bill No. 3-A)

This section does not violate either the federal or state constitutions and is not arbitrary or capricious in the classifications in (3). *Marshfield v. Cameron*, 24 W (2d) 56, 127 NW (2d) 809.

**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 s. 76.02, or the taxes due from any company on account of any dock, pier, wharf or grain elevator separately valued under s. 76.16, shall be paid in whole or in part to the state treasurer, he shall forthwith notify the department of administration of the name of such company and the amount of the payment, and the department of administration 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 ss. 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 department of administration, shall certify the amounts to be repaid to the state to the county clerks of the counties in which such municipalities are located for levy and collection from said municipalities as other state taxes are levied and collected.

(2a) The state shall assert no claim nor make demand against a municipality by reason of tax distributions made to the municipality respecting car ferry property, between the period January 1, 1947, to January 1, 1954.

(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 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 or marine loss, other than companies excepted under sub. (3) and s. 76.305, shall pay to the state on or before March 1 in each year, in respect to marine insurance a tax of one-half of one per cent and in respect to fire insurance 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 includes all insurance other than reinsurance. In case any company discontinues business in this state and reinsures 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 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, and the fees required by s. 200.13, such company may be licensed to transact its business until May 1 in the ensuing year, unless sooner revoked or forfeited according to law.

(3) Every domestic stock fire insurance company transacting the business of insurance against fire or marine loss, shall pay to the state on or before March 1 in each year in respect to marine insurance a tax of one-half of one per cent and in respect to fire insurance a tax of  $1\frac{1}{4}$  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.

(4) No domestic insurance company shall be required to pay any tax to the state upon gross premiums received from transacting the business of disability insurance as authorized by s. 201.04 (4).

**History:** 1961 c. 463, 562, 624.

**76.305 Mutual insurance companies; taxes, charges, dues and license fees.** No domestic mutual insurance company shall be required to pay any taxes, charges, dues or license fees to the state except those charges and dues provided for in ss. 200.04 (4), 200.13 and 200.17. This section shall not apply to annual license fees required under s. 76.34.

**History:** 1961 c. 562.

**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.

**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 an annual license fee  $3\frac{1}{2}$  per cent upon its gross income from all sources for the preceding calendar year 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. 200.13 (20) an amount in excess of the annual license fee which would have been payable by it in such year under sub. (2) had it been operating as a foreign company subject to said sub. (2). Any domestic company, corporation or association having in excess of \$750,000,000 of insurance in force as of December 31 of the preceding calendar year shall not pay less in the aggregate for a license fee as prescribed herein and valuation fee as set forth in s. 200.13 (20) than the amount of the annual license fee which would have been payable by it in such year under sub. (2) had it been operating as a foreign company subject to said sub. (2).

(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:** 1961 c. 562.

The annual license fee for a domestic insurance company is computed on gross premiums received without deduction for dividends applied to purchase of additional paid up insurance. 54 Atty. Gen. 201.

**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 ss. 76.30 to 76.37, 201.045 and 201.34 shall certify that payment of the license fee or tax and the fee required by s. 200.13 (2) has been made, be attested by the official seal of the commissioner of insurance thereto affixed, and 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 ss. 76.30 to 76.37, and the fees required by s. 200.13. Any company, corporation or association, aggrieved by the payment of any such license or other fee or tax, may maintain a suit against the state for the recovery thereof in the circuit court for Dane county within 6 months from the time of the payment 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 certificate of authority provided for by s. 201.045 or 201.34 until the license fee imposed by ss. 76.30 to 76.37, and the fees under s. 200.13 have been fully paid.

(4) It is 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 ss. 76.30 to 76.37, and the fees required by s. 200.13. Nothing in this subsection shall be construed as amending or modifying in any respect the provision of ch. 285.

**History:** 1961 c. 562.

**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 serv-

ice, 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 department of administration and the state treasurer on or before June 15 of each year. The department of administration 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 sub. (6), shall be retained by the state. Any error in the distribution roll may be subsequently corrected in the manner provided in s. 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 par. (a), the department shall certify such overpayments to the department of administration, which shall audit the amount of such overpayments and the state treasurer shall pay the amounts so audited. In case any portion of such overpayment has previously been paid to towns, villages and cities under the provisions of sub. (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 department of administration, shall certify the amounts to be repaid to the state to the county clerks of the counties in which such municipalities are located for levy and collection from 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.

**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.

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

(e) "Gross earnings in this state" means all gross earnings on intrastate business of a car line company from operation of car line equipment, and also gross earnings on interstate business in the proportion that the Wisconsin car miles are of the total car miles of such interstate business. The gross earnings not based on mileage shall be

allocated to this state in the ratio of each carrier's average annual freight car miles in Wisconsin to the carrier's total freight car miles in all states.

(2) There is levied annually a gross earnings tax in lieu of all property taxes on the car line equipment of a car line company equal to 6 per cent of the gross earnings in this state. Every railroad company operating in this state shall, upon making payment to each car line company 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 delinquent income taxes pursuant to ch. 71 or enforcing payment of delinquent ad valorem taxes pursuant to this chapter shall be available to collection of taxes on gross receipts in this state levied pursuant to this section.

**History:** 1963 c. 280; 1965 c. 329; 1967 c. 109.

**76.46 Powers of investigation.** (1) The department may, whenever in its opinion such action is necessary, examine or cause to be examined the books and records of any railroad company, 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.

History: 1963 c. 280.

**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 sub. (1) and certify the amounts due to the state treasurer and file a duplicate thereof with the department of administration. 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) One per cent of the license fee shall be paid into the general fund of the state. The remainder of such fees shall be apportioned by the department of taxation on or before November 1 as provided in subs. (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, receipts 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.

(c) 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.

(8) Additional assessments may be made, provided notice thereof is given, within 4 years of the date the annual return was filed, but if no return was filed, or if the return filed was incorrect and was filed with intent to defeat or evade the tax, an additional assessment may be made at any time upon the discovery of gross revenues by the department. Refunds may be made provided claim therefor is filed in writing with the department within 4 years of the date the annual return was filed. Refunds shall bear interest at the rate of 5% per annum and shall be certified by the department to the commissioner of administration who shall audit the amounts of such overpayments and the state treasurer shall pay the amount so audited. Any refund shall be reflected in the next allocation and apportionment of license fees under this section.

(9) All additional assessments and claims for refund shall be subject to the same procedure for review and final determination as is provided with respect to additional assessments and refunds of income taxes under chs. 71 and 73, except as such procedure conflicts with this section.

**History:** 1965 c. 433 s. 121; 1967 c. 17, 109.

**76.54 Motor carriers and urban transit companies; municipal taxation.** No city, village or town shall impose a license tax upon either of the following:

(1) Any common motor carrier of property or of passengers, any contract motor carrier or any private motor carrier on account of any operation of a motor vehicle which is subject to registration or taxation under ch. 341.

(2) Any corporation or other person engaged in urban mass transportation of passengers as defined in s. 71.18 (2) (a).