

Article 23.

Public Service Companies.

§ 105-333. Definitions.

The following definitions apply in this Article unless the context requires a different meaning:

- (1) Airline company. – A company engaged in the business of transporting passengers and property by aircraft for hire within, into, or from this State.
- (2) Bus line company. – A company engaged in the business of transporting passengers and property by motor vehicle for hire over the public highways of this State (but not including a bus line company operating primarily upon the public streets within a single local taxing unit), whether the transportation is within, into, or from this State.
- (3) Distributable system property. – All real property and personal property owned or used by a railroad company other than nondistributable system property.
- (4) Electric membership corporation. – A company organized, reorganized, or domesticated under Chapter 117 of the General Statutes and engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
- (5) Electric power company. – A company engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
- (6) Repealed by Session Laws 1973, c. 783, s. 5.
- (7) Flight equipment. – Aircraft fully equipped for flying and used in any operation within this State.
- (8) Gas company. – A company engaged in the business of supplying artificial or natural gas to, from, within, or through this State through pipe or tubing for light, heat, or power to consumers in this State.
- (9) Locally assigned rolling stock. – Rolling stock that is owned or leased by a motor freight carrier company, specifically assigned to a terminal or other premises, and regularly used at the premises to which assigned.
- (10) Motor freight carrier company. – A company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State as provided in this subdivision:
 - a. As to interstate carrier companies domiciled in North Carolina, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State

or two or more terminals inside this State. For purposes of appraisal and allocation only, the term also includes a North Carolina interstate carrier that does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad valorem taxes on a portion of the value of the rolling stock of the carrier to taxing units in one or more other states.

- b. As to interstate carrier companies domiciled outside this State, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.
 - c. As to intrastate carrier companies, this term includes only those carriers that are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State.
- (11) Nondistributable system property. – The following properties owned by a railroad company: land other than right-of-way, depots, machine shops, warehouses, office buildings, other structures, and the contents of the structures listed in this subdivision.
 - (12) Nonsystem property. – The real and tangible personal property owned by a public service company but not used in its public service activities.
 - (13) Pipeline company. – A company engaged in the business of transporting natural gas, petroleum products, or other products through pipelines to, from, within, or through this State, or having control of pipelines for such a purpose.
 - (14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company.
 - (15) Railroad company. – A company engaged in the business of operating a railroad to, from, within or through this State on rights-of-way owned or leased by the company. It also means a

company operating a passenger service on the lines of any railroad located wholly or partly in this State.

- (16) Rolling stock. – Motor vehicles, railroad locomotives, and railroad cars that are propelled by mechanical or electrical power and used upon the highways or, in the case of railroad vehicles, upon tracks.
- (17) System property. – The real property and personal property used by a public service company in its public service activities. The term also includes public service company property under construction on the day as of which property is assessed which when completed will be used by the owner in its public service activities.
- (18) Telegraph company. – A company engaged in the business of transmitting telegraph messages to, from, within, or through the State.
- (19) Telephone company. – A company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State.
- (20) Repealed by Session Laws 1973, c. 783, s. 5. (1939, c. 310, ss. 1600-1605; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; c. 1121, s. 4; 1973, c. 198; c. 783, ss. 1-5; c. 1180; 1991 (Reg. Sess., 1992), c. 961, s. 1; 1995, c. 350, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 646, s. 18; 1997-23, ss. 6, 7; 1998-98, s. 25.)

§ 105-334. Duty to file report; penalty for failure to file.

(a) Every public service company, whether incorporated under the laws of this State or any other state or any foreign nation, whose property is subject to taxation in this State, shall prepare and deliver to the Department of Revenue each year a report showing (as of January 1) such information with regard to the property it owns and the system property it leases as the Department of Revenue may by regulation prescribe. This report shall be filed on or before the last day of March, and the following affirmation, which shall be annexed to the report, shall be signed by a principal officer of the public service company making the report:

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this report, including any accompanying statements, inventories, schedules, and other information is true and complete.

(b) Any individual who willfully subscribes a report required by this section which he does not believe to be true and correct as to every material matter shall be guilty of a Class 2 misdemeanor.

(c) For good cause the Department may grant reasonable extensions of time for filing the required reports.

(d) The Department may require any additional reports or information it deems necessary to properly carry out its duties under this Article.

(e) The provisions of G.S. 105-291 and 105-312 are made specifically applicable to all proceedings taken under this Article. (1939, c. 310, ss. 1600-1606; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1993, c. 539, s. 721; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 105-335. Appraisal of property of public service companies.

(a) Duty to Appraise. – In accordance with the provisions of subsection (b), below, the Department of Revenue shall appraise for taxation the true value of each public service company (other than bus line, motor freight carrier, and airline companies) as a system (both inside and outside this State). Certain specified properties of bus line, motor freight carrier, and airline companies shall be appraised by the Department in accordance with the provisions of subsection (c), below, and all other properties of such companies shall be listed, appraised, and assessed in the manner prescribed by this Subchapter for the properties of taxpayers other than public service companies.

(b) Property of Public Service Companies Other Than Those Noted in Subsection (c). –

(1) System Property. – Each year, as of January 1, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) the system property used by each public service company both inside and outside this State. Property leased by a public service company shall be included in appraising the value of its system property if necessary to ascertain the true value of the company's system property.

(2) Nonsystem Personal Property. – Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) each public service company's nonsystem tangible personal property subject to taxation in this State.

(3) Nonsystem Real Property. – In accordance with the county in which the public service company's nonsystem real property is located and the schedules set out in G.S. 105-286 and 105-287, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) each public service company's nonsystem real property subject to taxation in this State.

(c) Property of Bus Line, Motor Freight Carrier, and Airline Companies. –

(1) Bus Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the rolling stock owned or leased by or operated under the control of each bus line company, which bus line company is domiciled in this State or which is regularly engaged in business in this State.

(2) Motor Freight Carrier Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value (as

defined in G.S. 105-283) the rolling stock owned by a motor freight carrier company or leased by a motor freight carrier company and operated by its employees which motor freight carrier company is domiciled in this State or is regularly engaged in business in this State at a terminal owned or leased by the carrier.

- (3) Flight Equipment. – Each year, as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the flight equipment owned or leased by or operated under the control of each airline company that is domiciled in the State or that is regularly engaged in business at some airport in this State. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 783, s. 6; c. 1180.)

§ 105-336. Methods of appraising certain properties of public service companies.

(a) Appraising System Property of Public Service Companies Other Than Those Noted in Subsection (b). – In determining the true value of each public service company (other than one covered by subsection (b), below) as a system the Department of Revenue shall give consideration to the following:

- (1) The market value of the company's capital stock and debt, taking into account the influence of any nonsystem property.
- (2) The book value of the company's system property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the system property, less a reasonable allowance for depreciation.
- (3) The gross receipts and operating income of the company.
- (4) Any other factor or information that in the judgment of the Department has a bearing on the true value of the company's system property.

(b) Appraising Rolling Stock and Flight Equipment. – In determining the true value of the rolling stock of bus line and motor freight carrier companies and the flight equipment of airline companies, the Department of Revenue shall consider the book value of the property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the property in its existing condition. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-337. Apportionment of taxable values to this State.

With respect to any public service company operating both inside and outside this State, it shall be the duty of the Department of Revenue to apportion for taxation in this State a fair and reasonable share of the value of the company as a

system or its rolling stock or flight equipment as appraised under the provisions of G.S. 105-336. Thus, when the Department has determined true value in accordance with the provisions of G.S. 105-336(a) or G.S. 105-336(b), it shall ascertain the portion of the total value subject to taxation in this State by applying property, business, and mileage factors thereto in accordance with the ratio that the company's property, business, or mileage in this State bears to its total property, business, or mileage. In its discretion, the Department may use one or more of the factors listed in the preceding sentence in order to achieve a fair and accurate result in the apportionment of the value of the property of any public service company. As used in this section,

- (1) The term "business factor" means data that reflect the use of the company's property, such as gross revenue, net income, tons of freight carried, revenue ton miles, passenger miles, car miles, ground hours, and comparable data.
- (2) The term "mileage factor" means factual information as to the linear miles of the company's track, wire, lines, pipes, routes, and similar operational routes and factual information as to the miles traveled by the company's rolling stock.
- (3) The term "property factor" means investment in property; it may be either gross or net investment or any other reasonable figure reflecting the company's investment in property. (1939, c. 310, s. 1609; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-338. Allocation of appraised valuation of system property among local taxing units.

(a) State Board's Duty. – For purposes of taxation by local taxing units in this State, the Department of Revenue shall allocate the valuations of public service company property among the local taxing units in accordance with the provisions of this section.

(b) System Valuation of Companies Other Than Those Noted in Subsection (c). –

(1) System Property of Railroad Companies. – The appraised valuation of the distributable system property of a railroad shall be allocated for taxation to the local taxing units in accordance with the ratio of the miles of all the company's tracks in the local taxing unit to the total miles of all the company's tracks in this State, adjusted to reflect density of traffic in the local taxing unit.

(2) System Property of Telephone Companies. –

a. The Department of Revenue shall divide each telephone company's system property in this State into the following two classes and shall determine the original cost of that property and the percentage thereof represented by the property in each of the two classes.

– Class 1: Property located in this State that is identified under the applicable uniform system of accounts as central office equipment, large P.B.X. equipment, motor vehicles, tools and work equipment, office furniture and equipment, materials and supplies, and land and buildings (including towers and other structures).

– Class 2: Property located in this State that does not come within Class 1.

The Department of Revenue shall then apply the percentages obtained in accordance with this subdivision to the appraised valuation of the company's system property in this State and thereby derive the proportions of appraised valuation to be allocated as Class 1 and Class 2 valuations to local taxing units in accordance with subdivision (b)(2)b, below.

b. Having made the division required by subdivision (b)(2)a, above, the Department of Revenue shall allocate the appraised valuation of the properties in each class among the local taxing units of the State as follows:

– Class 1: The appraised valuations of property in this class shall be allocated among the local taxing units in which such property of the company is situated on January 1 in the proportion that the original cost of such property in the taxing unit bears to the original cost of all such property in this State.

– Class 2: The appraised valuations of property in this class shall be allocated among the local taxing units in which the company operates in the proportion that the miles of the company's single aerial wire and single wire in cable (including single tube in coaxial cable) in the taxing unit bears to the total of such wire miles of the company in this State.

(3) System Property of Other Companies Appraised by the Department of Revenue. –

a. The provisions of this subdivision (b)(3) shall govern the allocation of the property of all companies appraised by the Department of Revenue except railroad, telephone, bus line, motor freight carrier, and airline companies.

b. The appraised valuation of the system property of such a company shall be allocated for taxation to the local taxing units in which the company operates in the proportion that the original cost of the taxable system property in the local taxing unit on January 1 bears to the original cost of all

the taxable system property in this State. If in any local taxing unit the company owns system property acquired prior to January 1, 1972, for which the original cost cannot be definitely ascertained, a reasonable estimate of the original cost of that property shall be made by the company, and this estimate shall be used by the Department of Revenue for allocation purposes as if it were the actual original cost of the property.

- (c) Property of Bus Line, Motor Freight Carrier, and Airline Companies. –
- (1) The appraised valuation of a bus line company's rolling stock shall be allocated for taxation to each local taxing unit according to the ratio of the company's scheduled miles during the calendar year preceding January 1 in each such unit to the company's total scheduled miles in this State for the same period. In no event, however, shall the State Board make an allocation to a taxing unit if, when computed, the valuation for that taxing unit amounts to less than five hundred dollars (\$500.00).
 - (2) The appraised valuation of the rolling stock (other than locally assigned rolling stock) owned or leased by a motor freight carrier company shall be allocated for taxation to each local taxing unit in which the company has a terminal according to the ratio of the tons of freight handled in the calendar year preceding January 1 at the company's terminals within the taxing unit to the total tons of freight handled by the company in this State in the same period. If a North Carolina interstate motor freight carrier company has no terminal outside this State, but has been required to pay ad valorem tax to one or more taxing units outside this State, there shall be allowed a reduction in the North Carolina valuation measured by the ratio of the rolling stock subject to ad valorem taxation outside the State to all of the carrier's rolling stock.
 - (3) The appraised valuation of an airline company's flight equipment shall be allocated for taxation to each local taxing unit in which an airport used by the company is situated according to the ratio obtained by averaging the following two ratios: the ratio of the company's ground hours in the taxing unit in the year preceding January 1 to the company's ground hours in the State in the same period, and the ratio of the company's gross revenue in the taxing unit in the year preceding January 1 to the company's gross revenue in the State in the same period. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 1180; 1997-456, s. 27.)

§ 105-339. Certification of appraised valuations of nonsystem property and locally assigned rolling stock.

Having determined the appraised valuations of the nonsystem properties of public service companies in accordance with subdivisions (b)(2) and (b)(3) of G.S. 105-335 and the appraised valuations of locally assigned rolling stock in accordance with subdivision (c)(1) of G.S. 105-335, the Department of Revenue shall assign those appraised valuations to the taxing units in which such properties are situated by certifying the valuations to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 18.)

§ 105-340. Certification of appraised valuations of railroad companies.

(a) Having determined the appraised valuation of the "nondistributable" system property of a railroad company, the Department of Revenue shall assign the valuations for taxation to the local taxing units in which such property is situated in the same manner as is provided for nonsystem property in G.S. 105-339.

(b) Having determined the appraised valuation of the "distributable" system property of a railroad company and having allocated the valuations in accordance with G.S. 105-338(b)(1), the Department of Revenue shall then certify the amounts of those allocations to the local taxing units to which such amounts are due in accordance with the provisions of G.S. 105-341.

(c) Each local taxing unit receiving certified valuations in accordance with this section shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1620; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 19.)

§ 105-341. Certification of public service company system appraised valuations.

Having determined the appraised valuations of public service company system property in accordance with subdivision (b)(1) of G.S. 105-335 and having allocated the valuations in accordance with G.S. 105-338(b)(2) and (3), the Department of Revenue shall assign each local taxing unit's appraised valuations by certifying them to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 20.)

§ 105-342. Notice, hearing, and appeal.

(a) Right to Information. – Upon written request to the Department of Revenue, any public service company whose property values are subject to appraisal, apportionment, and allocation for purposes of taxation under this Article shall be entitled to be informed of the elements that the Department considered in the appraisal of the company's property, the result in dollars produced by each element (including the methods and mathematical calculations used in determining those results), the specific factors and ratios the Department used in apportioning the appraised valuation of the company's property to this State, and the factors and the specific mathematical calculations the Department used in allocating the company's valuation among the local taxing units of this State. Upon written request to the Department of Revenue, any local taxing unit in this State shall be entitled to the same information with regard to any public service company whose property values are subject to appraisal, apportionment, and allocation for purposes of taxation under this Article.

(b) Appraisal and Apportionment Review. – The appraised valuation of public service company's property and the share thereof apportioned for taxation in this State under G.S. 105-335, 105-336, and 105-337 shall be deemed tentative figures until the provisions of this subsection (b) have been complied with. As soon as practicable after the tentative figures referred to in the preceding sentence have been determined, the Department of Revenue shall give the taxpayer written notice of the proposed figures and shall state in the notice that the taxpayer shall have 20 days after the date on which the notice was mailed in which to submit a written request to the Property Tax Commission for a hearing on the tentative appraisal or apportionment or both. If a timely request for a hearing is not made, the tentative figures shall become final and conclusive at the close of the twentieth day after the notice was mailed. If a timely request is made, the Property Tax Commission shall fix a date and place for the requested hearing and give the taxpayer at least 20 days' written notice thereof. The hearing shall be conducted under the provisions of subsection (d), below.

(c) Repealed by Session Laws 1985, c. 601, s. 4.

(d) Hearing and Appeal. – At any hearing under this section, the Property Tax Commission shall hear all evidence and affidavits offered by the taxpayer and may exercise the authority granted by G.S. 105-290(d) to obtain information pertinent to decision of the issue. The Commission shall make findings of fact and conclusions of law and issue an order embodying its decision. As soon as practicable thereafter, the Commission shall serve a written copy of its decision upon the taxpayer by personal service or by registered or certified mail, return receipt requested. (1971, c. 806, s. 1; 1973, c. 476, s. 193; 1979, c. 584, s. 2; c. 665, s. 1; 1985, c. 601, s. 4; 1987 (Reg. Sess., 1988), c. 1052, s. 1.)

§ 105-343. Penalty for failure to make required reports.

Any public service company which fails or refuses to prepare and deliver to the Department of Revenue any report required by this Article shall forfeit and pay to

the State of North Carolina one hundred dollars (\$100.00) for each day the report is delayed beyond the date on which it is required to be submitted. This penalty may be recovered in an action in the appropriate division of the General Court of Justice of Wake County in the name of the State on the relation of the Secretary of Revenue. When collected, the penalty shall be paid into the general fund of the State. The Secretary shall have the power to reduce or waive the penalty provided in this section for good cause. (1939, c. 310, s. 1606; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

§ 105-344. Failure to pay tax; remedies; penalty.

If any public service company fails or refuses to pay any taxes imposed on its property by any taxing unit of this State, the taxing unit may bring an action in the appropriate division of the General Court of Justice of the county in which the taxing unit is located for the recovery of the tax. Not less than 15 days before such an action is instituted, the taxing unit shall notify the taxpayer by registered or certified mail of its intention to bring the action. The judgment rendered in such an action shall include the tax imposed and unpaid and, as an additional tax, a penalty of fifty percent (50%) of the amount of the tax with interest on the sum of these taxes at the rate of nine percent (9%) per annum from the date the tax was due to be paid, plus reasonable attorneys' fees for the prosecution of the action to be fixed by the court. (The awarding of attorneys' fees by the court shall not prevent the taxing unit from paying its attorney an additional fee pursuant to contract, nor shall it prevent the taxing unit from requiring that the attorneys' fees awarded by the court be paid into the general fund of the taxing unit in accordance with any arrangement between the taxing unit and its attorneys.) The judgment rendered by the court may include a mandamus ordering the payment of the judgment, penalty, interest, and costs including the attorneys' fees as part of the costs.

If, during the pendency of an action brought under this section, additional or subsequent taxes shall accrue, those taxes, together with penalties and interest, may be included in the judgment if, prior to rendition of the judgment, the tax collector of the taxing unit files with the court a certificate of the additional taxes, penalties, and interest.

In any action brought under this section, the appraised valuation of the taxpayer's property as determined, allocated, and certified to the taxing unit by the Department of Revenue shall be conclusive and shall not be subject to collateral attack. (1939, c. 310, s. 1611; 1971, c. 806, s. 1; c. 931, s. 1; 1973, c. 476, s. 193.)