

CHAPTER 128—H. F. No. 823

An act relating to taxes, on and measured by net income; amending Minnesota Statutes, 1953, Section 290.49, Subdivision 1.

Be it enacted by the Legislature of the State of Minnesota.

Section 1. Minnesota Statutes 1953, Section 290.49, Subdivision 1, is amended to read:

290.49 **Assessment, collection.** Subdivision 1. Except as *otherwise provided in this chapter* the amount of taxes assessable with respect to all taxable years ending after January 1, 1937, shall be assessed within three and one-half years after the return is filed. Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by registered mail to the post office address given in the return, and the record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

Approved March 10, 1955.

CHAPTER 129—S. F. No. 496

[Not Coded]

An act relating to the conciliation court of the city of Minneapolis; repealing Laws of 1917, Chapter 263; Laws of 1921, Chapter 285; Laws of 1923, Chapter 262; Laws of 1925, Chapter 90; Laws of 1929, Chapter 242; Laws of 1935, Chapter 145; Laws of 1943, Chapter 148; Laws of 1951, Chapter 527; Laws of 1953, Sections 1 through 6 and Section 8 of Chapter 11.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Conciliation court.** Subdivision 1. **Established court continued.** The establishment of the existing Conciliation Court of the City of Minneapolis is confirmed and said court is continued with the jurisdiction and powers hereinafter stated.

Subd. 2. Court of record, seal. The conciliation court is a court of record with its own seal. It is separate from the Municipal Court of the City of Minneapolis.

Subd. 3. Jurisdiction. Excepting actions involving title to real estate, the court has jurisdiction to hear, conciliate, try and determine civil actions at law where the amount in controversy does not exceed the sum of \$150. The territorial jurisdiction of the court is coextensive with the geographic boundaries of the County of Hennepin.

Subd. 4. Powers, issuance of process. The court has all powers, and may issue such process, as is necessary or proper to carry out the purposes of this act.

Subd. 5. Terms of court. The judges shall hold terms of court from time to time as necessary to hear and dispose of all claims as promptly as feasible after filing.

Subd. 6. Rules of pleading, practice, and procedure. A majority of the judges may promulgate rules governing pleading, practice and procedure which are not inconsistent with the provisions of this act.

Subd. 7. Time, computation. In computing any period of time prescribed or allowed by this act, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.

Sec. 2. Judges. Subdivision 1. **Judges of municipal court serve as judges.** (a) The judges of the Municipal Court of the City of Minneapolis shall serve as judges of the conciliation court for such periods and in such rotation as the judges may determine. While so serving they shall act and be known as conciliation judges.

(b) The municipal judge who conducts the conciliation court hearing shall act upon any applications to vacate a judgment or an order for judgment whatever the grounds may be and shall sign the certificate upon a removed cause, but any other municipal judge may act upon such an application or sign such a certificate in the event that the judge who conducted the hearing has not previously denied the application and cannot act upon the application promptly or sign the certificate due to expiration of his term, death, disability, absence from the court house or any other cause.

Subd. 2. **Clerk of municipal court serve as clerk.** The clerk of the municipal court shall serve as the clerk of the conciliation court. He shall delegate deputy clerks of the municipal court to assist him in performing his duties under this act. The clerk shall keep such records and accounts and perform such duties as may be prescribed by the judges. He shall account for and pay over to the City of Minneapolis all fees received by him in the same fashion as required in his capacity as clerk of municipal court.

Subd. 3. **Police officers.** The police officers assigned to municipal court may be assigned by the judges to perform duties for the conciliation court.

Subd. 4. **Court reporter, duties.** Each court reporter appointed by a judge of municipal court shall assist that judge in performing his duties as conciliation judge, but, unless ordered to do so by that judge, he shall not take official notes of any trial or proceedings in conciliation court.

Subd. 5. **Salaries of officers.** The judges, clerk, deputy clerks, and court reporters shall receive only their salaries payable for serving as officers of municipal court while serving in conciliation court. All oaths taken and bonds given by the judges, clerk, deputy clerks and court reporters for their respective offices in municipal court include their acts as officers of conciliation court, whether or not so expressed therein.

Subd. 6. **Quarters for court.** The City of Minneapolis shall provide suitable quarters for the court, and court shall be held at that place. The clerk shall procure and furnish all necessary blanks, stationery, books, furniture, furnishings and other supplies for the use of the court and the officers thereof at the expense of the City, with the consent of the City Council and under the supervision and approval of a majority of the judges.

Sec. 3. **Actions, commencement.** Subdivision 1. **Time commenced.** An action is commenced against each defendant when the complaint is filed with the clerk of conciliation court and a filing fee of one dollar is paid to the clerk or the prescribed affidavit in lieu of filing fee is filed.

Subd. 2. **Filing fee, affidavit of inability to pay.** If the plaintiff or the defendant signs and files with the clerk an affidavit that he has no money or property and is unable to pay a filing fee, no fee shall be required for the filing of his claim or counterclaim. If the affiant prevails on his claim or counterclaim, the amount of the filing fee which would have been payable by him shall be included in the order for judgment and

paid to the clerk of conciliation court by the affiant out of any money recovered by him on the judgment.

Subd. 3. Claim, verification. The claim must be verified by the plaintiff or his attorney and shall contain a brief statement of the amount, date of accrual, and nature of the claim and the name and address of the plaintiff, the plaintiff's attorney (if any) and the defendant. If the plaintiff is not represented by an attorney, the clerk shall draw up the claim on request.

Subd. 4. Hearing, date; notice to parties. When an action has been properly commenced, the clerk shall set a date for court hearing and advise the plaintiff of the date set. The clerk shall promptly summon the defendant by mail or by personal service in the manner then provided for personal service of a summons of said municipal court. The summons shall state the amount and nature of the claim; shall require the defendant to appear at the hearing; shall specify that if he does not appear judgment by default will be entered against him for the relief demanded and shall summarize the requirements for filing a counterclaim. Unless otherwise ordered by a judge, the hearing date shall be not less than ten days from the date of mailing or service of the summons.

Subd. 5. Counterclaim. (a) The defendant may interpose as a counterclaim any claim within the jurisdiction of the court which he has against the plaintiff whether or not arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

(b) The counterclaim shall be interposed by filing with the clerk a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant or his attorney, and paying a filing fee of one dollar to the clerk. If the defendant is not represented by an attorney the clerk shall draw up the counterclaim on request.

(c) The clerk shall note the filing of the counterclaim on the original claim, promptly notify the plaintiff or his attorney by mail of the filing and set the counterclaim for hearing on the same date as the original claim.

(d) The counterclaim shall be filed not less than five days before the date set for court hearing. The judge, in his discretion, may thereafter allow the filing of a written or oral counterclaim before or after hearing the merits of the claim and counterclaim. The judge, in his discretion, may require the payment of absolute or conditional costs up to twenty-five dollars by the defendant as a condition of allowing late filing in

the event that a continuance is requested by the plaintiff and is granted because of such late filing.

(e) If the defendant has a counterclaim arising out of the same transaction or occurrence which exceeds the jurisdiction of the court and the defendant files an affidavit by himself or his attorney with the clerk not less than five days before the date set for court hearing showing that he has filed with the clerk of a specified other court of competent jurisdiction a complaint seeking recovery from the plaintiff on the counterclaim and stating the nature and amount thereof, the clerk shall strike the action from the calendar and so advise the plaintiff or his attorney by mail. If the plaintiff not less than thirty days nor more than three years after the filing of such an affidavit shall file an affidavit showing that he has not been served with a summons in the other action or that the other action has been finally determined, the clerk shall again set the cause for court hearing and summon the defendant in the same manner as for the initial hearing and the court shall proceed to hear and determine plaintiff's claim. If no such counter-affidavit is filed by plaintiff within three years, his original claim is dismissed without prejudice without any further action by the clerk or any judge. Prior to the expiration of this three year period the plaintiff's original claim may be dismissed by plaintiff or by court order at a hearing upon motion of the defendant.

Subd. 6. Court officer to take possession. If the controversy concerns the ownership or possession, or both, of personal property the value of which does not exceed the sum of \$150, the judge in his discretion, may direct an officer of the court to take possession of the property immediately and hold it subject to the further order of the court, without the giving of any bond whatever.

Sec. 4. Hearing by court. Subdivision 1. Testimony, exhibits. At the court hearing a conciliation judge shall hear the testimony of the respective parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

Subd. 2. Appearance of parties. Any party may appear in his own behalf without an attorney, or may retain and be represented by a duly admitted attorney who may participate in the hearing to the extent and in the manner that the judge, in his discretion, deems helpful to accomplish the purposes of this act.

Subd. 3. Evidence admissible. At the hearing the judge normally shall receive only evidence admissible under

the rules of evidence, but in the interests of justice and the summary determination of causes before him he may receive evidence not so admissible.

Subd. 4. Conciliation attempts. The judge may attempt to conciliate the parties. If the parties agree on a settlement the judge shall order judgment in accordance with that settlement.

Subd. 5. Determination, order of judgment. If the parties do not agree upon a settlement, the judge shall summarily hear and determine the cause and order judgment.

Subd. 6. Contents of order of judgment. Any judgment ordered may provide for satisfaction by payments in instalments in such amounts and at such times, not exceeding one year for the last instalment, as the judge determines to be just and reasonable. If any instalment is not paid when due the entire balance of the judgment ordered becomes immediately due and payable.

Subd. 7. Defendant, failure to appear. If the defendant, after being summoned as provided by this act, fails to appear at the time set for hearing, the judge may hear the plaintiff or his attorney and order judgment by default or he may fix a later date for hearing in accordance with what appears just and reasonable. If a later date be set for hearing the clerk shall notify the defendant by mail.

Subd. 8. Plaintiff failing to appear, defendant appearing. (a) If the plaintiff fails to appear at the time set for hearing and the defendant does appear, the judge may hear the defendant and order judgment of dismissal on the merits, order the cause dismissed without prejudice, fix a later date for hearing or make such other disposition as is just and reasonable.

(b) If both parties are present or represented at the hearing, the judge, in his discretion, on motion of the plaintiff, may grant dismissal without prejudice either before or after hearing evidence.

(c) If a later date be set for hearing the clerk shall notify by mail any party not present or represented at the hearing.

Subd. 9. Continuance. On proper showing of good cause, a continuance, further hearing or re-setting may be ordered on motion of either party. The court may require payment of costs, conditional or absolute, not to exceed \$25 to the other party as a condition of such an order. The clerk shall

give notice of any continuance, further hearing or re-setting by mail to any party who does not have other notice thereof.

Sec. 5. Notice of order of judgment sent to parties.
Subdivision 1. Contents of notice. The clerk shall promptly mail to each party a notice of the order for judgment which the judge enters. The notice shall state the number of days allowed for obtaining an order to vacate where there has been a default or for removing the cause to municipal court.

Subd. 2. Entry of judgment. The clerk shall enter judgment forthwith as ordered by the court, dating the judgment entry the same date as notice is mailed to the parties. Unless: (1) otherwise ordered by a judge, (2) payment has been made in full, (3) removal to municipal court has been perfected or (4) an order vacating the prior order has been filed, the judgment so entered by the clerk becomes finally effective ten days after the mailing of notice.

Subd. 3. Contents of order of judgment. The judge, in his order for judgment, shall include any filing fee paid by the prevailing party, may include any disbursements incurred by the prevailing party covering items taxable in civil actions in the municipal court, and may include or adjust for any sum which he deems proper to cover all or part of conditional costs previously ordered to be paid by either party. No other costs shall be allowed to a prevailing party.

Subd. 4. Payment of judgment. The losing party may pay all or any part of the judgment to the clerk for the benefit of the prevailing party or may pay the prevailing party indirectly and so advise the clerk. The clerk shall make an appropriate entry on his records when any payment has been made to him or when satisfied that any payment to the prevailing party has been made.

Subd. 5. Vacation of default judgment, costs. When a default judgment or a judgment of dismissal on the merits has been ordered for failure to appear, the judge, within ten days after notice thereof was mailed, may vacate the order for judgment ex parte and grant a new hearing, if the defaulting party shows lack of notice, mistake, inadvertence, or excusable neglect as the cause of his failure to appear. Absolute or conditional costs not exceeding \$25 to the other party may be ordered as a prerequisite to that relief. The clerk shall notify the other party by mail of the new hearing date.

Subd. 6. New hearing date. When a defendant shows that he did not receive a summons before the hearing within sufficient time to permit a defense and that he did not receive

notice of the order for default judgment within sufficient time to permit him to make application for relief within ten days or shows other good cause, a judge may vacate a default judgment after notice to the plaintiff and grant a new hearing on the merits with or without payment of absolute or conditional costs. The clerk shall notify the parties by mail of the new hearing date.

Subd. 7. Conditional costs. When a judge orders payment of absolute or conditional costs as a condition of an order under any provision of this act, the amount shall be paid to the clerk before the order becomes effective or is filed. Every such order is invalid unless filed with the clerk within five days after its date. Conditional costs shall be held by the clerk to abide the final order entered in the cause. Absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

Subd. 8. Transcript of judgment. When a judgment has become finally effective under subdivision 2 of this section, the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court on payment of a fee of fifty cents therefor and file it with the clerk of the municipal court of the City of Minneapolis without additional fee. After filing of the transcript, the judgment becomes, and is enforceable as, a judgment of the municipal court. A transcript of a judgment payable in instalments may not be so obtained and filed until twenty days after default in the payment of an instalment. No writ of execution or garnishment summons may be issued out of conciliation court.

Sec. 6. Removal of cause to municipal court. **Subdivision 1. Trial de novo.** Any person aggrieved by an order for judgment entered by a conciliation judge after a contested hearing may remove the cause to the Municipal Court of the City of Minneapolis for trial de novo.

Subd. 2. Prerequisites for removal of cause. No cause shall be so removed unless all of the following acts are performed by the aggrieved party within ten days after the date the clerk mailed to him notice of the order for judgment.

(a) Serve on the opposing party or his attorney a demand for removal of the cause to the municipal court for trial de novo stating whether trial by a jury of six or twelve persons or by the court without a jury is demanded. Service shall be made upon a party in accordance with the provisions for personal service of a summons in the municipal court or shall be made upon the party's attorney in accordance with the provisions for service of a notice of motion upon an attorney in

the municipal court. The demand shall show the office address of the attorney for each party and the residence address of each party who does not have an attorney.

(b) File with the clerk of conciliation court the original demand for removal and proof of service thereof. If the opposing party or his attorney cannot be found and service of the demand be made within the ten day period, the aggrieved party may file with the clerk within the ten day period the original and a copy of the demand, together with an affidavit by himself or his attorney showing that due and diligent search has been made and that the opposing party or his attorney cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address.

(c) File with the clerk of conciliation court an affidavit by the aggrieved party or his attorney stating that the removal is made in good faith and not for the purpose of delay.

(d) Pay to the clerk of conciliation court two dollars when the demand is for trial by court, plus three dollars additional when the demand is for trial by a jury of six persons or five dollars additional when the demand is for trial by a jury of twelve persons.

Subd. 3. Limited removal of cause. (a) When a motion for vacation of a judgment or an order for judgment under Subd. 5 or Subd. 6 of Sec. 5 has been denied, the aggrieved party may demand limited removal to the Municipal Court of the City of Minneapolis for hearing de novo of his motion. The demand for limited removal and notice of the hearing de novo must be served by the aggrieved party on the other party in accordance with the provisions of Subd. 2(a) of Sec. 6 and the original demand and notice, with proof of service, must be filed with the clerk of conciliation court within ten days after the motion has been denied, or the original and one copy of the demand and notice, together with an affidavit similar to that required by Subd. 2(b) of Sec. 6 must be filed with the clerk of conciliation court within said ten day period. When such an affidavit is filed, the clerk shall then mail the copy of the demand and notice to the other party at his last known residence address. The aggrieved party shall pay a fee of \$2.00 to the clerk of conciliation court for filing the demand and notice and this fee shall not be recoverable as a disbursement. The notice shall set a date for hearing de novo at a special term of the municipal court not less than 10 days nor more than 30 days subsequent to the date of filing the original demand and notice.

(b) The clerk of conciliation court thereupon shall pay over to the municipal court the \$2.00 fee and shall file in municipal court the removal demand and notice, together with all orders, affidavits, and other papers filed in conciliation court. The clerk of municipal court shall then place the cause on the special term calendar of the municipal court for hearing on the date specified in the notice.

(c) A municipal judge, other than the conciliation judge who denied the motion, shall hear the motion de novo at special term and may deny the motion, without allowance of costs, or grant the motion, with or without the allowance of absolute or conditional costs. At the hearing de novo the municipal judge shall consider the entire file of the conciliation court together with any subsequent affidavits or showing made by either party.

(d) The clerk of municipal court shall send a copy of the order made after the de novo hearing to both parties and return the file to the clerk of conciliation court.

Subd. 4. Trial by jury. If the opposing party desires trial by a jury of six or twelve persons when none or a jury of only six persons is demanded in the demand for removal, he shall: (a) serve a demand for trial by a jury of six or twelve persons on the aggrieved party, (b) file the demand with proof of service with the clerk of conciliation court within ten days after the demand for removal was served upon him, and (c) pay to the clerk of conciliation court at the time of such filing a fee of three dollars if he demands a jury of six persons, five dollars if he demands a jury of twelve persons or two dollars if he demands a jury of twelve persons instead of the six persons previously demanded by the aggrieved party.

Subd. 5. Waiver of trial by jury. If a jury of six or twelve persons is not demanded within the time limits and in the manner provided in this act, all parties waive trial by a jury of six or of twelve persons as the case may be.

Subd. 6. Removal, when perfected. When all removal papers have been properly filed and all requisite fees have been paid by the aggrieved party as herein provided, the removal is perfected. Thereupon the conciliation judge shall make and file an order vacating the order for judgment in conciliation court and a certificate setting out in general terms the proceedings had, the issues tried and the order entered.

Subd. 7. Clerk's duties. After the judge's order and certificate have been filed, the clerk of conciliation court shall

pay over to the municipal court the removal and jury fees paid to him hereunder and shall file in municipal court all claims, orders, certificates and other papers filed in conciliation court in connection with the cause and its removal to municipal court.

Subd. 8. Note of issue not necessary. No note of issue for trial in municipal court need be filed. The removed cause shall be brought on for trial in the same manner and substantially the same order as though a note of issue had been filed in municipal court on the date the claim was filed in conciliation court.

Subd. 9. Issues for trial. The issues for trial in municipal court shall be those in conciliation court as set forth in the judge's certificate, but a party may be allowed to amend the issues in municipal court on motion following the same procedure and subject to the same limitations as would apply if the motion were for amendment of the pleadings after a responsive pleading had been served in an action originally brought in municipal court. The court may grant an amendment which increases the amount claimed by either party to an amount in excess of the jurisdiction of conciliation court but not in excess of the jurisdiction of municipal court. The court may allow pleadings to be amended to add a new cause of action by way of counterclaim or otherwise if the new cause of action has not been barred by a statute of limitation of action before the date when the motion for amendment is heard by the court.

Subd. 10. Costs for prevailing party. (a) The prevailing party in a removed cause may tax and recover from the other party five dollars as costs together with his disbursements incurred in conciliation and municipal court.

(b) For the purpose of this subdivision, an "aggrieved party" means the party who demands removal to municipal court and means the first party who serves, or files in lieu of serving, a demand for removal if another party also demands removal, and an "opposing party" means any party as to whom the aggrieved party seeks a reversal in whole or in part by removal of the cause to municipal court.

(c) The aggrieved party is the prevailing party in municipal court:

(1) If the aggrieved party recovers any amount or any property in municipal court when the aggrieved party had been denied recovery of any amount or any property by the conciliation judge,

(2) If the opposing part does not recover any amount or any property from the aggrieved party in municipal court when the opposing party had recovered some amount or some property by the order of the conciliation judge,

(3) If the aggrieved party recovers an amount or value of property in municipal court which is at least \$25.00 in excess of the amount or value of property which the aggrieved party recovered by the order of the conciliation judge or

(4) If the opposing party recovers from the aggrieved party an amount or value of property in municipal court which is at least \$25.00 less than the amount or value of property which the opposing party recovered by the order of the conciliation judge.

(d) In all other situations the opposing party shall be deemed to be the prevailing party in municipal court.

(e) Costs or disbursements in the conciliation or municipal court shall not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this subdivision.

Subd. 11. Pleading, practice, and procedure. Except as otherwise expressly provided in this act, pleading, practice and procedure in a removed cause are the same as in an action originally brought in municipal court.

Subd. 12. Appeal to supreme court. Causes removed to municipal court from conciliation court may be removed from municipal court to the Supreme Court of Minnesota in the same manner, upon like proceedings and with the same effect as causes originally brought in the municipal court.

Sec. 7. Subdivision 1. Effective date. This act takes effect on July 1, 1955.

Subd. 2. Repeals. The following acts and sections of acts are hereby repealed:

Laws of 1917, Chapter 263
Laws of 1921, Chapter 285
Laws of 1923, Chapter 262
Laws of 1925, Chapter 90
Laws of 1929, Chapter 242
Laws of 1935, Chapter 145
Laws of 1943, Chapter 148
Laws of 1951, Chapter 527
Laws of 1953, Sections 1 through 6
and Section 8 of Chapter 11.

Subd. 3. **Exemptions.** This act does not affect the validity of any judgment or order made or any other action taken prior to the effective date of this act under any repealed acts and does not affect the pendency of any action or proceeding instituted before the effective date of this act.

Subd. 4. **Application.** This act governs all actions brought after it takes effect and also all further proceedings in actions then pending in conciliation court or in municipal court upon removal except to the extent that in the opinion of the judge their application in a particular action pending when this act takes effect would not be feasible, or would work injustice, in which event the provisions existing at the time the action was brought shall govern.

Subd. 5. **Laws excepted.** Laws 1947, Chapter 498, is not modified by this act. The supreme court of this state has the power to regulate pleading, practice, procedure and the forms thereof in civil actions in the Conciliation Court of the City of Minneapolis under Laws 1947, Chapter 498. The provisions of this act relating to pleading, practice, procedure and the forms thereof in civil actions are effective as rules of court until modified or superseded by subsequent court rule. Upon the adoption of any rule by the supreme court on the same subject, the provisions of this act, insofar as they are in conflict therewith, shall be of no further force or effect.

Approved March 10, 1955.

CHAPTER 130—S. F. No. 666

An act relating to conversion of certain special school districts into independent school districts, and amending Minnesota Statutes 1953, Section 122.58, Subdivision 3:

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1953, Section 122.58, Subdivision 3, is amended to read:

Subd. 3. All Class 2 special school districts, subject to the provisions of this subdivision, are hereby converted into independent school districts. In any Class 2 special school district, where no election is called as hereinafter provided, the governing body may, within 45 days after April 25, 1955, by resolution, elect that *Minnesota Statutes 1953, Section 122.58*, shall not apply to such school district, in which case they shall not. The governing body of such district, within 45 days after