

1934 Supplement

To

**Mason's Minnesota Statutes**

**1927**

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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SAINT PAUL, MINNESOTA.  
1934

**1973-6. Depositories — Bank delinquent in payment of taxes on stock shares.**

This statute is still in force. Op. Atty. Gen., May 29, 1930.

**1973-8. Certain banks may be depositories.**—In every case where a bank which is eligible under the provisions of General Laws 1927, Chapter 381 [Mason's Minn. Stat., 1927, §1973-6], merges or consolidates with another bank under the charter of either, such consolidated bank shall, so long as all taxes levied and assessed against its shares under the laws of this state subsequent to such consolidation are paid as required by law, be eligible to receive deposits of public moneys under said act. (Act Apr. 19, 1929, c. 262.)

**1973-9. Treasurer to be reimbursed for losses.**—Where the treasurer of any town, village or city of the fourth class has or shall hereafter reimburse such town, village or city for loss of funds of the town, village or city on deposit in any bank which has or may become insolvent, such town, village or city shall reimburse said treasurer for the money so paid when a majority of the electors voting thereon at the annual town meeting or at any regular or special village or city election vote so to do; provided, that the notice of such annual meeting or election shall specify that such matter will be considered thereat. (Laws 1931, c. 35; Apr. 20, 1931, c. 279.) Supersedes Laws 1929, c. 133, limited to town treasurers.

Laws 1931, cc. 35 and 279 do not repeal Laws 1929, c. 133 so as to prevent vote to reimburse town treasurer at special town meeting. Op. Atty. Gen., July 8, 1932.

**1973-10. Depositories insured under federal act excused from giving security to extent of insurance coverage.**—No bank or trust company authorized to do a banking business in this state, designated as a depository of state, county, village, borough, town, or school district funds, and Cities howsoever organized, provided by law, the deposits of which bank or trust company are insured in whole or in part, under the provisions of the Act of Congress of the United States of June 16, 1933 (creating the Federal Deposit Insurance Corporation and the Temporary Federal Deposit Insurance Fund) [Mason's U. S. C. A., tit. 12, §264], shall be required to furnish any corporate or personal surety bond, or deposit any collateral in lieu of bond, to secure such funds, in so far as such funds shall constitute "insured Deposit liabilities" of such bank or trust company within the provisions of said Act of Congress. Provided, that nothing in this Act shall be construed to release any bank or trust company from furnishing surety bond or collateral for all deposits in excess of the insurance afforded by the National Banking Act. (Act Jan. 9, 1934, Ex. Ses., c. 62, §1.)

**1973-11. Same—repeal.**—All Acts or parts of Acts, inconsistent herewith, are hereby repealed. (Act Jan. 9, 1934, Ex. Ses., c. 62, §2.)

## CHAPTER 11

### Taxes

Laws 1929, c. 38, creates a bank tax commission to study question of national bank taxation and to report at next session of legislature. Laws 1931, c. 275, continues the commission to the end of the 1933 session. Laws 1933, c. 323, continues commission.

Laws 1931, c. 303, authorizes the tax commission to compromise taxes assessed against shareholders of national banks. See, also, Res. No. 8, Laws 1931, p. 627.

#### GENERAL PROVISIONS

##### 1974. Property subject to taxation.

###### 1. General rules.

Intangibles, if so used as to become integral part of local business, may acquire situs for taxation other than domicile of their owner. Baker v. S., 186M160, 242NW 697. See Dun. Dig. 9155, 9572b.

City of Mankato could not enact an ordinance requiring one starting a new mercantile business to post a bond conditioned that if the concern does not stay in business for more than one year, the amount thereof should be forfeited to the city in liquidation of personal property taxes, license, etc. Op. Atty. Gen., Mar. 27, 1931.

###### 7. Interstate commerce.

Cattle, temporarily owned by licensed dealers at stockyards as they arrive and are purchased and resold outside state, are not subject to state taxation, such holding constituting interstate commerce. State v. Blasius, 187M420, 245NW612. See Dun. Dig. 4894.

###### 8. Held taxable.

A membership in the South St. Paul Traders' Livestock Exchange is property, and subject to taxation. State v. Blasius, 187M420, 245NW612. See Dun. Dig. 9128.

Franchises are subject to taxation. City of South St. Paul, 248NW288. See Dun. Dig. 9125.

##### 1975. Property exempt.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. State, Appeal of, 234M691. See Dun. Dig. 9151a.

The courts cannot acquire jurisdiction in proceedings to enforce taxes over state property. State, Appeal of, 182M437, 234NW691. See Dun. Dig. 9151a.

In the absence of express law so declaring, property of the state is not subject to taxation. State, Appeal of, 182M437, 234NW691. See Dun. Dig. 9151a.

Where city acquired land for airport pursuant to condemnation proceedings on Dec. 26, 1929, it was subject to 1929 levy of taxes which was spread on the books prior to that date. Op. Atty. Gen., Mar. 4, 1931.

A municipal golf course purchased by a city on Jan. 3, 1931, is exempt from taxation for 1931 and subsequent years, assuming that it is without unreasonable delay devoted to the purpose for which purchased. Op. Atty. Gen., Mar. 4, 1931.

Land owned and used by Boy Scouts is not exempt from taxation. Op. Atty. Gen., Aug. 11, 1930.

Property of Young Men's Christian Association used for boys' camp is not exempt from taxation. Op. Atty. Gen., Aug. 11, 1930.

Property purchased by an institution under a contract for a deed is not exempt from taxation. Op. Atty. Gen., July 20, 1931.

###### 3. Special assessments.

Constitutional exemption of church property from taxation has no application to special assessment for local improvements. Op. Atty. Gen., Sept. 21, 1932.

On deed by state of land to private party, city has no authority to levy assessment for local improvements made while state owned premises. Op. Atty. Gen., Feb. 14, 1933.

###### 4. Held exempt.

Property purchased by a church as a site for new church buildings is exempt at least from time architect is employed to prepare plans. State v. Second Church of Christ, Scientist, 185M242, 240NW532. See Dun. Dig. 9152.

Fact that church purchasing site for new buildings receives some small incidental revenue from the property was not sufficient ground for denying tax exemption. State v. Second Church of Christ, Scientist, 185M 242, 240NW532.

Taxes may not be levied against land owned by the state through foreclosure of rural credits bureau loan. Op. Atty. Gen., Sept. 24, 1931.

Property of the Animal Rescue League of Minneapolis is exempt from taxation. Op. Atty. Gen., Jan. 5, 1932.

When property is conveyed to a county, it becomes exempt from taxation, and enforcement of payment of any delinquent taxes is suspended. Op. Atty. Gen., Feb. 11, 1932.

Farms acquired by department of rural credit do not become subject to taxation when sold by state on contract for deed. Op. Atty. Gen., Sept. 2, 1932.

If renting of part of school building to a newspaper is subordinate to its principal use as a school and does not interfere therewith such renting does not destroy or take away the school's tax exemption. Op. Atty. Gen., Apr. 13, 1933.

Building principally used for school purposes is exempt, though part of it is rented to others. Op. Atty. Gen., Apr. 13, 1933.

###### 5. Held not exempt.

Hospital held not exempt from taxation. Op. Atty. Gen., Mar. 11, 1933.

Land acquired by state through foreclosure of mortgage is not taxable to pay bonded indebtedness of school district. Op. Atty. Gen., Aug. 1, 1933.

**1975-1. Building and loan associations exempted from income tax.**—Building and loan associations as defined by Mason's Minnesota Statutes of 1927, Section 7749-1, are hereby exempted from all income taxes and all franchise or privilege taxes measured by

income now or hereafter imposed by the laws of this State, and are in particular hereby exempted from any such tax imposed by the bill heretofore enacted into law by this legislature as House File No. 367 and entitled "An Act Raising Revenues, Imposing Income Taxes and Franchise or Privilege Taxes Measured by Income, Providing Certain Exemptions and Exceptions From Such Taxes, Providing for the Assessment, Levy and Collection Thereof, and the Distribution of the Proceeds Therefrom, Appropriating Money for the Administration Thereof, Providing Penalties for Violations Thereof and Defining Certain Crimes in Connection Therewith and Imposing Penalties Therefor," [§2394-1 et seq.]. (Act Apr. 21, 1933, c. 382.)

#### 1977. Real property.

Taxes on real estate are enforceable only against the land and cannot be enforced against the land owner personally. 172M567, 216NW250.

Where University leases land to faculty members under long term leases to be used for dwellings constructed by the lessee, the leasehold interest and the buildings are taxable as real estate. Op. Atty. Gen., Nov. 27, 1931.

#### 1978. Mineral, gas, coal, oil, etc.

Interests or estates in lands may be segregated and taxed separately. 172M263, 271, 273, 215NW71, 180, 181.

#### 1979. Personal property.

Pipe lines of companies transporting gasoline, running through the property of others under an easement, are personal property and should be taxed as such. Op. Atty. Gen., May 26, 1931.

Where title to buildings sold by school board at auction, though not right of possession, passes to the purchasers, the buildings are personal property, and subject to taxation assessed against purchaser. Op. Atty. Gen., Mar. 30, 1933.

(3). Where University leases land to faculty members under long term leases to be used for dwellings constructed by the lessee, the leasehold interest and the buildings are taxable as real estate. Op. Atty. Gen., Nov. 27, 1931.

(4). Greenhouse crops or plants grown in greenhouse proper or otherwise, including herbaceous annuals, are taxed as other property and not exempt. Op. Atty. Gen., July 10, 1933.

#### 1980. Other definitions.

174M509, 219NW872.

##### 1. Held credits.

Shares of stock of Standard Oil Company of Indiana operating filling stations and bulk stations in state are exempt from taxation. Op. Atty. Gen., May 31, 1932.

Shares of stock of Central States Electric Company owning and operating gas plant in Fairmont are exempt from taxation. Op. Atty. Gen., May 31, 1932.

Shares of stock of foreign corporation, having substantial amount of property in state upon which it pays taxes, are exempt from taxation. Op. Atty. Gen., May 31, 1932.

Shares of stock in foreign holding company which has subsidiary in state which pays substantial taxes upon property are subject to moneys and credits tax. Op. Atty. Gen., May 31, 1932.

Shares of stock of foreign telephone corporation are exempt if telephone corporation pays gross earnings tax. Op. Atty. Gen., May 31, 1932.

Shares of stock in foreign corporation owned by resident of state are subject to moneys and credits tax. Op. Atty. Gen., June 4, 1932.

#### 1983. Powers of tax commission.

There can be no refundment of a tax paid under this act except by application to the tax commission under §1983. Op. Atty. Gen., Apr. 28, 1930.

Where state lands were sold and school or swamp land certificates issued, and lands were placed on tax list and then sold for delinquent taxes, and petitioners purchased at the tax judgment sale or took assignments from the estate, and original purchaser of lands failed to live up to the terms of his contract, petitioners were not entitled to a refund. Op. Atty. Gen., Feb. 2, 1931.

State tax commission has authority to order a refundment of any excess of interest paid on a ditch assessment if approved by the county board. Op. Atty. Gen., July 2, 1931.

County board has no authority to compromise personal property tax judgments, and judgment debtors, to secure relief must proceed in manner outlined by this section. Op. Atty. Gen., Apr. 5, 1933.

Procedure for refund to taxpayer of monies and credits tax paid on money in closed bank should be as herein outlined. Op. Atty. Gen., Apr. 12, 1933.

Valuation of deposits in closed banks, discussed. Op. Atty. Gen., Apr. 12, 1933.

Tax commission has power to grant such a reduction or abatement of assessed valuations upon favorable recommendation by county board and auditor. Op. Atty. Gen., Apr. 28, 1933.

### LISTING AND ASSESSMENT

#### 1984. Time.

Hogs purchased and acquired by a packing plant on May 1st shall be included in the personal property tax return, and not only those held over from the evening of April 30th. Op. Atty. Gen., July 15, 1931.

City assessor has no authority to make revaluation of real estate in odd-numbered year. Op. Atty. Gen., Apr. 12, 1933.

City assessor had no authority to make a revaluation in an odd-numbered year by reason of diminution of value in real estate following last assessment. Op. Atty. Gen., Apr. 12, 1933.

Where one bank took over another after May 1st, question of who should pay personal property tax depends upon agreement between parties. Op. Atty. Gen., June 26, 1933.

Laws 1933, c. 359, amending §1993, is not applicable to 1933 taxes insofar as it relates to valuation and assessment of homesteads, time for assessment and valuation being fixed by this section. Op. Atty. Gen., Sept. 25, 1933.

#### 1985. Omitted property.

Statement of the taxes due on omitted property in a gross sum for a number of years in the published delinquent tax list was not a jurisdictional defect; but interest and penalties should not be added to the amount where the taxpayer was deprived of opportunity to pay the taxes. Op. Atty. Gen., June 12, 1930.

#### 1988. Deputy assessors.

Under this section a city operating under a special charter may appoint a deputy assessor, and fix his compensation at an amount not exceeding that of the assessor; and a provision in such charter that no law of the state shall be considered as repealing any of its provisions does not prevent that result. Op. Atty. Gen., Feb. 25, 1930.

Deputy or assistant assessor is a village officer or employee, and his compensation may be fixed by the body empowered to fix the compensation of the assessor. Op. Atty. Gen., June 20, 1931.

This section may be invoked where village assessor is temporarily disabled and will be unable to attend to his duties. Op. Atty. Gen., Apr. 14, 1932.

#### 1990. Assessor's duties.

174M509, 219NW872.  
Maximum limit as to amount township assessors would receive is \$240. Op. Atty. Gen., July 14, 1933.

##### 1. Assessments, when and how made.

It is the duty of an assessor to perform work which arises after his books have been sent in, though there is no provision for compensation therefor. Op. Atty. Gen., Feb. 6, 1930.

**1990-1. City Council to fix salary of city assessor in certain cases.**—The city council or other governing body of any city of the third class situated in one county and adjacent or contiguous to a city of the first class in another county may, by majority vote of all of its members, fix and determine the salary of the city assessor and appropriate money for the payment of such salary as so determined, and define his duties (Act Apr. 13, 1933, c. 234, §1.)

Sec 2 of act Apr. 13, 1933, cited, repeals all inconsistent acts.

#### 1992. Valuation of property.

Valuation for taxation of certain unimproved lands as reduced by the court, held sustained by evidence. 175M 478, 221NW725.

In determining the true and full value of real property for assessment purposes, the ordinary market value must control. In re Potlach Timber Co., 160 Minn. 209, 199NW968, followed. State v. Russell-Miller Milling Co., 182M543, 235NW22. See Dun. Dig. 9210(39).

Overcapacity of a packing plant and consequent increased expense of operation are proper elements for consideration in arriving at the full and true value of such plant for taxation. State ex rel. City of So. St. Paul v. McNiven, et al., 183M539, 237NW410. See Dun. Dig. 9210.

The assessable value of a membership in an unincorporated association is to be ascertained by apportioning the value in excess of the tangible property of the association already assessed. State v. Molyneaux, 185M199, 240NW468. See Dun. Dig. 9210(41).

Cubic foot method of valuation of buildings is a general rule which must, in particular cases, be modified where it appears that its strict application reaches a result grossly in excess of the actual sale value of the property. Op. Atty. Gen., Apr. 28, 1931.

Values of small mills have become much less and will remain so permanently and this should be taken into consideration by the assessor. Op. Atty. Gen., Apr. 28, 1931.

**1992-1. Assessment of real property.**—It shall be the duty of every assessor and board, in determining the value of lands for the purpose of taxation and in fixing the assessed value thereof, to consider and give due weight to every element and factor affecting the market value thereof, including its location with reference to roads and streets and the location of roads or streets thereon or over the same, and to take into consideration a reduction in the acreage of each tract or lot sufficient to cover the amount of land actually used for any improved public highway and the reduction in area of land caused thereby. ('27 c. 123; Apr. 20, 1931, c. 24, §1.)

Assessor should disregard altogether the acreage occupied for highway purposes in making his assessment. Op. Atty. Gen., Nov. 30, 1931.

**1993. Classification of property.**—All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as follows:

**Class 1.** Iron ore whether mined or unmined shall constitute class one (1) and shall be valued and assessed at fifty (50) per cent of its true and full value. If unmined, it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three (3), three "b" (3b) and four (4) as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

**Class 2.** All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two (2) and shall be valued and assessed at twenty-five (25) per cent of the full and true value thereof.

**Class 3.** Live stock, poultry, all agricultural products, except as provided by class three "a" (3a), stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tools, implements and machinery whether fixtures or otherwise, except as provided by class three "a" (3a) and all unplatted real estate, except as provided by classes one (1) and three "b" (3b) hereof, shall constitute class three (3) and shall be valued and assessed at thirty three and one-third (33 1/3) per cent of the true and full value thereof.

**Class 3a.** All agricultural products in the hands of the producer and not held for sale, all horses, mules and asses used exclusively for agricultural purposes, and all agricultural tools, implements and machinery used by the owner in any agricultural pursuit shall constitute class three "a" (3a) and shall be valued and assessed at ten (10) per cent of the full and true value thereof. ('13, c. 483, §1; '23, c. 140 [1988]; Mar. 31, 1933, c. 132.)

**Class 3b.** All unplatted real estate, except as provided by class one (1) hereof and which is used for the purposes of a homestead, shall constitute class three "b" (3b) and shall be valued and assessed at twenty (20) per cent of the true and full value thereof. Provided, if the true and full value is in excess of the sum of \$4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class three (3) hereof.

All platted real estate, except as provided by class one (1) hereof and which is used for the purposes of a homestead, shall constitute class 3c and shall be valued and assessed at twenty-five (25) per cent of

the true and full value thereof. Provided, if the true and full value is in excess of the sum of \$4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class four (4) hereof.

For the purpose of determining salaries of all officials based on assessed valuations and of determining tax limitations and net bonded debt limitations now established by statute or by charter, class 3b and class 3c property shall be figured at 33 1/3 per cent and 40 per cent of the true and full value thereof respectively.

**Class 4.** All property not included in the preceding classes shall constitute class four (4) and shall be valued and assessed at forty (40) per cent of the full and true value thereof. (G. S. '13, §1988; '13, c. 483, §1; '23, c. 140; Mar. 31, 1933, c. 132; Apr. 21, 1933, c. 359, §1.)

172M263, 271, 273, 215NW71, 180, 181; notes under §1978.

174M509, 219NW872.

By listing its coal bridges under class 4 for a series of years, owner did not thereby estop itself from having its property properly classified in a subsequent year. State v. Clarkson Coal & Dock Co., 246NW538. See Dun. Dig. 9208a.

Coal bridges used in handling coal on docks are "machinery," and taxable under provisions of class 3. State v. Clarkson Coal & Dock Co., 246NW538. See Dun. Dig. 9210.

Laws 1933, c. 359, amending this section is not applicable to 1933 taxes insofar as same relates to valuation and assessment of homesteads. Op. Atty. Gen., Sept. 25, 1933.

**1993-1. Effective January 1, 1934.**—This Act shall take effect and be in full force and effect from and after January 1, 1934. (Act Apr. 21, 1933, c. 359, §2.)

**1994. Real property platted since the last real estate assessment, etc.**

Op. Atty. Gen., Apr. 12, 1933; note under §1984.

**1995. Listing, valuation, and assessment of exempt property by county auditors.**

Real property located within Fort Snelling Reservation should not be placed on tax list and be valued. Op. Atty. Gen., May 3, 1932.

**1996. Lessees and equitable owners.**

Upon railroad company contracting to sell land, it becomes subject to taxation as other real estate is taxed, and the amount of such taxes should be determined by assessment of the land at its full value as other land is assessed. Op. Atty. Gen., June 17, 1931.

Where University leases land to faculty members under long term leases to be used for dwellings constructed by the lessee, the leasehold interest and the buildings are taxable as real estate. Op. Atty. Gen., Nov. 27, 1931.

## LISTING PERSONAL PROPERTY

**1999. By whom listed.**

Franchises are subject to taxation. City of South St. Paul, 248NW288. See Dun. Dig. 9125.

**2000. Merchants—Consignees.**

Where defendant sold farm machinery under conditional sale contract to a dealer and it was in possession of dealer for sale on taxing day, it should not have been taxed to seller. State v. J. I. Case Co., 248NW726. See Dun. Dig. 9199(62).

**2003. Personalty—Where listed.**

An aeroplane is taxable as personal property at the place of the residence of the owner, unless he is a merchant or a manufacturer thereof. Op. Atty. Gen., Mar. 30, 1931.

Pipe lines of companies transporting gasoline running through the property of others under an easement, are personal property and should be taxed as such. Op. Atty. Gen., May 26, 1931.

**2004. Capital stock and franchises.**

Franchises are subject to taxation. City of South St. Paul, 248NW288. See Dun. Dig. 9125.

**2005. Merchants and manufacturers.**

If a person is engaged in the manufacture of aeroplanes, the plane would be taxable where the manufacturing business is carried on. Op. Atty. Gen., Mar. 30, 1931.

If aeroplanes are kept for sale by a person who would come within the definition of a merchant, they would be taxable at the place where such business is conducted. Op. Atty. Gen., Mar. 30, 1931.

**2009. Express companies, etc.**

Companies transporting gasoline through pipe lines are "transportation companies" as used in this section, and its pipe lines and other personal property should be assessed in the taxing district where it is actually located, or where it is kept, regardless of the principal place of business of the company or the corporation. Op. Atty. Gen., May 26, 1931.

**STATEMENTS BY CORPORATIONS, ETC.****2021. Corporations, companies and associations generally.**

Franchises are subject to taxation. City of South St. Paul, 248NW288. See Dun. Dig. 9125.

**2026-1. Assessment of bank and mortgage loan company stocks, etc.**

Act Apr. 17, 1933, c. 315, authorizes the state tax commission to compromise tax on bank shares for 1933 and 1934. It is omitted as temporary.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

Deductions for leasehold interest may be made by bank. Op. Atty. Gen., Sept. 7, 1933.

**2029-5. Same—Apportionment of taxes.**

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

**REVIEW AND CORRECTION OF ASSESSMENTS****2034. Board of review.**

174M509, 219NW872.

Town board of review has authority to make flat percentage reduction throughout entire township, if from consideration of individual assessments it reaches conclusion that each assessment is uniformly excessive to extent of such reduction. Op. Atty. Gen., July 13, 1932.

Only assessor, clerk and president of village council are eligible to sit as members of board of review. Op. Atty. Gen., Aug. 4, 1933.

**2035. Board of review in cities.**

Compensation of board of review of South St. Paul is fixed by charter, and this section is not applicable. Op. Atty. Gen., Feb. 23, 1933.

**2037. Assessor's return to auditor.**

174M509, 219NW872.

Board of review of South St. Paul must finish its work prior to time assessor's books must be returned to auditor. Op. Atty. Gen., Feb. 23, 1933.

**EQUALIZATION OF ASSESSMENTS****2049. County board of equalization.**

174M509, 219NW872.

Members of county board of Yellow Medicine County are entitled to \$3 per day and mileage while acting on committee, and also \$3 per day and mileage for meeting when board is acting as board of equalization. Op. Atty. Gen., May 16, 1933.

**2051. Compensation of board.**

Mileage provisions are not affected by Laws 1931, c. 331, as amended by Laws 1933, c. 13 [§254-47]. Op. Atty. Gen., May 16, 1933.

**LEVY AND EXTENSION**

**2057-2. Limit of tax levy in certain counties.**—In all counties in this state now or hereafter having property of an assessed valuation of not less than \$175,000,000, exclusive of moneys and credits and having 96% or more of the assessed valuation of all property for taxation exclusive of moneys and credits in said counties now or hereafter located within the limits of incorporated cities, the County Board may levy a tax of not to exceed two and three-fifths mills on the dollar of the taxable valuation of such county, exclusive of moneys and credits, for the County Board and Bridge Fund, which said two and three-fifths mills shall not include interest, sinking fund, and redemption charges on all county road and bridge bonds outstanding. (Act Mar. 30, 1929, c. 115, §1.)

**2057-3. County Board to fix levy.**—The County Board at its July meeting may include in its annual tax levy an amount not to exceed two and three-fifths mills on the dollar of the taxable valuation of such counties for the County Road and Bridge Fund, exclusive of interest and redemption charges on all road

and bridge bonds outstanding which said amount may be in addition to the amount permitted by law to be levied for other county purposes. (Act Mar. 30, 1929, c. 115, §2.)

Act Apr. 15, 1933, c. 279, provides that counties having 43 to 45 congressional townships, population of 20,000 to 30,000, and assessed valuation, exclusive of moneys and credits of less than 13,000,000, may levy taxes in excess of limitations for general revenue purposes for 1933 and 1934.

**2058. City, village, town, and school taxes.**

Injunction does not lie against a municipality and its officers to restrain enforcement of special assessments after they are certified to county auditor. 176M76, 222 NW518.

County boards, school boards, town boards, and village councils, have power to amend or change their first tax levy as certified to the county auditor, if the amendment is received by the auditor before October 10th, but an amendment after such date may not be effective if the county auditor refuses to recognize the same. Op. Atty. Gen., Nov. 10, 1931.

Town board is not prohibited by request of county board from making a levy for road and bridge purposes. Op. Atty. Gen., Mar. 22, 1933.

Town board has no authority to make levy not exceeding two mills without vote of people. Op. Atty. Gen., Mar. 27, 1933.

**2058-1. Salaries of members of board of estimate and taxation.**—That the salary and compensation of each member of the Board of Estimate and Taxation in each city in Minnesota now or hereafter having over 50,000 inhabitants, whose salary and compensation as an officer or employee of the city is less than \$2500.00 per annum, be and is hereby fixed at and shall be \$10.00 per day for each day of attendance at the meetings of the board, provided that the total amount of such compensation shall not exceed \$500.00 in any one year, and provided that the combined salary of such member as an officer or employee of the city and as member of the Board or Estimate and Taxation shall not exceed \$2500.00 in any one year. (Act Apr. 15, 1931, c. 162, §1.)

**2060. Rate of levy.**

Act Mar. 28, 1933, c. 125, validates county levies for 1932 taxes in excess of existing limitations.

Act Mar. 30, 1933, c. 129, validates all county levies theretofore made for general revenue purposes exceeding existing limitations.

Maximum levy for road and bridge purposes is governed by §2573, and not §2060 or §2067. Op. Atty. Gen., Nov. 19, 1933.

Moneys and credits should be excluded in calculating the amount of tax which may be levied. Op. Atty. Gen., Feb. 6, 1930, July 3, 1930.

County board may not levy at a rate which will actually produce \$40,000.00 (after making allowances for delinquencies), but merely at a rate which when applied to the last assessed valuation would equal \$40,000.00. Op. Atty. Gen., Mar. 11, 1931.

Money received from insurance on old courthouse building, burned, may be set aside for a building fund in the general revenue fund, and this will have no bearing upon the county's right to levy five mills for general revenue purposes. Op. Atty. Gen., July 13, 1931.

A county cannot levy for revenue purposes a sum in excess of \$40,000, where a five-mill tax upon assessed valuation of property in county preceding year will not produce \$40,000, even though under statutes fixing salaries and expenses such sum is insufficient. State v. Keyes, 246NW547. See Dun. Dig. 2285, 9239.

The maximum tax levy for all purposes is five mills upon the dollar valuation in any one year. Op. Atty. Gen., Feb. 29, 1932.

(2).

County auditor should not undertake to determine in advance what is necessary to enable county to perform absolute duties, but should levy only maximum amount permitted and issue warrants later for absolutely essential requirements in excess thereof. Op. Atty. Gen., Sept. 2, 1932.

County must levy tax necessary to enable county to perform its absolute duties, though a tax in excess of five mills must be raised. Op. Atty. Gen., Sept. 2, 1932.

**2060-1. Rate of tax levy in counties, etc.**

Act Apr. 1, 1933, c. 147, provides that counties having 26,000 to 27,000 population and 27 to 29 congressional townships, may levy not to exceed 7 mills for county revenue purposes for period of two years.

Act Apr. 4, 1933, c. 157, authorizes counties with 81 to 85 congressional townships and population from 15,000 to 30,000, to levy tax for general revenue purposes in excess of limitations, not exceeding \$60,000.

Levy for tuberculin test under §5416 is not subject to the seven-mill limit. Op. Atty. Gen., May 31, 1930.

**2060-2. Rate of tax levy in towns.**

Op. Atty. Gen., Nov. 21, 1929; note under §1006.

**2061. Tax levy for general purposes limited.**—The total amount of taxes levied in the year 1921 and in each year thereafter, by or for any city or village, for any and all general and special purposes whatsoever, exclusive of taxes levied for special assessments for local improvements on property specially benefited thereby, shall not exceed one hundred dollars per capita of the population of such city or village; provided that in the years 1930 and 1931 such total levy shall not exceed eighty dollars per capita of the population of such city or village, in the year 1932 such total levy shall not exceed seventy-five dollars per capita of the population of such city or village, and in the year 1933 and in each year thereafter such total levy shall not exceed seventy dollars per capita of the population of such city or village.

Provided that if prior to the calendar year 1929 any such city or village has incurred by proper authority a valid indebtedness, including bonds, in excess of its cash on hand, plus any amount in any sinking fund, such city or village, within, but not above, the limits now permitted by law, in addition to the foregoing, may levy sufficient amounts to pay and discharge such excess indebtedness, bonds and interest thereon; but any such additional sums so levied shall be separately levied, and, when collected, shall be paid into a separate fund and used only for the purpose of paying such excess indebtedness, bonds and interest thereon; provided further, that nothing in this section, as amended, shall be construed to affect or limit levies heretofore or hereafter made pursuant to Section 3 [Mason's Minn. St., 1927, §2063] of the original act for the retirement of indebtedness incurred prior to Apr. 21, 1921, within the limits then permitted by law. ('21, c. 417, 1; Apr. 16, 1929, c. 206, §1.)

Laws 1929, cc. 208, 303, relating to certain villages, are valid. 227M41, 227NW202.

By reason of events transpiring since commencement of action, it having become impossible to grant plaintiffs any relief, judgment for defendants is affirmed. *Republic I. & S. Co. v. B.*, 187M444, 246NW615. See Dun. Dig. 425, 463.

Not unconstitutional as special legislation. *Independent School Dist. No. 35 v. B.*, 187M539, 246NW119. See Dun. Dig. 1689.

Law is not unworkable. *Independent School Dist. No. 35 v. B.*, 187M539, 246NW119. See Dun. Dig. 8669.

Not unconstitutional as violating uniformity of taxation clause. *Independent School Dist. No. 35 v. B.*, 187M539, 246NW119. See Dun. Dig. 9140.

The maximum tax levy as authorized by Laws 1875, c. 139, §12, has been modified by Mason's 1927 Stats., §1727-1. Op. Atty. Gen., Feb. 29, 1932.

**2062. Tax levy for schools limited.**

Tax limit herein applies to school district organized under Laws 1903, c. 289. Op. Atty. Gen., Nov. 18, 1929.

The fact that an excessive tax levy has been collected in a school district in the past does not authorize the county auditor to decrease a subsequent levy legally made. Op. Atty. Gen., Dec. 22, 1931.

**2064. Special census may be taken.**

Population of school district as determined by a special census made by the Secretary of State in 1923 must govern when a resolution is passed providing for a tax levy on a per capita basis, and no private census can be used in connection with the federal census to determine the population, such federal census not showing the population of the district but only other units. Op. Atty. Gen., Oct. 19, 1931.

Whether teachers and students are residents of particular place is question of fact depending on intention. Op. Atty. Gen., Oct. 17, 1933.

**2066. County auditor to fix amount of levy.**

The fact that an excessive tax levy has been collected in a school district in the past does not authorize the county auditor to decrease a subsequent levy legally made. Op. Atty. Gen., Dec. 22, 1931.

**2066-1. Issue of municipal warrants limited.**—That from and after January 1, 1930, no city or village in the State of Minnesota wherein the tax levied in the year 1928 exceeded \$100.00 per capita of the population, as defined by Chapter 417, General Laws 1921 [§2061, herein, and §§2062 to 2066, Mason's Minn. St., 1927], shall draw any order or warrant on any

fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 16, 1929, c. 208, §1.)

Is not invalid as special law. 178M337, 227NW41.

**2066-2. Board not to create indebtedness.**—Whenever the expense and obligations incurred chargeable to any particular fund of such city or village in any calendar year are sufficient to absorb 85 per cent of the entire amount of the tax levy payable in that year, including such amount as may remain in the fund from the levy of any prior year or years, no officer, board or official body of such city or village shall have the power and no power shall exist to create any additional indebtedness (save as the remaining 15 per cent of said tax levy is collected) which shall be a charge against that particular fund, or shall be in any manner a valid claim against such city or village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same.

Whenever any department, board or commission of such village has the power to expend money, such department, board or commission shall not, during any year commencing with the year 1933, contract any indebtedness or incur any pecuniary liability, which shall be in excess of the sum that may be allotted to its department for said year by the village council. The village council shall, by resolution, prior to March 1st each year, set aside for each such department, board or commission, such sum as it deems necessary and adequate for the proper operation thereof, subject, however, to amendments of such resolution thereof as necessity may require. Any member of any department board or commission who attempts to or does incur any expense, obligation or indebtedness against such department, board or commission, in an amount greater than the sum allotted to the department, board or commission, of which he may be a member, shall be personally liable for such excess indebtedness, expense or obligation. Provided, however, that where any board operates from funds collected by its own department, such board may use the full amount of such funds as may by law be provided, and notwithstanding the amount of the allotment made by the village council. (Act Apr. 16, 1929, c. 208, §2; Apr. 13, 1933, c. 231, §1.)

This section was intended to go into effect at once and govern the obligations and expenditures of a village during the calendar year of 1929, and any expenditures incurred during that year must not exceed the sum that could be paid out of the 1928 tax levy received by the village during 1929, and any indebtedness in excess of such sums was invalid. Op. Atty. Gen., Aug. 23, 1930.

**2066-3. Tax receipts to be used for paying indebtedness—Exceptions.**—That all moneys received from taxes levied in the year 1928 and payable in the year 1929 in any such city or village shall be placed in a separate fund or funds and used only for the purpose of paying obligations incurred during the calendar year 1929 and interest thereon, and for payment of bonds and interest thereon which shall mature and become due in said year; that the amount which any such city or village shall have the right to levy pursuant to Chapter 417, General Laws 1921, as amended [§2061, herein, and §§2062 to 2066, Mason's Minn. St., 1927], over and above the amounts therein authorized to be levied for any and all general and specific purposes, for the purpose of paying indebtedness existing on January 1, 1929, as defined in said Chapter 417, General Laws 1921, as amended, shall be used for the purpose of paying such indebtedness and the interest accruing thereon, and the remaining part of such levy shall be paid into a separate fund or funds and used only for the purpose of paying obligations incurred against or payable from such fund or funds in the year immediately succeeding the making of such levy, and any balance remaining at the end of any such year may be used in later years in addition to the taxes levied for such year or years.

provided that if any such city or village have any bonds issued for indebtedness incurred subsequent to April 21, 1921, and prior to the year 1929, which mature and become payable in the year 1930, such bonds and interest and interest payments on other bonds so issued shall be paid from taxes levied in the year 1929. (Act Apr. 16, 1929, c. 208, §3.)

**2066-4. May sell certificates of indebtedness.**—At any time after the annual tax levy has been certified to the county auditor and not earlier than October 10, in any year, the governing body of such city or village may, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes so levied for any fund named in said tax levy for the purpose of raising money for any such fund, but no certificate shall be issued and be outstanding for any of said separate funds exceeding 60 per cent of the amount named in said tax levy, as spread by the county auditor, to be collected for the use and benefit of said fund, and no certificate shall be issued to become due and payable later than December 31 of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made, and said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum; each certificate shall state upon its face for which fund the proceeds of said certificates shall be used, the total amount of said certificates so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00 or a multiple thereof and may have interest coupons attached and shall be otherwise of such form and terms and may be made payable at such place as will best aid in their negotiation, which certificates are hereby declared to be negotiable, and the proceeds of the tax assessed and collected, as aforesaid, on account of said fund, and the faith and credit of such city or village shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy for the year against which such certificates were issued. The money derived from the sale of said certificates shall be credited to such fund or funds for the calendar year immediately succeeding the making of such levy. No certificates for any year shall be issued until all certificates for prior years have been paid, except that any money derived from the sale of certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year, nor shall any certificate be extended. (Act Apr. 16, 1929, c. 208, §4; Apr. 13, 1933, c. 231, §2.)

Sec. 3 of act Apr. 13, 1933, cited, provides that the act shall take effect from its passage.

**2066-5. Bonds may be issued to fund indebtedness.**—For the purpose only of paying and discharging its valid indebtedness (except bonds) which existed January 1, 1929, and interest thereon until paid, such city or village may issue its bonds in the manner now provided by law, except that such bonds may be issued on a vote of the council thereof without a vote of the electors; provided that if any moneys received from taxes levied in 1928 and payable in 1929 or income from local sources received since January 1, 1929, have been used prior to the passage of this act for the retirement of indebtedness existing January 1, 1929, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were so paid. (Act Apr. 16, 1929, c. 208, §5.)

**2066-6. Effective date—Inconsistent acts repealed.**—This act shall take effect and be in force from and after its passage and all acts and parts of acts inconsistent herewith are hereby repealed and declared of no effect insofar as they may be inconsistent with this act. (Act Apr. 16, 1929, c. 208, §6.)

Laws 1931, c. 270, authorizes counties with assessed valuation of \$10,000,000 to \$12,000,000, and population of

25,000 to 30,000, and land area less than 625,000, to levy in excess of limitations to retire obligations against ditch fund.

**2067. Same.**

Maximum levy for road and bridge purposes is governed by §2573, and not §2026 or §2067. Op. Atty. Gen., Nov. 19, 1929.

Town Board has no power to cut tax levy made by voters at town meeting. Op. Atty. Gen., Mar. 7, 1933.

**2068-3. Certain cities may issue bonds to pay outstanding indebtedness.**—The governing body of any city of the fourth class now or hereafter organized and operating under a Home Rule Charter adopted pursuant to Section 36, Article 4, of the Constitution of this State, and which said Charter provides that the annual tax levy upon all the property in said city shall not exceed 20 mills, may, notwithstanding said maximum of annual tax levy, levy not to exceed ten mills annually in addition to said 20 mills for the purpose of creating a fund with which to retire outstanding bonds of any such city prior to July 1, 1929, or any refundment of such bonds. All moneys derived from any such additional levy shall be used only for the purpose of retiring such bonds of any such city. ('27, c. 267, §1; Apr. 23, 1929, c. 292.)

**2069. Excessive levy—Injunction.**

By §2116 defendant in action to enforce payment of delinquent real estate taxes had right to attack levies making up tax involved and was not confined to remedy given by this section. State v. Keyes, 246NW547. See Dun. Dig. 9334, 9336.

**2070. Contracts in excess void—Liability of officers.**

173M350, 217NW371.  
Cited to the point that Laws 1927, c. 147, is valid. 171 M312, 213NW914.

Contracts for grading roads are void if overdrafts on road and bridge fund would require levy of prohibited tax. Op. Atty. Gen., May 6, 1929.

The Village of Kenyon cannot enter into a contract for the purchase of electric generating equipment for a proposed municipal light plant to be paid for out of future earnings, nor can it issue warrants payable in the future out of such earnings. Op. Atty. Gen., Oct. 10, 1931.

**2071. Tax lists made by auditor.**

Injunction to restrain spreading of school tax will not issue where taxes involved have been spread and part of them collected. Republic I. & S. Co. v. B., 187M444, 245NW615. See Dun. Dig. 4467, 9535a.

**2073. Abstract to state auditor.**

174M509, 219NW872.

**2073-1. Publication of Personal Property tax lists, etc.**

That part of the current personal property tax list which pertains to personal property within the city of St. Cloud must be published in a St. Cloud newspaper, though such newspaper is located in another county. Op. Atty. Gen., Jan. 15, 1930.

County board has no authority to contract for printing under this section. Op. Atty. Gen., June 3, 1930.

**COLLECTION BY TREASURER**

**2075. Treasurer to be collector.**

U. S. F. & G. Co. v. M., (DC-Minn.), 1FSupp514; note under §846.

Error of county treasurer in crediting taxes on wrong land cannot defeat the payment of such taxes, and the records may be corrected. Op. Atty. Gen., June 10, 1931.

A county board has no authority to extend the time for payment of taxes without penalty beyond the date fixed by statute. Op. Atty. Gen., Oct. 21, 1931.

Where county treasurer acted as agent or as receiver and collector of taxes to which state was entitled and where county depository failed, it was duty both of county treasurer and state to file claim as preferred creditor. Op. Atty. Gen., Mar. 18, 1933.

**2076. Treasurer to collect local assessments.**

Cities as such have no duty to perform in connection with the collection of taxes, and have no right to expend moneys for that purpose except as they pay the salaries of assessors and members of equalization boards. Op. Atty. Gen., Jan. 6, 1932.

A city ordinance requiring deposit by a dealer engaging in business after the assessment of personal property for the year, purpose being to protect against evasions of the personal property tax law, is invalid. Op. Atty. Gen., Jan. 6, 1932.

**2080. Undivided interest—Payment and receipt.**

June 1, 1931; note under Laws 1931, c. 129, §1. Op. Atty. Gen., June 1, 1931.



**2081. Orders received for taxes.**

Warrants drawn on county poor fund must be accepted in payment of so much of taxes against the property of the person tendering the same in payment as is levied for the poor fund, but county treasurer need not accept such warrants in payment of taxes levied for general county purposes nor in payment of taxes levied by villages, school districts or towns. Op. Atty. Gen., Oct. 2, 1931.

Where taxpayer holds warrant on poor fund for \$50, county treasurer cannot endorse the amount of the poor tax levy upon such warrant, as the statute contemplates the taking up of the entire warrant. Op. Atty. Gen., Oct. 7, 1931.

Town treasurer is authorized to accept town order drawn on revenue fund in payment of so much of taxes against property of person tendering order as is levied for revenue fund. Op. Atty. Gen., July 15, 1932.

Register of deeds may not pay fees collected into county treasurer with warrants which he has received from county. Op. Atty. Gen., Sept. 6, 1932.

**ACCOUNTING AND DISTRIBUTION OF FUNDS****2082. Settlement between auditor and treasurer.**

Where May 31st falls on Sunday, settlement may be made as of June 1st. Op. Atty. Gen., April 23, 1931.

An act extending time for payment of personal property taxes from March 1 to April 1 would not postpone treasurer's settlement and division on March 1. Op. Atty. Gen., Mar. 2, 1933.

**2084. When treasurer shall pay funds.**

When county has paid into state state taxes collected by it, it may not thereafter offset against subsequent state tax collections, losses which county may claim to have sustained by reason of deposit of public funds in banks which have failed. Op. Atty. Gen., July 2, 1932.

County treasurer may turn in town orders lawfully accepted in payment of taxes same as though they were cash. Op. Atty. Gen., July 15, 1932.

County has no authority to withhold tax money belonging to township to enforce payment of obligation of township to county. Op. Atty. Gen., June 22, 1933.

**2086. Distribution of interest, penalties and costs.**

City of Mankato is entitled to a distribution of all penalties and interest accruing upon special assessments for local purposes on real estate in that city, which penalties and interest were collected by the county treasurer. Op. Atty. Gen., June 30, 1931.

**2087. Collected costs to be credited to county revenue fund.**

Op. Atty. Gen., June 30, 1931; note under §2086. County cannot deduct expenses of collecting tax before distribution to state, city school district and county. Op. Atty. Gen., Sept. 28, 1929.

As to penalties, interest and costs on delinquent personal property taxes, it would be proper to place expense of advertising and costs in county revenue fund and apportion the penalties and interest among taxing districts of county in proportion that personal property tax is spread. Op. Atty. Gen., Apr. 26, 1932.

**DELINQUENT PERSONAL PROPERTY TAXES**

**2088. When delinquent—Penalty.**—All unpaid personal property taxes shall be deemed delinquent on March 1 next after they become due, and thereupon a penalty of eight per cent shall attach and be charged upon all such taxes; except when the amount of such tax exceeds the sum of Ten Dollars the same shall not become delinquent if half thereof is paid prior to March 1st and the remaining half is paid prior to July 1st next following the year assessed; if the first half is paid prior to March 1st next after the tax becomes due and the last half is not paid prior to July 1st following, the unpaid portion of the tax shall thereupon become delinquent on said July 1st and the penalty herein provided for shall attach and become a charge thereupon from and after said July 1st. (R. L. '05, §888; G. S. '13, §2076; Apr. 21, 1933, c. 379, §1.)

Act Feb. 21, 1933, c. 36, and Act Feb. 28, 1933, c. 38, provide that personal property taxes for, or due and payable in, the year 1933 shall not be delinquent or subject to penalty until Apr. 1, 1933. The act is not applicable to counties having assessed valuation of between \$250,000,000 and \$325,000,000.

County cannot offset personal property tax judgment against claim for services and merchandise, nor can it offset delinquent personal property taxes before judgment. Op. Atty. Gen., June 20, 1932.

Time within which county treasurer must file his reports of delinquent taxes as required by §2089 was not changed. Op. Atty. Gen., May 26, 1933.

This act operates to extend time of payment of tax on moneys and credits. Op. Atty. Gen., Mar. 4, 1933.

State auditor postponing March settlement until Apr. 1, 1933, did not exceed his powers. Op. Atty. Gen., Mar. 9, 1933.

No personal property is exempt from seizure or sale under personal property tax judgment. Op. Atty. Gen., July 19, 1933.

**2089. Treasurer to file delinquent list in court—**

**Answer—Trial.**—On the fifth secular day of April of each year the county treasurer shall make a list of all personal property taxes remaining delinquent April 1, and shall immediately certify to and file the same with the clerk of the district court of his county, and upon such filing the list shall be prima facie evidence that all the provisions of law in relation to the assessment and levy of such taxes have been complied with. On or before the tenth secular day next thereafter, any person whose name is embraced in such list may file with the clerk an answer, verified as pleadings in civil actions, setting forth his defense or objection to the tax or penalty against him. The answer need not be in any particular form, but shall clearly refer to the tax or penalty intended, and set forth in concise language the facts constituting his defense or objection to such tax or penalty. The issues raised by such answer shall stand for trial at any term of court in such county in session when the time to file answers shall expire, or at the next general or special term appointed to be held in such county; and, if no such term be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county within which such taxes are levied, or, if there be none, of the county within which such proceedings are instituted, shall prosecute the same. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall without delay and summarily hear and determine the objections or defenses made by the answers, and at the same term direct judgment accordingly, and in the trial shall disregard all technicalities and matters of form not affecting the substantial merits. If the taxes and penalties shall be sustained, the judgment shall include costs. Whenever one-half of such tax has been paid prior to March 1st and the remaining half is not paid prior to July 1st next following, as provided for in Section 2088 of Mason's Minnesota Statutes of 1927, the county treasurer shall immediately make a list of the remaining unpaid portion of such tax and certify the same to the clerk of the district court of his county. Upon the filing of such list the clerk shall immediately enter a judgment for the amount of such tax, together with penalties and costs. Thereupon the clerk shall issue an execution in the manner now provided for by Section 2097 of Mason's Minnesota Statutes of 1927. The payment of the first half of such tax shall be deemed and admission of the validity of such tax, a waiver of notice and consent to the entry of judgment for the amount thereof together with interest and penalty. (R. L. '05, §889; G. S. '13, §2077; Apr. 21, 1933, c. 379, §1.)

County cannot turn over uncollected personal property taxes to a collection agency or private attorney on a salary or commission basis. Op. Atty. Gen., Aug. 20, 1929.

Time within which treasurer must file reports of delinquent taxes was not changed by Laws 1933, c. 36. Op. Atty. Gen., May 26, 1933.

**2089-1. Effective January 1, 1934.**—This Act shall take effect from and after January 1, 1934. (Act Apr. 21, 1933, c. 379, §2.)

**2090. Distress and sale.**

Personal property tax lien cannot be enforced against proceeds of insurance on the property unless judgment has been entered and execution issued. Op. Atty. Gen., Oct. 23, 1931.

Laws 1933, c. 38, making taxes delinquent on April 1, 1933 and 1934, does not operate to extend date upon which sheriff must make his return under this section. Op. Atty. Gen., May 15, 1933.

Statutory limitations of time within which distress is to be made on delinquent property tax warrants and returns made thereon are directory and not mandatory. Op. Atty. Gen., July 14, 1933.



**2093. Citation to delinquents—default judgment.**

Clerk of court issuing citations should insert names therein exactly as they appear on the tax books, even though erroneous. Op. Atty. Gen., Nov. 5, 1931.

**2097. Clerk's fee—Execution.**

Personal property tax lien cannot be enforced against proceeds of insurance on the property unless judgment has been entered and execution issued. Op. Atty. Gen., Oct. 23, 1931.

Fees received by clerk of district court under this section should be included in his statement in determining balance of salary due him. Op. Atty. Gen., Jan. 7, 1932.

**2098. Sheriff's fees.**

Sheriff who has collected personal property tax under §2029 may add thereto, mileage at the rate of ten cents per mile, as Laws 1931, c. 331, ante, §§254-47, 254-48, does not limit amount which any public officer may charge to an individual as fees or mileage. Op. Atty. Gen., June 8, 1931.

**2101. Docketing judgment.**

Personal property tax judgments may not be assigned or sold. Op. Atty. Gen., Mar. 11, 1931.

One purchasing at forfeited tax sale in 1930, and acquiring tax deed from the state in the usual way, took the land subject to lien of personal property tax judgments. Op. Atty. Gen., Oct. 1, 1931.

**DELINQUENT REAL ESTATE TAXES**

**2104. Penalty and interest on real estate taxes.**—On June 1 of each year a penalty of three per cent shall accrue and thereafter be charged upon all unpaid taxes on real estate on the current lists in the hands of the county treasurer, and thereafter on the first day of each month, up to and including November 1 following, an additional penalty of one per cent for each month shall accrue and be charged on all such unpaid taxes. When the taxes against any tract or lot exceed one dollar, one-half thereof may be paid prior to June 1st, and if so paid no penalty shall attach; the remaining one-half shall be paid at any time prior to November 1 following without penalty, but if not so paid then a penalty of eight per cent shall accrue thereon. If one-half of such taxes shall not be paid prior to June 1st the same may be paid at any time prior to November 1st with accrued penalties to the date of payment added, and thereupon no penalty shall attach to the remaining one-half until November 1 following, provided, also, that the same may be paid in installments as follows: One-fourth thereof prior to April 1st; one-fourth thereof prior to June 1st; one-fourth thereof prior to September 1st; and the remaining one-fourth thereof prior to November 1st, subject to the aforesaid penalties. Where the taxes delinquent after November 1 against any tract or parcel exceed \$25.00, the same may be paid in installments of not less than 25 per cent thereof, together with all accrued penalties and costs, up to the time of the next tax judgment sale, and after such payment, penalties, interest and costs shall accrue only on the sum remaining unpaid. Any county treasurer who shall make out and deliver or countersign any receipt for any such taxes without including all of the foregoing penalties therein, shall be liable to the county for the amount of such penalties. (R. L. '05, §903; G. S. '13, §2092; '23 c. 324; '25, c. 155, §1; Apr. 24, 1931, c. 316, §1; Mar. 27, 1933, c. 121, §1.)

Where May 30th is a holiday and May 31st falls on Sunday, first half of taxes may be paid on June 1st, without penalty. Op. Atty. Gen., Apr. 23, 1931.

Amount collected under Section 2204 may be applied upon delinquent taxes even though not sufficient to discharge in full, any one year's taxes. Op. Atty. Gen., May 16, 1931.

In the event the first half of the taxes was not paid prior to June 1st, the 5% penalty under the old law and the 4% penalty under the new law attached only. Op. Atty. Gen., June 1st, 1931.

Neither county board, Minnesota Tax Commission, nor any other public officer may waive penalty for non-payment of taxes on dates specified. Op. Atty. Gen., May 16, 1932.

Under Laws 1933, c. 121, if half of current tax is paid before June 1st, balance may be paid one-fourth before September 1st and one-fourth before November 1st. Op. Atty. Gen., June 8, 1933.

**2104-1. Penalties and interest in certain cases.**

The County Auditor and Treasurer of each county in this state are hereby authorized and directed to certify and accept, in part or in full payment and discharge of all real estate taxes and assessments of every kind on any parcel of land which became delinquent prior to the year 1928 and which are held by the state, an amount equal to such taxes and assessments as originally assessed and taxed, without penalty or interest at any time before January 1st, 1930, but no such part payment shall be accepted for less than one year's taxes at any one time; nor shall payment of the amount of a judgment for delinquent taxes, nor of the amount for which a parcel was bid in for the state pursuant thereto, be accepted unless all subsequent delinquent taxes for 1925 and prior years on the parcel are also paid; and, if all prior delinquent taxes and assessments held by the state have been paid or discharged, they may within such period accept in payment and discharge of taxes and assessments for 1926, 1927 and 1928 the amounts thereof as originally assessed and taxed, without penalty or interest; provided, further, the authority granted to the County Auditor and Treasurer by this act to waive penalties and interest shall not exist before July 1, 1929, and, if before that date the County Board as to general taxes or ditch or road liens, or the governing body of the town or municipality interested, as to other special assessments, shall have adopted a resolution, and filed a certified copy thereof with the County Auditor, fixing a minimum amount of such accrued interest and penalties which shall be accepted, the terms of such resolution shall control with respect thereto. (Laws 1929, c. 117; Apr. 27, 1929, c. 415, §4.)

When taxes payable for 1926, 1927 and 1928 without interest or penalties. 178M404, 227NW209.

This section continued only until and including Dec. 31, 1929, and thereafter it was of no effect. Op. Atty. Gen., Aug. 16, 1929.

**2105. Same.**—On the first Monday in January of each year the county treasurer shall return the tax lists in his hands to the county auditor, who shall compare the same with the statements receipted for by the treasurer on file in the auditor's office, and each tract or lot of real property against which the taxes, or any part thereof, remain unpaid, shall be deemed delinquent, and any auditor who shall make out and deliver any statement of delinquent taxes without including therein the penalties imposed by law, and any treasurer who shall receive payment of such taxes without including in such payment all items as shown on the auditor's statement, shall be liable to the county for the amount of any items omitted. (R. L. '05, §904; G. S. '13, §2093; Apr. 24, 1931, c. 316, §2; Mar. 27, 1933, c. 121, §2.)

**2105-1. Same.**—The rate of interest on delinquent real estate taxes levied in the year 1930 and is hereby fixed at ten per cent per annum and the rate of interest on delinquent real estate taxes levied in the year 1932 and subsequent years is hereby fixed at eight per cent per annum. All provisions of law providing for the calculation of interest at any different rate on delinquent taxes in any notice or proceeding in connection with the payment, collection, sale, or assignment of delinquent taxes, or the redemption from such sale or assignment are hereby amended to correspond herewith. Provided, that in calculating such interest for any fractional part of a year on taxes levied in 1930 it shall be calculated on the basis of five-sixths of one per cent for any month or major fraction thereof, and in calculating such interest for any fractional part of a year on taxes levied in 1932 and subsequent years it shall be calculated on the basis of two-thirds of one per cent for any month or major fraction thereof.

Provided, that such interest shall be calculated from the first day of March following the year in which the taxes become due and no interest shall be charged on penalties accrued and only on the amount

of taxes and costs authorized by laws. (Act Apr. 24, 1931, c. 315; Mar. 27, 1933, c. 121, §3.)

This statute applies to taxes levied in 1930, which become due and payable in 1931, and which will become delinquent in 1932, and has no reference for taxes for 1929. Op. Atty. Gen., May 8, 1931.

No interest is charged except for a major fraction of a month. Op. Atty. Gen., May 8, 1931.

Provisions as to ten per cent interest on delinquent real estate taxes applies to taxes levied in 1930, which become due and payable in 1931, and which become delinquent in 1932, and do not apply to taxes for 1929, which became payable in 1930. Op. Atty. Gen., May 8, 1931.

In making assignment, which includes taxes bearing different rates of interest for different years, amount of taxes, penalties and interest for such years, should be stated separately. Op. Atty. Gen., Mar. 23, 1932.

No interest for particular month is to be charged if less than major fraction thereof is involved, but if major fraction is involved, interest is computed on basis of five-sixths of one per cent. Op. Atty. Gen., May 25, 1932.

Where judgment is entered for delinquent taxes for 1932, it should include interest on original amount computed from first day of March. Op. Atty. Gen., Aug. 29, 1933.

**2105-2. Application.**—The provisions of this Act shall not apply to the taxes levied for a specific year, the time and method of payment of which, or the penalties and interest on which, are provided for or fixed by any other valid Act.

Approved March 27, 1933. (Act Mar. 27, 1933, c. 121, §4.)

**2106. Delinquent list—Filing—Effect.**

174M431, 219NW545; notes under §§2128, 2129, 2177.

**FILING THE LIST**

**22. Jurisdictional.**

The court had no jurisdiction to enforce delinquent taxes on real estate except as to lands described in filed and published delinquent list. State v. Keyes, 246NW547. See Dun. Dig. 9344.

**2107. Copy of list and notice.**

Op. Atty. Gen., Mar. 31, 1932; note under §2110.

**2108. Bids for publication.**

Op. Atty. Gen., Aug. 29, 1933; note under §2105-1.

The notice provided for herein need not be published in the official newspaper. Op. Atty. Gen., Feb. 13, 1930.

Contract for printing tax list must be special and not confused with contract to do general county printing. Op. Atty. Gen., June 3, 1930.

"Each description" means each description as assessed for which a tax is due, even though covering more than one division of a section. Op. Atty. Gen., Mar. 2, 1933.

**2110. Publication of notice and list.**

**2. Period of publication.**

Where delinquent real estate tax list is published on February 19 and February 26, judgment cannot be entered until twenty days after the 26th of February. Op. Atty. Gen., Mar. 31, 1932.

**2115. What defects jurisdictional.**

Op. Atty. Gen., Mar. 31, 1932; note under §2110.

**2116. Who may answer—Form.**

Op. Atty. Gen., Mar. 31, 1932; note under §2110.

**8. General statement as to defenses admissible.**

Defendant in action to enforce payment of delinquent real estate taxes had right to attack levies making up tax involved, and was not confined to remedy given by §2069. State v. Keyes, 246NW547. See Dun. Dig. 9334, 9336.

**2117. Judgment when no answer—Form—Entry.**

Op. Atty. Gen., Mar. 31, 1932; note under §2110.

**2118. Proceedings on answer.**

Town may not employ attorney to appear in proceedings to enforce payment of delinquent real estate taxes wherein taxpayers are seeking reduction of valuations. Op. Atty. Gen., Oct. 1, 1930.

**2120. Application for judgment.**

In proceedings to enforce the payment of taxes delinquent upon real estate, only the defenses specified in the statute can be interposed against assessments for the construction of ditches. 175M206, 220NW608.

Claims that the construction of roads, bridges, and culverts was improperly included in the drainage project, that unauthorized changes and extensions were made in the ditch, that benefited lands were not assessed, that contracts were let without advertising for bids, and that the work was not performed as required by the contract must be asserted in the drainage proceedings and cannot be interposed as a defense to proceedings to collect assessments. 175M206, 220NW608.

**TAX SALES**

**2127. Mode of sale.**

Effect of Laws 1929, c. 415, post, §§2138, 2139, 2139-2, ante, §2104-1, determined. Op. Atty. Gen., July 20, 1929.

**2128. Public vendue.**

**1. Conduct of generally.**

Auditor may restore tax certificate cancelled by him through error and make notice to that effect on record. Op. Atty. Gen., May 29, 1933.

**6. Caveat emptor.**—The doctrine of caveat emptor applies to purchasers at tax sales. 174M431, 219NW545.

**2129. Certificate of sale.**

The new form of assignment certificate prescribed by the tax commission should be used in connection with forfeited tax sale this year where a person bought an assignment on only the 1928 and 1929 taxes. Op. Atty. Gen., Aug. 26, 1931.

**10. After expiration of redemption period.**

When holder of a tax certificate, issued pursuant to §2169, fails to have it recorded within seven years from sale, he never acquires title in fee simple, as contemplated by §2129. Klasan v. T., 248NW817. See Dun. Dig. 9395.

**11. Prior taxes.**—Lands bid in by the state and not assigned by it or redeemed are not to be placed on the delinquent tax list for subsequent taxes, and certificates obtained at later sale are invalid. 174M431, 219NW545.

**12. Change in procedure.**

Validity of a tax certificate and rights of holder are to be determined by laws in force at time certificate is acquired. Klasan v. T., 248NW817. See Dun. Dig. 9380, 9395.

**2130. Who may purchase.**

Purchase by mortgagor, through third person, to defeat lien of mortgage. 180M480, 231NW224.

**2131. Who may not purchase or take assignment.**

After purchasing taxes for 1925, and prior years, at forfeited tax sale, the same person may take an assignment from the county auditor of the taxes for later years under the regular assignment statute, in which case he would have two separate and distinct tax titles. Op. Atty. Gen., Sept. 5, 1930.

**2136. Payment of subsequent taxes.**—The taxes for subsequent years shall be levied on property so sold or bid in for the state in the same manner as if the sale had not been made. The purchaser or assignee of the state may pay the amount of such taxes at the annual May sale following the date they become delinquent. Any such purchaser or assignee paying such taxes shall, if he be the owner of a prior certificate of sale notify the county auditor prior to the annual May sale that he is the owner of a tax certificate and such notice shall contain a description of the property for which such certificate was issued together with the year of sale, thereupon the county auditor shall issue the said certificate or a certificate for said taxes in the same form as now provided by section 2129, Mason's Minnesota Statutes of 1927, such certificate shall bear interest at the rate provided by section 2128, Mason's Minnesota Statutes 1927, and acts amendatory thereof unless said prior certificate bears a lower rate of interest, in that case such lower rate shall apply provided, however, that if there shall have been any parcel redemption under sections 2158, 2159, and 2160 of this chapter, or otherwise, then he shall pay the delinquent taxes on the unredeemed portion of the land described in his tax certificate, and such tax certificate after such parcel redemption, shall be applicable to such unredeemed portion of the land therein described only, in all respects as if a portion of the land unredeemed from had been all of the land described in said certificate at the time of its issuance, and all proceedings thereafter had as to notice of expiration of redemption and otherwise, shall be as to said certificate so modified by the elimination therefrom of the portion of the land redeemed from as aforesaid. (R. L. '05, §934; G. S. '13, §2125; '25, c. 63; Apr. 25, 1931, c. 412.)

When taxes for 1926, 1927 and 1928 are payable without interest or penalties under Laws 1929, c. 415, §4, ante §2104-1. 178M404, 227NW209.

No payment of delinquent 1930 taxes could be made as subsequent until day of annual 1932 delinquent tax sale, and county auditor is probably without authority to refund payments made. Op. Atty. Gen., Mar. 23, 1932.

**2137. Lands bid in for state.****2. Contents**

Tax title held void for failure to include in state assignment certificate and notice of amount required to redeem of correct amount of delinquent taxes subsequent to those covered by the certificate on which the notice was issued. *Warroad Co-op. Creamery Co. v. H.*, 182M73, 233NW824. See *Dun. Dig.* 9391(16).

In making assignment, which includes taxes bearing different rates of interest for different years, amount of taxes, penalties and interest, for such years, should be stated separately. *Op. Atty. Gen.*, Mar. 23, 1932.

1930 taxes bid in by state may be included in assignment certificate covering 1929 tax or taxes for prior years. *Op. Atty. Gen.*, Mar. 23, 1932.

**4. Purchaser must pay subsequent delinquent taxes.—**

When taxes for 1926, 1927 and 1928 are payable without interest or penalties under Laws 1929, c. 415, §4. 178M404, 227NW209.

**10. Cancellation of assignment.**

Where one paid by check to the county treasurer for a state assignment certificate of taxes against property on Saturday and on Tuesday county treasurer presented the check to the bank which had been closed that morning, the county auditor could cancel the assignment upon petition to the tax commission. *Op. Atty. Gen.*, May 22, 1931.

**2138. Unredeemed lands.**—All parcels of land bid in for the state, and not assigned to purchasers or redeemed within three (3) years from the date of the tax sale at which they are offered, shall be disposed of as provided in this section and section 2139. Such sale shall commence at the county seat on the second Monday of August of each year and shall continue from day to day until and including the 31st day of December of such year when it shall be completed, and the county auditor shall publish a notice once each week for three successive weeks in such county of the time and place when said sale will commence. Provided, that at no such sale hereafter held shall the rights of the state acquired at delinquent tax sales in the year 1928 and subsequent years, nor the liens for subsequent delinquent taxes attaching thereto, be disposed of. (R. L. '05, §936; '07, c. 430; G. S. '13, §2127; '13, c. 74, §1; '27, c. 363; '29, c. 415, §1; Apr. 9, 1931 c. 129, §3.)

The title of Laws 1929, c. 415, complies with Const., Art. 4, §27. 178M244, 226NW842.

Effect of Laws 1929, c. 415, determined. *Op. Atty. Gen.*, July 20, 1929.

A sale made under this section as amended by Laws 1929, c. 415, after the second Monday in December is illegal, and the remedy of the purchaser is under §2148, possibly by a suit in equity, or by application to the state tax commission. *Op. Atty. Gen.*, June 30, 1930.

Under this section as amended by Laws 1929, c. 415, §1, the holder of a certificate for taxes for 1925, or prior years, may pay the taxes for 1926 and subsequent years after they become delinquent and tack them to the certificate in the usual manner. *Op. Atty. Gen.*, Sept. 5, 1930.

At 1930 forfeited tax sale, only taxes for the year 1925 and previous years should be sold under Laws 1929, c. 415, §1, amending this section. *Op. Atty. Gen.*, Sept. 5, 1930.

The provisions of section 1 (f) and section 2 are the latest expression of the legislative intent and are controlling over the last sentence in this section if there is any conflict between them. *Op. Atty. Gen.*, May 27, 1931.

Forfeited tax sales are to be conducted as provided in §§2138, 2139, as amended by Laws 1929, c. 415, and Laws 1931, c. 129, some provisions of such laws being permanent. *Op. Atty. Gen.*, June 6, 1932.

This section was not changed by Laws 1933, c. 414. *Op. Atty. Gen.*, June 16, 1933.

Laws 1931, c. 129, §3, is still in force to extent that it requires published notice of tax sale as herein provided. *Op. Atty. Gen.*, June 28, 1933.

**2139. Unredeemed lands—conduct of sale.—Subd.**

(a). Such sale shall be conducted by the county auditor. Each parcel shall be sold to the highest cash bidder therefor but not for a less sum than the aggregate taxes, penalties, interest and costs charges against it, unless the cash value thereof fairly determined by the county board and approved by the Minnesota Tax Commission shall be less than such aggregate, in which case the value so fixed and approved shall be the minimum price for which such property may be so sold. The rights of the purchaser at such sale shall be subject to the rights of any purchaser and of the state or its assignee by virtue of any delinquent tax sale held in 1928 or any subsequent year, and of

any subsequent delinquent taxes attaching thereto or required to be paid in case of redemption therefrom.

Subd. (b). Provided that at such sale to be commenced on the second Monday of August, 1933, if there be no bidders for the same for the amounts as hereinbefore authorized, any such parcels coming within the following classification may be disposed of for cash only, and without regard to the determination of value by the county board or Minnesota Tax Commission, for not less than the following amounts: (1) all parcels bid in for the state for taxes for the year 1922, or prior years, for one-fifth of the total taxes remaining unpaid for 1925 and prior years as originally assessed; (a) all parcels, not in such first class, but bid in for the state for taxes for the year 1924 or prior years, for one-third of the total taxes remaining unpaid for 1925 and prior years, as originally assessed; and (3) all parcels, not in such first or second class, but bid in for the state for taxes for the year 1925 or prior years, for one-half of the total taxes remaining unpaid for 1925 and prior years, as originally assessed.

Subd. (c) Provided, further that where any parcel subject to sale under the provisions of this section and sections 2138 and 2140, contains as a part of said tax the full amount or a portion of the lien for the construction of any county or judicial ditch, or the full amount or a portion of any special assessment for local improvements levied under municipal authority the county board, in case of such ditch lien, or the governing body of the municipality, in case of such special assessment, may, by ordinance or resolution, determine and fix the minimum amount of such ditch lien or assessment to be included in addition to the amounts hereinbefore provided as the minimum for which any such parcel may be sold; provided that the resolution of the county board shall be adopted or a copy of such resolution or ordinance of the municipality describing each tract and fixing each such minimum amount shall be served upon the county auditor at least 30 days before the date of sale; provided, further, that if such resolution of the county board be not adopted, or if such governing body of any such municipality fails to cause to be certified to said county auditor, at least 30 days before such date of sale, the minimum amount of such assessment to be included with the other taxes on any parcel, said county auditor shall include such ditch lien or special assessment with the other taxes on said parcel, to be sold on the same basis as the other taxes thereon. Provided, the minimum amounts of ditch liens or assessments to be so included in the sale of lands within the Red Lake Game Preserve shall be the full amounts of such ditch liens and assessments.

Subd. (d). The purchaser shall forthwith pay the amount of his bid to the county treasurer, and the officer conducting the sale shall give to him a certificate in a form prescribed by the Attorney General, in which shall be set forth the name of the purchaser, a description of the land sold, the price paid and the date and place of sale. The auditor and treasurer of the county shall attend such sale, the former to make a record of all sales thereat, and the latter to receive all moneys paid on account thereof. The proceeds of the sale of any parcel of land at any such sale, for whatever amount sold, shall be distributed among the taxing districts interested in the taxes and assessments on said parcel at the date of such sale, in the proportions of their respective interests; provided that the provisions of this section as to the amount of any ditch lien or special assessment which shall be included in the minimum cash amount for which any parcel may be sold shall also fix the amount applicable to such ditch lien or special assessment in the distribution of the proceeds of such sale.

Subd. (e) Provided, by resolution of the county board, adopted at least 30 days before the commence-

ment of the sale, any parcel of land which, since the accrual of the unpaid taxes and assessments thereon, has produced a yield or income or had an actual use, of value exceeding the amount of such taxes and assessments as originally extended, may be excluded from the sale.

Subd. (f) Any purchaser at such sale may, within ten days following his purchase, discharge the taxes and assessments against such parcel for 1926 and subsequent years, if delinquent and held by the state, if title to such parcel has not vested or been perfected in the state, or secure an assignment thereof upon the payment of a fractional part of the taxes for such years, as originally assessed, equal to the fractional part of the taxes for the years prior to 1926 against such property required to be paid by such purchaser at such sale, and by paying the same proportion of the ditch liens or special assessments against such property collectible with the taxes for 1926 and subsequent years that he was required to pay at such forfeited sale for ditch liens or special assessments collectible with the taxes for 1925 or prior years. (R. L. '05, §937; '07, c. 430, §2; '11, c. 30; G. S. '13, §2128; '13, c. 333, §1; '17, c. 303; '19, c. 337; '21, c. 386, §1; '25, c. 208, §1; '27, c. 119, §1; '29, c. 415, §2; Apr. 9, 1931, c. 129, §1; Apr. 22, 1933, c. 129, §1.)

178M244, 226NW633.  
Op. Atty. Gen., June 6, 1932; note under §2138.  
Laws 1931, c. 325, validates sales made at improper place between second Monday in August, 1929, and Dec. 31st of that year.

When taxes for 1926, 1927 and 1928 are payable without interest or penalties under Laws 1929, c. 415. 178M404, 227NW209.

Discount rate fixed by Laws 1929, c. 415, amending this section applies only to the 1929 sale, and it is only where there has been a valuation less than total amount of the taxes that a sale can be made for less than the total amount due. Op. Atty. Gen., July 2, 1930.

Effect of Laws 1929, c. 415, amending this section. Op. Atty. Gen., July 20, 1929.

The discount rates established by Act 1929, c. 415, §2, at the 1929 forfeited tax sale were not available to a purchaser at the 1930 forfeited tax sale. Op. Atty. Gen., Sept. 6, 1930.

In determining amounts of ditch liens within Red Lake Game Preserve, interest should be calculated at six per cent, in view of section 6840-50. Op. Atty. Gen., June 15, 1931.

The only discretion the county board has is to limit the discount rate so far as ditch liens are concerned and owner of property may purchase 1925 taxes at forfeited tax sale and pay 1926 to 1929 taxes at the same discount rates. Op. Atty. Gen., July 18, 1931.

Where A and B each own an undivided one-half interest in land and A paid taxes on his share up to 1927 and B only paid his taxes up to 1918, A, on acquiring B's interest prior to sale of delinquent land, can purchase the taxes against B's interest for 1925 and prior years upon payment of one-fifth of the amount thereof as originally assessed in accordance with subdivision (f), pay the taxes for 1927 and subsequent years against that one-half year interest on the same basis, but he cannot pay the taxes on the other half interest for 1927 and subsequent years at that rate but must discharge that part of his taxes at the rate specified in section 2. Op. Atty. Gen., June 1, 1931.

Where taxes for the years 1923 and 1925 are delinquent and taxes for 1926 to 1929, inclusive, are delinquent, record owner, but not a stranger, may by purchasing the 1923-1925 taxes and then proceeding under section 2 instead of under section 1 (f), discharge all these taxes. Op. Atty. Gen., July 17, 1931.

After installment sale in 1927, deferred installments of taxes for 1922 to 1926, inclusive, lost their character as delinquent taxes for those years, and they had the same status as deferred installments of local assessments levied before 1925 but payable with the 1926 and subsequent taxes. Op. Atty. Gen., Aug. 18, 1931.

Manner of obtaining advantage of discount where a number of lots were taxed and assessed as one tract for the years 1924 and 1925 and in different tracts after that date, discussed. Op. Atty. Gen., Aug. 21, 1931.

Where taxes are delinquent for the years 1923 to 1929 and the 1930 taxes unpaid, question whether the 1930 tax be paid in full or paid on the 50% basis, or otherwise, depends on whether the owner proceeds under §1 or §2 of this act. Op. Atty. Gen., Aug. 21, 1931.

Necessary steps to obtain a tax title on annual May sales certificate stated. Op. Atty. Gen., Aug. 25, 1931.

A person purchasing taxes for 1925 and prior years at forfeited tax sale and paying up the 1926 to 1929 taxes cannot pay the 1930 taxes without interest and penalties accrued. Op. Atty. Gen., Aug. 26, 1931.

Two forties assessed as one tract in tax judgment proceeding cannot be divided for purposes of offering a portion thereof at the forfeited tax sale. Op. Atty. Gen., Aug. 26, 1931.

Sheriff is not supposed to hold moneys until a full year's taxes have been collected, but it is his duty to turn it over to the county treasurer when he receives it. Op. Atty. Gen., Aug. 26, 1931.

Where sheriff has collected rent under Laws 1929, c. 266, but not enough to pay taxes for any one year the owner has no right to demand the rent money from the sheriff to be used in the purchase of land at forfeited tax sale, but such owner having purchased the land at forfeited tax sale may demand such rent moneys. Op. Atty. Gen., Aug. 26, 1931.

Where taxes for 1919 to 1924 are delinquent and held by the state, and taxes for 1925 and 1926 were sold to private purchasers, and taxes for 1927, 1928 and 1929 are delinquent and held by the state, the discount rate applicable to the taxes for the years 1919 to 1924, inclusive, and to the taxes for 1927, 1928 and 1929 are one-fifth of the taxes as originally assessed, if paid pursuant to the requirements of subdivisions (b) and (f). Op. Atty. Gen., Aug. 31, 1931.

Two forties assessed as one tract in a tax judgment proceeding cannot be divided for purpose of offering a portion thereof at a forfeited tax sale. Op. Atty. Gen., Sept. 2, 1931.

Resolution of county board determining value of property to be less than taxes may be adopted and approved by tax commission after notice of sale. Op. Atty. Gen., Sept. 2, 1932.

County auditors have implied authority to look after leasing of lands acquired under this act. Op. Atty. Gen., Apr. 12, 1933.

If there are no bidders for amounts mentioned in Laws 1933, c. 414, Par. 3, parcel may be sold at discount rates provided in subdivision B of this section as amended by Laws 1933, §1. Op. Atty. Gen., June 16, 1933.

Laws 1933, c. 414, makes no change in manner of handling ditch liens and special assessments for local improvements included in taxes for which premises are sold at August, 1933, forfeited tax sale. Id.

This section remains substantially the same under Laws 1933, c. 414, and discount provided for in §3 of latter act is not applicable. Id.

This act did not change §2138. Id.

Act makes no change in manner of handling ditch liens and special assessments for local improvements which are included in taxes for which premises are sold at August, 1933, forfeited tax sale. Id.

County board under this section as amended by Laws 1933, c. 414, may limit discounts to year 1933 only and provide that no discounts can be had in year 1934 or may limit discounts to years prior to 1929. Op. Atty. Gen., June 21, 1933.

Purchaser of land held by state for taxes for years 1921 to 1925 may take an assignment of subsequent taxes including those for year 1931 as to which there was no tax sale. Op. Atty. Gen., June 28, 1933.

It is mandatory upon county auditor to hold forfeited tax sale provided for in this act in year 1933. Op. Atty. Gen., July 5, 1933.

Where two-thirds of 1927 taxes on land owned by three tenants in common has been paid, remaining one-third may be paid on basis of three-fifths of tax originally assessed whether tenants were separately assessed or not, but in neither event can owner pay any part of 1932 taxes on basis of three-fifths of tax originally assessed. Op. Atty. Gen., June 1, 1933.

Extension of period of redemption of land sold for years 1926 and 1927 from 5 to 7 years is limited to cases where lands were bid in for the state and had not been assigned. Op. Atty. Gen., Aug. 24, 1933.

Under Laws 1933, c. 414, period of redemption of land sold for delinquent taxes for years 1926 and 1927 is 7 years, notwithstanding Laws 1933, c. 407. Op. Atty. Gen., Aug. 29, 1933.

Laws 1933, c. 414, amending this section is constitutional. Op. Atty. Gen., Sept. 20, 1933.

**2139 1/2. Unredeemed lands.**—Subd. (a) In the event that there are no taxes for 1925 or prior years delinquent and held by the state against any parcel of land but the taxes for 1926 or any part thereof are delinquent and held by the state, and the title to such parcel has not vested or been perfected in the state, the county auditor and treasurer of each county are hereby authorized and directed to certify and accept in full payment and discharge of all taxes and assessments and interest and penalties thereon against such parcel or for an assignment thereof, an amount equal to one-half of the total taxes and assessments against it, as originally assessed and taxed.

Subd. (b) In the event that the taxes of 1926 and all prior years against any parcel of land have been paid, or sold or assigned to a purchaser other than the state, but the taxes for 1927 or 1928, or any part thereof remain delinquent and held by the state, the

county auditor and treasurer are authorized and directed to accept in full payment and discharge of all taxes and assessments and interest and penalties thereon, or for an assignment thereof, an amount equal to three-fifths of such taxes and assessments as originally assessed and taxed, without penalty or interest. In the event that the taxes for 1928 and all prior years against any parcel of land have been paid, or sold or assigned to a purchaser other than the state, but the taxes for 1929 or 1930 or any part thereof remain delinquent and held by the state, the county auditor and treasurer are authorized and directed to accept in full payment and discharge of all taxes and assessments and interest and penalties thereon, or for an assignment thereof, an amount equal to four-fifths of such taxes and assessments, as originally assessed and taxed.

Subd. (c) The authority of the county auditor and treasurer to accept payment of such taxes or assessments or to assign the same under the terms set forth in this section shall exist only where such payment or assignment is made on or prior to December 31st, 1934.

Subd. (d) The authority granted to the county auditor and treasurer by this Act to accept payment, waive penalties or interest, or to assign taxes at the rates provided for in this section shall not exist before July 1st, 1933, and, if before that date the county board as to general taxes or ditch or road liens, or the governing body of the town or municipality interested, as to other special assessments, shall have adopted a resolution, and filed a certified copy thereof with the county auditor, fixing a minimum amount of such taxes, liens or assessments or accrued interest and penalties which shall be accepted, the terms of such resolution shall control with respect thereto. (Act Apr. 9, 1931, c. 129, §2; Apr. 22, 1933, c. 414, §1.)

The bargain sale does not apply to 1930 taxes at all except, insofar as this section applies to such taxes, and one who failed only to pay for the year 1925 could not pay his 1930 taxes on the basis of one-half of the original tax. Op. Atty. Gen., June 15, 1931.

The provisions of this section do not apply where 1925 taxes are delinquent and held by the State. Op. Atty. Gen., July 18, 1931.

Where taxes are delinquent for the years 1923 to 1929 and the 1930 taxes unpaid, question whether the 1930 tax be paid in full or paid on the 50% basis, or otherwise, depends on whether the owner proceeds under §1 or §2 of this act. Op. Atty. Gen., Aug. 21, 1931.

Resolution of county board requiring 1932 taxes to be paid in full is valid but a resolution requiring payment of 1932 taxes in full as condition precedent to obtaining other benefits of act is invalid. Op. Atty. Gen., June 22, 1933.

If delinquent taxes for 1926 and subsequent years are paid prior to Jan. 1, 1934, person making such payment must, in addition, pay 1932 taxes and all assessments included therein in full to be entitled to discount rates provided in this section as amended. Op. Atty. Gen., Aug. 15, 1933.

In absence of resolution prohibiting payment of current taxes at discount, current taxes may be paid at same discount as delinquent taxes. Op. Atty. Gen., Aug. 23, 1933.

Person paying taxes for 1929 and later years pursuant to this section was entitled to 10% discount on amount he actually paid under Laws 1933, c. 414, §3, but county is not legally obliged to repay such discount, proper procedure being to make application to tax commission under §1983. Op. Atty. Gen., Aug. 24, 1933.

**2139-2. Forfeiture in five years.**—Except as hereinbefore provided, all parcels of land hereafter duly sold at the annual delinquent tax sale, whether so sold to an actual purchaser or bid in for the state as provided by law, shall at the expiration of five years from the date of such sale become and be the absolute property of the purchaser or of the state, or of his or its assigns, without the doing of any act or thing whatsoever, without any right of redemption, and no notice of expiration of the time to redeem from any such sale shall be required. The notice attached to each delinquent list hereafter issued pursuant to Section 2107, General Statutes 1923, and acts amendatory thereof, shall contain in addition to

the contents therein provided for, and immediately preceding the signature of the clerk, the following language: "You are further notified that at the expiration of five years from the date of the tax judgment sale pursuant to such judgment, each parcel of land sold at such sale, and not redeemed, will become and be the absolute property of the purchaser or of the state, or of his or its assigns, without further right of redemption, and without any notice of expiration of the time to redeem the same." Provided that at any time before the expiration of such period of five years from the sale of any parcel at any such annual or delinquent tax sale any person interested in such parcel may redeem the same or, may apply to the court on notice to the county auditor and to the purchase at such tax sale, if any, for cause shown, to have the taxes, penalties, interest and costs remaining unpaid on such parcel, set aside or reduced and the determination of the court on such application shall have like effect to that of a judgment in proceedings to enforce delinquent real estate taxes, except that the period of redemption shall not be extended thereby beyond such time as may be determined by the court. If by such determination the amount required to redeem from such sale is reduced, the purchaser at the sale or his assigns shall be entitled to refundment of the excessive amount paid by him, with interest, as in other cases of refundment. Provided, further, that no action, defense or application attacking the validity of the sale of any parcel at an annual delinquent tax sale or the validity of any subsequent delinquent taxes shall be entertained unless brought, interposed or made within five years from such sale. The title to each and every parcel of land thereby acquired by the state shall be held by it in trust for each and all of the taxing districts interested in the taxes and assessments, penalties, interest and costs accrued therein at the time of such forfeiture in the proportions of their respective interests, and the county auditor of the county in which each such parcel is situated shall furnish to the State Tax Commission, and keep on file in his office, the accurate statement of the amount of such accrued taxes, assessments, penalties, interest and costs, with the amount of the interest of each such taxing district therein. ('27, c. 119, §3; Apr. 27, 1929, c. 415, §3.)

Effect of Laws 1929, c. 415, amending this section. Op. Atty. Gen., July 20, 1929.

Holder of state assignment certificate for delinquent taxes is not required to serve notice of expiration of time for redemption, but title vests in him automatically upon expiration of the five-year period. Op. Atty. Gen., Apr. 21, 1931.

**2139-3. Same—Classification, appraisal, etc.**

County auditors have implied authority to lease land acquired by the state under this chapter. Op. Atty. Gen., Apr. 1, 1933.

**2139-5. Same—who may purchase at sales.**

A municipal corporation has no power to purchase taxes against any property nor to purchase the property at a tax sale. Op. Atty. Gen., Dec. 23, 1931.

**2139-6. Tax sale for 1931 taxes deferred.**—No sale under any judgment entered on default of answer against real estate for taxes levied and assessed against the same for the year 1931 shall be had prior to the second Monday in May, 1935.

Any defense or objection to the taxes assessed against any parcel of land for the year 1931 shall be determined on answer interposed to the list of delinquent taxes published in the year 1933 in the manner provided by Section 2116, Mason's Minnesota Statutes of 1927 but not otherwise, and the judgment entered thereon shall have the same force and effect, and a sale and all subsequent proceedings shall be had thereon in all respects the same as on any judgment for real estate taxes under existing laws. (Act Mar. 20, 1933, c. 98, §1, repealed; Apr. 20, 1933, c. 337, §1.)

**2139-7. May be paid in installments.**—During the year 1933 the county auditor and/or treasurer is hereby authorized and directed to accept in full payment of any real estate taxes levied and assessed for the year 1931, whether such taxes have attached to a tax judgment sale to the state for prior taxes or not to which no defense or objection as hereinbefore provided shall have been interposed, the face amount thereof as originally levied and assessed without penalty or interest. During said year said taxes may be paid, and the county auditor and/or treasurer is hereby authorized and directed to accept payment thereof, in installments of not less than twenty-five per cent of the original amount of said taxes. The official receiving payment of any installments of said taxes shall issue and deliver to the person making the payments a proper receipt therefor, and a receipt in full when final payment is made. All partial payments of such taxes whether made before or after entry of judgment shall be certified by the county auditor to the clerk of the district court and entries thereof made on the delinquent tax list or in the real estate tax judgment book, in the manner as provided by law, and the judgment shall be reduced accordingly. (Act Mar. 20, 1933, c. 98, §2, repealed; Apr. 20, 1933, c. 337, §2.)

**2139-8. Penalties and interest.**—In case more than 50 per cent of said real estate taxes to which no defense or objection as hereinbefore provided shall have been interposed shall remain unpaid on January 1, 1934, the amount remaining due shall be subject to and there shall be charged thereon and thereafter collected a penalty of 10 per cent, together with interest from January 1, 1934, at the rate of 10 per cent per annum, but in case 50 per cent or more of such taxes shall be paid on or before January 1, 1934, the remainder thereof shall not be subject to penalty or interest, except as hereinafter provided. Any such taxes remaining unpaid on January 1, 1934, may be paid, and the county auditor and/or treasurer is hereby authorized and directed to accept payment thereof any time prior to the tax judgment sale, in installments of not less than twenty-five per cent of the original amount, provided that there shall be included and paid with the first installment all penalties, if any, and interest then accrued, and with each subsequent installment all interest then accrued; provided that upon any of such original taxes remaining unpaid January 1, 1935, upon which no penalty accrued on January 1, 1934, there shall be charged a penalty of ten per cent and interest thereon after said date at the rate of ten per cent per annum. (Act Mar. 20, 1933, c. 98, §3, repealed; Apr. 20, 1933, c. 337, §3.)

**2139-9. Sale to be held in May, 1935.**—At the regular delinquent real estate tax sale to be held on the second Monday in May, 1935, there shall be sold by the County Auditor, in addition to all other parcels of land then required by law to be sold, all parcels of land against which default judgment has been entered for the taxes, or any part thereof, levied and assessed for the year 1931, and which taxes then remain unpaid, together with interest and penalties as provided by this act. (Act Mar. 20, 1933, c. 98, §4, repealed; Apr. 20, 1933, c. 337, §4.)

**2139-10. Penalties and interest heretofore made to be refunded.**—In the event any penalty or interest on the 1931 real estate taxes payable in 1932 shall have been paid, whether such taxes have attached to a tax judgment sale to the state for prior taxes or not the amount of such penalty and interest so paid shall be refunded to the person paying the same upon application to the County Auditor and due proof of payment and identity of the person making the application; provided, however, that the warrant issued by the County Auditor therefor shall be valid only in payment of 1931 or 1932 taxes paid in 1933 on any parcel of land in the same county, which fact

shall be stamped on its face and the same shall be accepted by the County Treasurer for that purpose only, when properly endorsed. (Act Mar. 20, 1933, c. 98, §5, repealed; Apr. 20, 1933, c. 337, §5.)

**2139-11. Taxes to include assessments.**—That the term "taxes" as referred to in this chapter shall include such assessments as have been certified to the County Auditor for collection and included in such taxes for the year 1931, but penalties and interest added to such assessments prior to the same being certified to the County Auditor shall not be abated or cancelled by this act. (Act Mar. 20, 1933, c. 98, §6, repealed; Apr. 20, 1933, c. 337, §6.)

**2139-12. Law repealed.**—That Chapter 98, Laws of 1935 [sic], be and the same hereby is repealed. (Act Mar. 20, 1933, c. 98, §7, repealed; Apr. 20, 1933, c. 337, §7.)

Sec. 8 of Act Apr. 20, 1933, and of Act Mar. 20, 1933, cited, provide that the act shall take effect from its passage.

**2139-13. Period of redemption extended.**—The period of redemption of lands sold for the year 1926, and of lands sold for the taxes for the year 1927, pursuant to the provisions of Laws 1927, Chapter 119 [§§2139 to 2139-5], which were bid in for the State and have not been assigned, is hereby extended to seven (7) years from the date of sale. (Act Apr. 22, 1933, c. 414, §2.)

Purchaser taking assignment from state after passage of Laws 1933, c. 366, must serve notice of expiration of redemption, and year commences to run from date of filing of proof of service of notice in office of county auditor. Op. Atty. Gen., June 6, 1933.

Where land was held by state for taxes of 1926 at time of enactment of this act and was thereafter assigned to a purchaser, notice of expiration of time for redemption should be served so that 12 months' period would expire at same time as 7-year period allowed by act. Op. Atty. Gen., June 9, 1933.

In order to terminate period of redemption in all cases, notice of expiration provided for by Laws 1933, c. 366, must be given. Op. Atty. Gen., June 16, 1933.

This section has no direct relation to balance of act, but automatically extends period for redemption of lands sold for taxes for years 1926 and 1927 which were bid in by the state and were not assigned from 5 years after date of sale to 7 years of date of sale. Id.

In accepting payments of 1926 and subsequent taxes at discount, purchaser of land may include 1932 taxes, though not delinquent. Op. Atty. Gen., June 28, 1933.

**2139-14. Amount required to redeem in certain cases.**—In case payment of any taxes is made prior to January 1, 1934, on any parcel of land in accordance with the provisions contained in Section 1 of this Act then and in such cases the County Auditor and County Treasurer are hereby authorized and directed to accept in full payment and discharge of all taxes and assessments and interest and penalties thereon 90% of the amount which would otherwise be required to be paid under the provisions of this Act. (Act Apr. 22, 1933, c. 414, §3.)

Discount provided for in this section is not applicable to any sales mentioned in §2139. Op. Atty. Gen., June 16, 1933.

If there are no bidders for amounts mentioned in this section, land may be sold at discount rates provided in §2139, subdivision b, as amended by §1 of this act. Id.

This section does not allow an additional discount of 10%, in addition to amounts allowed under §1, subdivision b. Op. Atty. Gen., June 28, 1933.

#### 2140. Purchaser to receive deed.

In the event that purchaser of 1925 taxes at forfeited tax sale does not desire to take up the 1926, 1927 and 1928 taxes, but attempts to perfect title on his certificate for the 1925 taxes alone, the notice of expiration of time for redemption should include in the amount necessary to redeem the 1926, 1927 and 1928 taxes, if still held by the state. Op. Atty. Gen., Sept. 5, 1930.

Necessary steps to obtain a tax title on forfeited sales certificate stated. Op. Atty. Gen., Aug. 25, 1931.

Private individual purchasing land at tax sale acquired definite vested rights which were not disturbed by later acquisition by public for public purpose, but this might not apply against rights of state. Op. Atty. Gen., June 17, 1932.

#### 2148. Invalid certificate.

Doctrine of caveat emptor applies to purchaser at tax sale, and he has no right to recover money paid from municipality, except as provided in §2177. 174M234, 219 NW545.



Holder of invalid tax title is entitled to lien for all subsequent taxes, penalties, interests and costs paid by him, even though a part thereof was covered by an assignment certificate which he had surrendered for cancellation, assuming that he had acquired title under his prior certificate. *Warroad Co-op Creamery Co. v. H.*, 182M73, 233M824. See Dun. Dig. 5398(52).

The rights of a purchaser at a discount sale held after the date permitted by §2138 as amended by Laws 1929, c. 415, may be enforced under this section, but a suit in equity may be necessary. *Op. Atty. Gen.*, June 30, 1930.

#### 2149. Indorsement before record.

The title of the holder becomes complete on the endorsement of a certificate of nonredemption, and he cannot thereafter have the tax cancelled under §2152, though he has obtained title from another source and has not recorded his certificate. *Op. Atty. Gen.*, July 7, 1930.

**2150. Lands bid in for the State.**—When any parcel of land is bid in for the state, until its rights be assigned or the land be redeemed, the sale shall not operate as a payment of the amount for which the same is sold, but at any time after such sale the county auditor may make and file with the clerk where the judgment is entered an affidavit stating the date of the sale, the amount for which such parcel was bid in for the state, and the amount of all subsequent delinquent taxes, that its right has not been assigned, that there has been no redemption, and that the land is rented in whole or in part, and produces rent, and giving the names of the persons paying rent. Upon presentation of such affidavit, the judge or court commissioner for the county shall indorse thereon an order directing an attachment to issue to attach the rents of such lands. The clerk shall thereupon issue a writ directing the sheriff to attach the rents accruing for such land from any person, and to collect therefrom the amount for which the same was bid in for the state and the amount of all subsequent delinquent taxes, stating such amount and the date of sale, with penalties and interest accruing thereon, and his fees, and one dollar for the costs of the affidavit and attachment. The sheriff shall serve such writ by serving a copy thereof on each tenant or person in possession of such land paying rent therefor, or for any part thereof, and such service shall operate as an attachment of all rents accruing from the person served. The sheriff shall receive such rents as they become due, and may bring suit in his own name to collect the same, and shall pay into the county treasury the amount collected. No payment of rents by any person so served after such service, or prior thereto for the purpose of defeating such attachment, shall be valid against such attachment. The clerk shall be allowed for issuing the writ, including the filing of the affidavit, order of allowance, writ and return, fifty cents, to be paid to him by the county in which the taxes are levied: Provided, that in counties whose population exceeds one hundred and fifty thousand such fees shall be paid into the county treasury to the use of the county. The sheriff shall be allowed for serving the writ and collecting the money the same fees as are allowed by the law upon an execution in a civil action, and, if he brings suit, such additional compensation as the court may allow, not exceeding one-half of the fees allowed by law for like services in ordinary cases.

Provided further, that if at any time while the sheriff is collecting such rent the lease upon said property shall expire, or, if the sheriff has once commenced to collect such rent and said property becomes vacant, the county auditor may lease said property upon five days' notice to the owner, subject to the approval of the district court.

Provided further, that at any time while the sheriff is collecting the rent under any lease, no modification of the lease between the owner and the tenant shall be valid unless approved by the district court upon five days' notice to the county auditor.

Provided further, that the collection of such rent under this statute shall not be a bar to the county auditor assigning said taxes to an actual pur-

chaser, or selling the land at a forfeited tax sale under the present laws or any laws hereafter enacted. (R. L. '05, §944; G. S. '13, §2136; Apr. 20, 1929, c. 266, §1.)

*Warroad Co-op Creamery Co. v. H.*, 182M73, 233NW 824; notes under §§2137, 2188.

Sheriff has right to bring unlawful detainer where tenant does not pay rent. *Op. Atty. Gen.*, Sept. 3, 1929. Under this section as amended by Laws 1929, c. 266, the county cannot expend money to repair property sold for taxes, in order to make it tenantable, even though the money sought to be used has been collected as rent on the property. *Op. Atty. Gen.*, Mar. 13, 1930.

Sheriff is entitled to fees the same in source, amount and manner of payment as he is allowed for collections made under execution. *Op. Atty. Gen.*, July 21, 1930.

Institution of proceedings for the attachment of rent from delinquent land is discretionary with the county auditor. *Op. Atty. Gen.*, Apr. 11, 1931.

Where rents are attached on two lots, the sheriff should apportion the rents received between the two parcels on a fair basis, but amounts collected cannot be applied upon current taxes. *Op. Atty. Gen.*, June 1, 1931.

Where owner of business property fails to pay taxes for eight years or more, city has no remedy to compel payment of the taxes or prevent the owner from using the property, but may attach rents, if any part of the property is rented. *Op. Atty. Gen.*, Dec. 23, 1931.

There is no authority for village officers to institute proceedings to collect rents. *Op. Atty. Gen.*, Aug. 2, 1932.

County auditor may lease land bid in by state where state is about to acquire title thereto. *Op. Atty. Gen.*, Feb. 28, 1933.

State before acquiring tax title to land may attach rentals. *Op. Atty. Gen.*, Mar. 3, 1933.

County cannot step in and sell rights of user in tax delinquent lands where time to redeem has not expired and lands have not been rented. *Op. Atty. Gen.*, July 29, 1933.

"Rent" includes owner's share of crops raised. *Op. Atty. Gen.*, Aug. 8, 1933.

Where land was bid in for state, rents of premises can be attached to make collection of amount for which premises were bid in and also all subsequent delinquent taxes. *Op. Atty. Gen.*, Aug. 24, 1933.

### REDEMPTION FROM TAX SALES

#### 2151. By whom—When.

Owners of lands sold for taxes for years 1926 and 1927, are given option of repurchase, etc. Laws 1933, c. 407.

#### 2152. Amount payable.

Certificate holder cannot be deemed to have paid any delinquent taxes unless he has paid them in the manner required by §2136. *Op. Atty. Gen.*, May 9, 1929.

The tax laws passed in 1927 and 1928 did not amend in any way this section with reference to the amount which must be paid by a person redeeming. *Op. Atty. Gen.*, Jan. 16, 1930.

Where the holder of a tax certificate acquires title through other means he cannot have the tax cancelled under this section though he has not yet recorded his certificate. *Op. Atty. Gen.*, July 7, 1930.

In the event that purchaser of 1925 taxes at forfeited tax sale does not desire to take up the 1926, 1927 and 1928 taxes, but attempts to perfect title on his certificate for the 1925 taxes alone, the notice of expiration of time for redemption should include in the amount necessary to redeem the 1926, 1927 and 1928 taxes, if still held by the state. *Op. Atty. Gen.*, Sept. 5, 1930.

Where real estate has been sold to the state for taxes for years 1927, 1928, and 1929, and no assignment has been made, taxpayer cannot redeem from either sale without paying for all three years. *Op. Atty. Gen.*, Sept. 7, 1932.

(1). Where separate judgment for each year was entered for delinquent taxes for 1927 and subsequent years, purchaser at tax sale for 1927 taxes need not pay subsequent taxes before issuing notice of expiration of redemption, but all delinquent taxes subsequent to 1927 taxes must be paid at time of redemption. *Op. Atty. Gen.*, Aug. 18, 1933.

#### 2158. Specific part.

An owner desiring to sell a five acre tract out of a larger tract is entitled to have the taxes separated under this section, though the most appropriate way might be to convey the five acres to a third person who could secure the separation and then convey the land to the purchaser. *Op. Atty. Gen.*, Jan. 15, 1930.

The purchaser of part of a large tract at mortgage foreclosure sale is entitled to a division of the assessment both as to general taxes and as to special assessments. *Op. Atty. Gen.*, Apr. 2, 1930.

The owner of the whole of a tract which has been sold for taxes as one tract is not entitled to redeem a specific portion thereof without redeeming the whole parcel, though it consists of two distinct governmental subdivisions. *Op. Atty. Gen.*, July 17, 1931.

Manner of obtaining discount in taxes under Laws 1931, c. 129, where a number of lots were assessed as one tract in 1924 and 1925 and in different tracts after that date, discussed. *Op. Atty. Gen.*, Aug. 21, 1931.



**2160. Auditor to determine proposition.**

The notice provided for herein need not be published in the official newspaper. Op. Atty. Gen., Feb. 13, 1930. County board has no authority to contract for printing under this section. Op. Atty. Gen., June 3, 1930.

**2161. Taxpayer may pay taxes on part.**

Manner of obtaining discount in taxes under Laws 1931, c. 129, where a number of lots were assessed as one tract in 1924 and 1925 and in different tracts after that date, discussed. Op. Atty. Gen., Aug. 21, 1931.

**2163. Notice of expiration of redemption—etc.**

Laws 1931, c. 158, validates titles acquired where notice of expiration of time for redemption did not properly state amount necessary to redeem by failure to include taxes for 1926.

See §2164-1 extending period for redemption to one year after proof of service of notice of expiration of time for redemption.

Necessary steps to obtain a tax title on state assignment certificates stated. Op. Atty. Gen., Aug. 25, 1931.

**6½. Payment of subsequent taxes.**

Where separate judgment for each year was entered for delinquent taxes for 1927 and subsequent years, purchaser at tax sale for 1927 taxes need not pay subsequent taxes before issuing notice of expiration of redemption, but all delinquent taxes subsequent to 1927 taxes must be paid at time of redemption. Op. Atty. Gen., Aug. 18, 1933.

**9. Statement of amount required to redeem.**

When taxes for 1926, 1927 and 1928 may be paid without penalties or interest under Laws 1929, c. 415, §4. 178M404, 227NW209.

**13. Publication.**

Notice under this section need not be published in the official newspaper. Op. Atty. Gen., Feb. 13, 1930.

County board has no authority to contract for printing under this section. Op. Atty. Gen., June 3, 1930.

**2164-1. Redemptions from tax sales.**—Right of redemption from any sale for delinquent taxes shall continue for a period of twelve months after proof of service, in the manner required by law, of a notice of expiration of the time within which redemption can be made, has been filed in the office of the county auditor of the county in which such sale is made. (Act Apr. 21, 1933, c. 366, §1.)

Act is applicable to all tax sales to state or to private individuals where title had not passed prior to date when act became operative. Op. Atty. Gen., May 18, 1933.

Where premises were sold to state for 1926 taxes and purchaser took assignment after passage of this act, obligation to serve notice of expiration of redemption falls upon assignee. Op. Atty. Gen., June 6, 1933.

Where tract of land was held by state for taxes of 1926 at time of enactment of Laws 1933, c. 414, and was thereafter assigned to a purchaser, notice of expiration of time for redemption should be served so that 12 month's redemption period would expire at same time as seven-year period allowed for redemption. Op. Atty. Gen., June 9, 1933.

In order to terminate period of redemption in all cases under Laws 1933, c. 414, notice of expiration provided by this act must be given. Op. Atty. Gen., June 16, 1933.

Even if Laws 1933, c. 414, had not been passed, title to lands sold for 1926 taxes and not assigned would not have vested in state after expiration of 5-year period in view of necessity for 12-month notice under this act. Op. Atty. Gen., July 5, 1933.

It is not necessary for purchaser at tax sale for 1926 and 1927 taxes to pay subsequent delinquent taxes before notice of expiration of redemption is issued. Op. Atty. Gen., Aug. 24, 1933.

An owner can redeem land sold for 1926 delinquent taxes on May 14, 1928, to an actual purchaser. Op. Atty. Gen., Sept. 1, 1933.

Notice of expiration of redemption must be given where property was sold for delinquent taxes for year 1926 and subsequent years. Op. Atty. Gen., Sept. 5, 1933. Effect of act on §2170, discussed. Id.

**2164-2. Repeal.**—All acts and parts of acts inconsistent with this act are hereby repealed. (Act Apr. 21, 1933, c. 366, §2.)

Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.

**2169. Failure to serve notice to extinguish lien.**

When holder of a tax certificate, issued pursuant to §2169, fails to have it recorded within seven years from sale, he never acquires title in fee simple, as contemplated by §2129. *Klasen v. T.*, 248NW817. See *Dun. Dig.* 3395.

**2170. Limitation of time for filing certificate.**

Notice of expiration of redemption on forfeited sale held in 1915 cannot now be issued. Op. Atty. Gen., July 31, 1933.

Effect of Laws 1933, c. 366, upon this section, discussed. Op. Atty. Gen., Sept. 5, 1933.

**2171. Redemption, when expires.**

The title of the holder becomes complete on the endorsement of a certificate of nonredemption, and he cannot thereafter have the tax cancelled under §2152, though he has obtained title from another source and has not recorded his certificate. Op. Atty. Gen., July 7, 1930.

**2176-1. Time for redemption from tax sale extended in certain cases.**—That whenever at the time fixed by law for absolute forfeiture of any parcel of land heretofore or hereafter bid in for the State and not assigned or disposed of by the State, pursuant to Mason's Minnesota Statutes of 1927, Sections 2139-2, and acts amendatory thereof and supplementary thereto, there shall be pending, in the United States District Court, proceedings in eminent domain affecting such parcel, and such eminent domain proceedings shall have been pending more than two years prior to the said date of forfeiture, the time of said forfeiture of such parcel shall be and is postponed and continued until the expiration of one year after the final determination of such eminent domain proceedings; and the owner of such parcel, regardless of whether such parcel is included within the boundaries of any game preserve, reforestation project, or conservation area, or any person having an interest therein may discharge the delinquent taxes and assessments against such parcel and redeem such parcel, or portion thereof, from such sale to the State within such period, as so extended, upon payment of the portion of such unpaid taxes and assessments permitted by any law in effect during the pendency of such condemnation proceedings. Such redemption and discharge of delinquent taxes and assessments may be so made regardless of any or no determination of value or other action by the county board or the Minnesota Tax Commission. (Act Apr. 15, 1933, c. 274, §1.)

This act is constitutional. Op. Atty. Gen., June 12, 1933.

**2176-2. May redeem part of tract.**—Whenever any tract less than the whole parcel designated for taxation and bid in for the state shall be taken or encumbered by such eminent domain proceedings, the tract so taken or encumbered may be redeemed and the delinquent taxes and assessments thereon discharged, as provided in this act, without redeeming or discharging the delinquent taxes and assessments on the entire parcel so bid in for the State. When only such portion or fraction of the parcel bid in for the State shall be redeemed and discharged from taxes and assessments, the amount to be paid for such redemption and discharge from delinquent taxes and assessments shall be computed by the Auditor of the County wherein such lands are situated, and shall be such a part or proportion of the amount designated by any such law permitting redemption and discharge on payment of a fraction or percentage of the total amount due, as provided in this act, as the said tract taken or encumbered by said proceedings and so redeemed bears to the value of such entire parcel bid in for the State, and of which it forms a part. Any party interested in such computation and determination of value, and aggrieved thereby may, within ten days following the filing thereof, appeal to the District Court of the county wherein such land is situated, by filing written notice of such appeal and proof of service thereof, with the clerk of said court. (Act. Apr. 15, 1933, c. 274, §2.)

**2176-3. Owner to have option to repurchase land sold for taxes.**—The owner of any land sold for the taxes for either of the years 1926 or 1927 which shall become forfeited to the state for taxes shall have the option to repurchase said land from the state at any time within one year from the date of such forfeiture for one-half the amount of the taxes accrued against said land at the date of such forfeiture, less penalties, interests and costs, with interest upon said sum from the date of such forfeiture at the rate of four per cent per annum, provided that no owner shall re-

purchase more than 320 acres or more than two platted lots not exceeding one-third of an acre in area in any city, village, or borough, in any county unless the same were actually occupied by him or his tenant at the time of the forfeiture. (Act Apr. 22, 1933, c. 407, §1.)

Period of redemption of land sold for delinquent taxes for years 1926 and 1927 was extended to 7 years from date of sale by Laws 1933, c. 414. Op. Atty. Gen., Aug. 29, 1933.

**2176-4. Partial payment for land.**—Such owner may exercise said option by paying into the county treasury one-tenth of the amount of said 50 per cent accrued taxes within one year from the date of such forfeiture, and by paying the remainder of the repurchase price in twenty equal annual installments with interest thereon, payable annually at the rate of four per cent per annum, computed from the date of such initial payment to the anniversaries of such date in the respective years in which such installments and interest become payable; provided, however, the owner of any such land which shall have been sold to the state in one tract shall have the privilege of repurchasing from the state any tract of land included therein and containing 40 acres or more, upon the payment within the time aforesaid of one-half the amount which the county auditor shall determine is the amount of taxes which would have accrued against such lesser tract at the date of such forfeiture, less penalties, interest and costs, with interest upon said sum from the date of such forfeiture at the rate of 4% per annum, if such lesser tract had been listed for taxation separately and sold to the state in one parcel. (Act Apr. 22, 1933, c. 407, §2.)

**2176-5. Termination of option.**—Such option to repurchase shall terminate upon the failure of said owner to make payment of any annual installment of said repurchase price and interest within sixty days after the anniversary date upon which the same becomes due and shall likewise terminate upon the failure of said owner to pay the current taxes for any year prior to the first Monday of January in the year following that in which they become payable. (Act Apr. 22, 1933, c. 407, §3.)

**2176-6. Conveyance of land by state.**—On payment in full of said repurchase price, appropriate conveyance in fee, in such form as may be prescribed by the Attorney General, shall be issued by the Minnesota Tax Commission, which conveyance shall have the force and effect of a quitclaim deed from the state. (Act Apr. 22, 1933, c. 407, §4.)

**2176-7. Occupants not to be evicted, when.**—No person shall be evicted by any public authority from lands forfeited to the state by reason thereof within two years from the time such forfeiture takes place whether the option to repurchase is exercised or not, provided that he was an actual occupant of the premises when so forfeited. (Act Apr. 22, 1933, c. 407, §5.)

**2176-8. Application of act.**—Provided that this Act shall not apply to the Game Preserve established by the laws of 1929, Chapter 258 [§§5620-1 to 5620-3] or conservation areas established by laws 1931, Chapter 407 [§§6452-1 to 6452-13], or any other conservation area or state forest which the state Legislature has heretofore established or may hereafter establish on which the state pays a proportionate share of the indebtedness. (Act Apr. 22, 1933, c. 407, §6.)

#### REFUNDMENT

**2177. On sale or assignment, when allowed.**  
Assessments and interest held voluntarily paid, notwithstanding protest. 171M309, 213NW916.  
Interest and installments of assessments voluntarily paid could not be recovered. 171M309, 213NW916.  
This section specifies the exclusive cases in which a purchaser at a tax sale may have a refundment. 174M431, 219NW545.

Rule of caveat emptor applies to purchaser at tax sale. 174M431, 219NW545.

Where clerk failed to note answer of owner of real property alleging excessive overvaluation, and judgment by default was entered, and court, being unaware of default judgment, reduced assessment and entered judgment accordingly, and both judgments were vacated and court fixed assessment at reduced amount previously determined, §§2177, 2179 and 2185 were properly applied. County of Hennepin v. H., 246NW537. See Dun. Dig. 9363.

Where a discount sale is made under §2138 as amended by Laws 1929, c. 415, after the date permitted by that section, the sale is illegal, but refundment cannot be had under this section, the proper remedy being under §2148, but as the latter section seems to contemplate a sale for the full amount of the taxes due the right of the purchaser may be determined in a suit in equity. Op. Atty. Gen., June 30, 1930.

Where state lands were sold and school or swamp land certificates issued, and lands were placed on tax list and then sold for delinquent taxes, and petitioners purchased at the tax judgment sale or took assignments from the estate, and original purchaser of lands failed to live up to the terms of his contract, petitioners were not entitled to a refund. Op. Atty. Gen., Feb. 2, 1931.

Purchaser buying taxes on land afterwards discovered to be school land may have refund thereof by application to county board, county auditor and tax commission. Op. Atty. Gen., July 20, 1932.

#### 2179. On Judgment—County to be party.

County of Hennepin v. H., 246NW537; note under §2177.

#### 2182. Taxes paid twice.

Bank paying taxes held agent of taxpayer in paying 1931 taxes instead of 1930 taxes, and taxpayer is not entitled to have payment of 1931 taxes cancelled and amount applied on 1930 taxes. Op. Atty. Gen., Apr. 18, 1932.

#### ACTIONS INVOLVING TAX TITLES

##### 2185. Tax judgment or sale set aside—Lien.

174M431, 219NW545; notes under §§2128, 2129, 2148, 2177. County of Hennepin v. H., 246NW537; note under §2177.

#### MISCELLANEOUS PROVISIONS.

##### 2191. Lien of real estate taxes.

174M431, 219NW545; notes under §§2128, 2129, 2148, 2177.  
26 U. S. Board of Tax Appeals 1004; note under §2199-1.  
In determining the taxability of land taken by the state for a military reservation, the question to determine is ownership of the land on May 1st. Op. Atty. Gen., Aug. 15, 1931.

##### 2. When attaches.

179M298, 229NW127.  
Where government condemns property for post office, title does not pass until final judgment and payment of the award, and county auditor has authority until that time to assess taxes against the property, even though under Mason's USCA, Tit. 40, §258, title relates back to the date of the filing of the commissioner's award. Op. Atty. Gen., Jan. 26, 1931.

Where city of St. Paul acquired by condemnation portions of property for widening of street and property owner gave city deed on December 26th, 1930, and award was ratified by city council on December 30th, 1930, but proceedings of council were not published in the official newspaper until January 3rd, 1931, on which date award was paid, taxes for 1930 spread by the auditor on December 24th, 1930, constituted a lien on the property and should be paid by the city. Op. Atty. Gen., Apr. 25, 1931.

##### 11. Personal liability.

180M283, 230NW654.

##### 2192. Assessments for local improvements in cities.

Constitutional exemption of church property from taxation has no effect upon manner of collection of special assessments which are to be collected in same manner as against real estate generally. Op. Atty. Gen., Sept. 21, 1932.

##### 2199. Lien of personal property taxes.

No personal property is exempt from seizure or sale under personal property tax judgment. Op. Atty. Gen., July 19, 1933.

##### 2199-1. Lien of taxes on personal property—Nature, extent, etc.

Purchaser of property paying taxes which were a liability of the vendor held not entitled to deduction as for taxes paid under federal income tax law. 26 U. S. Board of Tax Appeals 1004.

A chattel mortgage filed for record prior to time tax became a lien upon property is superior to the tax lien, and the property could be sold under the mortgage by foreclosure or auction sale and give purchaser good title clear of taxes. Op. Atty. Gen., Jan. 12, 1932.

##### 2202-1. Day for payment of taxes, etc.

Where the last day of February, May or October falls on Sunday, county treasurer and auditor may make dis-

tribution under §2082 on the first day of the following month. Op. Atty. Gen., Apr. 23, 1931.

Where May 30th is a holiday and May 31st falls on Sunday, first half of taxes may be paid on June 1st, without penalty. Op. Atty. Gen., Apr. 23, 1931.

**2203. Structures, etc., not to be removed.**—No structures, standing timber, or minerals on which a lien for taxes has attached shall be removed from any tract of land until all the taxes assessed against such tract and due and payable shall have been fully paid and discharged. When the state auditor or the county auditor has reason to believe that any such structure, timber, or minerals will be removed from such tract before such taxes shall have been paid, either may direct the county attorney to bring suit in the name of the state to enjoin any and all persons from removing such structure, timber, or minerals therefrom until such taxes are paid. No bond shall be required of plaintiff in such suit. (R. L. '05, §977; G. S. '13, §2184; amended Apr. 24, 1931, c. 333, §1.)

Before taking any action under this and the following section it is necessary to first secure the consent and direction of the state auditor. Op. Atty. Gen., Jan. 15, 1930.

State auditor had no power to prevent the removal of a spur track after Railroad and Warehouse Commission made its order permitting its abandonment and removal. Op. Atty. Gen., Mar. 31, 1931.

Sand and gravel, where they exist in such substantial quantities as to possess commercial value, are "minerals" within this section. Op. Atty. Gen., July 11, 1932.

Where lot was bid in by state at 1928 delinquent tax sale, and assignment of state's interest was made that year and at time 1927 taxes were unpaid, and shortly thereafter owner sold house on lot and purchaser removed same, county auditor could proceed against house, but no part of proceeds could be used to take up assignment certificate. Op. Atty. Gen., Sept. 8, 1932.

House removed from land may not be seized or sold to pay any tax which was not due and unpaid at time of removal. Op. Atty. Gen., Sept. 8, 1932.

County owing money for gravel taken off of land may not compel owner and claimant to apply part of money in payment of delinquent tax on such land. Op. Atty. Gen., Oct. 1, 1932.

Village council cannot stop removal of buildings situated upon real estate upon which taxes are due and unpaid, but it can call matter to attention of proper authorities. Op. Atty. Gen., Feb. 14, 1933.

**2204. Structures, etc., may be seized.**—Any structure, timber, or minerals removed from any tract of land subject to a lien for taxes as provided in this chapter, or so much thereof as may be necessary, may be seized by the state auditor, or by the county auditor, or by any person authorized by either of them in writing, and sold in the manner provided for sale of personal property in satisfaction of taxes. All moneys received from such sale in excess of the amount necessary to satisfy such taxes and the costs and expenses of seizure and sale shall be returned to the owner of such structure, timber, or minerals, if known, and, if unknown, shall be deposited in the county treasury subject to the right of the owner. (R. L. '05, §978; G. S. '13, §2185; Apr. 24, 1931, c. 333, §2.)

Op. Atty. Gen., Feb. 14, 1933; note under §2203.

Amount collected under this section may be applied upon delinquent taxes even though not sufficient to discharge in full any one year's taxes. Op. Atty. Gen., May 16, 1931.

#### **2205. Penalty for removal.**

It is not necessary for a county attorney to secure authority from the state auditor to institute criminal proceedings under this section. Op. Atty. Gen., Jan. 15, 1930.

#### **2206. Right to assess and collect.**

An action in the district court for the enforcement of the lien of the inheritance tax under section 2311 is not barred by limitations. State v. Brooks, 183M251, 236NW 316. See Dun. Dig. 5666, 9525.

#### **2207. Real estate tax judgment—No limitation.**

Ten year statute runs against personal property tax judgment. Op. Atty. Gen., Feb. 5, 1929.

#### **2210. Taxes paid by occupant, etc.**

Does not apply to voluntary payment of taxes by person other than owner. 180M283, 230NW654.

#### **2211. Payment of taxes before transfer, etc.**

Op. Atty. Gen., July 23, 1931; note under §2213.

One holding unrecorded deed to land, the title to which had passed to third persons by purchase at foreclosure sale, who voluntarily paid the taxes in order to record his deed, held not entitled to recover the amount so paid from such purchasers. 180M283, 230NW654.

Laws 1895, c. 8, §285, controls over this section in a city organized and operating under such 1895 act. Op. Atty. Gen., Dec. 26, 1929.

Certificate releasing claim or interest to timber upon specified land to "owner of the fee," held a quitclaim deed entitled to record, and one contemplated by this section, unless the facts show that it comes within some of the exceptions set forth in the statute; and it is immaterial that the instrument is not dated. Op. Atty. Gen., June 7, 1930.

Deeds to the state highway department may be recorded without the certificate of the county auditor or the county treasurer as to the payment of taxes. Op. Atty. Gen., April 23, 1931.

Where no taxes are due the state but there are outstanding certificates evidencing sale or assignment to an actual purchaser, the auditor should endorse on the deed "Paid by sale of land described within," and thus authorize the register of deeds to record the instrument. Op. Atty. Gen., Aug. 12, 1931.

Government patent must be recorded, though taxes have not been paid. Op. Atty. Gen., Mar. 9, 1933.

#### **2213. Transfer of undivided interest.**

Where state highway department has condemned an easement across a tract of land against which there are delinquent taxes, the taxes cannot be divided so as to determine the amount of the tax against the particular piece crossed by the highway, so that only that portion of the tax will be payable out of the award. Op. Atty. Gen., July 23, 1931.

#### **2215. Transfer of specific part.**

Manner of obtaining discount in taxes under Laws 1931, c. 129, where a number of lots were assessed as one tract in 1924 and 1925 and in different tracts after that date, discussed. Op. Atty. Gen., Aug. 21, 1931.

#### **2216. Mortgages foreclosed, etc**

The words "preceding year" relates to the calendar year from Jan. 1, to Dec. 31. Op. Atty. Gen., Jan. 25, 1930.

#### **2217. Mortgages, listing.**

Duties of register of deeds as prescribed by this section are in no way affected by the Mortgage Moratorium Law. Op. Atty. Gen., Apr. 3, 1933.

#### **2219. Irregular tracts to be platted.**

Where surveyor did not register letters to owners, his survey and plats could be used after new notice and failure of owners to have surveys made in the interim. Op. Atty. Gen., Mar. 25, 1929.

Under St. Cloud City Charter, §208, the city may make it a punishable offense to refuse to survey and plat land divided into lots, but has no authority to have the property platted and surveyed and charge the expense thereof to the owner. Op. Atty. Gen., Feb. 18, 1932.

Where owners divide dried-up bed of meandered lake, it is desirable that they have county auditor's plat made. Op. Atty. Gen., May 16, 1932.

#### **2221. Railroad lands—Sale.**

Upon railroad company contracting to sell land, it becomes subject to taxation as other real estate is taxed, and the amount of such taxes should be determined by assessment of the land at its full value as other land is assessed. Op. Atty. Gen., June 17, 1931.

#### **2232. Compensation to auditor for furnishing statement of tax liens.**

County treasurer is not entitled to a fee for preparing tax lists for banks desiring to remit taxes for their customers. Op. Atty. Gen., May 19, 1933.

#### **2232-1. County treasurer to search and certify taxes due.**

County treasurer is not entitled to keep fees collected for issuance of certificates for search of tax records, but must turn them into the county treasurer. Op. Atty. Gen., April 22, 1931.

### **COMPANIES PAYING GROSS EARNINGS TAX**

#### **2235. Failure to pay.**

Where there is a failure to report earnings there is at the time of the failure also a default in payment rendering railroad liable for penalties and interest. 181M615, 233NW866. See Dun. Dig. 9562.

#### **2240. Evasions and violations.**

Where there is a failure to report earnings, there is at the time of the failure also a default in payment rendering railroad liable for penalties and interest. 181M615, 233NW866. See Dun. Dig. 9562.

## RAILROAD COMPANIES

**2246. Gross earnings.**

This section, as applied to ore transported from the iron range to Wisconsin docks, at a rate which absorbs the dock service, held not invalid as violative of the commerce clause or the 14th Amendment of the federal constitution. 49SCR191, aff'g 174M3, 218NW167.

The tax constitutes a property tax. *Id.*

Where there is a failure to report earnings, there is at the time of the failure also a default in payment rendering railroad liable for penalties and interest. 181M615, 233NW866. See Dun. Dig. 9562.

**20. Union station.**

Receipt from checking room in union depot handled by depot company as agent of railroads using depot, held to constitute taxable gross income. 181M615, 232NW105. See Dun. Dig. 9561, 9562.

**21. What included in gross earnings.**

Pullman excess receipts paid to railroad company, held not a part of taxable gross income, where the Pullman Company has paid a gross earnings tax on such receipt. 181M615, 232NW105. See Dun. Dig. 9562.

**23. Exemption from special assessments.**

An assessment greatly in excess of special benefit is invalid, and while the test of benefit is the increase in market value of the property after the improvement is made, the Supreme Court cannot review the matter of special benefit where the evidence is not in the record, the conclusion of the municipal authorities being *prima facie* correct, and the burden of proof being on the objector. 172M554, 216NW318.

Gross earnings tax under this section is a "property tax" and is valid. 174M1, 218NW167.

**2247. "Gross earnings" defined.**

49SCR191, aff'g 174M3, 218NW167; notes under §2246. Moneys paid by Pullman Company to railway company for space in terminal depots should not be included in calculating the gross earnings tax of the railway company. *Op. Atty. Gen.*, Apr. 11, 1931.

As between two railroads one of which collects a charge from the shipper and pays it to the other, the ultimate recipient is the one that should be called upon to pay the gross earnings tax. *Op. Atty. Gen.*, July 15, 1931.

## EXPRESS COMPANIES

**2262. Annual statement.**

Express shipments originating in Minnesota for points in Canada, which are transferred to Canadian express companies are included in "business done \* \* \* within this state in connection with other companies" for the purpose of computing the Minnesota gross earnings tax on express companies. *State v. Am. Ry. Express Co.*, 183M244, 236NW321. See Dun. Dig. 9570a.

**2268. Gross earnings tax.**

Refund of amount paid as motor vehicle registration tax. 173M98, 216NW541.

The tax imposed by this section is a lieu property tax measured by gross earnings, and the motor vehicle registration tax in addition thereto is invalid. 173M72, 216NW542.

Laws 1929, c. 361, impliedly mending this section, and excluding from the gross earnings tax the license tax on vehicles used on the highways, is unconstitutional. 180M268, 230NW815.

## SLEEPING CAR COMPANIES

**2279. Gross earnings defined.**

Pullman excess receipts on which gross earnings tax has been paid by the Pullman Company are not again taxable after payment to railroad company. 181M651, 232NW105. See Dun. Dig. 9562.

## TELEGRAPH AND TELEPHONE COMPANIES

**2286. Telephone companies to pay 4% tax, etc.**

Property owned by telephone company paying a gross earnings tax is exempt from an ad valorem tax, if reasonably necessary in operation of its business. *State v. Pequot Rural Telephone Co.*, 247NW695. See Dun. Dig. 9570(15).

Use of property for telephone purposes and other purposes cannot be apportioned. *Id.*

Telephone company deriving income from advertisements in its telephone directory, which are so arranged as to lead the patron to look at the advertisements rather than the regular list of names to find the number of a particular advertiser, held returnable as gross income along with income derived from the placing of names in the alphabetical list in display type. *Op. Atty. Gen.*, April 7, 1930.

Telephone company which permits another company to use its lines for the installation of radio service is required to report as a part of its gross earnings not only the charge for the use of the wires but the cost of installation of the radio receiver. *Op. Atty. Gen.*, April 7, 1930.

Shares of stock of foreign telephone corporation are exempt if telephone corporation pays gross earnings tax. *Op. Atty. Gen.*, May 31, 1932.

## INHERITANCES, DEVISES, BEQUESTS AND GIFTS

**2292. Taxation on inheritances, etc.**

Transfer by deceased to his wife and children, held not shown to have been made in contemplation of death or intended to take effect at or after death, and property transferred was not subject to tax. 179M233, 228NW920. Act to obtain benefit of Federal Estate tax. Laws 1931, c. 332.

Shares of stock in a domestic corporation are so far localized in the state that state has jurisdiction for purpose of imposing an inheritance tax, notwithstanding nonresidence of owner. *Benson v. State*, 183M368, 236NW626. See Dun. Dig. 9572b(40).

The transfer of insurance received by war veteran from the Government for disability or under the compensation act is not subject to inheritance tax in this state. *Op. Atty. Gen.*, April 23, 1931.

The tax imposed is a succession duty, and is valid, though the instrument creating the power of appointment was executed prior to the passage of the statute. 186M262, 232NW331. See Dun. Dig. 9571.

Executors could not waive the bar of the statutes of limitations as to a debt of decedent as regards computation of succession tax. In *re Walker's Estate*, 184M164, 238NW58. See Dun. Dig. 35931(72), 9572a.

Our state tax on gifts and successions is distinguished from federal estate tax, which is neither gift nor succession tax, but only transfer tax. *Rising's Estate v. S.*, 186M56, 242NW459. See Dun. Dig. 9571a.

Gifts inter vivos, but with reservation of income to donor for life, are liable to succession tax. *Rising's Estate v. S.*, 186M56, 242NW459. See Dun. Dig. 9572c.

Classification for taxation of gifts with those testamentary, *causa mortis*, and in contemplation of death, is not denial of due process of law. *Rising's Estate v. S.*, 186M56, 242NW459. See Dun. Dig. 1639, 9572c.

Death transfer tax cannot be imposed in Minnesota upon shares of stock in domestic corporation, owned by nonresident. *Baker v. S.*, 242NW697. See Dun. Dig. 9572b.

Certificates of beneficial interest in trust covering stock of Minnesota and West Virginia corporations, owner of which is domiciled in another state, are not subject to death transfer tax. *Baker v. S.*, 242NW697.

Contracts by insurance companies in consideration of lump sum to pay certain annuity each year to insured and his beneficiaries after his death, are subject to succession tax. In *Re Thornton's Estate*, 186M351, 243NW389.

(3).

A transfer made by one whose age and physical condition is such that he must realize that death is not far away must be held to have been made in contemplation of death, though he may have entertained an intent for some time prior thereto to give away his property during his lifetime. *Anneke v. W.*, (DC-Minn., 1FSupp662. See Dun. Dig. 9572c.

Stock in domestic corporation is not subject to Minnesota Transfer Tax where deceased owner was domiciled in foreign state. *Op. Atty. Gen.*, Feb. 20, 1933.

**2293. Tax, how computed—exemptions. \* \* \* \***

Section 2c. The following exemptions from the tax are hereby allowed: Any devise, bequest, gift, or transfer to or for the use of the State of Minnesota or any political division thereof for public purposes exclusively, and any devise, bequest, gift or transfer to or for the use within this state of any corporation or association operated within this state for religious, charitable, scientific, literary, educational or public cemetery purposes exclusively, including the encouragement of art within this state, and the prevention of cruelty to children or animals within this state, no part of which devise, bequest, gift or transfer inures to the profit of any private stockholder or individual, any bequest or transfer to a trustee or trustees exclusively for such purposes shall be exempt. ('27, c. 290, §1; Apr. 18, 1931, c. 208.)

Laws 1931, c. 208, amends. "the first paragraph of \* \* \* section 2293, sub-section 2c" to read as above.

Public securities consisting of state bonds, certificates of indebtedness and bonds of municipalities owned by a nonresident at the time of his death are tangibles, and are treated as property in the state where they are found. 175M310, 219NW153.

To ascertain the value of the property upon which the inheritance tax is to be imposed, it is proper to deduct the amount paid as an inheritance or succession tax in another state. 175M310, 219NW153.

In the imposition of an inheritance tax in Minnesota, state bonds, state certificates of indebtedness, and bonds of municipalities owned by a nonresident at the time of

his death are intangibles having a situs at the domicile of the owner. 175M310, 221NW64, reversing 175M310, 219NW153.

Such intangibles are subjected to an inheritance tax in this state upon the theory that the owner may invoke our laws. State ex rel. Graff v. Probate Court, 128M371, 150NW1094, L. R. A. 1916A, 901, and State ex rel. March v. Probate Court, 168M508, 210NW389, followed. 175M310, 221NW64, reversing holding in 175M310, 219NW153.

Payments by federal government under war risk policy, held not subject to tax. 179M450, 229NW781.

Where personal property left by a testator is properly sold during administration for less than its appraised value to pay specific legacies, difference is deductible for inheritance tax purposes as an expense of administration, and should not be included in property upon which tax is calculated as against residuary legatees. Bowljn, 248NW741. See Dun. Dig. 9572a.

#### 2297. Inheritance tax a lien upon property.—

Every tax imposed by this Act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment, to the extent of the value of such property." But no such lien heretofore or hereafter claimed shall be enforced against real property, in any case, unless the State shall have asserted or shall hereafter assert the same by filing a statement of its lien in the office of the Register of Deeds in the county or counties wherein such real estate may be situated, within ten years after the date of any final decree of distribution which may be entered in the estate involved. ('05, c. 288, §6; G. S. '13, §2276; Mar. 25, 1933, c. 118.)

#### 2301. Tax erroneously paid—Refundment.

Judicial determination of rights under §2301, to refundment of taxes paid under §2302. Laws 1933, c. 335.

This section does not apply to payments made under inheritance tax laws which have been declared unconstitutional, but only to payments made in excess of proper amount by reason of mistake in computation. Op. Atty. Gen., Jan. 25, 1933.

Money paid as a transfer tax on shares of stock in Minnesota corporation belonging to deceased nonresidents cannot be recovered under this section. Op. Atty. Gen., Feb. 20, 1933.

#### 2302. Transfer by foreign executors, etc.

Act Apr. 20, 1933, c. 335, provides a remedy to compel refundment of tax paid under this section to be exercised within one year from date of enactment. It is omitted as temporary.

Shares of stock in a domestic corporation are so far localized in the state that state has jurisdiction for purpose of imposing an inheritance tax, notwithstanding nonresidence of owner. Benson v. State, 236NW626. See Dun. Dig. 9572b(40).

#### 2311. Non-payment of tax—Property omitted.

The district court has jurisdiction of a suit to enforce the lien of the inheritance tax upon property omitted from the appraisal and inventory in the probate court so that its value was not considered in that court in the determination of the inheritance tax. State v. Brooks, 183M251, 236NW316. See Dun. Dig. 2759.

Neither laches nor estoppel may be invoked against the state in an action by it to enforce its inheritance tax lien under this section. State v. Brooks, 183M251, 236NW316. See Dun. Dig. 3211, 5356.

An action in the district court for the enforcement of the lien of the inheritance tax is not barred by limitations. State v. Brooks, 183M251, 236NW316. See Dun. Dig. 9525.

**2321-1. Inheritance tax.**—There shall be assessed by the probate court in addition to the inheritance tax as now provided by Mason's Minnesota Statutes of 1927, Sections 2292-2321, an estate tax upon all estates which are subject to taxation under the present Federal Revenue Act of Nineteen Hundred Twenty-six. Said tax is hereby imposed upon the transfer of the estate of every person, who at the time of his death was a resident of this state. The amount of said tax shall be computed by the attorney general and his computation shall be sent to the probate court of the county of deceased's residence and shall be by the probate court assessed as an additional amount of inheritance tax as fixed in accordance with the provisions of this act by said probate court. In the event that the estate of the deceased is not probated, said tax shall be deter-

mined and computed by the attorney general. The amount of said tax so assessed shall be the amount by which eighty per cent of the estate tax, payable to the United States under the provisions of the said Federal Revenue Act of Nineteen Hundred Twenty-six [Mason's U. S. Code, Anno., title 26, §§1136-1 to 1136-49], shall exceed the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States in respect to any property owned by such decedent, or subject to such taxes as a part of or in connection with his estate. (Act Apr. 24, 1931, c. 332, §1.)

**2321-2. When payable.**—The tax imposed by this act shall become due and payable at the expiration of 18 months after the death of the person from whom the transfer is made, and executors, administrators, trustees, grantees, donees, beneficiaries and surviving joint owners shall be and remain liable for the tax until it is paid. If the tax is not paid when due interest at the rate of seven per centum per annum shall be charged and collected from the time the same became payable unless by reason of claims upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined as herein provided; in such case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which seven per centum shall be charged. (Act Apr. 24, 1931, c. 332, §2.)

**2321-3. To become void, when.**—This act shall become void and of no effect in respect to estates of persons who die subsequent to the effective date of the repeal of Title III of said Federal Revenue Act [Mason's U. S. Code, Anno., title 26, §§1136-1 to 1136-25] or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding 80 per cent of the tax imposed by said Title III [Mason's U. S. Code, Anno., title 26, §1136-3(b)]. (Act Apr. 24, 1931, c. 332, §3.)

**2321-4. Intent of act.**—It is hereby declared to be the intent and purpose of this act to obtain for this state the benefit of the credit allowed under the provisions of said Title III, Section 301, subsection (b) of the Federal Revenue Act of Nineteen Hundred Twenty-six [Mason's U. S. Code, Anno., title 26, §1136-3(b)] to the extent that this state may be entitled by the provisions of this act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose. The attorney general may make such regulations, relative to the assessment and the collection of the tax provided by this act, not inconsistent with law, as may be necessary to carry out this intent. (Act Apr. 24, 1931, c. 332, §4.)

**2321-5. Application.**—The provisions of this act shall also apply to all estates not fully distributed and now in process of settlement, where the date of death was subsequent to February 26, 1926. (Act Apr. 24, 1931, c. 332, §5.)

**2321-6. Other laws made part of this act.**—All provisions of Sections 2292-2321, Mason's Minnesota Statutes of 1927, and amendments thereto, relating to succession taxes are hereby made a part of this act wherever the same are applicable. (Act Apr. 24, 1931, c. 332, §6.)

**2321-7. Apportionment of tax.**—The tax which may be imposed under section 1 [§2321-1] of this act shall be chargeable against the interests of each beneficiary in proportion to the amount of the normal state inheritance tax paid by each. (Act Apr. 24, 1931, c. 332, §7.)

**2321-8. Provisions separable.**—If any portion of this act is held to be unconstitutional, such decision shall not invalidate any provisions unaffected thereby. In the event that any part of the Federal Revenue Act or Federal Estate Tax Law, hereinbefore re-

ferred to, shall be declared to be in violation of the constitution of the United States, such declaration shall not be construed to affect the provisions of this act. (Act Apr. 24, 1931, c. 332, §8.)

## MORTGAGES ON REAL PROPERTY

### 2322. Mortgage defined.

Westberg v. W., 185M336, 241NW315.

Transfer by managing officer of bank to certain directors to secure his indebtedness to the bank, held a mortgage and not an assignment for benefit of creditors. 172M149, 214NW787.

The fact that the tax was not paid until after the trial but before final submission of the case does not avoid the instrument. 172M149, 214NW787.

Finding that judgment creditors had no knowledge of deed until after the docketing of their judgments held sustained by the evidence. 173M244, 217NW132.

Failure to pay mortgage registry tax for two extensions of a mortgage on which the tax was originally paid, held not to invalidate the mortgage, and it was enforceable without such payment. *Moody et al. v. U.*, 180M550, 231NW406(2).

The ordinary essential elements of a real estate mortgage are: (1) A conveyance, and (2) security for a debt. *Spelman v. A.*, 183M282, 236NW319. See *Dun. Dig.* 6145.

A mortgage running to a national bank is subject to the mortgage registry tax. *Op. Atty. Gen.*, Mar. 17, 1931.

Where an instrument is filed modifying a mortgage, making installments smaller, but requiring payment of the balance on the same date that the balance would be due under the original mortgage, it is only as to the portion of the indebtedness extended that a new lien is created and on which a tax must be paid. *Op. Atty. Gen.*, Aug. 15, 1931.

Mortgages given to joint stock land banks are exempt from state registry tax. *Op. Atty. Gen.*, Apr. 1, 1933.

Receiver of joint stock bank is exempt from payment of mortgage registration tax. *Op. Atty. Gen.*, Apr. 20, 1933.

### 2323. Tax on record or registration.

Laws 1931, c. 173, legalizes termination of land contracts where tax was not paid.

173M244, 217NW132; note under §2322.

Where tax was paid on mortgage it could be enforced, though the tax was not paid on two extensions of the mortgage. 180M550, 231NW406(2).

Mortgage given by joint stock land bank to reconstruction finance corporation should be accepted for recording without payment of mortgage registry tax. *Op. Atty. Gen.*, Feb. 1, 1933.

An agreement to pay existing delinquent taxes and accrued interest on a mortgage assumed under a contract for deed does not create a lien upon which a mortgage registration tax must be paid. *Gruenberg v. S.*, 248NW724. See *Dun. Dig.* 9576.

Where registration tax is paid for five years to maturity, there is no further tax due to failure of mortgagee to foreclose for a number of years after maturity. *Op. Atty. Gen.*, July 20, 1929.

A mortgage on all lands owned by mortgagor in certain counties in the state and property in certain other states, without a specific description of any property, may be recorded if there is satisfactory proof by affidavit or otherwise satisfactory to the treasurer of facts necessary to determine apportionment of tax. *Op. Atty. Gen.*, Oct. 31, 1932.

Mortgages executed under Federal Home Owners' Loan Act are not subject to registration tax. *Op. Atty. Gen.*, Aug. 26, 1933.

### 2324. Exemption from other taxes.

Present payment of mortgage registration tax does not exempt mortgagee or grantor in contract for deed from liability for money and credits tax avoided in prior years. *Op. Atty. Gen.*, Apr. 23, 1929.

### 2326. Tax, how payable—Receipts.

There can be no refundment of a tax paid under this act except by application to the tax commission under §1983. *Op. Atty. Gen.*, April 23, 1930.

A mortgage on all lands owned by mortgagor in certain counties in the state and property in certain other states, without a specific description of any property, may be recorded if there is satisfactory proof by affidavit or otherwise satisfactory to the treasurer of facts necessary to determine apportionment of tax. *Op. Atty. Gen.*, Oct. 31, 1931.

### 2327. Mortgage on exempt property—property not directly taxed—receipt—apportionment of tax.—

When any real estate situate in this state and described in any such mortgage is exempt from taxation under Section 1, Article 9 of the Constitution, the tax herein provided shall be paid to the treasurer of the county in which such real estate is situate in the same manner as if such real estate was not exempt from taxation. When any real estate situate in

this state and described in such mortgage is not exempt from taxation under such section, but is not taxed by direct tax upon the assessed valuation thereof, then the tax herein provided shall be paid to the state treasurer and credited to the general revenue fund. The receipt thereof shall be endorsed upon the mortgage by the state treasurer and countersigned by the state auditor, who shall charge the treasurer therewith, and thereupon such mortgage shall be recorded or registered, as to such real estate in any office in this state. When any such mortgage shall describe any real estate, part of which is not taxed by direct tax, upon the assessed valuation thereof and part of which is so taxed or is exempt from taxation, the proportionate amount of the tax to be paid to the state treasurer and to the county treasurer shall be determined in accordance with the proportionate value of the real estate included therein as such valuation shall be determined by the state auditor upon application of the mortgagee. The amount of the tax payable to the state treasurer shall thereupon be paid to him, who shall endorse upon such mortgage that the proportionate amount of the tax payable to him has been paid and the balance of such tax shall be paid to the county treasurer of the county where the mortgage is first presented for record or registration and shall be divided and paid to the county treasurers of the other counties entitled thereto, as provided by Section 3326, G. S. 1923. ('07, c. 328, §6; G. S. '13, §2306; Feb. 20, 1929, c. 30.)

**2327-1. Records legalized.**—The record or registration of any mortgage covering real estate, part or all of which is exempt from taxation or not taxable by direct tax upon the assessed valuation thereof, upon which the mortgage registration tax has heretofore been paid either to the county treasurer of the county where such mortgage was first presented for record or to the state treasurer, is hereby legalized and made valid for all purposes, notwithstanding such tax may have been paid to the wrong officer if all other requirements of law in relation to the recording or registration of such mortgage have been complied with. (Act Feb. 20, 1929, c. 30, §2.)

**2328. Prepayment of tax.—Evidence—Notice.**—No such mortgage, no papers relating to its foreclosure nor any assignment or satisfaction thereof shall be recorded or registered after the passage of this act unless said tax shall have been paid; nor shall any such document or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise; but if the tax be paid no error in computation or ascertainment of the amount thereof shall affect the validity of such mortgage or the record or foreclosure thereof. ('07, c. 328, §7; G. S. '13, §2307; '13, c. 163, §2; Apr. 18, 1929, c. 222, §1.)

In prosecution of notary for false certifying acknowledgment of mortgage, the mortgage was properly admitted in evidence, though registration tax was not paid. 171M345, 214NW262.

## MONEY AND CREDITS

### 2337. Definitions.

Reserve or surrender value of single premium policies is not taxable, but the present value of installments or annuities is taxable after maturity. *Op. Atty. Gen.*, Apr. 4, 1929.

Moneys and credits are not to be taken into consideration in determining the limit of the city of Stillwater of its authorized levy of taxes for current purposes. *Op. Atty. Gen.*, July 3, 1930. Feb. 6, 1930.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing for method of taxation of banks. *Op. Atty. Gen.*, Aug. 29, 1930.

A tax sale certificate covering real estate in North Dakota is taxable to the holder as moneys and credits under Minnesota tax law. *Op. Atty. Gen.*, Aug. 14, 1931.

Bonds of Dominion of Canada are taxable to holder under our moneys and credits tax unless exempted by some treaty. *Op. Atty. Gen.*, Apr. 5, 1932.

Tax certificates are not taxable under statute relating to moneys and credits unless sale is void and holder is entitled to return of money paid. *Op. Atty. Gen.*, July 16, 1932.



Stock of First Bank Stock Corporation and Northwest Bancorporation, insofar as value thereof is supported by shares in national banks is not subject to money and credits tax. Op. Atty. Gen., June 7, 1933.

Anticipated payments to be received out of so-called trust fund of a reorganization bank need not be listed as moneys and credits for purposes of taxation. Op. Atty. Gen., June 22, 1933.

Postal savings are not exempt from state taxation. Op. Atty. Gen., May 23, 1933.

Funds belonging to clients in hands of grain commission company are taxable. Op. Atty. Gen., May 31, 1933.

### TRANSIENT MERCHANTS

#### 2353-1. Taxation of personal property of transient merchants—etc.

This act does not affect a stock of merchandise moved into an assessment district between January 1st and May 1st with the intent of being sold and disposed of before the latter date. Op. Atty. Gen., Feb. 6, 1930.

### MINNESOTA TAX COMMISSION

#### 2364-1 to 2364-3. [Repealed.]

Repealed Mar. 16, 1933, c. 82, effective from and after passage.

#### 2365. To have powers of state board of equalization, etc.

(4). Legislature in Laws 1933, c. 413, §26, that part of appropriation should be used by tax commission for preliminary investigations of tax irregularities whether or not reassessment might result. Op. Atty. Gen., July 27, 1933.

#### 2370. Property omitted or undervalued—Reassessment.

Op. Atty. Gen., July 27, 1933; note under §2365(4). Tax commission does not have power to order reassessment unless considerable amount of property has been undervalued or overvalued. Op. Atty. Gen., Apr. 28, 1933.

**2372-1. Municipalities to be party to tax hearings.**—Any city, town, village, borough, school district, or county (all of which governmental subdivisions shall be embraced in the word "municipality" as used hereinafter) may appear at and become a party to any proceedings before the Tax Commission held for the purpose of equalizing or assessing any real or personal property in said municipality, or reducing the assessed value of any such property. For that purpose any such municipality may employ counsel and disburse money for other expenses in connection with such proceedings, on duly itemized verified claims, which shall be audited and allowed as now provided by law for the allowance of claims against a municipality. It shall be the duty of the Tax Commission, at the time of such hearing to grant the municipality, at its request, such further reasonable time as may be necessary for such municipality to prepare for further hearing. It shall be the duty of the Tax Commission whenever any taxpayer or property owner has applied for a reduction of the assessed valuation of any real or personal property in an amount exceeding Fifteen (\$15,000) Thousand Dollars, to give written notice to the officials of the municipality wherein such property is located, and to permit such municipality to have a reasonable opportunity to be heard at any proceedings concerning such application. (Act Apr. 23, 1931, c. 304, §1.)

**2372-2. Must file written request for hearing.**—Any such municipality may, at any time within ten days after the final adjournment of the county board of equalization of the county in which such municipality is located, or within 10 days after the filing with the county auditor of such county of any order of the tax commission reducing the assessed valuation of any property in such municipality, file a written request with the tax commission for a hearing upon the equalization or assessment of any property within such municipality, specifying the property and the name and address of the owner thereof, as they appear from the assessment books. The tax commission shall thereupon order a hearing thereon and shall mail a notice stating the time and place of such hearing to the municipality and to the owner of such prop-

erty. It shall be the duty of the Tax Commission, at the time of such hearing to grant the municipality, at its request, such further reasonable time as may be necessary for such municipality to prepare for further hearing. (Act Apr. 23, 1931, c. 304, §2.)

**2372-3. Commission to summon witnesses.**—Upon any such hearing the tax commission shall, upon the request of such municipality or any party to such proceedings, issue subpoenas and summon witnesses to appear and give testimony, and to produce books, records, papers and documents. For the purpose of preparing for and participating in said hearing the municipality shall have access to, and use of, all the data, records and files of the tax commission pertaining to the property in question. Upon demand of any party a record shall be kept by the tax commission of all evidence offered or received upon such hearing, the cost thereof to be paid by the party making such demand. (Act Apr. 23, 1931, c. 304, §3.)

**2372-4. Commission to make findings of facts.**—The tax commission shall determine the controversy upon the evidence produced at such hearing and shall make and file written findings of fact and its order determining the controversy. In the equalization and determination of valuations, the findings and values as given by the Assessor of the local assessment district shall be considered as prima facie correct. Copies of such order and findings shall be mailed to all parties appearing at said hearing, and to the county auditor of the county in which the property is located. Any municipality which has appeared in such proceedings, and which is aggrieved by the order of the tax commission reducing the assessed valuation of any such property, or failing to increase such assessed valuation, may have the order of the commission reviewed by appeal to the supreme court on any of the following grounds:

(1) That the determination of the commission was not in accordance with the laws relating to the assessment of property, or that the commission committed any other error of law; (2) That the findings of fact and determination of value were unwarranted by or were contrary to the weight of the evidence. Any owner of property who has appeared in such proceedings and who is aggrieved by the order of the tax commission raising the assessed valuation of any such property, or failing to reduce such assessed valuation may have the order of the commission reviewed on appeal to the Supreme Court in like manner and upon the same grounds as hereinabove provided for review on the appeal of any municipality as hereinafter provided. (Act Apr. 23, 1931, c. 304, §4.)

**2372-5. Notice of appeal.**—To secure such review, the municipality shall, within thirty days after mailing of notice of such determination by the tax commission, serve upon such commission a notice of appeal to the supreme court from the order of the commission and shall file the original thereof with proof of service with the clerk of the supreme court, paying the filing fee provided by law for appeals in civil actions. The filing of such notice of appeal shall vest the supreme court with jurisdiction thereof and such appeal shall be heard and disposed of as in the case of appeals from civil actions from the district court. Record and briefs shall be served and filed as provided by law or rule of court in such appeals. (Act Apr. 23, 1931, c. 304, §5.)

**2372-6. Supreme Court to determine.**—The supreme court shall reverse or affirm the order of the commission or remand the cause to the commission for a new hearing or further proceedings or for other disposition thereof with such directions as the court may deem proper. (Act Apr. 23, 1931, c. 304, §6.)

**2372-7. Not to stay collection.**—The institution of any such appeal from the order of the commission shall not operate to stay in any way proceedings for the assessment or collection of taxes against the property involved therein. Notwithstanding such appeal, the tax commission shall file with the county auditor



of the county in which such property is situated its order confirming; increasing, decreasing or determining the assessed value thereof, and the county auditor shall extend and levy against said property or the owner thereof the taxes thereupon for said year according to such assessment, and all subsequent proceedings for the determination of the taxes and the collection thereof shall be taken as if no appeal from such order were pending. When the matter is finally determined on review, a properly authenticated copy of the findings, order or judgment shall be filed with the county auditor of the county in which the land or property referred to in the proceedings is situated. If said order or judgment lowers the taxable valuation of the land or property referred to in the proceedings the tax commission, upon petition of the owner, approved by the county board, shall abate so much of the taxes against such property as is attributable to the excessive valuation thereof. If such tax has been paid the county auditor, upon petition of the owner, approved by the county board and tax commission, shall refund so much of such payment as is attributable to such excess valuation. Upon such refund being made the county auditor shall charge the same to the state and the various governmental subdivisions thereof that participated in such excessive payment in proportion to their respective shares therein and deduct the same in the next tax apportionment. (Act Apr. 23, 1931, c. 304, §7.)

**2372-8. Shall be extended as additional taxes.**—If such final order and judgment results in raising the valuation of the property affected by the proceedings, the county officers shall, for the next ensuing year, in addition to the regular taxes levied for such ensuing year, levy, extend and spread against such property (if real property) or against the owner thereof (if personal property) a tax equal to the difference between the taxes actually levied and extended against such property or owner for the year in question and the taxes which should have been levied or extended against such property or owner at the increased valuation as finally determined. (Act Apr. 23, 1931, c. 304, §8.)

**2372-9. Proceedings to determine assessed valuation.**—The proceedings provided hereby are for the purpose of determining the assessed valuation upon the basis of which taxes are spread against property or the owner thereof in the first instance. The order of the commission or the final order for judgment of the supreme court thereon shall not be a bar to any defense against such taxes interposed at the time of the proceedings for judgment thereon, and all defenses which may be set up against the proceedings for judgment upon such taxes under existing laws may be asserted notwithstanding the determination of the commission or the supreme court hereunder. In the event that taxes are levied or extended pending review of the order of the commission by the supreme court as hereinbefore provided, a judgment entered upon such taxes in the tax delinquency proceedings shall not be a bar to the spreading of further taxes against such property for such year in the event the assessed valuation of such property is raised as herein provided. In the proceedings for the collection of any taxes which include an additional levy because of the raising of the assessed valuation of any property hereunder the owner may answer separately to the proceedings to obtain judgment for such excess levy. (Act Apr. 23, 1931, c. 304, §9.)

**2372-10. Inconsistent acts repealed.**—All acts and parts of acts inconsistent with the provisions of this act shall be and the same are hereby repealed. (Act Apr. 23, 1931, c. 304, §10.)

#### OCCUPATION TAX ON MINING OR PRODUCING IRON ORE OR OTHER ORES

**2373. Occupation tax of 6% on iron ore.**

172M263, 271, 273, 215NW71, 180, 181; note under §2392-1. 221NW13.

181M221, 232NW35; note under §2374.

Reformation of covenant in lease to pay tax. 43F(2d) 17. See Dun. Dig. 8328.

The occupation tax and the royalty tax are complementary. 172M235, 215NW74.

#### 2374. Value of ore—How ascertained.

The purchaser of a mining lease is entitled to a deduction as advance royalty from the valuation of the ore produced, in addition to the rent or royalty reserved, of the amount paid for the lease, whether by way of additional rent or royalty or by lump sum payment. 172M235, 215NW74.

Money paid for an assignment is none the less advance royalty because the assignment is without condition and contains no right of re-entry. 172M235, 215NW74.

Where company took assignments of leases and other property in 1906, and gave assignor a mortgage, and transferred part of the corporate stock to him, held that there were no advance royalties. 172M235, 215NW74.

A corporation which buys a mining lease from a stockholder in good faith is entitled to the benefit of advance royalties paid therefor. 176M125, 222NW649.

Where a mining lease is sold or transferred, the transferee is entitled to the benefit of advance royalties paid by the transferor on ore thereafter mined. 176M125, 222NW649.

Where the sum paid for a mining lease includes the amount for the privilege of mining the ore and also the price paid for other property, the amount of advance royalty may be determined by deducting the value of the other property from the sum paid. 176M125, 222NW649.

In fixing the value of iron ore for the purpose of computing the occupation tax, advance royalties paid thereon are to be deducted. 176M125, 222NW649.

The deduction of royalty does not include the 6% royalty tax imposed by §2392-1 and 2392-2, as the latter is a tax and not a royalty, the royalty upon which it is imposed being a royalty subtracted in computing the occupation tax. 181M221, 232NW35. See Dun. Dig. 9576c.

#### 2383. Notices to persons liable of amount of tax—Hearings and review.

Certiorari to the Tax Commission discharged for want of sufficient record. 172M605, 216NW240.

#### TAX ON IRON ORE ROYALTIES

##### 2392-1. Tax on royalties—Rate of tax.

181M221, 232NW35; note under §2392-2.

Reformation of covenant in lease to pay tax. 43F(2d)17. See Dun. Dig. 8328.

The royalty tax is imposed upon the right, title, and interest of the lessor, and where the lessee has covenanted to pay all taxes and assessments, he must pay the royalty tax. 172M263, 271, 273, 215NW71, 180, 181.

The occupation tax and the royalty tax are complementary. 172M235, 215NW74.

Laws 1923, c. 226, is properly entitled and does not offend constitution, art. 4, §27. 175M305, 221NW13.

Tax imposed by Laws 1923, c. 226, does not violate Const., art. 1, §7, or art. 9, §1, 175M305, 221NW13.

Following Marble v. Oliver Mining Co., 172M263, 215NW71, and Fryberger v. Inland Steel Co., 218NW553, the leases here involved obligated the lessees to pay the tax imposed by chapter 226, L. 1923. 175M305, 221NW13.

Royalty tax accruing prior to termination of lease was not "levied" by the statute but by the administrative acts of the state officials in the following year when the amount of the tax was determined and extended upon the records for collection. Day v. I., 185M53, 239NW776. See Dun. Dig. 9236.

##### 2392-2. Same—Definitions.

172M235, 215NW74; note under §2374.

Mineral lease of lands belonging to state imposed upon lessee the duty to pay all taxes, and an assignment put upon assignee duty to perform all covenants of the lessee, and to pay royalty tax upon additional royalties reserved by lessee, under new statute. 174M139, 218NW553.

The tax imposed by this section is a property tax not deductible as a non-statutory deduction in fixing the valuation of the ore produced in computing the occupation tax imposed by §2373. 181M221, 232NW35. See Dun. Dig. 9576c.

**2392-5. Tax on royalties—assessment by tax commission.**—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 3 [2392-8] of this act it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such person, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and of the amount that has been paid thereon, and on or before the first day of May of each year file the same

with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

A person subletting land for the use of which he received royalty shall be required to pay taxes only on the difference between the amount of royalty paid by him and the amount received. ('23, c. 226, §5; Apr. 20, 1931, c. 234, §1.)

**2392-7. Time for payment of tax.**—Any portion of such tax that has not been withheld and paid by the royalty payor as herein required shall be due and payable on or before May 31st of each year. ('23, c. 226, §7; '25, c. 361, §1; Apr. 20, 1931, c. 234, §2.)

**2392-8. Lien of tax.**—The situs of royalty for all purposes of this act shall be in this state; and the tax herein provided for shall be a specific lien from the time the royalty accrues upon all and singular the right, title and interest of the person to whom such royalty is payable, in and to the land for permission to explore, mine, take out and remove ore on which the royalty is paid, and shall be a specific lien upon such royalties as they accrue. Every person paying royalty to another which is subject to tax hereunder and upon which the royalty tax has not been paid shall withhold the amount of the tax upon such royalty and remit the same to the state treasurer at the time the royalty is paid. Such payment to the state treasurer shall operate to discharge to that extent the liability of the person paying such royalty to the royalty recipient. At the time of such payment he shall file with the state auditor and with the Minnesota Tax Commission a report thereof on forms to be prescribed by the Minnesota Tax Commission. If any person paying royalty to another shall fail to withhold the tax thereon and pay the same to the state treasurer he shall be liable for the amount of such tax, with interest at the rate of 12 per cent per annum from the time the same should have been paid, to be recovered in an action by the attorney general for and on behalf of the state. The tax commission may, upon petition of any royalty payor or recipient, and upon such conditions as it may impose, permit the paying of the tax in one annual payment instead of as such royalty accrues, in which case such annual payment shall be made at such times as the tax commission directs, not later than May 31 of the year following the accrual of the royalty. No such extension of time shall be granted unless as one of the conditions thereof the royalty payor shall guarantee the payment of the tax.

In the event the royalty is paid in ore instead of in cash the tax provided for herein shall be a specific lien upon the ore apportioned to the royalty recipient or, if such ore be not apportioned, upon the royalty recipient's interest in the ore mined, and such ore shall not be shipped from the state of Minnesota unless:

- (a) The royalty tax be paid, or
- (b) A bond be given to secure such payment, upon a form and with sureties approved by the tax commission, in an amount 25 per cent in excess of the tax commission's estimate of the tax, or
- (c) The estimated amount of the tax (such estimate to be made by the tax commission) be deposited with the state treasurer as security for such payment, or
- (d) The payment of the tax be guaranteed or secured in some other manner satisfactory to the tax commission. ('23, c. 226, §8; Apr. 20, 1931, c. 234, §3.)

Royalty tax cannot be enforced against right, title, and interest in land, where recipient of royalty conveyed prior to time such tax became a lien; grantee having no actual notice or knowledge of existence of tax. *State v. Rea*, 250NW41. See *Dun. Dig.* 9576c.

**2392-8½. Application.**—Nothing in this act shall be construed as amending, modifying, qualifying or in any way affecting the nature or character of the tax imposed by Mason's Statutes of 1927, Section 2392-1 to 2392-13, inclusive. (Act Apr. 20, 1931, c. 234, §4.)

## TAXES DUE UNITED STATES

### 2394. Taxpayer may pay taxes, etc.

Laws 1931, c. 111, limits scope of Laws 1915, c. 44, as amended by Laws 1919, c. 528.

Laws 1931, c. 127, relates to mailing statement of taxes to landowners in counties with assessed valuation of \$20,000,000 to \$25,000,000, population of 35,000 to 40,000, and area of 400,000 to 500,000 acres.

Laws 1931, c. 207, legalizes abatement of taxes in counties having an area of over 1,000,000 acres and assessed valuation of \$6,000,000 to \$12,000,000 because of destruction of crops.

## INCOME TAX

Act is constitutional. *Reed v. Bjornson*, 253NW102 Adv. Sh. No. 1.

### ARTICLE I.—GENERAL DEFINITIONS

#### 2394-1. Definitions.—When used in this Act—

(a) The term "person" shall include individuals, fiduciaries, estates and trust, and partnerships not included in the definition of corporation.

(b) The term "partnership" shall mean any partnership not of the class included in the definition of corporations.

(c) The term "corporation" shall include joint stock companies and corporations existing under the laws of any state or county; limited partnerships organized under Mason's Minnesota Statutes of 1927, Chapter 57, and Acts amendatory thereof, and partnerships similar in nature organized under the laws of other states; associations (other than ordinary partnerships) and common-law trusts organized or conducted for profit.

(d) The term "domestic" when applied to a corporation shall mean created or organized in Minnesota or under its laws, and the term "foreign" when thus applied shall mean a corporation other than a domestic corporation.

(e) The term "taxpayer" shall mean any person or corporation subject to a tax imposed by this Act.

(f) The term "resident" shall mean any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not during the whole of such tax year have been domiciled outside the state.

(g) The term "fiduciary" shall mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person or corporation.

(h) The term "taxable year" shall mean the period for which the taxes levied by this Act are imposed. It shall be a calendar year, a fiscal year, or, in cases where returns for a fractional part of a year are permitted or required, the period for which such return is made. The term "fiscal year" shall mean an accounting period of twelve months ending on the last day of any month other than December.

(i) The term "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which net income is computed for the purposes of the taxes imposed by this Act; and the terms "received" or "received or accrued" shall be similarly construed.

(j) The terms "stock" or "share" shall mean the interest of a member in a corporation however evidenced; and the terms "stockholder" or "shareholder" shall mean the owner of any such "stock" or "share."

(k) The terms "state" or "this state" shall, unless the context requires otherwise, mean the State of Minnesota.

(l) The term "includes" and its derivatives, when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(m) The term "Commission" shall mean the Minnesota Tax Commission.

(n) The term "property" shall include every form of property, real, personal or mixed, tangible or intangible, and every interest therein, legal or equitable, irrespective of how created or arising. Property pledged or mortgaged shall be treated as owned by the pledgor or mortgagor.

(o) Whenever in this Act the estate of a decedent or a trust is referred to as a taxable person, or a duty is imposed on such estate or trust, the reference may be construed as meaning the fiduciary in charge of the property of such estate or trust, and the duty shall be treated as imposed on such fiduciary.

(p) The term "comptroller" shall mean the comptroller of the Commission of Administration and Finance provided for in Section 1 of Article III, Chapter 426 of the Laws of Minnesota of 1925. (Act Apr. 21, 1933, c. 405, § 1.)

## ARTICLE II—IMPOSITION OF TAXES

**2394-2. Income tax imposed.**—There is hereby imposed on every domestic and foreign corporation an annual tax for the privilege of existing as a corporation or of transacting any local business within this state during any part of its taxable year, measured by its taxable net income for such year, computed in the manner and at the rates hereinafter provided. (Act Apr. 21, 1933, c. 405, § 2.)

**2394-3. Rate of tax.**—(a) There is hereby imposed an annual tax for each taxable year upon the taxable net income for such year of every taxpayer specified in sub-section (b) hereof, computed in the manner and at the rates hereinafter provided.

(b) The tax imposed by sub-section (a) shall apply in the case of a domestic and foreign corporation whose business within this state during any taxable year consists exclusively of interstate commerce; to resident and non-resident individual; to the estates of decedents dying domiciled within or without this state; to trusts (except so far as these are taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations; provided that no non-resident individual shall be taxed on his income from compensation for labor or personal service within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year. (Act Apr. 21, 1933, c. 405, § 3.)

**2394-4. Date of liability.**—(a) The liability for the tax imposed by Section 2 shall arise upon the first day of the taxable year upon which the corporation exercises any of the privileges specified in Section 2. The liability for the tax imposed by subsection (a) of Section 3 shall arise concurrently with the receipt or accrual of income during the taxable year. These provisions shall in no way affect the determination of the amount of such taxes, the time for making returns, and the time for paying such taxes.

(b) The liability of any taxpayer shall remain unaffected by the fact that such taxpayer, or the title, possession, custody or control of his business or property, is in the care of a guardian, trustee, receiver, conservator or any other person acting in any fiduciary capacity for such taxpayer or in reference to his business or property, unless the taxes imposed by this Act are specifically imposed by this Act upon any such guardian, trustee, receiver, conservator or fiduciary. (Act Apr. 21, 1933, c. 405, § 4.)

**2394-5. Exemptions from act.**—The following corporations and organizations shall be exempted from taxation under this Act:

(a) National and state banks.

(b) Corporations engaged in the business of mining or producing iron ore; but if any such corporation engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in Mason's Minnesota Statutes of 1927, Section 2392-2) shall not be con-

sidered as income from the business of mining or producing iron ore within the meaning of this section.

(c) Insurance companies however or wherever organized, and regardless of the risks insured against.

(d) Fraternal beneficiary associations wherever organized, and public department relief associations of public employees of this State or of any of its political subdivisions.

(e) Co-operative or mutual rural telephone associations.

(f) Corporations engaged in the business of loaning money to home builders for home building purposes, but if any such corporation is engaged in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or other business or activity.

(g) Labor, agricultural and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder, or individual;

(h) Farmers, fruit growers, and like organizations organized and operated as sales agents for the purpose of marketing products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity or value of produce furnished by them; and farmers' co-operative associations, however organized, so far as engaged in marketing farm products or in buying and selling farm products and supplies without profit, and co-operative associations organized under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed.

(i) Corporations operating or conducting public burying grounds, public school houses, public hospitals, academies, colleges, universities, seminaries of learning, churches, houses of worship, and institutions of purely public charity, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(j) Corporations organized for exclusively scientific, literary or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(k) Business leagues and commercial clubs, not organized for profit and no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(l) Clubs organized and operated exclusively for pleasure, recreation or other non-profitable purposes, no part of the net income of which inures to the benefit of any private member, stockholder or individual;

(m) Any corporation all the stock of which is owned by the United States or which may be exempt from a state franchise or income tax by federal law;

(n) The State of Minnesota and all its political or governmental subdivisions, municipalities, agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions. (Act Apr. 21, 1933, c. 405, § 5.)

Laws 1933, c. 382, ante, § 1975-1, exempts building and loan associations.

**2394-6. Rate of tax.**—The taxes imposed by this Act shall be at the following rates on the taxable net income in excess of the applicable credits against net income hereinafter provided for:

(a) On the first \$1,000 thereof, one per centum.

(b) On the second \$1,000 thereof, one and one-fourth per centum.

(c) On the third \$1,000 thereof, one and one-half per centum.

(d) On the fourth \$1,000 thereof, one and three-fourths per centum.

(e) On the fifth \$1,000 thereof, two per centum.

(f) On the sixth \$1,000 thereof, two and one-half per centum.

(g) On the seventh \$1,000 thereof, three per centum.

(h) On the eighth \$1,000 thereof, three and one-half per centum.

(i) On the ninth \$1,000 thereof, four per centum.

(j) On the tenth \$1,000 thereof, four and one-half per centum.

(k) On the remainder thereof, five per centum.

(Act Apr. 21, 1933, c. 405, §6.)

**2394-7. Tax to be imposed for 1933.**—(a) The first taxable year for all taxpayers whose taxable year is a calendar year shall be the calendar year 1933.

(b) The first taxable year for all taxpayers whose taxable year is a fiscal year shall be the fiscal year ending during 1933, and the tax for such first taxable year shall in these cases be computed on the basis of the taxable net income received or accrued on and after January 1, 1933, in accordance with the method provided for by Section 31(a). (Act Apr. 21, 1933, c. 405, §7.)

**2394-8. Direct tax in certain cases.**—The tax for the first taxable year in the case of taxpayers taxable under Section 2 whose taxable year ended prior to the date on which this Act takes effect shall be a tax directly on its taxable net income instead of on the exercise of the privileges specified in said section during such first taxable year. (Act Apr. 21, 1933, c. 405, §8.)

### ARTICLE III.—COMPUTATION OF NET INCOME

**2394-9. Taxable net income.**—(a) Net income and taxable net income shall be computed upon the basis of the taxpayer's annual accounting period, and, except as specifically provided to the contrary by this Act, in accordance with the method of accounting regularly employed in keeping the taxpayer's books; but if no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this Act, the computation shall be made in accordance with such method as in the opinion of the Commission does clearly and fairly reflect income and the income taxable under this Act. If a taxpayer has no annual accounting period, or has one other than a fiscal year as heretofore defined, the net income and taxable net income shall be computed on the basis of the calendar year. Taxpayers shall employ the same accounting period on which they report, or would be required to report, their net income under the federal income tax act, except that their right to change accounting periods is limited as hereinafter set forth.

(b) A taxpayer may change his accounting period only with the consent of the Commission. In case of any such change, he shall pay a tax for the period not included in either his former or newly adopted taxable year, computed as provided in Section 31(b).

(c) The Commission may, whenever in its opinion the fair distribution of income as between taxable years will be promoted thereby, permit, under such regulations as it may prescribe, taxpayers who regularly dispose of property on the installment plan, or who make a casual disposition of property on terms under which the initial payment in cash or property other than the purchaser's evidences of indebtedness does not exceed 40 per cent of the purchase price, to return their income from such transactions over the taxable years during which they occurred. (Act Apr. 21, 1933, c. 405, §9.)

**2394-10. What is net income.**—The term "net income" shall mean the gross income as defined in Sections 11 and 12, less the deductions allowed by Section 13. (Act Apr. 21, 1933, c. 405, §10.)

**2394-11. What is gross income.**—The term "gross income" shall include every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services, whatsoever; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any

source whatever. Items of gross income includible within said definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by Section 9, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that such amounts were accumulated through deductions from gross income during any taxable year, be treated as gross income for the year in which the transfer occurs, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received. (Act Apr. 21, 1933, c. 405, §11.)

**2394-12. Exemptions from gross income.**—The following items shall not be included in gross income:

(a) The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or inheritance of a right to receive income shall also be included in gross income.

(b) Amounts received under a life insurance contract payable by reason of the death of the insured, whether in a single sum or in installments; but the interest accruing after December 31, 1932, and paid by the insurer on any such amounts held by it after the death of the insured shall be included in gross income.

(c) Amounts received, other than those specified in subdivision (b), under a life insurance, endowment, or annuity contract; but if such amounts when added to the amounts received under such contract before the taxable year (after deducting from the aggregate of amounts received such proportion thereof as is represented by interest accrued prior to January 1, 1933) exceed the aggregate premiums or consideration paid, whether or not paid during the taxable year, then the excess shall be included in gross income. The amount which a transferee for a valuable consideration of any such contract, or interest therein, shall be permitted to exclude from his gross income shall be the actual value of the consideration paid by him plus the amount of the premiums and other sums subsequently paid by him thereunder.

(d) Amounts received as compensation for personal injuries or sickness by the injured or sick taxpayer, whether received under accident or health insurance contracts, workmen's compensation acts, any plan maintained by employers for such purpose, or by way of damages received in any suit or by agreement; also amounts received as compensation for the death of any member of the taxpayer's family, whether received under insurance contracts, workmen's compensation acts, any plan maintained by employers for such purposes, or by way of damages received in a suit or by agreement; and amounts received under any arrangement entered into by the taxpayer to provide a fund specifically intended to defray the funeral expenses of himself or any member of his family. The words "compensation" and "damages" as used in this subdivision shall include reimbursement for medical, hospital and funeral expenses in connection with such sickness, injury or death.

(e) Amounts received by any person from the United States or the State of Minnesota by way of a pension, family allotment, or other similar allowance.

(f) Interest upon obligations of the State of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities.

(g) Income received from the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law.

(h) The rental value of the premises occupied by the taxpayer as his home, or for his business, except where the occupancy by such taxpayer of such premises for such purposes constitute in whole or in part the consideration received by him in connection with a transaction such that, had such consideration been received thereunder in cash or other property, the amount thereof would have been required, either in whole or in part, to be included in his gross income.

(i) The value of food and goods produced by the taxpayer and consumed or used by his immediate family.

(j) Amounts deducted from the wages or salaries of employees by employers under a voluntary or compulsory plan of unemployment insurance shall not be included in the gross income of such employees.

(k) The amounts distributed by co-operative buying, selling or producing associations, however organized, as patronage dividends shall not be included in the gross income of such associations.

(l) Subdivisions (c), (d), (i) and (j) shall not apply to corporations, and subdivision (g) shall not apply to corporations taxable under Section 2, except so far as taxable under Section 8. (Act Apr. 21, 1933, c. 405, §12.)

**2394-13. Deductions from gross income.**—The following deductions from gross income shall be allowed in computing net income:

(a) Ordinary and necessary expenses paid or incurred in conducting the activity or in carrying on the trade or business from which the gross income is derived, including a reasonable allowance for salaries and voluntary or compulsory contributions made by employers to maintain a voluntary or compulsory system of unemployment insurance or a system of old age pensions for their employees, and any welfare work for the benefit of such employees.

(b) The interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludible from gross income under Section 12, or on indebtedness incurred or continued in connection with the purchasing or carrying of an annuity.

(c) Taxes paid or accrued within the taxable year, except (a) income or franchise taxes imposed by this Act; and (b) taxes assessed against local benefits of a kind deemed in law to increase the value of the property assessed; and (c) inheritance and estate taxes. Income taxes permitted to be deducted hereunder shall, regardless of the methods of accounting employed, be deductible only in the taxable year in which paid. Taxes imposed upon a shareholder's interest in a corporation which are paid by the corporation without reimbursement from the shareholder shall be deductible only by such corporation.

(d) Losses sustained during the taxable year not compensated for by insurance or otherwise if incurred in connection with a business or transaction the gains from which, if any, would be includible in gross income; or if arising from fires not attributable to arson by the taxpayer or some one acting for him, or from storms, wrecks, other casualty, or theft. No deductions shall be allowed under this subdivision for any loss sustained in any sale or other disposition of shares of stock or other securities if within thirty days before or after the date of such sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or disposition; but if such acquisition of the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of such loss shall be disallowed. A loss deductible under this subdivision shall be treated as sustained in the taxable year during which the property in respect of which it has occurred is disposed of by some method of disposition

other than gift, devise, bequest or inheritance, but, if it shall clearly appear that it is unlikely that such property can ever be disposed of, then it shall be deemed sustained during the taxable year when it first became reasonably clear that it had become worthless, provided that deductible losses arising from fires, storms, wrecks, or other casualty shall be treated as sustained in the taxable year during which the property was injured or destroyed, and deductible losses arising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. The amount of the deductible loss shall be computed on the same basis as is provided by Section 16 for determining the gain or loss on the sale or other disposition of property.

(e) Debts ascertained to be worthless and charged off during the taxable year, but this last shall be required only if the taxpayer keeps regular books of account; provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided further, that the Commission may allow a bad debt to be deducted or charged off in part.

(f) A reasonable allowance for the exhaustion, wear and tear of property the periodical income from which is includible in gross income, and of property used in an occupation or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiary and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of buildings or other structures or improvements constructed or made on leased premises by a lessee, and the fixtures and machinery therein installed, the lessee alone shall be entitled to the allowance of this deduction.

(g) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the case of leases the deduction shall be equitably apportioned between the lessor and lessee in accordance with rules prescribed by the Commission. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(h) The amount of the deductions under subdivisions (f) and (g) shall be computed on the basis specified in Section 20.

(i) The deductions provided for herein shall be taken for the taxable year in which paid or accrued, dependent upon the method of accounting employed in computing net income, unless in order to clearly reflect income they should be taken as of a different year.

(j) No deductions shall be allowed unless the taxpayer, when thereunto requested by the Commission, furnishes it with information sufficient to enable it to determine the validity and correctness thereof.

(k) Payments of the necessary expenses of sickness and accidents to the taxpayer or his dependents during the taxable year shall be allowed as deductions. (Act Apr. 21, 1933, c. 405, §13.)

The word "obsolescence" in subd. (f) occurs in enactment and is not a typographical error of the printer.

**2394-13a. Net Loss.**—(a) The term "net loss" as used in this section shall mean the excess of the

deductions of the kind provided for in Section 13, permitted to be taken in computing a taxpayer's taxable net income, as that term is defined in Section 22, over the gross income used in computing such taxable net income, with the following exceptions and limitations:

(1) Deductions otherwise allowable in computing taxable net income, but which are not attributable to the operation of a trade or business regularly carried on by the taxpayer, shall be allowed only to the extent of the amount of the gross income, not derived from such trade or business, included in computing such taxpayer's taxable net income.

(2) There shall be included in computing the gross income used in computing taxable net income the amount of the interest, excludible from gross income under Section 12, that would be treated as assignable to this state, decreased by the amount of interest paid or accrued to purchase or carry the investments earning such interest to the extent that such interest would not have been deductible in computing the taxpayer's taxable net income.

(3) In the case of a taxpayer conducting any trade or business whose taxable net income is determined by an allocation of net income under Section 25 or other provisions of this Act, the net loss shall be computed for any such business in the same manner as if the entire gross income therefrom were assignable to this state, the net loss to be separately computed for each separate business.

(4) No taxpayer shall be allowed a net loss deduction for or with respect to losses connected with income producing activities if the income therefrom would not be required to be either assignable to this state or included in computing the taxpayer's taxable net income.

(5) In computing the net loss for any taxable year, a net loss for a prior year shall not be allowed as a deduction.

(b) If, for any taxable year, it appears upon the production of evidence satisfactory to the Commission that any taxpayer has sustained a net loss, the amount thereof shall be allowed as a deduction in computing the net income of a taxpayer for the succeeding taxable year, and if such net loss is in excess of such net income (computed without such deduction), the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding taxable year; the deduction in all cases to be made under regulations prescribed by the Commission.

(c) The provisions of this Section shall not authorize any taxpayer to deduct a net loss so far as the same is attributable to activities or operations that should, under recognized accounting principles and practices, be treated as having been incurred prior to January 1, 1933.

(d) Wherever under this Act any taxpayer is required or permitted to make a return for a period of less than 12 months, such period shall be deemed a taxable year in the application of the provisions of this Section. (Act Apr. 21, 1933, c. 405, §13-1.)

**2394-14. Non-deductible items.**—In computing the net income no deduction shall in any case be allowed for:

(a) Personal, living or family expenses;

(h) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(c) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(d) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;

(e) Shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance. (Act Apr. 21, 1933, c. 405, §14.)

**2394-15. Inventories shall be taken in certain cases.**—Whenever in the opinion of the Commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commission may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business involved and as most clearly reflecting the income. (Act Apr. 21, 1933, c. 405, §15.)

**2394-16. Gain and loss on sales.**—(a) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in Sections 18 and 19, and the loss shall be the excess of such basis over the amount realized, except that said basis shall in the case of both gain and loss be adjusted as provided in subsection (b) of this section.

(b) In computing the amount of gain or loss under subsection (a) proper adjustment shall be made for any expenditure, receipt, loss or other item, properly chargeable to capital account by the taxpayer during his ownership thereof. The basis shall be diminished by the amount of the deductions for exhaustion, wear, tear, obsolescence and depletion, which could, during the period of his ownership thereof, have been deducted by the taxpayer under this Act in respect of such property. In addition, if the property was acquired before January 1, 1933, the basis (if other than the fair market value as of said date) shall be diminished by the amount of exhaustion, wear, tear, obsolescence, or depletion, actually sustained before such date. In the case of stock the basis shall be diminished by the amount of tax-free distributions of capital received by the taxpayer in respect of such stock at any time during his ownership thereof. For the purpose of determining the amount of these adjustments the taxpayer who sells or otherwise disposes of property acquired by gift shall be treated as the owner thereof from the time it was acquired by the last preceding owner who did not acquire it by gift, and the taxpayer who sells or otherwise disposes of property acquired by gift through an inter vivos transfer in trust shall be treated as the owner from the time it was acquired by the grantor. The adjustments in case of a sale or other disposition of property received in a transaction of the kind specified in Section 17 (a), and in the case of a transaction referred to in Section 18 (c), shall include those which the taxpayer should have been required to make were he selling or otherwise disposing of the property exchanged, or sold, in any such transaction.

(c) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(d) The disposition of property by gift, devise, bequest, or inheritance, and the passing of property from a decedent to his estate, shall be treated as dispositions from which neither gain nor loss arises for the purposes of this Act. (Act Apr. 21, 1933, c. 405, §16.)

**2394-17. Exceptions.**—(a) No gain or loss from the following transactions shall be recognized at the time of their occurrence, except as otherwise specified in this section:

(1) If stock of a given class in a corporation is exchanged solely for stock of the same class in the same corporation.

(2) If stock or securities in a corporation a party to a reorganization are, in pursuance of a plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a part to such reorganization.

(3) If, in pursuance of a plan of reorganization, a stockholder in a corporation a party to a reorganization receives, without the surrender by such stockholder of stock or securities of such corporation,



solely stock of securities in such corporation or in another corporation a party to the reorganization.

(4) If a corporation a party to a reorganization exchanged property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation party to a reorganization.

(5) If property is transferred to a corporation by one or more persons solely in exchange for its stock or securities, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this section shall apply only if the amount of stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(6) If property (as a result of fire, storm, wreck, or other casualty, or as a result of an exercise of the power of requisition or condemnation or the threat or imminence thereof) is involuntarily or compulsorily converted into property similar or related in service or use to the property converted, or into money which is within one year in good faith, under regulations prescribed by the Commission, expended in the replacement of the property converted or in the acquisition of other property similar or related in service or use thereto, but if any part of the money is not so expended the gain, if any, shall be recognized in an amount not in excess of the money not so expended.

(b) The term "reorganization" shall mean a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of all classes of stock of another corporation, or substantially all the properties of another corporation), or a transfer of all or a part of its assets to another corporation if immediately after the transfer the transferor, or its stockholders, or both, are in control of the corporation to which the assets are transferred, or a recapitalization, or a mere change in identity, form or place of organization, however effected. The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(c) The term "control" means the ownership of at least 80 per centum of all the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

(d) The term "securities" means secured obligations maturing not less than one year after the completion of the reorganization. (Act Apr. 21, 1933, c. 405, §17.)

**2394-18. Basis for determining gain or loss.**—The basis for determining the gain or loss from the sale or other disposition of property acquired on or after January 1, 1933, shall be the cost to the taxpayer of such property, with the following exceptions:

(a) If the property should have been included in the last inventory, it shall be the last inventory value thereof.

(b) If the property was acquired by gift, it shall be the same as it would be if it were being sold or otherwise disposed of by the last preceding owner not acquiring it by gift. If the facts required for this determination cannot be ascertained, it shall be the fair market value as of the date or approximate date of acquisition by such last preceding owner as nearly as the requisite facts can be ascertained by the Commission.

(c) If the property was acquired by gift through an inter vivos transfer in trust, it shall be the same as it would be if it were being sold or otherwise disposed of by the grantor.

(d) If the property was acquired by devise, bequest, or inheritance, or by the estate of a decedent

from such decedent, it shall be the fair market value at the date of the decedent's death, and for the purpose of this subdivision an inter vivos transfer in trust made by the decedent in which he reserved the income, or the control thereof, to himself for his life and a power of revoking the trust, shall be treated as a disposition by will at his death of the property transferred on such trust terms.

(e) If the property was acquired by a transaction described in Section 17 (a) it shall be the same as it would be if the taxpayer were selling or otherwise disposing of the property exchanged, except that, if it was acquired under the provision of Section 17 (a)

(6), the basis shall be the same as if the property so converted were being sold or otherwise disposed of, decreased by the amount of any money received by the taxpayer which was not expended in accordance with the provisions thereof and increased by the amount of any gain to the taxpayer recognized upon such conversion. The provisions of this subdivision shall not apply to transactions included within Section 17 (a) (3) which shall be governed by the next following subdivision.

(f) In the case of transactions within Section 17 (a) (3), the amount that would constitute the basis if the taxpayer were selling or otherwise disposing of the stock in respect of which the distribution was made shall be equitably apportioned between such stock and the stock of securities received by such distribution, and the amount apportioned respectively to the original stock and to the stock or securities received in the distribution shall be the basis respectively on their sale or other disposition.

(g) If substantially identical property was acquired in the place of stocks or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under Section 13 (d) the basis in the case of property so acquired shall be the same as in the case of the stock or securities so sold or disposed of, increased by the excess of the repurchase price of such property over the sale price of such stock or securities, or decreased by the excess of the sale price of such stock or securities over the repurchase price of such property.

(h) If a taxpayer has received a stock dividend in respect to any stock, the amount that would be the loss or gain basis in disposing of the stock in respect of which such stock dividend was received shall be ratably apportioned over such stock and the stock received as a dividend, and the basis thus arrived at for the original and the dividend stock shall be the basis, respectively, when the original stock or dividend stock is sold or otherwise disposed of. (Act. Apr. 21, 1933, c. 405, §18.)

**2394-19. Same.**—The basis for determining the gain or loss from the sale or other disposition of property acquired before January 1, 1933, shall be the fair market value thereof on said date except that, if its costs to the taxpayer (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such cost (or last inventory value). (Act Apr. 21, 1933, c. 405, §19.)

**2394-20. Depreciation, etc.**—The basis upon which exhaustion, wear, tear, obsolescence, or depletion are to be allowed in respect of any property shall be the same as provided in Sections 18 and 19 for the purpose of determining the loss or gain on the sale or other disposition thereof. (Act Apr. 21, 1933, c. 405, §20.)

**2394-21. What are dividends.**—(a) The term "dividends" shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, out of its accumulated earnings or profits. Every distribution shall be treated as made out of earnings or profits if, and to the extent that, any such earnings or profits are available on the date the action ordering such distribution was taken or, if no such action was taken, on the date of the actual payment or credit of such distribution to shareholders.



ers, and, for the purposes hereof, the earnings or profits for the year during which any such distribution was so made shall be prorated on the time basis. Dividends paid in property other than cash shall be included in the recipient's income at the fair market value of such property on the date the action ordering their distribution was taken, or if no such action was taken, on the date of the actual payment or credit thereof to the shareholder.

(b) If a distribution (other than a distribution in liquidation) is made by a corporation that is not out of earnings or profits, the distributee may receive the same free from tax until the amount thereof equals the loss or gain basis applicable to the stock in respect of which it is received, but amounts received in excess thereof shall be treated as income for the taxable year when received by him; amounts received tax-free hereunder shall be applied to reduce the loss or gain basis applicable to the stock in respect of which received whenever such stock is sold or otherwise disposed of.

(c) A stock dividend shall not be treated as income; but, if a corporation cancels or redeems its stock whether or not such stock was issued as a stock dividend at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend the amount so distributed in cancellation or redemption of the stock shall be treated as a taxable dividend to the extent that it represents a distribution of earnings or profits.

(d) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under Section 16 but shall be recognized only to the extent provided in Section 17. No amounts received in liquidation shall be taxed as a gain until the distributee shall have received in liquidation an amount in excess of the applicable loss or gain basis of the stock in respect of which the distribution is received, and any such excess shall be taxed as gain in the year in which received, but losses on liquidation shall be recognized only in the year in which the corporation shall have made its final distribution. No amount received in liquidation shall be treated as the distribution of an ordinary dividend. (Act Apr. 21, 1933, c. 405, §21.)

**2394-22. Taxable net income.**—The taxable net income shall mean the net income assignable to this state, and shall be determined as provided in Sections 23, 24, 25, and 26. (Act Apr. 21, 1933, c. 405, §22.)

**2394-23. Gross income to be allocated.**—Items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(a) The entire income of all resident or domestic taxpayers from compensation for labor or personal services, or from a business consisting principally of the performance of personal or professional services, shall be assigned to this state, and the income of non-resident taxpayers from such sources shall be assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources shall be treated as income from sources without this state.

(b) Income and gains received from tangible property not employed in the business of the recipient of such income or gains, and from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, shall be assigned to this state if such property has a situs within it, and to other states only if it has no situs whatever in this state.

Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal prop-

erty employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held and whether in trust or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state; provided, however, that income or gains from such property held in trust shall be assigned to this state if (1) the recipient of such income is domiciled within this state and such income or gains would be taxable to such recipient under Section 28, or (2) the grantor of such trust is domiciled within this state and such income or gains would be taxable to such grantor under Section 29.

(c) Income derived from carrying on a trade or business, including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be assigned to this state if the trade or business is conducted wholly within this state, and to other states if conducted wholly without this state. This provision shall not apply to business income subject to the provisions of subdivision (a).

(d) Income derived from carrying on a trade or business partly within and partly without this state, including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be governed by the provisions of Section 25. This shall not apply to business income subject to the provisions of subdivision (a).

(e) All other items of gross income shall be assigned to the taxpayer's domicile. (Act Apr. 21, 1933, c. 405, §23.)

**2394-24. Computation of net income.**—The taxable net income shall, except in so far as Section 25 is applicable, be computed by deducting from the gross income assignable to this state under Section 23 deductions of the kind permitted by Section 13 in accordance with the following provisions:

(a) Such deductions shall be allowed to the extent that they are connected with and allocable against the production or receipt of such gross income assignable to this state.

(b) That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries and so far as not entering into the computation of the net income assignable to this state under Section 25, shall be allowed which the taxpayer's gross income from sources within this state, as determined under subdivisions (a), (b), (c) and (e) of Section 23, bears to his gross income from all sources, including that entering into the computations provided for by Section 25; provided that taxes of the kind deductible under Section 13 (c) shall, so far as within the description of deductions deductible under this subsection (b), be deductible in their entirety if paid to the State of Minnesota or any of its subdivisions authorized to impose such taxes, and shall thereupon be excluded in making the computation of deductions hereinbefore in this subsection (b) provided for.

(c) No deductions shall be allowed under this section, unless the taxpayer, when requested by the Commission, shall furnish it with information sufficient to enable it to determine the validity and correctness of such deductions. (Act Apr. 21, 1933, c. 405, §24.)

**2394-25. Net income to be allocated.**—(a) The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deductions of the kind permitted by Section 13 so far as connected with or allocable against the production or receipt of such

income, and assigning to this state a proportion of the remainder determined as follows:

1—If the business consists principally of the sale, or the manufacture and sale, of personal property, that proportion of the remainder which the sales made within this state and through, from or by offices, agencies, branches or stores within this state, bear to the total sales wherever made.

2—In all other cases that proportion of such remainder which the gross earnings or receipts from business operations in whole or part within this state bear to the total gross earnings or receipts from business operations wherever conducted.

3—The sales and earnings or receipts above referred to shall be those for the taxable year whose tax is being computed.

(b) The methods prescribed by Subsection (a) shall apply whenever, and in so far as, the business carried on within this state is an integral part of a business carried on both within and without the state.

(c) Nothing in this section shall prevent the application of Sections 23 and 24 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without the state. (Act Apr. 21, 1933, c. 405, §25.)

**2394-26. Taxpayer to determine net income.**—The Commission may in any case permit or require a taxpayer to determine the taxable net income from sources within this state by other methods than those heretofore described whenever it shall appear to it that the application of those methods will for any reason not properly reflect the taxable net income assignable to this state, and in that connection may permit or require the direct allocation of such parts of the taxable net income of a business carried on partly within and partly without this state as can be directly allocated with a reasonable degree of accuracy. Every taxpayer feeling aggrieved by the application to his case of the methods heretofore prescribed or required by the Commission may petition the Commission to be allowed to determine the taxable net income allocable to this state on some other basis which shall be allowed if in the opinion of the Commission the method proposed by the taxpayer will more clearly reflect the taxable net income properly assignable to this state, or if it will remove injustices resulting to the taxpayer from the use of those methods. The methods heretofore prescribed or required or permitted to be used by the Commission hereunder, and the results obtained thereunder, shall be presumed to be valid, and the taxpayer shall have the burden of establishing the invalidity of both the method and its results as applied to his case. (Act Apr. 21, 1933, c. 405, §26.)

**2394-27. Personal credits on income.**—The taxes imposed by this Act shall be on, or measured by, as the case may be, the taxable net income less the following credits against it:

(a) A personal credit in the case of an unmarried individual, the estate of a decedent, and a trust, equal to \$1,200.

(b) A personal credit in the case of a married individual, living with husband or wife, and in the case of the head of a household, equal to \$2,000. If husband and wife, living together, make separate returns, this credit may be divided between them.

(c) A credit of \$250 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent.

(d) The credits allowed under sub-divisions (a), (b) and (c) shall be determined by the taxpayer's status on the last day of his taxable year.

(e) A credit of \$1,000 in the case of each corporation.

(f) An amount for contributions or gifts made within the taxable year.

(1) To the State of Minnesota or any of its political subdivisions for exclusively public purposes.

(2) To any community chest, corporation, organization, trust, fund, or foundation operating within this State, organized and operated exclusively for religious, charitable, scientific, literary, artistic or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) To a fraternal society, order, or association, operating under the lodge system, if such contributions or gifts are to be used within this State exclusively for the purposes specified in (2); or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organization, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual.

The total credit against net income hereunder shall not exceed fifteen per cent of the taxpayer's taxable net income.

(g) Dividends received during the taxable year from income arising out of business done in this state by the corporation paying such dividends; but if the income out of which the dividends are declared was derived from business done within and without this state, then so much of the dividends shall be allowed as a credit as the amount of the taxable net income of the corporation paying the dividends assignable to this state bears to the entire net income of the corporation, such rate being determined by the returns under this Act of the corporation paying such dividends for the taxable year preceding the distribution thereof except that with respect to dividends distributed during the year 1933 the rate shall be determined by the corporation's return for that year. The burden shall be on the taxpayer of showing that the amount of dividends claimed as a credit has been received from income arising out of business done in this state. (Act Apr. 21, 1933, c. 405, §27.)

#### ARTICLE IV.—PROVISIONS RELATING TO SPECIAL CASES

**2394-28. Taxes on estates.**—(a) The taxes imposed by subsection (a) of Section 3 of this Act shall apply to the income of estates of decedents; and to the income from any kind of property held in trust (except trusts coming under the definition of corporations) whether such income is under the trust terms to be accumulated, currently distributed, or in any other manner disposed of.

(b) The taxable net income of such estate or trust shall be computed in the same manner and on the same basis as in the case of an individual.

(c) There shall be allowed as a credit against the taxable net income of a trust any part of the gross income, without limitations, which, during the taxable year paid, or permanently set aside to be paid, for making contributions or gifts that are within Section 27 (f), or which is during such year used, or permanently set aside to be used, by the trust itself, exclusively for religious, charitable, scientific, literary, artistic or educational purposes, or for the prevention of cruelty to children or animals. This credit shall be in lieu of that provided for by Section 27 (f).

(d) There shall be allowed in computing the taxable net income of an estate or trust for its taxable year as an additional deduction the amount of its income which is during such taxable year to be currently distributed (including that distributed to the guardian of an infant or other incompetent person which is to be held or distributed as the court may direct), or which is during such year lawfully distributed (including that distributed by a fiduciary having a discretion to distribute or accumulate), to the beneficiaries, but if such beneficiaries are domiciled within this state, the amount so allowed as a deduction shall be included in computing the taxable net

income of such beneficiaries. If, for any reason, other than the fact that a beneficiary is not domiciled within this state, the amounts thus distributable or distributed shall in any amount not be required to be included in the beneficiaries' income, the deductions aforementioned shall be reduced in the same amount.

(e) There shall be allowed in computing the taxable net income received by the estates of deceased persons during the period of administration or settlement as an additional deduction the amount of the income of the estate for its taxable year which is properly paid or credited during such year to any legatee or heir, but the amounts so allowed as deductions shall be included in computing the taxable net income of the legatee or heir.

(f) If any part of the income of an estate or trust is included in computing the taxable net income of a legatee, heir or beneficiary, he shall be allowed as credits against his taxable net income, in addition to those allowed him under Section 27, his proportionate share of such amounts of dividends as are credits under Section 27 (g) as were included in the income received by him from the estate or trust, and the balance only of such credit shall be allowed the estate or trust.

(g) Income with respect to which an estate or trust has paid the tax imposed by this Act, and income received by an estate of trust prior to January 1, 1933, shall not, when distributed by the fiduciary, be included in the distributee's income.

(h) The provisions of this Section shall not apply to the trusts provided for in Section 29. (Act Apr. 21, 1933, c. 405, §28.)

**2394-29. Taxes on trusts.**—(a) A trust created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his or its employees, to which contributions are made by such employer, or employee, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxed, but the amount contributed to such fund by the employer and all earnings of such fund shall be taxed to the distributee, in the year in which distributed or made available to him. The foregoing provisions shall also apply to a trust created by an employer to provide a system of unemployment insurance or a system of old age pensions for his or its employees.

(b) If the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, the power to revest in the grantor title to any part of the corpus of the trust, or the power to give notice the effect of which would be the future revestment in the grantor of the title to any part of the corpus of the trust, or if any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom has such power or powers at any such time as aforesaid, then the income of such part of the trust for such taxable year shall be included in computing the taxable net income of the grantor for such taxable year.

(c) If any part of the income of a trust is, or, in the discretion of the grantor (either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question) or of any person not having an adverse interest in the disposition of such part of the income, may be (1) distributed either to the grantor or in any respect subject to his direction, (2) held or accumulated for future distribution either to the grantor or in any respect subject to his direction, (3) applied to the payment or discharge of any obligation of either the grantor or any other person, (4) applied to provide funds to be used for purposes of either the grantor or any other person if such pur-

poses are such that expenditures therefor, if made directly by the grantor, would be non-deductible under Section 14, or (5) applied to the payment of premiums upon policies on the life of the grantor (except policies irrevocably payable to organizations gifts to which would be a credit against taxable net income under Section 27 (f) or on the life of any other person if the grantor or any person designated by him is a beneficiary thereunder (with the same exception as above made), then such part of the income of the trust shall be included in computing the taxable net income of the grantor. (Act Apr. 21, 1933, c. 405, §29.)

**2394-30. Partnerships not to be taxed.**—(a) The tax imposed by this Act shall not be imposed on partnerships; but the distributive share, whether distributed or not, of each partner in the taxable net income of the partnership for its taxable year ending during such partner's taxable year shall be included in computing such partner's taxable net income, except that, if a partnership's taxable year ending in 1933 differs from the partner's taxable year during which he must include its taxable net income for such taxable year in his taxable net income, he shall be required to include only such fraction of the partnership's taxable net income for its said taxable year that the number of months within 1933 contained in its said taxable year bear to twelve.

(b) The taxable net income of the partnership shall be assigned to this state under Sections 23 to 36, inclusive.

(c) Each partner shall be allowed as a credit against his taxable net income his proportionate part of the dividend credit allowable under Section 27 (g), and of contributions or gifts that are within Section 27 (f) made by the partnership during its taxable year, but the sum of this latter credit allowed hereunder and that allowed the partner under Section 27 (f) shall not exceed the limit therein specified.

(d) The taxable net income of a partnership which a partner is required hereunder to take into his taxable net income shall be taxed at the rates applicable to the partner's taxable year during which he is required to include it in his taxable net income. (Act Apr. 21, 1933, c. 405, §30.)

**2394-31. Taxes for part of year.**—(a) Whenever under this Act a taxpayer is permitted or required to make a return for a fractional part of a year, the tax shall be computed in the same manner as if such fractional part of a year were an entire year. This shall not apply to cases within subdivision (b) of this section.

(b) Whenever a taxpayer is permitted to change the basis for reporting his income from a fiscal to a calendar year, he shall make a separate return for the period between the close of his last fiscal year and the following December 31; if the change is from a calendar to a fiscal year, a separate return shall be made for the period between the close of his last calendar year and the date designated as the close of the fiscal year; and if the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. The taxable net income for any such period shall be put on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which such separate return is made; and the tax shall be that part of a tax, computed on the taxable net income put on such annual basis, less the credit against that taxable net income under the provisions of Section 27, which the number of months in such period bears to twelve months. (Act Apr. 21, 1933, c. 405, §31.)

**2394-32. Special taxes for corporation.**—(a) If a corporation is formed or availed of for the purpose of splitting up the income of its stockholders, or of

the holders of a majority of its shares, with an aim to reducing the total amount of their taxes under this Act, there shall be imposed upon it a special tax, in addition to those otherwise imposed by this Act, of ten per cent of its taxable net income assignable to this state less credits against net income under Section 27.

(b) When any corporation liable to taxation under this Act conducts its business in such a manner as either directly or indirectly to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodities or services in which it deals at less than the fair price which might be obtained therefor, or buying such commodities or services at more than the fair price for which they might have been obtained, or when any corporation, a substantial portion of whose shares is owned, directly or indirectly, by another corporation, deals in the commodities or services of the latter corporation in such a manner as to create a loss or improper net income or to reduce the taxable net income attributable to this state, the Commission may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income or the overstatement of its losses, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business.

(c) Whenever a corporation which is required to file an income tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or has its income regulated through contract or other arrangement, the Tax Commission may permit or require such consolidated statements as in its opinion are necessary in order to determine the taxable net income received by any one of the affiliated or related corporations. If 90% of all the voting stock of two or more corporations is owned by or under the legally enforceable control of the same interests the Commission may impose the tax as though the combined entire taxable net income was that of one corporation except that the credit provided by Section 27 (e) shall be allowed for each corporation; but inter-company dividends shall in that event be excluded in computing taxable net income. (Act Apr. 21, 1933, c. 405, §32.)

#### ARTICLE V.—RETURNS

**2394-33. Who shall make returns.**—The following persons shall make a return under oath for each taxable year (or fractional part thereof where permitted or required by this Act) if their net income or taxable net income for such period, or that of the persons for whom they are required to make the return, exceeds the credits against taxable net income allowable under Section 27, or if their gross income for such period, or that of the person for whom they are required to make the return, exceeds \$5,000:

(a) Individuals with respect to their own taxable net income.

(b) The executor or administrator of the estate of a decedent with respect to the taxable net income of such decedent for that part of the taxable year during which he was alive.

(c) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate.

(d) The trustee or other fiduciary or property held in trust with respect to the taxable net income of such trust if such trust belongs to the class of taxable persons.

(e) The guardian of an infant or other incompetent person with respect to the taxable net income of such infant or other incompetent person.

(f) Every corporation with respect to its taxable net income, and in this case the return shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer.

(g) The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer. (Act Apr. 21, 1933, c. 405, §33.)

**2394-34. Married women may make separate returns.**—A married woman living with her husband may file a separate return of her own income, or she may include the income received by her during any year during any part of which she lived with her husband, in the return of her husband. In the latter case the tax shall be computed on the basis of the combined taxable net income and there shall be allowed as a credit against such taxable net income, gifts or contributions within Section 27 made by the husband or by her while living with him, subject to the limit therein contained. A woman who was married during only a part of a year shall, if during any part of such year she lived with her husband, treat all her income for such year in accordance with one of the methods herein referred to. (Act Apr. 21, 1933, c. 405, §34.)

**2394-35. Form of return.**—Every return shall specifically set forth the items of gross income, deductions, credits against net income, and any other data necessary for computing the amount of any item required for determining the amount of the tax. The return shall be in such form as the Commission may prescribe as necessary to determine the amount of the tax. (Act Apr. 21, 1933, c. 405, §35.)

**2394-36. Filing of return.**—The filing of a return required under this section shall be deemed an assessment subject to revision of the tax shown due on the basis of such return. (Act Apr. 21, 1933, c. 405, §36.)

**2394-37. Shall be annual return—exceptions.**—The returns shall cover a twelve month period except in the following cases:

(a) The return made by or for any taxpayer who was in existence for less than the whole of a taxable year shall cover that part of the taxable year during which such taxpayer was in existence.

(b) A taxpayer who changes from one taxable year to another shall make a return from the fractional parts of a year as specified in Section 31 (b). (Act Apr. 21, 1933, c. 405, §37.)

**2394-38. Partnership returns.**—(a) Partnerships shall make a return for each taxable year which shall conform in every respect to the requirements of Section 35, and shall, in addition, include the names and addresses of all partners entitled to a distributive share in their taxable net income and the amount of such distributive share to which each is entitled. The return shall be sworn to by one of the partners.

(b) Any person or corporation making payments to others on account of wages, salaries, commissions, rent, interest or dividends, may be required by the Commission, as a condition upon his right to take the deductions allowed by this Act in computing his net income, to file returns as to such payments made during a taxable year showing the names and addresses of those to whom such payments were made, and the amounts thus paid to each of them. The Commission may also require brokers to furnish it with the names of the customers for whom they have transacted business, and with such details as to transactions of any customer as will enable it to determine whether all income tax due on profits or gains of such customers has been paid. (Act Apr. 21, 1933, c. 405, §38.)

**2394-39. Date of filing.**—The returns required to be made under Sections 33, 34, 35, 36, and 38 (other than those under 38 (b) which shall be made within 30 days after demand therefor by the Commission) shall be filed at the following times:

(a) Returns made on the basis of the calendar year shall be filed on the 15th day of March following the close of the calendar year.

(b) Returns made on the basis of the fiscal year shall be filed on the 15th day of the third month following the close of such fiscal year.

(c) Returns made for a fractional part of a year as an incident to a change from one taxable year to another shall be filed on the 15th day of the third month following the close of the period for which made.

(d) Other returns for a fractional part of a year shall be filed on the 15th day of the third month following the end of the month in which falls the last day of the period for which the return is made.

(e) In case of sickness, absence or other disability or whenever, in its judgment, good cause exists, the Commission may extend the time for filing these returns for not more than six months, except that where the failure is due to absence outside the United States it may extend the period until 30 days after the taxpayers' return to this State. (Act Apr. 21, 1933, c. 405, §39.)

**2394-40. Where filed.**—The returns required to be made under Sections 33, 34, 35, 36 and 38 shall be filed with the Commission at its office in St. Paul or at such local offices in the County of the residence or principal place of business of the taxpayer as the Commission may designate. If designated by the Commission the County Treasurer of each county shall receive such return and payments of taxes thereon and transmit the same to the Commission within 10 days, and in such case his bond as County Treasurer shall cover any defalcations in connection therewith. But no County Treasurer shall be required to assist in making out or swearing to such returns. (Act Apr. 21, 1933, c. 405, §40.)

#### ARTICLE VI.—COLLECTION OF TAX

**2394-41. Payment of tax—exceptions.**—The taxes imposed by this Act, and interest and penalties imposed with respect thereto, shall be paid by the taxpayer upon whom imposed except in the following cases:

(a) The tax due from a decedent for that part of the taxable year in which he died during which he was alive shall be paid by his executor or administrator.

(b) The tax due from an infant or other incompetent person shall be paid by his guardian or other person authorized or permitted by law to act for him.

(c) The tax due from the estate of a decedent shall be paid by the executor or administrator thereof.

(d) The tax due from a trust (including those within the definition of corporation) shall be paid by the trustee or trustees.

(e) The tax due from a taxpayer whose business or property is in charge of a receiver, trustee in bankruptcy, assignee, or other conservator shall be paid by the person in charge of such business or property so far as the tax is due to the income from such business or property. (Act Apr. 21, 1933, c. 405, §41.)

**2394-42. Tax to be paid when return is filed.**—All taxes imposed by this Act shall be paid at the time fixed for filing the return on which the tax is based, except that they may, at the election of the taxpayer, be paid in two equal installments the first of which shall be paid at the time above specified and the second on or before six months thereafter. They shall be paid to the Commission or to the local officers designated by the Commission with whom the return is filed as hereinbefore provided. (Act Apr. 21, 1933, c. 405, §42.)

**2394-43. Tax commission to examine return.**—(a) The Commission shall as soon as practicable after the return is filed examine the same and make any investigation or examination of the taxpayer's records and accounts that it may deem necessary for determining the correctness of the return. The tax

computed by it on the basis of such examination and investigation shall be the tax to be paid by such taxpayer. If the tax found due shall be greater than the amount reported as due on the taxpayer's return, the Commission shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the Commission within 30 days after notice of the amount and demand for its payment shall have been mailed to the taxpayer by the Commission. If the understatement of the tax on the return was false or fraudulent with intent to evade the tax, the installments of the tax shown by the taxpayer on his return which have not yet been paid shall be paid to the Commission within 30 days after notice of the amount thereof and demand for payment shall have been mailed to the taxpayer by the Commission. If the amount of the tax found due by the Commission shall be less than that reported as due on the taxpayer's return, the excess shall be refunded to the taxpayer in the manner provided by Section 47 (except that no demand therefor shall be necessary), if he has already paid the whole of such tax, or credited against any unpaid installment thereof.

(b) The notices and demands provided for by Sections 43, 44, and 45 shall contain a brief statement of the computation of the tax and shall be sent by registered mail to the taxpayer at the address given in his return, if any, and if no such address is given then to his last known address. (Act Apr. 21, 1933, c. 405, §43.)

**2394-44. Failure to make return or pay tax.**—If any person or corporation required by this Act to file any return shall fail to do so within the time prescribed by this Act or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Commission file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within said time to file such return, or corrected return, the Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 10 days after the Commission has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. (Act Apr. 21, 1933, c. 405, §44.)

**2394-45. Actions for collection of tax.**—(a) If a tax imposed by this Act, including penalties therein, or any portion of such tax, is not paid within 30 days after it is required to be paid thereunder, the Commission shall, unless it proceeds under the provisions of subdivision (b) hereof, bring against the person liable for payment thereof an action at law in the name of the state for the recovery of the tax and interest and penalties due in respect thereof under this Act. Such action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the taxpayer or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by the taxpayer shall be conclusive against the taxpayer in this matter. If no such place is named in the return such action may be commenced in Ramsey County. Such action shall be commenced by filing with the clerk of such court a statement showing the name and address of the taxpayer, if known, an itemized summary of the taxable net income on the basis of which the tax has been computed, the tax due and unpaid thereon and the interest and penalties due with respect thereto under the provisions of this Act, and shall contain a prayer

that the court adjudge the taxpayer to be indebted on account of such taxes, interest and penalties in the amount thereof specified in the statement; a copy of such statement shall be furnished to the clerk therewith. Said clerk shall mail a copy of said statement by registered mail to the taxpayer at the address given in the return, if any, and if no such address is given then at his last known address within 5 days after the same is filed, except that, if the taxpayer's address is not known, notice to him shall be made by posting copy of said statement for ten days in the place in the court house where public notices are regularly posted. The taxpayer shall, if he desires to litigate the claim or any part thereof, file a verified answer with said clerk setting forth his objections to the claim or any part thereof; said answer shall be filed on or before the lapse of the twentieth day after the date of mailing said statement or, if notice has been given by posting, on or before the twentieth day after the expiration of the period during which the notice was required to be posted. If no answer is filed within the specified time, the court shall enter judgment for the State in the amount prayed for plus costs of \$10.00. If an answer is filed, the issues raised shall stand for trial as soon as possible after the filing of such answer and the court shall determine the issues and direct judgment accordingly, and if the taxes, interest or penalties are sustained to any extent over the amount tendered by the taxpayer, shall assess \$10 costs against the taxpayer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The Commission may call upon the county attorney or the attorney general to conduct such proceedings on behalf of the state. Execution shall be issued upon such judgment at the request of the Commission, and such execution shall in all other respects be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon such execution.

(b) If a tax imposed by this Act, or any portion of such tax, is not paid within 30 days after it is required to be paid thereunder, and if, for want of power in the State of Minnesota to impose a personal liability for such tax, interest or penalties upon the taxpayer or to obtain jurisdiction of his person for purposes of rendering against him a personal judgment for the amount of any such tax, interest or penalties, or for any other reason the proceedings authorized by subdivision (a) hereof shall be impossible, then the Commission shall issue its warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the Commission and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, except the homestead and household goods of the taxpayer, and shall sell so much thereof as is required to satisfy such taxes, interest and penalties, and his costs, but such sales shall as to their manner be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales less the sheriff's costs shall be turned over to the Commission which shall retain such part thereof as is required to satisfy the tax, interest and penalties, and costs, and pay over any balance to the taxpayer. The Commission shall not proceed under this subdivision until the expiration of 30 days after mailing to the taxpayer at his last known address a written notice of the amount of taxes, interest and penalties due from the taxpayer and demand for their payment.

(c) The Commission may also proceed under the provisions of subdivision (b) hereof whenever it

has reasonable grounds for believing that the collection of any taxes, interest or penalties due under this Act will be jeopardized by delays incident to other methods of collection, and in such cases no preliminary notice and demand shall be required.

(d) If the Commission has reasonable grounds for believing that a taxpayer is about to remove himself or his property from this state with the purpose of evading the tax imposed by this Act, it may immediately declare the taxpayer's taxable year at an end and assess a tax on the basis of its own knowledge or information available to it, mail the taxpayer written notice of the amount thereof at his last known address, demand its immediate payment, and if payment is not immediately made, collect the tax by the method prescribed in subdivision (b) hereof, except that it need not await the expiration of the periods of time therein specified.

(e) In addition to all other methods authorized for the collection of the tax it may be collected in an ordinary action at law or in equity by the state against the taxpayer.

(f) Either party to an action for the recovery of any taxes, interest, or penalties under subdivisions (a) or (e) hereof may remove the judgment to the Supreme Court by appeal as provided for appeals in civil cases.

(g) No suit shall lie to enjoin the assessment or collection of any taxes imposed by this Act, or the interest and penalties imposed thereby.

(h) The tax, as assessed by the Commission, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its incorrectness or invalidity. The statement filed by the Commission with the clerk of court, as provided herein, or any other certificate by the Commission of the amount of the tax and penalties as determined or assessed by it, shall be admissible in evidence and shall establish prima facie, the facts set forth therein. (Act Apr. 21, 1933, c. 405, §45.)

**2394-46. Assessment of tax.**—(a) The amount of the taxes imposed by this Act shall be assessed within two years after the return was filed. They shall be deemed to have been assessed whenever the commission shall have determined and certified the amount thereof. No proceeding for their collection shall be begun after the expiration of two years after such date unless the commission shall, prior to the expiration thereof, have mailed the taxpayer at his last known address written notice of the amount thereof and demand for payment of such amount, and in that case no proceeding for their collection shall be begun after one year after the mailing of such notice. The provisions of this section shall not apply in the case of a failure to file a return, nor in the case of a false or fraudulent return with intent to evade the tax. In such cases the Commission may assess the tax, or begin proceedings for its collection, at any time.

(b) If before the expiration of the time prescribed by subdivision (a) hereof for the assessment of the tax the Commission and the taxpayer consent in writing to the assessment of the tax after such time, it may be assessed at any time prior to the expiration of the period agreed upon (or extensions thereof agreed upon before the expiration of the preceding extension), and be collected at any time within one year after the date of its assessment. (Act Apr. 21, 1933, c. 405, §46.)

**2394-47. Refundment of over-payments.**—(a) A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in subdivisions (a) and (e) of Section 45) an amount of tax for any year in excess of the amount legally due for that year, may file with the Commission a claim for the refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid



or collected. If the Commission finds that the taxpayer has paid more than was legally payable, it shall issue its certificate for the refundment of the excess with interest at the rate of 6 per centum per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this Act, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

(b) A taxpayer aggrieved by the decision of the Commission on his claim for a refund may sue the Commission to recover any overpayments of taxes made by him and not refunded by it. Such suits may be brought in the district court of the district in which lies the county of his residence or principal place of business or, if an estate or trust, of the principal place of its administration, or in the district court for Ramsey County. Such suit shall be brought within six months after the Commission shall have taken final action on such claim for refund except as provided in subdivision (c) hereof.

(c) No suit shall be entertained to recover overpayments of taxes imposed by this Act until the taxpayer shall have filed a claim for refund thereof with the Commission and until said Commission has finally disposed thereof, except that, if said Commission shall fail to render final action on a claim for refund within 6 months after it is filed with it, the taxpayer may sue the Commission for such overpayment at any time thereafter but not more than 2 years after the filing of the claim for refund. On the bringing of such suit the Commission shall be deprived of further jurisdiction in hearing and determining such claim for refund.

(d) Either party to the suits provided for in subdivisions (b) and (c) hereof may remove the judgment to the supreme court by appeal as provided for appeals in civil cases. (Act Apr. 21, 1933, c. 405, §47.)

**2394-48.—Tax a personal debt.**—(a) The tax imposed by this Act, and interest and penalties imposed with respect thereto, shall become a personal debt of the taxpayer from the time the liability therefor arises, irrespective of when the time for discharging such liability by payment occurs. The debt shall, in the case of the executor or administrator of the estate of a decedent and in the case of any fiduciary, be that of such person in his official or fiduciary capacity only unless he shall have voluntarily distributed the assets held in such capacity without reserving sufficient assets to pay such tax, interest and penalties, in which event he shall be personally liable for any deficiency. This provision shall apply only to cases in which this state is legally competent to impose such personal liability.

(b) The tax imposed by this Act, and interest and penalties imposed with respect thereto, shall become a lien upon all of the real property of the taxpayer within this state, except his homestead, from and after the filing by the Commission of a notice of such lien in the office of the register of deeds of the county in which such real property is situate. (Act Apr. 21, 1933, c. 405, §48.)

#### ARTICLE VII.—INTEREST AND PENALTIES

**2394-49. Penalties for non-payment.**—(a) If any person failing to make any return required to be made by him under the provisions of this Act at the time therein specified for such return, shall fail to make such return within 30 days after the Commission has mailed him a written notice and demand therefor, there shall be imposed on him a specific penalty of \$10, except that to such penalty shall be added the penalty imposed by subsection (c) if the failure to make the return on such demand is with the purpose of evading the tax.

(b) If any person, failing to pay any tax due under this Act at the time required thereby for such payment, shall fail to pay such tax within 30 days after the Commission has mailed him written notice of the amount thereof and demand for its payment, there shall be imposed on him a specific penalty of \$10, except that to such penalty shall be added the penalty imposed by subsection (c) if the failure to pay on such demand is with the purpose of evading the tax.

(c) If any person, with intent to evade the tax imposed by this Act, shall fail to file any return required by this Act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to 25 per centum of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related.

(d) The penalties imposed by this section may be collected as part of the tax or by separate actions brought by the Commission for their recovery in any district court in which actions for the collection of taxes due from such taxpayer can be begun under the provisions of Section 45(a).

(e) The Commission shall have power to abate penalties when in its opinion their enforcement would be unjust or inequitable.

(f) If any tax imposed by this Act, or any portion of such tax, is not paid when first due and payable thereunder, there shall be added thereto interest at the rate of six per centum per annum from the time above specified, except that, where the taxpayer has filed a return, other than a false or fraudulent one made with intent to evade the tax, and paid the tax on the basis thereof, interest on additional taxes thereafter imposed for the same taxable year (or fraction thereof, if the return was for a fractional year) shall commence to run only from the thirtieth day after the Commission has mailed the taxpayer written notice either requiring him to make a corrected return or informing him that an additional tax is due and demanding the payment thereof. Interest due hereunder shall be added to the tax and collected as part thereof.

(g) All payments received shall be credited first to penalties, next to interest, and then to the tax due. (Act Apr. 21, 1933, c. 405, §49.)

#### ARTICLE VIII.—ADMINISTRATIVE PROVISIONS

**2394-50. Tax commission to administer act.**—The Commission shall administer and enforce the assessment and collection of the taxes imposed by this Act. It may, from time to time, make and publish such rules and regulations, not inconsistent with this Act, as it may deem necessary to assist in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this Act, and shall distribute the same throughout this State and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this Act. (Act Apr. 21, 1933, c. 405, §50.)

**2394-51. Commission may examine books and records.**—For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid taxes hereunder, the Commission shall have power to examine or cause to be examined any books, papers, records, or memoranda relevant to making such determinations including the taxpayer's retained copy of his return of income to the United States Government for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the taxpayer or any other person or corporation. It shall further have power to require the attendance of any taxpayer or other person having knowledge or information in the premises to compel the production of books, papers, record or memoranda by persons so required to attend, to take testimony



on matters material to such determination and to administer oaths or affirmations. (Act Apr. 21, 1933, c. 405, §51.)

**2394-52. Examiners.**—For the purpose of making such examinations and determinations, the Commission may appoint such officers, to be known as income tax examiners, as it may deem necessary. If the Commission deems it advisable it may request the comptroller, for such period of time as it may direct, to audit such returns and conduct such examinations, and report thereon to the Commission. Upon such request being made the comptroller shall appoint such income tax examiners as he may deem necessary. (Act Apr. 21, 1933, c. 405, §52.)

**2394-53. Powers of examiners.**—Such income tax examiners, whether appointed by the Commission or the comptroller, shall have all the rights and powers with reference to the examining of books, records, papers, or memoranda, and with reference to the subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony that are conferred upon the Commission hereby. The clerk of any court of record, or any justice of the peace, upon demand of any such examiner shall issue a subpoena for the attendance of any witness or the production of any books, papers, records or memoranda before such examiner. The Commission may also issue subpoenas for the appearance of witnesses before it or before such examiners. The Commission may appoint such referees as it deems necessary to review (singly or as a board of review) the reports of the income tax examiners and petitions or complaints of taxpayers and report thereon to the Commission. Disobedience of subpoenas issued under this Act shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court. (Act Apr. 21, 1933, c. 405, §53.)

**2394-54. Additional help.**—The Commission (and the comptroller, if requested to conduct examinations as hereinbefore provided) may appoint and employ such additional help, or purchase such supplies or materials or incur such other expenditures in the enforcement of this Act as it may deem necessary. The salaries of all officers and employees provided for in this Act shall be fixed by the Commission, where appointed by it, and by the comptroller, where appointed by him, subject to the approval of the Department of Administration and Finance. (Act Apr. 21, 1933, c. 405, §54.)

**2394-55. Payment of expenses.**—All the expenses of the administration of this Act shall be paid out of the receipts therefrom as other moneys of the state are expended by the departments incurring the same, and there is hereby appropriated out of such receipts so much thereof as may be necessary therefor. Provided that none of said departments may expend any money for any of the purposes of this Act after February 15, 1935, unless the same shall be appropriated by the Legislature. (Act Apr. 21, 1933, c. 405, §55.)

Laws 1933, c. 395, makes an appropriation to carry out provisions of act.

**2394-56. Reports shall not be public record.**—(a) Except in connection with a proceeding involving taxes due under this Act from the taxpayer making such return, in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commission or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this Act, or any information concerning the taxpayer's affairs acquired while examining or auditing any taxpayer's liability for taxes imposed thereunder. Nothing herein shall be construed to prohibit the publication by the Commission of statistics so classified as not to disclose the identity of particular reports or returns and the items thereof, or the inspection of any return by the

legal representative of this state in connection with any proceeding involving the taxes due from the taxpayer making such return and the use thereof in such proceedings. The Commission may also permit the authorized representatives of the United States or any state imposing an income tax to examine the returns of any taxpayer, or furnish them with copies or abstracts thereof or with information relating to such returns, if the United States or such other state grants substantially similar privileges to representatives of this state connected with the administration of the tax imposed by this Act.

(b) Any person violating the provisions of subdivision (a) hereof shall be guilty of a gross misdemeanor. (Act Apr. 21, 1933, c. 405, §56.)

#### ARTICLE IX.—DISTRIBUTION OF PROCEEDS OF TAXES

**2394-57. Distribution of taxes.**—The revenues derived from the taxes, interest and penalties under this Act shall be paid into the state treasury; and, unless the sums required during any year for the expenses of collecting such tax and for refunds of taxes erroneously collected from taxpayers, shall be paid into a special fund in the State Treasury to be known as "Income Tax School Fund" and the same shall be distributed to all the school districts in the State of Minnesota, including municipalities which operate their own schools, on the basis of population therein of compulsory school age. Such distribution shall be made by the State Board of Education semi-annually in the same manner as now provided by law as nearly as practicable governing the distribution of state funds by said State Board of Education, except that each such school district shall be entitled to receive its proportion of said Fund without being subject to any conditions. Provided, however, that the amounts distributed to each school district shall be used only for the purpose of

(1) Payment or providing for the payment of any bonded or other indebtedness of such district outstanding January 1, 1933.

(2) Providing for the payment of any bonded or other indebtedness thereafter incurred until such debts are fully paid or payment thereof provided for.

(3) Any such revenue not required to pay or provide for the payment of any such indebtedness shall be used to cover and pay current operating expenses and to reduce and replace levies on real and personal property. (Act Apr. 21, 1933, c. 405, §57.)

#### ARTICLE X

**2394-58. Provisions separable.**—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other type of case within their terms. If any provision hereof excepting any item of income from inclusion in the computation of the taxes imposed hereby, or allowing any credit or deduction in calculating such taxes, be adjudged to be invalid by any court of competent jurisdiction, the taxes shall be computed or calculated as if such item of income were not excepted or such credit or deductions not allowed. If the exception or exemption of any person or corporation from any tax imposed hereby be adjudged by any court of competent jurisdiction to be invalid, such persons or corporations shall be subject to the tax imposed on other persons or corporations of the same class hereunder. (Act Apr. 21, 1933, c. 405, §58.)