

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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village, borough or school district funds, and no deposit of such funds in such designated depository shall be limited by the amount of the capital or surplus of such depository, but the authority designating such depository may nevertheless fix the limit of deposit to be made therein and shall require security therefor as provided by law. (Act Apr. 29, 1935, c. 318, §1.)

This act applies uniformly to all municipalities throughout the state, including the city of Minneapolis, and must prevail over city charter. Op. Atty. Gen. (59a-22), Nov. 13, 1935.

**1973-13. Application of act.**—This act shall apply to all cities, villages, and boroughs, however organized. (Act Apr. 29, 1935, c. 318, §2.)

Sec. 3, of Act Apr. 29, 1935, cited, repeals all inconsistent laws.

**1973-14. Deposit of town and school district funds with county treasurer in certain cases.**—Whenever the town board of any town or the school board of any school district in this state, by a unanimous resolution, deem it advisable, such town board or school board may invest such amount of funds in such town or school treasury as will not, in the opinion of such board, be needed by such town or school district during the fiscal year, in any of the bonds of any county, city, town, village, school district, drainage or other district created pursuant to law for public purposes in Minnesota, Iowa, Wisconsin and North and South Dakota or in the bonds of any city, county, town, village, school district, drainage or other district created pursuant to law for public purposes in the United States, containing at least 3500 inhabitants provided that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent of its assessed valuation. (Apr. 17, 1937, c. 250, §1.)

**1973-15. Same—Investment of funds.**—Any town board or school district board, investing such surplus

funds in such authorized securities as herein provided, shall deposit such securities for safe-keeping with the county treasurer of the county wherein such town or school district is located. Such county treasurer shall give a receipt for each and all of the said securities to the town board or school district board, as the case may be, and such county treasurer shall keep such securities for safe-keeping until such time as such town board or school district board shall adopt a resolution requesting the county treasurer to turn such securities or any of them over to the treasurer of such town or school district. (Apr. 17, 1937, c. 250, §2.)

**1973-16. Same—Need not be covered by bonds.**—The funds of such town or school district invested in such securities and deposited with such county treasurer by such town board or school board as herein provided shall not be included within the amount of money for which such town treasurer or school treasurer is required by law to give a bond to such town or school district. (Apr. 17, 1937, c. 250, §3.)

**1973-17. Deposit of county funds.**—In all counties in this state, now or hereafter having an area of more than five thousand (5,000) square miles and an assessed valuation of more than Two Hundred Million Dollars (\$200,000,000.), exclusive of moneys and credits, it shall be the duty of the County Treasurer to place all moneys of the county belonging to the various funds on deposit in banks situated within the respective individual Commissioner's districts to which the said moneys and funds are either allocated or for whose specific needs and benefit such moneys and funds are used. The county and its proper disbursing officers shall draw warrants and vouchers upon said funds in the banks located in each said Commissioner's districts. (Apr. 26, 1937, c. 430, §1.)

Sec. 2 of Act Apr. 26, 1937, cited, provides that the Act shall take effect from its passage.

## 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.

Power of taxation is inherent in sovereignty and reposes in legislature, except as limited by state or national Constitution, and except as so limited, it is exhaustive and embraces every conceivable subject of taxation. Reed v. E., 191M254, 253NW102. See Dun. Dig. 9115.

Taxation is a burden or charge imposed by legislative power upon persons or property to raise money for public purposes, with essential characteristic that it is not a voluntary payment or donation but an enforced contribution. Bemis Bro. Bag Co. v. W., 197M216, 266NW 690. See Dun. Dig. 9114.

Power of taxation is inherent in sovereignty and reposes in the legislature except as it is limited by state or national constitution. Id. See Dun. Dig. 9115.

Mason's Stat. 1927, §2021, was enacted as a taxation statute and not merely to provide taxing officers with information whereby value of bonds or stock could be determined for purpose of taxation under §1974, and the latter section is not applicable to corporate excess taxation. Id. See Dun. Dig. 9128.

Power of taxation is inherent in sovereignty and reposes in legislature, except as limited by constitutional prohibition. State v. Aitkin County Farm Land Co., 204M 495, 284NW63. See Dun. Dig. 9114.

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.

Taxes assessed against land owned by state are not a lien thereon and may be cancelled. Op. Atty. Gen. (770e), June 12, 1934.

Life tenant must pay taxes during lifetime under a deed of a farm to a town. Op. Atty. Gen. (349a-22), June 16, 1936.

**2. Credits of non-residents in the hands of local agents.** Intangible managed by a resident trustee where right of revocation is reserved by non-resident trustor is subject to tax. Op. Atty. Gen. (421c-15), Apr. 29, 1935.

**4. Property of non-residents consigned for sale here.** There is no tax upon sale of surplus electric energy outside of corporate limits of a city, even though in another county. Op. Atty. Gen. (624c-13), Aug. 12, 1937.

**6. Federal property and agencies.** Under Clapp Amendment trust patent lands of adult mixed blood Indians in Mahnomen county became subject to taxation 25 years from date of patent. U. S. v. Spaeth, (DC-Minn), 24FSupp465.

An allotment to a mixed blood Chippewa Indian, fee patent for which had not been delivered, issue of patent not even having been applied for by him, is not subject to taxing power of state or any of its municipal subdivisions. Warren v. M., 192M464, 257NW77. See Dun. Dig. 9120.

A state income tax upon salary of governor of a federal reserve bank is invalid as a direct and palpable burden on exertion of government sovereign powers. Geery v. M., 202M366, 278NW595. See Dun. Dig. 9120.

Salary of governor of federal reserve bank is not immune from state income taxes. Geery v. M., 204M622, 285 NW614. See Dun. Dig. 9153.

Personal property belonging to an individual or corporation located on United States government land, not deeded by state legislature, is not exempt from taxation, even though used under contract with government. Op. Atty. Gen. (414a-2), Jan. 20, 1937.

Office furnishings and equipment of National Farm Loan Associations are exempt from state taxation, in view of

Mason's U. S. C. A., title 12, §931. Op. Atty. Gen. (421a-11), June 16, 1939.

**7. Interstate commerce.**

Cattle, temporarily owned by licensed dealers at stock-yards 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. Rev'd, 290NS1, 54SCR34, 78LEd131. See Dun. Dig. 4894.

The power of the states to tax intangibles. 15MinnLawRev741.

**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*, 189M26, 248NW288. See Dun. Dig. 9125.

License ordinance for dogs is not invalid because they are also assessed as personal property. Op. Atty. Gen. (146d-4), July 19, 1939.

**1975. Property exempt from taxation.**—All property described in this section to the extent herein limited shall be exempt from taxation, to-wit:

- (1) All public burying grounds.
- (2) All public schoolhouses.
- (3) All public hospitals.
- (4) All academies, colleges, and universities, and all seminaries of learning.
- (5) All churches, church property and houses of worship.
- (6) Institutions of purely public charity.
- (7) All public property exclusively used for any public purpose.
- (8) Personal property of every household of the value of \$100. The county auditor shall deduct such exemption from the total valuation of such property as equalized by the tax commission assessed to such household, and extend his levy of taxes upon the remainder only.

In case there is an assessment against more than one member of a household the \$100 exemption shall be divided among the members assessed in the proportion that the assessed value of the personal property of each bears to the total assessed value of the personal property of all the members assessed. (R. L. '05, §795; '13, c. 259, §1; G. S. '13, §1970; '25, c. 171, §1; Apr. 29, 1935, c. 385.) Jan. 24, 1936, Ex. Sess., c. 66.)

**½. In general.**

Op. Atty. Gen. (414d-10), July 19, 1934; note under §113.

It is not necessary in arriving at assessed valuation of property in a county for salary purposes to go behind assessed valuation as determined by tax commission, and lands to which state has acquired title through operations of rural credit department should not be included, while so-called \$100 exemption of personal property should be included. Op. Atty. Gen. (104a-9), Dec. 27, 1934.

Under a statute providing that county auditor merely deducts total sum of exemptions from total valuation of property in county as equalized by tax commission, personal property exemption to each householder is not to be deducted in determining assessed valuation of all taxable property of county for purpose of determining sheriff's salary. Op. Atty. Gen. (104a-1), Jan. 2, 1935.

Whether part of village park platted by village for purpose of sale was subject to taxation depended upon whether it could still be considered used for a public purpose. Op. Atty. Gen. (414a-11), Nov. 6, 1936.

Exemption of property from taxation. 18MinnLawRev 411.

**1. None except authorized by constitution.**

Articles of incorporation are not sole criterion in question of whether institution is charitable. Op. Atty. Gen. (414e-1), Feb. 23, 1939.

**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.

Special assessment against state land on which is located teachers' college cannot be paid in absence of special appropriation of legislature. Op. Atty. Gen., Jan. 30, 1934.

State forfeited tax lands are not subject to assessment, and assessment will be cancelled upon lot to which state subsequently acquires title. Op. Atty. Gen. (387b-1), Oct. 22, 1937.

Lands forfeited to state are not subject to special assessments for local improvements. Op. Atty. Gen. (700a-8), Apr. 5, 1938.

Liability of county for sidewalk and curb work done on property owned by county in connection with village WPA project. Op. Atty. Gen. (480a), March 31, 1939.

Real property to which state has acquired title following tax sale cannot be charged with a lien for local improvements. Op. Atty. Gen. (412a-26), Sept. 21, 1939.

**4. Held exempt.**

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.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. Id. See Dun. Dig. 9151a.

The courts cannot acquire jurisdiction in proceedings to enforce taxes over state property. Id. See Dun. Dig. 9151a.

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*, 185M242, 240NW532.

Evidence shows that real estate has since 1928 been continuously occupied and used as a seminary of learning, and hence is exempt from taxation. *State v. Northwestern College*, 193M123, 258NW1. See Dun. Dig. 9152.

A hospital organized to operate on a non-profit basis was tax exempt, though it charged for services and did not pretend to care for charity patients, without charge. *State v. H. Longstreet Taylor Foundation*, 198M263, 269NW469. See Dun. Dig. 9152.

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.

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.

An assembly hall maintained by church on parcel of land distant from church is exempt from taxation, though it is occasionally rented to other organizations for a small charge. Op. Atty. Gen., Dec. 27, 1933.

Funds of fraternal beneficiary association are exempt from taxation. Op. Atty. Gen. (414d-8), Apr. 3, 1934.

As affecting taxes, contract for deed executed by state takes effect on date of delivery, although contract bears earlier date. Op. Atty. Gen. (301c-1), July 11, 1934.

Real estate acquired by county by deed under old age pension act is exempt from real estate tax as long as property belongs to the county. Op. Atty. Gen. (414f), June 20, 1935.

Hotel furniture owned and used by manager of hotel and family is exempt. Op. Atty. Gen. (421b-5), July 16, 1935.

Building of public charities used for charitable purposes held exempt even though incidental income was derived from use thereof. Op. Atty. Gen. (414a-10), Sept. 11, 1935.

Church parsonage was exempt though part thereof was rented and income applied on salary of minister. Op. Atty. Gen. (414d-12), Apr. 28, 1936.

Real property of St. Paul Society for the Prevention of Cruelty is tax exempt. Op. Atty. Gen. (414d-17), Apr. 28, 1936.

A dwelling house sold to church for parsonage under contract dated April 20, 1936, and deed for which was executed and delivered June 3, 1936, should be returned by assessor as church property. Op. Atty. Gen. (414d-6), July 3, 1936.

County board should not reconvey property deeded to county by recipient of pension under §3183-7, and payment of pension made before effective date of Old Age Assistance Act did not remain a lien upon the property until redeemed under that act, and lands acquired by county pursuant to §3183-7 are exempt from taxation while title thereto is in county, in view of §3199-42. Op. Atty. Gen. (521p-3), Sept. 14, 1936.

Where church owned two parsonages, one just acquired, of which it was about to take possession, and one which was used as a parsonage on May 1st and has since been sold, both were exempt for the year. Op. Atty. Gen. (414d-6), Sept. 15, 1936.

Land belonging to village used for public purposes cannot be sold for taxes even though deed thereto has

not been recorded, and such deed may be recorded without endorsement thereon of certificates showing payment of taxes, but village should secure order from tax commission cancelling all taxes. Op. Atty. Gen. (469a-15), Nov. 10, 1936.

A "public hospital" must allow free access to public without discrimination and should be operated for benefit of public rather than for benefit of a private individual, corporation or group of individuals, but it need not be owned by the public and may charge a fee for services rendered. Op. Atty. Gen. (414d-10), July 2, 1937.

A municipal power plant located outside city and in another county is exempt from taxation, though it is a "stand-by plant for the city," and though surplus energy is sold to a cooperative association. Op. Atty. Gen. (414a-13), Sept. 20, 1937.

Exemption of hospital is not lost because title is transferred to nonprofit corporation organized under laws of another state. Op. Atty. Gen. (414d-10), Dec. 28, 1937.

Municipally owned electric light and power plant lines used for purpose of furnishing electricity to persons outside of municipality are exempt from taxation. Op. Atty. Gen. (414a-13), Feb. 2, 1938.

Real estate used by township telephone company is not subject to general property tax. Op. Atty. Gen., (421c-35), Oct. 14, 1938.

Residence owned by church but located several blocks therefrom, furnished to a janitor for a residence, is exempt from taxation. Op. Atty. Gen. (414d-6), Dec. 31, 1938.

Where lands are forfeited to the state and owner repurchases under Laws 1937, c. 88, Ex. Sess., and county buys land for a public purpose, unpaid installments are not taxes, and must be paid to the state by the county. Op. Atty. Gen. (412a-23), March 2, 1939.

A public hospital is one that allows free access to public without discrimination and is operated for benefit of public rather than for a private individual, corporation, or group of individuals, but mere fact that a fee is charged does not preclude exemption if there is no intent to make private profits. Op. Atty. Gen. (414d-10), March 31, 1939.

Where land was deeded to state on September 27, 1937, and lease for one year given to former owner, taxes set by auditor in December, 1937, could be cancelled, even as to purchaser in 1938. Op. Atty. Gen. (770G), April 21, 1939.

Where rural credit department owned land on May 1, 1938, and sold it to a private party under contract on July 7, 1938, purchaser was entitled to cancellation of the 1938 taxes, but would be liable for taxes for succeeding year. Op. Atty. Gen. (770G), April 25, 1939.

Taxes levied against real property while title to it is in state is not a lien on the land and may be cancelled. Op. Atty. Gen. (770G), May 8, 1939.

Where department of rural credit became owner of land on April 17, 1938 by expiration of year of redemption in foreclosure proceedings and thereafter sold and conveyed the land on June 1, 1938, purchaser was entitled to cancellation of 1938 taxes and land could not be legally assessed for taxes before May 1, 1939. Op. Atty. Gen. (770G), May 9, 1939.

Where department of rural credit acquired title to real estate by foreclosure on July 10, 1938, and on October 25, 1938, and prior to time taxes were spread thereon, department sold land by contract for deed, former owner and mortgagor occupied farm as a tenant until November 1, 1938, property is not subject to taxes for 1938. Op. Atty. Gen. (770G), July 24, 1939.

Under proposed certificates of incorporation of Old Frontenac Point, Methodist Campus, real estate and personal property of which is to be used exclusively by members of the church, is exempt from taxation so long as property is used in accordance with such certificate, and receipt of some fee for use of property would not necessarily change its right to exemption. Op. Atty. Gen. (414d-5), Sept. 8, 1939.

##### 5. Held not exempt.

A hospital owned by an individual and operated with an intent to make private profit is not exempt from taxation. State v. Browning, 192M55, 255NW254. See Dun. Dig. 9153.

Fact that waterworks is not actively used but is held as a reserve plant does not make land taxable as long as plant has not been abandoned or land sold to private party or put to other use. Anoka County v. C., 194M554, 261NW588. See Dun. Dig. 9151a.

Sale of water by city to two other municipalities and to other consumers outside city, revenue derived therefrom being about one-tenth of total revenue, is not determinative consideration and does not remove exemption, word "exclusively" meaning "substantially all" or "for greater part." Id.

Portion of land owned by city and used as a part of waterworks but not leased to private parties is public property used exclusively for a public purpose and is exempt, though land is located outside corporate limits of city and in another county. Id. See Dun. Dig. 9152.

Portion of the land which city owns for waterworks plant but leases to private parties who farm same and pay city a stipulated rental is not exempt from taxation as such portion is not used for a public purpose despite fact that rentals go into general fund used to operate waterworks. Id. See Dun. Dig. 9153.

Special Laws 1878, c. 69, did not continue the Minnesota Central University in existence, but created a new corporation, now Pillsbury Academy, whose property could not lawfully be made exempt from taxation. Trustees of Pillsbury Academy v. S., 204M365, 283NW727. See Dun. Dig. 9140.

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.

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.

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

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.

Community hall owned by club and used partially for town purposes is not exempt from taxation. Op. Atty. Gen., Mar. 22, 1934.

Home for aged asking contributions from those who enter was not exempt from taxation. Op. Atty. Gen. (414e-1), Apr. 20, 1934.

Church property when not used for minister's residence or in connection with its religious or charitable work or activities is not exempt from taxation. Op. Atty. Gen. (414d-6), May 25, 1934.

Household furniture and equipment used by a person who lives alone is not exempt to \$100 of its value. Op. Atty. Gen. (421b-5), June 19, 1934.

Single person living alone in his home after death of his parents in same household is not entitled to \$100 personal property exemption. Op. Atty. Gen. (414a-9), Feb. 4, 1935.

Land privately owned and leased by state is not exempt from taxation. Op. Atty. Gen. (414c-2), Sept. 27, 1935.

A municipally owned power plant and distributing system leased to a private company is taxable. Op. Atty. Gen. (414e), Dec. 9, 1936.

Personal property belonging to an individual or corporation located on United States government land, not deeded by state legislature, is not exempt from taxation, even though used under contract with government. Op. Atty. Gen. (414a-2), Jan. 20, 1937.

Pioneer Memorial Home, incorporated, a Minnesota corporation, held not exempt from taxation as institution of purely public charity. Op. Atty. Gen. (414a-10), Sept. 2, 1937.

House owned and maintained by school district as a home for superintendent of schools, rental being deducted annually from superintendent's salary, is not exempt from taxation. Op. Atty. Gen. (622a-11), Feb. 10, 1938.

City may not enter into an agreement exempting privately owned property used for a public purpose from taxation. Op. Atty. Gen. (414a-9), Feb. 11, 1938.

Municipal liquor store cannot be taxed. Op. Atty. Gen. (218k), May 14, 1938.

Land sold under contract for deed by Department of Rural Credit is subject to taxation. Op. Atty. Gen., (770g), Dec. 7, 1938.

Pioneer Memorial Home is not exempt from taxation. Op. Atty. Gen. (414a-10), Jan. 27, 1939.

Where department of rural credit foreclosed mortgage and bid in property under sheriff's certificate dated August 23, 1937, and obtained title August 23, 1938, there being no redemption, department was not entitled to cancellation of taxes levied for year 1937. Op. Atty. Gen. (407h), April 21, 1939.

A building forming part of a charitable institution would become subject to taxation if it were leased to an educational institution to be used as a dormitory. Op. Atty. Gen. (414B-2), May 25, 1939.

A farm devised to city to be used for benefit of a city hospital managed by a hospital board operated by a tenant and "any income there might be from such operation would be employed as directed by the said will", is not exempt from taxation. Op. Atty. Gen. (414a-11), July 7, 1939.

An auxiliary landing field owned by a city was not exempt from taxation where small grain and alfalfa were grown thereon on share crop basis, though it did not interfere with its use as a landing field. Op. Atty. Gen. (414a-11), July 24, 1939.

Where telephone company constructed new office building and rented old building to the state free of rent on condition that it pay taxes and maintenance costs, property is subject to ad valorem tax. Op. Atty. Gen. (216G), August 17, 1939.

**1975-1. Building and loan association exempted from income tax. [Repealed.]**

Laws 1933, c. 382. Repealed. July 15, 1937, Sp. Sess., c. 43, §33.

**1975-2. Veteran's pension, bonus, or compensation.**

Transferred to section 9447-1.

**1977. Real property.**

Because a building erected for a special use may have no market value by reason of no demand, it should not escape its just share of the tax burden. *State v. Federal Reserve Bank*, 25FSuppl4.

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.

House on land owned by another is to be taxed as real estate and as part of the land as fourth class real estate and not as homestead of the occupant, and is to be taxed as personal property if located on United States or railroad property. *Op. Atty. Gen.* (59a-7), May 28, 1935.

House on land owned by another is to be taxed as real estate and as part of the land as fourth class real estate and not as homestead of the occupant, and is to be taxed as personal property if located on United States or railroad property. *Id.*

Life tenant must pay taxes during lifetime under a deed of a farm to a town. *Op. Atty. Gen.* (349a-22), June 16, 1936.

Taxation of real estate subject to mortgage. 20 Minn LawRev347.

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

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

Mineral rights owned separately may be taxed separately from surface. *Op. Atty. Gen.*, (408a), Oct. 31, 1938.

Taxes must be paid on land before instrument conveying mineral rights may be recorded. *Op. Atty. Gen.*, (408a), Dec. 7, 1938.

**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.—**

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2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, upon which the mortgage registration tax has not been paid, and all shares of stock in corporations 75 per cent or more of the real and/or tangible personal property of which is not taxable in this state. (As amended Apr. 1, 1939, c. 127.)

174M509, 219NW872.

(2).

Shares of corporate stock held by a resident in a domestic corporation property of which is assessed and taxed in this state, is not taxable as credits, even though a portion of property of corporation is located outside state. *Holmes v. B.*, 200M97, 273NW623. See *Dun. Dig.* 9203a.

Decisions regarding taxation of memberships in unincorporated boards of trade or chambers of commerce prior to enactment of §§2337 to 2349, do not control taxation of corporate shares held by a resident in a domestic corporation, major part of whose property is assessed and taxed in this state. *Id.*

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.

Shares of stock in corporation paying gross earnings tax whose real and tangible personal property taxable in state is equal to 25% or less of its total real and tangible property are taxable as credits. *Op. Atty. Gen.* (614n), May 12, 1939.

(5).

All real property must bear taxation, not only commensurate with burden which property imposes upon the community, but equitably in comparison with other property assessed in the community. *State v. Federal Reserve Bank*, (DC-Minn), 25FSuppl4.

Assessor must determine true value of property from all factors present, notwithstanding that the property could not be sold at the time for valuation placed thereon for taxation purposes. *Id.*

Aim is to assess property at its market or sales value as distinguished from its cost price or intrinsic value. *State v. Penn Mut. Life Ins. Co.*, 198M115, 269NW37; 198 M620, 272NW547. *Cert. den.*, 58SCR45. See *Dun. Dig.* 9210.

Evidence sustains finding as to true and full value of defendant's lot in proceeding for assessment of 1932 tax. *Id.*

**1983. Powers of tax commission.**

Trial court held not to have erred in granting a temporary injunction to restrain county board and county auditor from recommending to state tax commission a refundment of taxes on part of personal property owned by a corporation. *School Dist. No. 1 v. L.*, 195M14, 251 NW486. See *Dun. Dig.* 4480.

Defendant having voluntarily paid tax after it had full knowledge of claimed error in assessment, it cannot be said that tax was "erroneously" paid. *Id.* See *Dun. Dig.* 9516.

While word "tax" in its broad meaning includes both general taxes and special assessments, courts are reluctant to so hold where result would be to deplete public revenues. *Calhoun Beach Holding Co.*, 287NW317. See *Dun. Dig.* 9577a.

The commission did not violate the uniformity clause of the state constitution by granting the application for abatement of taxes. *Id.* See *Dun. Dig.* 9130, 9577a.

An order granting abatement of taxes held not to constitute abuse of discretion justifying interference by court. *Id.* See *Dun. Dig.* 9577a.

Where order does not abate special assessments commission did not disregard statutory prohibitions when it made order without first procuring approval of standing committee on taxes in city in which the property is located. *Id.* See *Dun. Dig.* 9577a.

There can be no refundment of a tax paid under this act except by application to the tax commission under §1933. *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.

Tax commission has authority to abate taxes with consent of taxing district on land taken over for public purposes on receiving deed from owners without consideration. *Op. Atty. Gen.*, Dec. 6, 1933.

Where it was ascertained after assessments on particular land was paid that land received no benefit, assessments could be refunded. *Op. Atty. Gen.*, Feb. 8, 1934.

Tax commission might have power to compromise personal property tax judgment but board of county commissioners has no such authority. *Op. Atty. Gen.*, Mar. 16, 1934.

County auditor has no authority to cancel off tax list unpaid assessments in ditch proceedings without the approval of the state tax commission. *Op. Atty. Gen.* (148a-16), Apr. 5, 1934.

County has no authority to refund taxes paid by purchasers at delinquent tax sales under erroneous belief that they were the owners in fee, but the tax commission may under its broad equitable powers order a refundment. *Op. Atty. Gen.* (424a-5), Apr. 20, 1934.

Tax commission has power to grant application for abatement of taxes paid on personal property assessed

in wrong school district, provided county board and county auditor have first favorably recommended granting of such application. Op. Atty. Gen. (407g), May 23, 1934.

Reduction of taxes can be made by tax commission only on application of owner of tax property or of some one having an interest therein. Op. Atty. Gen. (421a-15), Sept. 18, 1934.

Tax commission has no power to abate taxes on 16,000 acres under §1983 in consideration of transfer of 32,000 acres to the state under §6514. Op. Atty. Gen. (130b), Dec. 7, 1934.

County board may not enter into an agreement with owner of real estate to accept settlement in full of delinquent taxes a sum less than amount of such taxes, but Minnesota Tax Commission have authority to grant such reduction or statement of taxes upon recommendation by county commissioners and county auditor. Op. Atty. Gen. (407o), Feb. 16, 1935.

Taxes for year in which state acquired title to lands should be cancelled if land was acquired by state prior to time taxes were spread on county auditor's books. Op. Atty. Gen. (407), Apr. 30, 1935.

An oversight in assessing homestead property as such does not give county auditor authority on his own motion to correct assessment rolls and tax records but proper application must be made to the tax commission upon recommendation of the county board and county auditor. Op. Atty. Gen. (408d), June 19, 1935.

It is duty of registrar of titles to file deeds to city without endorsement of certificates showing payment of taxes, but city should first secure an order from tax commission cancelling and abating all taxes, and also present a certificate of county auditor showing all unredeemed tax sales, and new certificates of title should show all unredeemed tax sales. Op. Atty. Gen. (373b-9(e)), Aug. 21, 1935.

Assessment for construction of town ditches may be abated or reduced by commission. Op. Atty. Gen. (407d), Dec. 9, 1935.

Application must be favorably recommended by county board and county auditor before commission can pass on reduction. Op. Atty. Gen. (232d), Jan. 28, 1936.

County authorities warranted in recommending application for abatement and cancellation of taxes on property owned by village and used by Boy Scouts. Op. Atty. Gen. (414d-14), Feb. 29, 1936.

Where land was conveyed to a town in consideration for support and burial, matter of payment of taxes should be submitted to tax commission together with recommendation of county board. Op. Atty. Gen. (349a-22), June 16, 1936.

After tax representing expense of eradication of obnoxious weeds has been assessed against land, county board has no power to refund amount of money taxed. Op. Atty. Gen. (424a-3), June 24, 1936.

Appraisement for purposes of sale of land at receiver's sale is not binding upon assessor or tax commission. Op. Atty. Gen. (414a-1), July 17, 1936.

Land belonging to village used for public purposes cannot be sold for taxes even though deed thereto has not been recorded, and such deed may be recorded without endorsement thereon of certificates showing payment of taxes, but village should secure order from tax commission cancelling all taxes. Op. Atty. Gen. (469a-15), Nov. 10, 1936.

Taxes accrued at time of forfeiture on forfeited tax delinquent land sold for 1926 or 1927 taxes cannot be abated or cancelled by tax commission after such forfeiture. Op. Atty. Gen. (407i), Nov. 10, 1936.

It is not necessary that city assessor approve recommendation of Stillwater board of review for abatement of taxes. Op. Atty. Gen. (406c), June 21, 1937.

One making entry upon land of United States subject to a ditch lien has right to redeem, and tax commission has authority to abate ditch liens. Op. Atty. Gen. (921j), Aug. 9, 1937.

County commissioners have no authority to consider an application for abatement made prior to reversion date at a meeting held subsequent to that date. Op. Atty. Gen. (407h), Sept. 1, 1937.

Tax commission may not reduce, abate, or cancel taxes after forfeiture to State. Op. Atty. Gen. (407h), Dec. 7, 1937.

A bank assisting a depositor in making a loan and paying ditch taxes and delinquent taxes is not entitled to a refund, where loan was afterward rejected. Op. Atty. Gen. (424a-9), Dec. 13, 1937.

Taxes may not be abated after property has been forfeited to state. Op. Atty. Gen. (414a-9), Feb. 11, 1938.

Commission is authorized to grant applications for reduction or abatement of taxes on parcels of land covered by a confession of judgment entered pursuant to Laws 1935, ex. sess., c. 72. Op. Atty. Gen. (407), May 4, 1938.

General statute of limitations is only law limiting time in which taxpayer may apply for refund, but this does not affect right of commission in its discretion to consider question of laches. Op. Atty. Gen. (424a-9), March 20, 1939.

One paying tax on new house which was only partially complete on May 1, held not subject to general rule relating to taxpayers voluntarily paying taxes. Id.

Commission may abate specific amount levied for specific purposes where cumulative assessments from year to year are far in excess of indebtedness. Op. Atty. Gen. (519), April 7, 1939.

Commissioner of taxation has power to abate or reduce assessment levied in course of judicial ditch proceedings. Op. Atty. Gen. (407d), August 15, 1939.

Relief accorded taxpayer as to taxes illegally assessed or collected. 15MinnLawRev692.

## LISTING AND ASSESSMENT

### 1984. Time.

Real estate taxes on Minnesota land for year 1933 "accrued" on May 1, 1933, though amount thereof was not ascertained at that time and they were not payable until Jan., 1934, and one taking assignment of sheriff's certificate of sale under mortgage foreclosure dated October 7, 1932, was not entitled to deduct taxes paid on a cash basis in 1934 from 1934 gross income. Lifson, (CCA8), 98F(2d)508, aff'g 36BTA593. Cert. den., 59SCR 364, 586.

Amount of real estate taxes accrued but unpaid at time of death constituted a claim against corpus of estate and upon payment by administrators no deduction is allowable from income of estate. Roy J. O'Neil, 31BTA727.

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.

Cash rents due on May 1 are assessable as moneys and credits for the year, but share of crops realized for past years are assessable as ordinary personal property in assessment district in which they were located on May 1. Op. Atty. Gen. (614m), Aug. 14, 1934.

One who acquired home subsequent to assessment in an even-numbered year is not entitled to have it classed as homestead for taxes of the following year. Op. Atty. Gen. (232d), Jan. 22, 1936.

### 1985. Omitted property.

#### 1/2. In general.

Claim for money and credits taxes is not one which is required to be filed in probate court. Op. Atty. Gen. (614f), Apr. 16, 1936.

Duties of county auditor under §2340 and §1985 are not altered by passage of laws 1939, c. 423, amending §2206. Op. Atty. Gen. (614), May 2, 1939.

#### 1. Liability for taxes unaffected by omission.

Existing shortage on account of failure of county auditor to extend amount certified in previous years for village corporation taxes cannot be replaced by levying of an amount in excess of legal maximum by village council. Op. Atty. Gen. (481a-2), Oct. 23, 1935.

#### 5. Lands omitted from tax books altogether.

Where land did not forfeit in Feb., 1938, because of defective notice of tax judgment sale in 1932, and 1937 tax, through error, was not spread by county auditor, 1937 tax may be spread as a current tax under this section. Op. Atty. Gen. (425b-4), Mar. 30, 1938.

#### 7. Effect of death of owner of personal property.

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. Op. Atty. Gen. (614f), Jan. 7, 1935.

#### 10. Penalties.

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.

#### 12. No re-assessment upon undervaluation.

Where property has improperly, through error or fraud, been given a homestead classification, it would be reasonable construction to hold that amount of tax that such property should have paid may be added to tax in subsequent year, but supreme court might hold otherwise. Op. Atty. Gen. (232d), Aug. 31, 1937.

### 1986. Assessment—Mode.

Superseded in part by §§1986-1 to 1986-3.

Taxes on realty are assessed for calendar year as of May 1, upon which date they attach as a lien or charge thereon, and various steps in assessment and levy of taxes, whenever finished, relate back to and take effect

as of May 1st. *Merle-Smith v. M.*, 195M313, 262 NW865. See Dun. Dig. §195.

**1986-1. Compensation of assessors in certain counties.**—That in all towns, villages and cities other than cities of the first class and cities now or hereafter having home rule charters containing provisions in conflict with this Act which are situated in counties having a population of not less than 450,000 inhabitants and an assessed valuation, including monies and credits, of more than \$450,000,000.00, the assessor and each deputy assessor of each such town, village and city, shall be entitled to compensation for each day's service necessarily rendered by him, the sum of Five dollars, not exceeding, however, 120 days in any one year, and mileage at the rate of Five cents per mile for each mile necessarily traveled by him in going to and returning from the County Seat of such county to attend any meeting of the assessors of such county which may be legally called by the Minnesota Tax Commission and also for each mile necessarily traveled by him in making his return of assessment to the proper officer of such county. (Act Apr. 5, 1935, c. 118, §1.)

The title to Act Apr. 5, 1935, cited, is as follows: "An act determining and fixing the time within which assessors are required to perform their duties and their compensation in villages, townships and certain cities in counties having a population of more than 450,000 inhabitants and an assessed valuation, including monies and credits, of more than \$450,000,000.00." This title does not seem to conform to the body of the act with respect to the municipalities to which it is attempted to be made applicable.

This act has no application to cities under home rule charters. *Op. Atty. Gen.* (12a-1), Aug. 16, 1935.

**1986-2. Time for performance of duties of assessors in certain counties.**—The duties of the assessor in towns, villages and cities affected by this Act shall be as now prescribed by law, and shall be performed between the first Monday in April and the last Monday in July of each year. (Act Apr. 5, 1935, c. 118, §2.)

**1986-3. Inconsistent acts repealed.**—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 5, 1935, c. 118, §3.)

**1987. Bond and oath of assessors.**

Section 1987 is controlling over §1084, and township assessor's bond should be filed with county auditor and not with town clerk. *Op. Atty. Gen.* (439a), Apr. 16, 1937.

**1988. Deputy assessors.**

Act Jan. 24, 1936, Ex. Ses., c. 82, provides for additional employees in county assessor's office to assess household goods during 1936.

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, 1936.

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.

Where town assessor was elected in March, 1935, followed by appointment of deputy assessor by board with approval of county auditor, and assessor died in June, 1935, and deputy took up duties of office, and there was no appointment of assessor either by the board or the county auditor following the death, there existed a vacancy which must be filled by appointment under §1086 or §1087, and one elected assessor in even numbered year was not entitled to take office. *Op. Atty. Gen.* (12c-4), Apr. 9, 1936.

*Op. Atty. Gen.*, Opinion No. 50, 1930 Report. *Op. Atty. Gen.* (12e), May 4, 1936.

A deputy assessor may be appointed for a village and receive same compensation as assessor. *Op. Atty. Gen.* (12e), Feb. 11, 1938.

Whether or not an assessor may appoint an assistant or deputy in the city of Eveleth, it is within power of city attorney to employ a mining engineer or any other expert with consent of city council for purpose of having expert testimony available for pending or expected litigation involving taxation of mines. *Op. Atty. Gen.* (12e), August 10, 1939.

**1990. Assessor's duties.**

$\frac{1}{2}$ . In general.

174M509, 219NW872.

*Op. Atty. Gen.*, Feb. 19, 1934; note under §1089.

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

Compensation which assessor shall receive is limited to work performed during the months of May and June of each year. *Op. Atty. Gen.* (12c-1), July 10, 1934.

**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.

Per diem compensation of township assessor can only be paid during months of May and June except where auditor notifies him of an omission, and he can only be paid for days he actually worked. *Op. Atty. Gen.* (442b-10), June 28, 1935.

Assessor should complete his work within time specified by statutes, and, if he does not do so, he is not entitled to additional compensation. *Op. Atty. Gen.* (12e), Feb. 11, 1938.

Where a two story brick building is located upon land leased from a railroad, lower floor and basement being owned by one individual and the second story by another individual, assessor could not divide assessment. *Op. Atty. Gen.* (408), Sept. 1, 1939.

Assessor cannot be compelled to make more than one assessment on an apartment building owned by a co-operative, each occupant buying one apartment. *Op. Atty. Gen.*, (414a-13), Sept. 7, 1939.

**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.**

Purpose of an assessment is to distribute tax burden fairly and equitably, and as long as real estate bears the major part of that burden, a tax base that will prevent undue discrimination or inequities must be adhered to. *State v. Federal Reserve Bank*, (DC-Minn.), 25FSuppl14.

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 *Fotlach Timber Co.*, 160 Minn. 209, 199NW963, followed. *State v. Russell-Miller Milling Co.*, 182M543, 235NW22. See Dun. Dig. §210(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. §210.

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. Molyneux*, 185M199, 240NW468. See Dun. Dig. §210(41).

Decision of district court sustaining, in proceedings for collection of taxes, assessed valuation of real estate, being reasonably supported by evidence, will not be disturbed. *State v. Walso*, 196M525, 265NW345. See Dun. Dig. §210.

Where there were not sufficient sales to establish a sale or market price, for land, court properly heard and considered judgment and opinion of men acquainted with properties, their adaptability for use, and all other facts and circumstances having to do with value. *State v. Oliver Iron Mining Co.*, 198M385, 270NW609. See Dun. Dig. §210.

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.

Order of court reducing assessed valuation for 1930 cannot be used for reducing assessed valuation for 1931. *Op. Atty. Gen.* (412a-28), Dec. 29, 1934.

In determining value of gasoline, amount of federal and state gasoline taxes are not to be taken into consideration. *Op. Atty. Gen.* (421c), May 27, 1936.

Appraisement for purposes of sale of land at receiver's sale is not binding upon assessor or tax commission. *Op. Atty. Gen.* (424a-1), July 17, 1936.

**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 and 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. 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 lands which are comparable in character, quality and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination. ('27, c. 123; Apr. 20, 1931, c. 24, §1; Apr. 23, 1935, c. 237, §1.)

State v. Oliver Iron Mining Co., 198M385, 270NW609; note under §1992.

In placing valuation for taxation purposes on Federal Reserve Bank building reliance may not be had solely upon valuation computed by capitalization of estimated income, since the building when erected was not primarily constructed to return income as such and many of its features which may detract from its usefulness as an income producing building may enhance its value for the purpose for which it was built. State v. Federal Reserve Bank, (DC-Minn), 25FSuppl4.

Aim is to assess property at its market or sales value as distinguished from its cost price or intrinsic value. State v. Penn Mut. Life Ins. Co., 198M115, 269NW37; 198 M620, 272NW547. Cert. den., 58SCR45. See Dun, Dig. 9210.

Evidence sustains finding as to true and full value of defendant's lot in proceeding for assessment of 1932 tax. Id.

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. Iron ore, mined by underground methods subsequent to August first of a calendar year and prior to the next succeeding May first, which requires concentration other than crushing or screening, or both to make it suitable for commercial blast furnace use, and in stock pile on the first assessment date after being mined, and iron ore mined by underground methods subsequent to August first of a calendar year and prior to the next succeeding May first which contains phosphorous in excess of .180 per cent, dried analysis, and in stock pile on the first assessment date after being mined for the first taxable year only, shall be listed and assessed in the taxing district where mined at the same amount per ton as it would be assessed if still unmined, and thereafter such ore in stock piles shall be valued and assessed as mined iron ore, as otherwise provided by law. 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. (As amended Apr. 22, 1937, c. 365, §1; Mar. 4, 1939, c. 48.)

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. Provided, further, that the first \$4,000.00 full and true value of each tract of unplatted real estate used for the purpose of a homestead shall be exempt from taxation for state purposes; except that said first \$4,000.00 full and true value shall remain subject to and be taxed for the purpose of raising funds for the discharge of any and all state indebtedness incurred prior to and existing at the time of the passage of this act. (As Amended Apr. 21, 1933, c. 359; July 23, 1937, Sp. Ses. c. 86, §1.)

Class 3c. 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. Provided, further that the first \$4,000.00 full and true value of each tract of platted real estate used for the purposes of a homestead shall be exempt from taxation for state purposes; except that said first \$4,000.00 full and true value shall remain subject to and be taxed for the purpose of raising funds for the discharge of any and all state indebtedness incurred prior to and existing at the time of the passage of this act. (As Amended Laws 1933, c. 359; July 23, 1937, Sp. Ses., c. 86, §1.)

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; July 23, 1937, Sp. Ses., c. 86, §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.*, 188M106, 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.*, 188M106, 246NW538. See Dun. Dig. 9210.

Statute as amended is constitutional. *Apartment Operators' Ass'n v. C.*, 191M365, 254NW443.

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.

Amendment by Laws 1933, c. 359, is applicable to assessments to be made by assessors in 1934, taxes on which will become due and payable in 1935, but not to taxes to be collected in 1934. *Op. Atty. Gen.*, Feb. 10, 1934.

Classification of property for purposes of assessment and taxation under amendment by Laws 1933, c. 359, should be by same officers as passed upon questions involved before amendment. *Id.*

Classification of lands is to be made as of May 1 of even-numbered years for that year and the following year. *Id.*

Property held under contract for deed may be a homestead. *Id.*

Property becomes homestead of owner as soon as he takes possession with intention of making it his home but it will not receive homestead classification until May of even-numbered year. *Id.*

Whether a person who resides on certain premises only part of time uses them for purposes of homestead is a question of fact to be determined by assessors and subsequent reviewing authority, but owner of two separate properties cannot claim both as homestead. *Id.*

A building may be used for purposes of homestead and also for other purposes and still be entitled to classification under 3b or 3c. *Id.*

Two or more different tracts of land may not constitute one homestead unless they are contiguous, but two tracts of farm land separated merely by road or railroad may constitute one homestead. *Id.*

The homestead tax reduction law does not follow the same rules as the homestead exemption law, that the six months' absence period of the homestead exemption law does not apply to the tax law, and that the filing of a notice claiming property under the homestead exemption law will not extend the period of permissible absence to five years. *Op. Atty. Gen.* (414a-9), Aug. 7, 1934.

Classification of counties for purpose of determining salaries of officials based on assessed valuation and of determining tax limitations and net bonded debt limitations is not affected by Laws 1933, c. 359, amending this section. *Op. Atty. Gen.* (104a-1), Aug. 14, 1934.

Where one person owns three lots all contiguous and on one lot is located his home and he operates a store on the other two lots, only the one lot upon which the home is situated should be assessed as homestead property. *Op. Atty. Gen.* (408d), June 19, 1935.

An oversight in assessing homestead property as such does not give county auditor authority on his own motion to correct assessment rolls and tax records but proper application must be made to the tax commission upon recommendation of the county board and county auditor. *Id.*

Fact that irregular tracts of land are platted under §2219 does not require that they be placed in nonagricultural classification. *Op. Atty. Gen.* (474j), Feb. 24, 1936.

In determining salary of judge of probate under Laws 1937, c. 94, assessed valuation should be determined by figuring Class 3b and Class 3c property at thirty-three and one-third per cent and forty per cent of full and true value. *Op. Atty. Gen.* (104a-9), June 12, 1937.

**Class 3.**

Whether commercial, industrial or manufacturing buildings and land, and power dam, are platted or unplatted land does not depend upon whether they are located within or without a municipality, or whether they are actually platted or not, but determines upon whether they are urban or rural in character. *Op. Atty. Gen.* (408), July 1, 1936.

**Class 3b.**

"Homestead" as used in Laws 1933, c. 359, §1, merely means "home" without any limitation as to area, including all contiguous property used as part of place of abode. *Op. Atty. Gen.*, Nov. 7, 1933. Opinion of Oct. 18, 1933, is withdrawn.

Laws 1933, c. 359, did not affect net bonded debt limitations in effect at time of its passage. *Op. Atty. Gen.* (531i), July 24, 1934.

In determining limit of county levy for general revenue purposes assessed valuation of real estate which is used for homestead purposes may be considered to be the same as it would have been if assessed valuation had been determined under law as it existed prior to enactment of this section. *Op. Atty. Gen.* (519d), Dec. 7, 1934.

Where two heirs owning each one-fourth of farm live upon the land as their home, farming same for benefit of all heirs, such undivided half interest should be assessed at 20% of its true and full value, being worth less than \$4,000. *Op. Atty. Gen.* (232d), Dec. 29, 1934.

Last paragraph of this section should be considered by village of Ironton in determining salaries of officers. *Op. Atty. Gen.* (471k), Dec. 21, 1936.

Properties occupied by purchasers under certain earnest money contracts held not to be classified as homesteads. *Op. Atty. Gen.* (408d), May 27, 1937.

Laws 1937, Ex. Sess., c. 86, amending this section, does not apply to taxes for 1936 payable in 1937. *Op. Atty. Gen.* (232d), Aug. 19, 1937.

Where property has improperly, through error or fraud, been given a homestead classification, it would be reasonable construction to hold that amount of tax that such property should have paid may be added to tax in subsequent year, but supreme court might hold otherwise. *Op. Atty. Gen.* (232d), Aug. 31, 1937.

Where land is located in two counties, the \$4,000 should be apportioned between two counties on same ratio as true and full value of tract in respective counties bears to total amount of true and full value. *Op. Atty. Gen.* (232d), April 27, 1939.

Owner must actually occupy a contiguous piece of land as a homestead, and this would not apply to one who was living with his mother upon a contiguous tract which she occupied as her homestead. *Id.*

Only that part of lot or lots on which is located house in which owner lives should be placed in class 3B where there are several buildings on the same tract. *Op. Atty. Gen.* (232d), July 7, 1939.

**Class 3c.**

Where before May 1 of an odd-numbered year a dwelling formerly not a homestead becomes one, owner, not having made timely demand upon assessor, local board of review, or county board of equalization for a reclassification of property for assessment as a homestead, is not entitled to mandamus to compel county auditor to reclassify property. *State v. Strom*, 198M173, 269NW371. See Dun. Dig. 9210.

That part of Laws 1933, c. 359, reducing rates at which homesteads shall be valued for taxation, but preserving former and higher rates for purpose of figuring "tax limitations," held not to amend a provision of a city charter limiting a school tax to 22 mills on dollar, purpose being not to amend charter but to provide for valuing homesteads at former rates for purpose of applying tax limitation and it is constitutional as so construed. *510 Groveland Ave. v. E.*, 201M383, 276NW287. See Dun. Dig. 9210.

Contiguous tracts used by husband and wife for homestead purposes may be assessed as such, although husband owns part, and wife, part. *Op. Atty. Gen.* (421c-13), Sept. 28, 1934.

A deputy whose salary is based on assessed valuation is an officer within meaning of this section and his salary should be determined on basis of an assessed valuation computed on percentages of 33 1/3% and 40% respectively of class 3b and class 3c properties. *Op. Atty. Gen.* (104a-3), Jan. 29, 1935.

Fact that deed to real estate claimed as homestead is not recorded is immaterial. *Op. Atty. Gen.* (408d), Mar. 12, 1935.

Store building used for homestead purposes will be taxed as such notwithstanding its additional use for store purposes. *Op. Atty. Gen.* (232d), May 1, 1935.

House on land owned by another is to be taxed as real estate and as part of the land as fourth class real estate and not as homestead of the occupant, and is to be taxed as personal property if located on United States or railroad property. *Op. Atty. Gen.* (59a-7), May 23, 1935.

Land of church cultivated by members who live thereon and turn over products to organization is not assessable as property used for purposes of a homestead. *Op. Atty. Gen.* (232d), July 11, 1935.

Homestead exemption is determined by status of property on May 1st of even numbered years. *Op. Atty. Gen.* (232d), Aug. 6, 1935.

A building used in part for purposes of a homestead is entitled to homestead classification. *Op. Atty. Gen.* (408d), Aug. 17, 1935.

If only one of four heirs is living on property, the one living on the premises is entitled to have one-fourth of four thousand or one thousand dollars, given the 25% classification, and the entire remainder of the property must be given the 40% classification. *Op. Atty. Gen.* (232d), Nov. 6, 1935.

Property sold on contract and occupied by vendee is assessable as homestead. *Op. Atty. Gen.* (232d), Nov. 9, 1935.

Vendee under unrecorded contract for deed is entitled to homestead classification. *Op. Atty. Gen.* (232d), Dec. 18, 1935.

One who acquired home subsequent to assessment in an even-numbered year is not entitled to have it classed as homestead for taxes of the following year. *Op. Atty. Gen.* (232d), Jan. 22, 1936.

Whether unoccupied property was a homestead held a question of fact. *Op. Atty. Gen.* (232d), Jan. 28, 1936.

Hotel owner of which rents a room from lessee for stipulated rent, not owning any furniture, is not homestead. *Op. Atty. Gen.* (232d), May 22, 1936.

Land used by life tenant as his home is considered real property used for purposes of a homestead. *Op. Atty. Gen.* (232d), June 2, 1936.

For purposes of taxation a person is not entitled to homestead classification of a place in which he does not reside, even though he files a notice of homestead, and

maintains furniture in one room. Op. Atty. Gen. (408d), June 2, 1936.

Where a person owns three lots and lives in a house on one lot and has a house on another lot which he rents out, he is entitled to homestead classification on the lot on which his house is located and also vacant lot if used by him as a garden or lawn. Op. Atty. Gen. (408d), May 20, 1937.

Sheriff occupying county jail building as living quarters cannot claim homestead exemption in a house owned by him, in which he has reserved one room for storage of furniture, unless he can be said to actually occupy such house. Op. Atty. Gen. (232d), June 29, 1937.

Saving clause in this section applies to 22-mill limitation in Minneapolis home rule charter for school purposes. Op. Atty. Gen. (519m), Oct. 9, 1937.

Whether one occupying two parcels of real estate has a homestead in one of them is a question of fact. Op. Atty. Gen. (232d), Nov. 9, 1937.

Where husband claims homestead in Minnesota and wife in Florida, it becomes a question of fact which is homestead. Op. Atty. Gen. (232d), May 5, 1938.

Valuation for indebtedness is not affected by homestead exemptions, but value of nontaxable lands cannot be included. Op. Atty. Gen. (159a-4), May 31, 1938.

Where farmer's wife became ill and he rented farm to a son and obtained a house in city and moved his wife there with small amount of necessary household goods with intent to remain there only until wife's health improved, leaving most of his furniture at the farm and working there daily himself, farm should probably be classified as homestead. Op. Atty. Gen. (232d), May 31, 1938.

Person having two houses on one lot, one of which he rents, is entitled to have that part of lot on which is located his home in homestead classification. Op. Atty. Gen. (232d), Aug. 2, 1938.

Ownership of apartment buildings by cooperative association, each occupant buying one apartment, does not entitle each member occupant to homestead classification, nor is association entitled to benefit of reduction in valuation. Op. Atty. Gen. (414a-13), Sept. 7, 1939.

#### Class 4.

House on land owned by another is to be taxed as real estate and as part of the land as fourth class real estate and not as homestead of the occupant, and is to be taxed as personal property if located on United States or railroad property. Op. Atty. Gen. (59a-7), May 28, 1935.

Whether commercial, industrial or manufacturing buildings and land, and power dam, are platted or unplatted land does not depend upon whether they are located within or without a municipality, or whether they are actually platted or not, but determines upon whether they are urban or rural in character. Op. Atty. Gen. (408), July 1, 1936.

**1993-1. Effective January 1, 1934.**—This Act shall take effect and be in full force and effect from and after January 1, 1937. (Act Apr. 21, 1933, c. 359, §2; July 23, 1937, Sp. Sess., c. 86, §2.)

#### 1993-2. Classification of iron ore—Definitions.—

(a) For all purposes of this Act the word "person" shall be construed to include individuals, copartnerships, companies, joint stock companies, corporations and all associations however and for whatever purpose organized.

(b) "Deposit" means a body of iron-bearing materials which in accordance with good engineering and metallurgical practice should be mined as a unit.

(c) Low-grade iron-bearing formations shall mean those commercial deposits of iron-bearing materials, not including paint rock, located beneath the surface of the earth, which in their natural state require beneficiation to make them suitable for blast furnace use, and which after such beneficiation produce in tonnage less than fifty (50) per cent in iron ore concentrates from the tonnage of low-grade iron-bearing formations delivered to a beneficiation plant and which formations must be mined in accordance with good engineering and metallurgical practice to produce such concentrates.

(d) "Beneficiation" shall mean the process of concentrating that portion of the iron-bearing formations entering the beneficiating plant as defined in this Act.

(e) "Concentrates" shall mean such ores which by the process of beneficiation have been made suitable for the blast furnace use.

(f) The term "tonnage recovery" or "tonnage recovery of iron ore concentrates" shall mean the proportion which the weight of concentrates recovered or recoverable after beneficiation bears to the weight

of the low-grade iron-bearing material entering the beneficiating plant. (Apr. 22, 1937, c. 364, §1.)

**1993-3. Same—Classifications of low grade iron ore.**—There are hereby established classifications for purposes of taxation which are designated Class 1 (a), which shall consist of all low-grade iron-bearing formations as defined above. Such classifications shall be assessed at the following percentages of their full and true value: If the tonnage recovery is less than fifty per cent (50%) and not less than forty-nine per cent (49%), the assessed value shall be forty-eight and one-half per cent (48½%) of the full and true value; if the tonnage recovery is less than forty-nine per cent (49%) and not less than forty-eight per cent (48%), the assessed value shall be forty-seven per cent (47%) of the full and true value; and for each subsequent reduction of one per cent (1%) in tonnage recovery, the percentage of assessed value to full and true value shall be reduced an additional one and one-half per cent (1½%) of the full and true value, but the assessed value shall never be less than thirty per cent (30%) of the full and true value. The land, exclusive of such formations, shall be assessed as otherwise provided by law. (Apr. 22, 1937, c. 364, §2.)

**1993-4. Same—Determination of classification.**—The classification of iron-bearing formations under the provisions of this Act shall be determined in the manner hereinafter set forth. Any person engaged in the business of mining whose tonnage recovery of iron-ore concentrates for a taxable year in producing concentrates from the iron-bearing material entering the beneficiating plant has been less than fifty per cent (50%) may file a petition with the Minnesota Tax Commission requesting classification of such deposit under the provisions of this Act. The taxpayer shall furnish such available data and information concerning the operation of such deposit as the Minnesota Tax Commission may require and who shall upon receipt thereof submit such petition and data to the University of Minnesota Mines Experiment Station. Said Mines Experiment Station shall consider the deposit referred to in said petition as a unified commercial operation, and based on all engineering data and information furnished shall file a written report thereon with the Minnesota Tax Commission who, after hearing duly had, shall approve or disapprove said report. If a classification is made covering such deposit and property the Commission shall give appropriate notice thereof to the taxing districts affected thereby. If the Commission disapprove such classification, their findings and order thereon may be reviewed by a writ of certiorari issued out of the Supreme Court on petition of the party aggrieved presented to said court within thirty days after the date of said order. Such classifications shall also be subject to further review by the Mines Experiment Station from time to time upon request of the Commission or upon further petition by the taxpayer. Valuations determined hereunder shall be subject to the provisions of Section 2372 of the 1934 supplement to Mason's Minnesota Statutes. (Apr. 22, 1937, c. 364, §3.)

**Explanatory note.**—The reference "Section 2372 of the 1934 supplement to Mason's Minnesota Statutes" is incorrect. Sections 2372-1 to 2372-10 was, perhaps, intended.

**1993-5. Same—Provisions severable.**—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 or invalidate any other part or provision in the remainder of the Act. (Apr. 22, 1937, c. 364, §4.)

**1993-6. Same—Inconsistent acts repealed.**—All acts or parts of acts inconsistent herewith are hereby repealed. (Apr. 22, 1937, c. 364, §5.)

Sec. 6 of Act Apr. 22, 1937, cited, provides that the Act shall take effect from its passage.

**1994. Assessment of real property in odd numbered years.**—In every odd numbered year, at the time of assessing personal property, the assessor shall also assess all real property that may have become subject to taxation since the last previous assessment, including all real property platted since the last real estate assessment in the even numbered year, and all buildings or other structures of any kind, whether completed or in process of construction, of over one hundred dollars in value, the value of which has not been previously added to or included in the valuation of the land on which they have been erected. He shall make return thereof to the county auditor, with his return of personal property, showing the tract or lot on which each structure has been erected and the true value added thereto by such erection. Every assessor shall list, without revaluing, in each odd numbered year, on a form to be prescribed by the Minnesota Tax Commission, all parcels of land that shall have become homesteads or shall have ceased to be homesteads for taxation purposes since the last real estate assessment.

The county auditor shall note such change in the assessed valuation upon the tax lists, caused by a change in classification, and shall calculate the taxes for such odd numbered year on such changed valuation. In case of the destruction by fire, flood or otherwise, of any building or structure, over one hundred dollars in value, which has been erected previous to the last valuation of the land on which it stood, or the value of which has been added to any former valuation, the assessor shall determine, as nearly as practicable, how much less such land would sell for at private sale in consequence of such destruction and make return thereof to the auditor. (As Amended Apr. 14, 1937, c. 206, §1.)

Where before May 1 of an odd-numbered year a dwelling formerly not a homestead becomes one, owner, not having made timely demand upon assessor, local board of review, or county board of equalization for a reclassification of property for assessment as a homestead, is not entitled to mandamus to compel county auditor to reclassify property. *State v. Strom*, 198M173, 269NW371. See Dun. Dig. 9210.

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, 189M26, 248NW288. See Dun. Dig. 9125.

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. Op. Atty. Gen. (614f), Jan. 7, 1935.

**2000. Merchants—Consignees.**

Where defendant sold farm machinery under conditional sale contract to a dealer and it was in possession of deal for sale on taxing day, it should not have been taxed to seller. *State v. J. I. Case Co.*, 189M180, 248NW 726. See Dun. Dig. 9199(62).

**2002. Lists to be verified.**

Intangible managed by a resident trustee where right of revocation is reserved by non-resident trustor is subject to tax. Op. Atty. Gen. (421c-15), Apr. 29, 1935.

**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.

Contract for deed of foreign insurance corporation doing business from its home office in another state is exempt from money and credits taxes. Op. Atty. Gen. (414a-6), June 25, 1935.

Colonies of bees placed by honey dealer on many farms in many townships in county should be assessed in taxing district in which owner resides. Op. Atty. Gen. (421a-4), Apr. 6, 1936.

Where farm on which owner resides is located partly in a village and partly in a township, all personal property on the farm should be listed and assessed in taxing district where house is located. Op. Atty. Gen. (421a-17), June 26, 1937.

Law books and office equipment of judge located in city should be assessed in township where judge resides. Op. Atty. Gen. (421a-17), July 28, 1938.

Livestock and machinery should be assessed in township where owner resides. Op. Atty. Gen., (232d), Aug. 2, 1938.

Where farm is located on land between two towns and township line divides house, residence of farmer depends upon intent. Id.

Where farm on which owner resides is located partly in one county and partly in another, personal property should be listed and assessed in taxing district in which house in which owner resides is located. Op. Atty. Gen. (421a-17a), March 17, 1939.

Residence is in that place in which habitation of person is fixed without any present intention of removing therefrom, and to which whenever he is absent he intends to return, and is not lost by leaving home to go into another state or county for temporary purposes. Op. Atty. Gen. (614t), July 7, 1939.

**2004. Capital stock and franchises.**

Franchises are subject to taxation. City of South St. Paul, 189M26, 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.

**2006. Farm property of non-resident.**

Lessor's share of crops held over from former years are assessable as ordinary personal property in assessment district in which they are located on May 1, and are not assessable in district in which lessor lived. Op. Atty. Gen. (614m), Aug. 14, 1934.

Where farm on which owner resides is located partly in a village and partly in a township, all personal property on the farm should be listed and assessed in taxing district where house is located. Op. Atty. Gen. (421a-17), June 26, 1937.

**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.

**2012. Electric light and power companies to be assessed where property is located.**

Northern States Power Company does not pay gross earnings tax in lieu of other taxes. Op. Atty. Gen. (2161), May 1, 1935.

**2012-1. Electric light and power utilities—Place of assessment of personal property with situs outside corporate limits of villages, cities and boroughs.**—Personal property other than personal property lying inside of the corporate limits of any city of the first class of electric light and power companies, and other individuals and partnerships, supplying electric power having a fixed situs outside of the corporate limits of villages, cities and boroughs shall be listed with and assessed by the Minnesota tax commission in the county where situated. (As amended Apr. 20, 1939, c. 321, §1.)

**2012-2. Same—Percentage of assessments—Supply to farmers—Co-operative associations.**—The tax commission shall assess such property at the percentage of full and true value fixed by law, and on or before

the 15th day of November shall certify to the county auditor of each county in which such property is located the amount of the assessment made against each company owning such property therein; provided, however, that the tax commission shall assess at five per cent of full and true value distribution lines, and the attachments and appurtenances thereto, used primarily for supplying electricity to farmers at retail, and which shall be taxed at the average rate of taxes of all counties throughout the state of Minnesota, levied for all purposes, for the preceding year and which shall be entered, certified and credited as provided in Laws 1925, Chapter 306, Section 3 [2012-3]. This act shall not apply to cooperative associations organized under the provisions of Laws 1923, Chapter 326 [§§7834 to 7847], and laws amendatory thereof and supplementary thereto and engaged in the electrical heat, light and power business, upon a mutual non-profit and cooperative plan. (As amended Apr. 20, 1939, c. 321, §2.)

**2012-4. Annual tax on electric, heat, light or power co-operative associations.**—Co-operative associations organized under the provisions of Laws of 1923, Chapter 326 [§§7834 to 7847], and laws amendatory thereof and supplemental thereto and engaged in electrical heat, light or power business upon a mutual, non-profit and co-operative plan in rural areas as hereinafter defined, are hereby recognized as quasi-public in their nature and purposes. (Act Apr. 18, 1939, c. 303, §1.)

**2012-5. Same—Definitions.**—As used in this chapter, the term "rural area" shall be deemed to mean any area of the state of Minnesota not included within the boundaries of any incorporated city, village or borough and such term shall be deemed to include both farm and non-farm population thereof. (Act Apr. 18, 1939, c. 303, §2.)

**2012-6. Same—Amount of tax.**—There is hereby imposed upon each such co-operative association on December 31 of each year, a tax of \$10.00 for each 100 members or fraction thereof of such association. The tax, when paid, shall be in lieu of all personal property taxes, state, county or local, upon distribution lines and the attachments and appurtenances thereto of such associations located in rural areas. The tax shall be payable on or before March 1 of the next succeeding year, to the Tax Commission who shall retain five percent of the proceeds of such tax for expenses of administration and shall distribute the balance thereof on or before July 1 of each year to the treasurers of the respective counties of the state in proportion to the number of members of such associations in the several counties as of December 31 of the preceding year, as determined by reports of such associations made and verified in such manner and on such forms as may be prescribed by the Tax Commission. The moneys so distributed to the respective counties shall be credited by the treasurers thereof, one-half to the general revenue fund and one-half to the general school fund of the county. (Act Apr. 18, 1939, c. 303, §3.)

**2018. Where listed in case of doubt.**

Relief accorded taxpayer as to taxes illegally assessed or collected. 15MinnLawRev692.

**STATEMENTS BY CORPORATIONS, ETC.**

**2021. Corporations, companies and associations generally.**

Franchises are subject to taxation. City of South St. Paul, 189M26, 248NW288. See Dun. Dig. 9125.

This section was impliedly repealed by mortgage registration tax money and credit tax, and income tax, Bemis Bro. Bag Co. v. W., 197M216, 266NW690. See Dun. Dig. 8927, 9128.

Mason's Stat. 1927, §2021, was enacted as a taxation statute and not merely to provide taxing officers with information whereby value of bonds or stock could be determined for purpose of taxation under §1974, and the latter section is not applicable to corporate excess taxation. Id.

**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.

Act Apr. 5, 1935, c. 131, authorizes the state tax commission to compromise tax on bank shares for 1935 and 1936. It is omitted as temporary.

Act July 15, 1937, Sp. Ses., c. 65, authorizes settlement by Minnesota Tax Commission of tax on shares of national banks for the years 1937 and 1938, as of May 1 in each year, by an assessment on the basis of 22% of the true value of the shares on condition that the bank agrees in writing to pay the tax thus assessed. The commission is also directed to report to the next session of the legislature a plan for taxing bank shares.

Appointment of national bank conservator held not destructive of bank's corporate entity, especially where reorganization resulted and bank thereafter continued to function under its original charter, as affecting value of stock for tax purposes. Freeborn County v. F., 199M 29, 270NW908. See Dun. Dig. 9207.

Whether this section violates Mason's USCA title 12, §548, is a question of fact to be determined each year in accordance with varying rates of taxation. Cherokee State Bank v. W., 202M582, 279NW410. See Dun. Dig. 9120.

A state statute levying a tax upon all bank stock is not rendered unlawfully discriminatory against state bank because its operation might be invalid as applied to national banks. Id. See Dun. Dig. 9140.

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.

Funds of government (R. F. C. Capital Debentures) loaned to state banks and evidenced by debentures are not taxable in same manner as capital stock of bank. Op. Atty. Gen., Dec. 11, 1933.

An agricultural credit corporation organized to lend money to those engaged in production or marketing of agricultural products could not have been organized under §7440, but is governed by §7436, and is subject to §2026-1, relating to assessment and taxation of bank and mortgage loan company stock. Op. Atty. Gen. (92b-1), July 15, 1937.

Formula set out is not to be applied rigidly, but is to be used for purpose of arriving at true and full value of stock. Op. Atty. Gen. (421c-3), June 16, 1938.

**2026-5. Assessment of investment company shares.**

—That the shares of stock of every investment company organized under the laws of this state coming within the purview of Section 7771 of Mason's Minnesota Statutes for 1927, shall be assessed and taxed in the taxing district where such investment company has its principal place of business, whether the stockholders of such investment company reside in such place or not and shall be assessed in the name of and be paid by such investment company. The treasurer or other officer of such investment company shall list all shares of the company for assessment in the same manner as personal property is listed. To aid the assessor in determining the value of such shares of stock, the accounting officer of every such investment company shall furnish to the assessor on or before July 15, 1937, and on or before June 1 of each year thereafter a sworn statement showing as of the immediately preceding May 1, the amount and number of the shares of its capital stock, the amount of its surplus and undivided profits, and the amount of its real property and tangible personal property located in this state upon which a tax in this state has been paid during the preceding annual period and the amount of any indebtedness upon which taxes have been properly and fully paid under the provisions of Sections 2322 to 2330, inclusive, Mason's Minnesota Statutes for 1927. The assessor shall deduct the amount of such real property and tangible personal property located in this state and the amount of any indebtedness upon which taxes have been properly and fully paid under Sections 2322 to 2330, inclusive, Mason's Minnesota Statutes for 1927, from the aggregate amount of such capital, surplus and undivided profits and the remainder shall be taken as the basis for the valuation of such shares in the hands of the stockholders and shall be assessed at 33 1/3 % of the full and true value thereof; and such tax shall be in lieu of all other taxes on such investment companies for the year in which such shares are assessed and

taxed except income tax and shall be in lieu of all other taxes on such shares and taxes on the property of such investment companies except upon real property, tangible personal property, motor vehicles, mortgage registry taxes and taxes on franchises measured by income. (June 21, 1937, Sp. Ses., c. 5, §1.)

Act does not apply to a corporation organized under laws of another state. Op. Atty. Gen. (414d), Oct. 11, 1937.

Citizens Morris Plan Company of Minneapolis, organized and operating pursuant to §7774-25, et seq., is not an investment company within §7771, and is not subject to tax imposed by Laws 1937, Ex. Sess., c. 5, §1. Op. Atty. Gen. (53a-27), Oct. 15, 1937.

Companies not doing an investment business are not subject to tax. Op. Atty. Gen. (92b-8), Nov. 4, 1937.

A reserve for retirement of outstanding certificates should not be added to capital in determining value of shares of stocks unless it can be classified as either surplus or undivided profits. Id.

All money and credits owned by a federal savings and loan association doing business in the state are taxable under §2337, but not under §2026-5. Op. Atty. Gen. (614i), March 7, 1939.

#### 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.

Where before May 1 of an odd-numbered year a dwelling formerly not a homestead becomes one, owner, not having made timely demand upon assessor, local board of review, or county board of equalization for a reclassification of property for assessment as a homestead, is not entitled to mandamus to compel county auditor to reclassify property. State v. Strom, 198M173, 269NW371. See Dun. Dig. 9195.

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.

Board of review has authority to correct assessment list to include omitted moneys and credits. Op. Atty. Gen., Mar. 20, 1934.

Village assessor, clerk and president of a village operating under Laws 1885, c. 145, are not entitled to extra compensation for serving on board of review. Op. Atty. Gen. (470b), July 5, 1935.

On application for reduction of assessment and refundment of real estate taxes from 1930 to 1935, refusal to consider application for lack of diligence was within discretion of board of review. Op. Atty. Gen. (424a-1), Mar. 29, 1937.

When assessor, clerk, and president of a village act as a board of review in response to notice from tax commissioner, they are not entitled to any compensation other than that which they receive as village officers. Op. Atty. Gen. (469B-7), July 5, 1939.

Relief accorded taxpayers as to taxes illegally assessed or collected. 15MinnLawRev692.

#### 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.

Op. Atty. Gen., Feb. 19, 1934; note under §1089.

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.

Under International Falls City Charter, c. 10, §4, members of board of review can only receive compensation for days spent between the fourth Monday in June and the Friday next preceding the first Monday in July, notwithstanding that it takes a longer time to complete their work. Op. Atty. Gen. (59a-52), July 20, 1934.

#### 2042. Correction of books.

Where a town has duly levied its tax for local purposes and listed and assessed personal property therein taxable on first of May in any year, a city thereafter organized so as to include part of such town may not levy a tax for city purposes on any of personal property so assessed and taxed for same year. State v. Republic Steel Corp., 198M107, 271NW119. See Dun. Dig. 9649. Op. Atty. Gen., Feb. 19, 1934; note under §1089.

### EQUALIZATION OF ASSESSMENTS

#### 2049. County board of equalization.

174M509, 219NW872.

Where before May 1 of an odd-numbered year a dwelling formerly not a homestead becomes one, owner, not having made timely demand upon assessor, local board of review, or county board of equalization for a reclassification of property for assessment as a homestead, is not entitled to mandamus to compel county auditor to reclassify property. State v. Strom, 198M173, 269NW371. See Dun. Dig. 9195.

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.

Section gives to county boards of equalization power to reclassify, and thereby raise or lower assessment under §1933, as amended. Op. Atty. Gen., Feb. 10, 1934.

County board of equalization may raise or reduce valuations of real property. Op. Atty. Gen. (406h), Dec. 12, 1936.

Offices of county auditor and member of city council of city of Madison are incompatible. Op. Atty. Gen. (358a-2), Aug. 8, 1938.

Relief accorded taxpayer as to taxes illegally assessed or collected. 15MinnLawRev692.

#### 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.

Mileage under this section is not affected by §254-47. Op. Atty. Gen. (104a-8), Mar. 8, 1935.

### LEVY AND EXTENSION

**2050. Certification of state tax levy.**—The state tax shall be levied by the legislature, and the rate of such tax shall be certified by the state auditor to each county auditor on or before November 15 annually. He shall also notify each county auditor of the amount due the state from his county on account of school textbooks furnished such county, and each county auditor so notified shall levy a tax sufficient to meet such indebtedness, which tax shall be levied and collected and paid into the state treasury in the same manner as other state taxes. (R. L. '05, §867; G. S. '13, §2049; Apr. 24, 1935, c. 282.)

Act Apr. 24, 1937, c. 385, §6, authorizes state auditor to levy tax for 10 years beginning in 1938 to pay certificates of indebtedness pursuant to appropriation for buildings at state educational institutions.

Tax levy for state purposes on all taxable property. Laws 1939, c. 375.

State auditor does not possess power to make tax levy. Op. Atty. Gen. (280b), Apr. 22, 1937.

#### 2057. County taxes.

Counties having 20,000 to 22,000 population, and valuation of \$6,000,000 to \$9,000,000 and area of 550,000 to 552,000 acres, may levy additional taxes. Laws 1939, v. 26. App. Feb. 17, Laws 1939, c. 31.

Counties having 24 to 28 townships and population of 14,000 to 16,000 and valuation of \$4,500,000 to \$7,000,000, may levy additional taxes not to exceed \$55,000. Laws 1939, c. 30.

Counties having 24 or 25 townships, and 34,000 or 35,000 population, may levy additional taxes not to exceed \$115,000. Laws 1939, c. 92.

In counties having 25 or more townships and less than 15,000 population and a valuation of more than \$5,000,000 and outstanding road and bridge warrants of more than \$100,000, excess levies are legalized. Laws 1939, c. 144.

Levy for tuberculosis tests may be made before July meeting. Op. Atty. Gen., Jan. 30, 1934.

Provision requiring county board to levy county taxes in July of each year is directory, not mandatory. Op. Atty. Gen. (519E), Aug. 29, 1934.

County board may amend resolution levying road and bridge tax at any adjourned meeting prior to certification of taxes to auditor. Op. Atty. Gen. (125a-14), Sept. 6, 1935.

It is mandatory upon county to levy taxes for mothers' pensions. Op. Atty. Gen. (335b), Aug. 7, 1936.

County board may amend tax levy made in July at any time prior to spreading of taxes on tax rolls, as where there is a change of poor relief from town to county system. Op. Atty. Gen., (339p), Nov. 28, 1938.

**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.

Act Mar. 1, 1935, c. 35, authorizes counties having 43 to 45 townships, from 20,000 to 30,000 population, and assessed valuation of less than \$13,000,000 to levy taxes for general revenue purposes for 1935 and 1936 in excess of existing limitations. It is omitted as local and temporary.

Act Feb. 2, 1937, c. 9, amends §1 of '35, c. 35, to make the act apply to years 1937 and 1938, and to limit tax levy to not more than \$85,000. Amended, Laws 1939, c. 6.

**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.

Where a town has duly levied its tax for local purposes and listed and assessed personal property therein taxable on first of May in any year, a city thereafter organized so as to include part of such town may not levy a tax for city purposes on any of personal property so assessed and taxed for same year. State v. Republic Steel Corp., 199M107, 271NW119. See Dun. Dig. 9649.

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.

Time within which levy may be made by village for bond or other purposes is directory and not mandatory. Op. Atty. Gen. (519h), Dec. 23, 1935.

**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.)

**2059. Auditor to fix rate.**

Clerical work of county auditor in spreading an assessment does not embrace authority to include items which have not been authorized. Normania Tp. v. Y., 286NW 881. See Dun. Dig. 9240.

If levy of taxes exceeds 2% of assessed valuation of property in a village, county auditor must reduce the levy, unless more than 2% is necessary to meet maturing bond obligations and absolutely necessary governmental function. Op. Atty. Gen. (481a-4), Dec. 5, 1935.

Levy by village operating under cash basis law for bond and interest payment must be included within limitations provided by Laws 1933, c. 72. Op. Atty. Gen. (518q), July 8, 1938.

Villages may not exceed statutory limit for general fund. Op. Atty. Gen. (519q), Dec. 13, 1938.

**2060. County board to levy additional tax in certain cases.**—There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists, for the several purposes enumerated, taxes at the rates specified as follows:

1. For state purposes, such amount as may be levied by the legislature.

2. For county purposes, such amount as may be levied by the county board, the rate of which tax for general revenue purposes shall not exceed five mills, unless such maximum mill levy will not raise the sum of \$40,000 based upon the last preceding assessed valuation of such county, in which case the county board by unanimous vote may levy at such rate as will raise the amount levied by the board but not exceeding said sum of, &40,000, except that in any county now or hereafter having a population of not less than 65,000, nor more than 85,000, inhabitants, according to the last Federal census, and having not less than 35, nor more than 45, full or fractional congressional townships, the county board is hereby authorized by unanimous vote of its members to make levies for general revenue purposes up to but not exceeding seven mills.

3. For town purposes, such sum as may be voted at any legal town meeting, the rate of which tax shall not exceed, exclusive of such sums as may be voted at the annual town meeting for road and bridge purposes and for the support of the poor, two mills in any town having a taxable valuation of one hundred thousand dollars or more, and the amount of which shall not exceed one hundred and fifty dollars in any town having a taxable valuation less than one hundred thousand dollars, and the rate of which shall not exceed one-half of one per cent in any town. The rate of tax for road and bridge purposes in any town shall not exceed five mills per dollar, and the tax for poor purposes shall not exceed two mills, provided, however that in any town in which the amount levied within the above limitations is not sufficient to enable such town to carry on its necessary governmental functions, the electors, during the business hour after disposing of the annual report may make an additional levy not to exceed three mills to enable such town to carry on such necessary governmental functions.

4. For school district purposes, such amounts as are provided in chapter 14 [2741 et seq.]. (As amended Apr. 23, 1937, c. 379, §1; Apr. 8, 1939, c. 170.)

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.

Act Feb. 3, 1939, c. 6, applicable by its description only to Pine County provides that the county board may, in the years 1939 and 1940, levy taxes for general revenue purposes at such a rate and in such an amount in excess of existing limitations as will produce sufficient revenue to defray county expenses, payable out of the revenue fund; provided, however, that no levy shall be made at a rate that will produce more than \$85,000.00 in taxes collected and paid into the revenue fund of said county, which rate calculated to produce said amount shall be based on the percentage of the taxes, currently payable in the preceding year, which have been collected by July first of the year in which the levies authorized hereby are made.

Tax levy in counties having population of 20,000 to 22,000, assessed valuation of \$6,000,000 to \$9,000,000, and acreage of 550,000 to 552,000 acres. Act Feb. 17, 1939, c. 26; Act Feb. 25, 1939, c. 31; Act Mar. 25, 1939, c. 82.

Tax levy in counties having 24 to 28 congressional townships, population of 14,000 to 16,000, and assessed valuation of \$4,500,000 to \$7,000,000. Act Mar. 25, 1939, c. 80.

Tax levy in counties having 24 to 25 congressional townships, and population of 34,000 to 35,000. Act Mar. 28, 1939, c. 92.

Act Apr. 4, 1939, c. 144, legalizes excessive levy in counties having not less than 25 congressional townships, population of not more than 15,000, assessed valuation, exclusive of moneys and credits, of not less than \$5,000,000, outstanding road warrants in excess of \$100,000, and which levied \$8,230.07 in excess of tax limitations. The act is omitted as local and special within Const. Art. 4, §33.

Apr. 8, 1939, c. 170, which concerns additional tax levy in Stearns County, amends Mason's Minn. St. 1927, §2060, which see.

Tax levy in Yellow Medicine County. Act Apr. 8, 1939, c. 176.

Tax rate in counties having 48 townships, area of 1,000,000 to 1,250,000 acres, population of 15,000 to 20,000, and assessed valuation of \$4,000,000 to \$8,000,000. Apr. 17, 1939, c. 290, amending '33, c. 34, §1.

Act Apr. 20, 1939, c. 335, applicable by its descriptive terms to Freeborn County alone, authorizes levy of tax for lake improvement. Probably unconstitutional as local and special.

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*, 188M79, 246NW547. See Dun. Dig. 2285, 9239.

Maximum levy for road and bridge purposes is governed by §2573, and not §2060 or §2067. Op. Atty. Gen., Nov. 19, 1929.

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.

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

In making county levy for general revenue purposes, assessed valuation of real estate which is used for home-stead purposes may be considered to be the same as it would have been if assessed valuation had been determined under law as it existed prior to Laws 1933, c. 359 (Mason's Stats. §1993). Op. Atty. Gen. (519d), Dec. 7, 1934.

Town levy for town road drainage is subject to maximum limitations contained in §2573(b) and §2580(a). Op. Atty. Gen. (519e), Feb. 9, 1937.

Levy for village hall may be extended in addition to two mill limitation contained in this section. Op. Atty. Gen. (519q), Dec. 21, 1938.

Cost of remodeling and making additions to court house may be paid from general revenue fund in treasury or from taxes already levied and in process of collection. Op. Atty. Gen. (125a-20), Aug. 29, 1938.

Value of tax exempt real estate is not to be included in total assessed value for purpose of determining maximum amount of tax levy. Op. Atty. Gen. (104a-9), July 27, 1939.

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

(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.

(3). Maximum levy which may be made by a town for road and bridge purposes is now governed by §2573 and not by subsection 3 of §2060. Op. Atty. Gen. (519k), Aug. 14, 1934.

Section 2573 is controlling with respect to maximum levy. Op. Atty. Gen. (519k), Dec. 19, 1936.

Laws 1937, c. 379, is not an additional limitation upon authority of town to levy taxes, nor an additional limitation on current year's township levy. Op. Atty. Gen. (519o), June 2, 1937.

Laws 1937, c. 379, is not an additional authority upon a town to levy taxes. Op. Atty. Gen. (519o), Nov. 1, 1937.

In enacting Laws 1937, c. 379, amending §2060(3), legislature did not intend to repeal tax limitation provision found in §§2573, 2067 or 1006. Id.

#### 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.

Laws 1935, c. 276. Tax levy in counties having 27 to 29 townships and population of 25,000 to 28,000.

Act Jan. 13, 1936, c. 10, authorizes counties having population of 14,000 to 16,000, with 56 to 58 townships and assessed valuation of \$3,000,000 to \$5,000,000 to levy tax in excess of existing limitations for general revenue purposes, but not to exceed total of \$60,000.

Act Feb. 24, 1937, c. 41, authorizes counties having 15 to 17 townships, 12,000 to 13,000 population, and assessed

value of \$5,000,000 to \$10,000,000, to levy taxes to raise \$55,000.

Act Apr. 12, 1937, c. 205, provides that in counties having \$7,000,000 to \$10,000,000 assessed value, exclusive of moneys and credits, area of 41 to 42 townships, tax levy not exceeding 7 mills may be made for county purposes.

Act Apr. 14, 1937, c. 212, provides that in counties having assessed valuation, exclusive of money and credits, of more than \$250,000,000, and area of over 5,000 square miles, the county board may levy a tax to raise \$15,000 to aid agricultural society.

Act Apr. 14, 1937, c. 219, provides that in counties containing 20 to 22 townships, 13,500 to 14,500 inhabitants, and assessed valuation of \$5,000,000 to \$9,000,000, a tax may be levied to raise not more than \$55,000 for general revenue purposes.

Act Apr. 19, 1937, c. 293, provides that in counties having 10 to 15 townships, 17,000 to 23,000 inhabitants, and \$7,000,000 to \$13,000,000 assessed value, exclusive of moneys and credits, the county board may levy a tax to raise not more than \$60,000.

Act Apr. 21, 1937, c. 317, provides that in counties having 39 to 40 townships, 21,000 to 25,000 population, and assessed valuation, exclusive of moneys and credits, of \$6,000,000 to \$10,000,000, tax levy in excess of limitations made to be made to pay county expenses, but not to exceed ten mills.

Act Apr. 24, 1937, c. 399, provides that in counties having assessed valuation, exclusive of moneys and credits, of \$2,000,000 to \$4,000,000, and 75 to 76 townships may levy a tax for revenue fund to produce \$40,000.

Act July 14, 1937, Sp. Ses., c. 19, provides that in counties having 380 to 400 square miles, over 37,000 platted lots, and over 20,000 population, the county board may levy a tax for general revenue purposes not in excess of \$85,000.

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—Exceptions.

See §2060-5 to 2060-9.

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

Where a town has duly levied its tax for local purposes and listed and assessed personal property therein taxable on first of May in any year, a city thereafter organized so as to include part of such town may not levy a tax for city purposes on any of personal property so assessed and taxed for same year. *State v. Republic Steel Corp.*, 199M107, 271NW119. See Dun. Dig. 9649.

Laws 1927, c. 110 [§§2060-2 to 2060-4], is similar to Laws 1921, c. 417 [§§1938-3 to 1938-13], except that it applies only to towns and as to such towns to which it applies on the iron ranges, it was intended to be remedial and to take care of special situations and was not repealed by Laws 1927, c. 131. Op. Atty. Gen., Mar. 2, 1934.

This section limits rate of taxes which a town may levy for road and bridge purposes, as well as for all other purposes in cases where it is applicable, but this section was part of legislation intended to restrict tax levies by towns, villages and school districts on the iron range where valuations are exceedingly high as compared to valuations in similar political subdivisions in other parts of the state, and this section is applicable only in cases where tax levied would produce result mentioned in it. Op. Atty. Gen. (519k), Aug. 14, 1934.

Tax levy for road and bridge purposes is limited by this section, where it is applicable, and may be exceeded only when necessary to provide funds to pay minimum corporate expenses. Op. Atty. Gen. (519a), Aug. 21, 1936.

2060-5. Limitation of act.—This Act shall apply to all towns in the State of Minnesota having a population of more than 3,000, exclusive of incorporated villages or cities therein, and an assessed valuation of taxable property, exclusive of money and credits, of more than \$10,000,000.00. (Act Apr. 6, 1935, c. 133, §1.)

2060-6. Limit of tax levy.—The total amount of taxes, exclusive of money and credit taxes, levied by or for any such town, through the vote of the town meeting or the electors of such town or otherwise, and by or for any board or commission thereof, for any and all general or special purposes whatsoever, including payment of indebtedness and bonds, shall not exceed 16 mills on the dollar of the assessed taxable valuation of the property in any such town, exclusive of money and credits, in the year 1935; shall not exceed 15½ mills on the dollar in the years of 1936 and 1937, each; shall not exceed 15 mills on the dollar in the year 1938; shall not exceed 14½ mills on the dollar in the year 1939; shall not exceed 14 mills on the dollar in the year 1940; shall not exceed 13 mills on the dollar in the year 1941; and in the year 1942 and in each year thereafter such total levy shall not exceed 12 mills on the dollar of the assessed taxable valuation of the property of any such town, exclusive of money and credits, whenever such levies

as herein specified will produce a total levy of town taxes as great or greater than an average of \$1,000.00 per government section of the entire area of such town, according to government survey of the property therein in any one calendar year. (Act Apr. 6, 1935, c. 133, §2.)

**2060-7. Limitation of expenditures.**—No such town, by vote of the electors or otherwise, shall contract debts or make expenditures in any calendar year in excess of the amount of taxes levied for that year, plus any available unexpended balance in prior years against which obligations have not been incurred. (Act Apr. 6, 1935, c. 133, §3.)

**2060-8. Act additional limitation.**—This Act shall not authorize nor shall it be construed in any instance as authorizing the levy or spreading of total amounts of taxes for specific purposes or in total amounts in any year in excess of the amount allowed by law at the time of the passage of this Act, but this Act is and shall be considered an additional limitation. (Act Apr. 6, 1935, c. 133, §4.)

**2060-9. County auditor to make levy within limit.**—If any such town shall return to the County Auditor a levy greater than herein permitted, such County Auditor shall extend only such amount of taxes as the limitations herein prescribed shall permit, and to that end he shall determine the area of such towns as herein described from the records in his office or such other data as to government survey as may be available. If any such town shall make levies otherwise valid, in specific amounts, for specific purposes, which aggregate more than the total amount permitted by this Act, then the amount of each specific levy shall be reduced and spread by him proportionately to bring the aggregate within the total limit herein permitted. (Act Apr. 6, 1935, c. 133, §5.)

Sec. 6 of Act Apr. 6, 1935, cited, provides that the act shall take effect from its passage.

**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.)

Act Jan. 18, 1936, Sp. Ses. 1935-36, c. 55, authorizes villages with population of 3200 to 3400 and assessed value of not more than \$900,000 to levy tax for 1936 and 1937 of 25 mills.

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. E., 187M444, 245NW615. See Dun. Dig. 425, 463.

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

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

Not unconstitutional as violating uniformity of taxation clause. Independent School Dist. No. 35 v. E., 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.

Laws 1921, c. 417 [§§2061 to 2066], Laws 1929, c. 206 [§§1186, 2061], are special and remedial in nature and intended to take care of special situations existing upon the iron range, whereas, Laws 1927, c. 131 [§§1938-3 to 1938-13], is a general law applying generally to municipalities throughout the state. Op. Atty. Gen., Mar. 2, 1934.

Laws 1929, c. 206, merely adds to and reenacts Laws 1921, c. 417, and in no wise repeals, qualifies or modifies Laws 1927, c. 131, insofar as latter chapter applies generally to municipalities throughout state. Id.

Laws 1927, c. 110 [§§2060-2 to 2060-4], is similar to Laws 1921, c. 417, except that it applies only to towns and as to such towns to which it applies on the iron ranges, it was intended to be remedial and to take care of special situations and was not repealed by Laws 1927, c. 131. Id.

Village operating under Laws 1885, c. 145, may levy an amount for corporate taxes which shall not exceed 2% of assessed valuation of property taxable in village, but amount of such levy must not exceed per capita limit prescribed by this statute. Op. Atty. Gen. (519q), Oct. 10, 1936.

The 2% limitation includes levy for general fund, police department and fire department, but not to levy by park commission under §1258, public library under §5661 or old age pensions and poor relief. Id.

Village may issue certificates of indebtedness payable out of special assessments against benefited property for purpose of constructing sidewalk, notwithstanding limitations of per capita tax laws. Op. Atty. Gen. (476a-4), Oct. 6, 1937.

**2061-1. Tax levy in cities of the third class.**—The governing body of any city of the third class now or hereafter organized in this state and operating under a home rule charter, and which charter provides that the annual tax levy shall not exceed twenty mills on the dollar of the taxable valuation of the city for all purposes, and wherein there is due and delinquent special assessments in the sum of \$25,000.00 or more, may, notwithstanding said maximum of annual tax levy, levy not to exceed three mills annually in addition to said twenty mills for the purpose of creating a fund with which to retire and pay outstanding certificates of indebtedness of any such city issued prior to July 1, 1937. All moneys derived from any such additional levy shall be used only for the purpose of retiring such certificates of indebtedness of any such city. (Mar. 19, 1937, c. 66, §1.)

Sec. 2 of Act Mar. 19, 1937, cited, provides that the Act shall take effect from its passage.

**2061-2. Tax levy in certain villages.**—Any village now or hereafter having a population of not less than 2,200 or more than 3,400 according to the 1930 federal census, and an assessed valuation of not more than \$900,000.00, exclusive of monies and credits, may levy annually for general corporation purposes, an amount not exceeding 25 mills on such assessed valuation. (Apr. 6, 1937, c. 141, §1.)

Sec. 2 of Act Apr. 6, 1937, cited, provides that the Act shall take effect from its passage.

**2061-3. Tax levy in certain villages.**—This act shall apply to villages having a population of more than 2,500 and less than 3,000 according to the last federal census, and an assessed valuation exclusive of monies and credits, of more than \$3,000,000.00, of which valuation more than 70% consists of iron ore. (Apr. 12, 1937, c. 194, §1.)

**2061-4. Same.**—If the assessed valuation of any such village (exclusive of monies and credits) as equalized by the Minnesota Tax Commission or State Board of Equalization, within three years following passage and approval of this act, shall be reduced so that the valuation upon which the County Auditor spreads the levy of any such village, is more than

20% less than the assessed valuation upon which taxes for the year 1936 were spread, such village for a period of four years following such reduction may levy 25 mills for general corporation purposes instead of 20 mills now permitted by law. (Apr. 12, 1937, c. 194, §2.)

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

See §§2062-1 to 2062-5.

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.

This section is applicable to board of education of Duluth. Op. Atty. Gen. (161b-10), Dec. 3, 1934.

School board may use proceeds of insurance policies to construct and equip a new school house, and need not use money to retire outstanding bonds of district. Op. Atty. Gen. (159b-4), Jan. 20, 1939.

**2062-1. Limitation of act.**—This act shall apply to all school districts in the State of Minnesota having a population of more than 10,000 and less than 50,000, and having an assessed valuation of taxable property, exclusive of monies and credits, of more than \$50,000,000.00. (Act Apr. 6, 1935, c. 132, §1.)

**2062-2. Limit of tax levy.**—The total amount of taxes which may be levied by or for any such school district for any and all general and special purposes whatsoever, including payment of indebtedness and bonds, and including the county school tax of one mill required to be levied by statute, but exclusive of any state levy shall not exceed in the year 1935 \$51.75 per capita of the population of such school district; in the year 1936 shall not exceed \$51.00 per capita; in the year 1937 shall not exceed \$49.00 per capita; in the year 1938 shall not exceed \$48.00 per capita; in the year 1939 shall not exceed \$47.50 per capita; in the year 1940 shall not exceed \$47.50 per capita; in the year 1941 shall not exceed \$47.50 per capita; in the year 1942 and in each year thereafter shall not exceed \$40.00 per capita. (Act Apr. 6, 1935, c. 132, §2.)

**2062-3. Sinking fund for bonds and interest.**—Any such school district having outstanding at the time of the passage of this Act any bonded or other indebtedness shall, out of the levies permitted within the limits above stated, set aside each year sufficient money to pay and discharge the interest on such bonded or other indebtedness and at least one-tenth of the principal of such indebtedness. In addition thereto, such school district shall establish and set aside out of the levies permitted within the limits above stated a sinking fund sufficient so that by January 1, 1942, and including the amounts apportioned thereto in the levy of the year 1941, there will have been accumulated in said fund enough to pay and discharge all bonded indebtedness existing at the time of the passage of this act, with interest thereon. Such school district shall, prior to making the levy of the year 1935, by resolution determine the amount of money from each year's tax levy up to and including the levy for the year 1941, which shall be set aside to meet bond payments and interest and accumulate the sinking fund above provided for, and shall certify a copy of such resolution to the county auditor of the county in which such school district is situated. If the outstanding indebtedness of said school district consists of bonds held by the State of Minnesota, the county auditor each year as the tax levy is made spread the same so that at least the amounts stated in said resolution are levied for state loan bonds and interest thereon, and when collected are paid into the special fund provided by law for that purpose. Such levies shall be spread so that the total levy for said district does not exceed in any year the limits herein provided. (Act 6, 1935, c. 132, §3.)

**2062-4. Federal census to govern.**—For the purposes of this act, the last state or federal census of population taken prior to the enactment hereof shall govern and shall be conclusive in determining hereunder the population of any such school district until

and including the levy of the year 1942; thereafter the last respective state or federal census of population taken prior to the calendar year in which any such levy may be made shall govern; provided, that if the federal census of 1940 or any subsequent decennial federal census shall not be taken so as to show the population of any school district hereunder, or if the population of such school district cannot be computed from the district enumerators' reports prepared and filed at the time of the taking of said federal census, the governing body of said school district shall, at any time within two years following the end of the calendar year in which said federal census is taken, have a special census taken of the population of said district in the following manner; the governing body of such school district shall pass a resolution requesting the taking thereof by the Secretary of State, and shall furnish the Secretary of State a certified copy thereof; whereupon the Secretary of State shall cause such census to be taken under his immediate supervision and under such rules and regulations as he may prescribe, and shall certify the result thereof to the governing body of any such school district within three months from the receipt by him of such resolution. The expense of taking such census shall be paid by the school district in which the same is taken. Provided, further, that in the year 1945 and every tenth year thereafter, the governing body of such school district may, if it desires a special census taken of the population of said district, have the same taken under the direction of the Secretary of State in the manner above provided. (Act Apr. 6, 1935, c. 132, §4.)

**2062-5. County auditor to make levy within limit.**—If any such school district shall return to the county auditor a levy greater than herein permitted, such county auditor shall extend only such amount of taxes as the limitations herein prescribed will permit. (Act Apr. 6, 1935, c. 132, §5.)

Sec. 6 of Act Apr. 6, 1935, cited, provides that the act shall take effect from its passage.

**2062-6. Tax levy for certain school districts.**—Any special school district organized under a special law and having less than six square miles in area and now or hereafter having not less than two thousand inhabitants nor more than five thousand inhabitants is hereby authorized to annually levy for general school purposes a tax of not to exceed thirty-five mills on the dollar of the valuation of all taxable property in said district, according to the preceding official assessment thereof; provided that this act shall not be applicable to any districts the boundaries of which are coterminous with the boundaries of any city. (Apr. 17, 1937, c. 260, §1.)

**2062-7. Same—Tax levy legalized.**—In cases where such school districts have heretofore levied an amount in excess of that provided by law such proceedings are hereby legalized and declared valid. (Apr. 17, 1937, c. 260, §2.)

**2062-8. Same—Inconsistent acts repealed.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Apr. 17, 1937, c. 260, §3.)

Sec. 4 of Act Apr. 17, 1937, cited, provides that the Act shall take effect from its passage.

**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.

Procedure for taking census in villages operating under per capita tax limitations. Op. Atty. Gen. (8701), Dec. 13, 1938.

**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.

If levy of taxes exceeds 2% of assessed valuation of property in a village, county auditor must reduce the levy, unless more than 2% is necessary to meet maturing bond obligations and absolutely necessary governmental function. Op. Atty. Gen. (481a-4), Dec. 5, 1935.

**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.

Village may issue certificates of indebtedness payable out of special assessments against benefited property for purpose of constructing sidewalk, notwithstanding limitations of per capita tax laws. Op. Atty. Gen. (476a-4), Oct. 6, 1937.

**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, provided, however, that that part of the police budget allocated to the payment of salaries in the police department shall not be reduced during the fiscal year, and that only the surplus in such salary budget that is created by reason of deaths, resignation or reduction in the number of employees in said department may be placed in the general fund of the village. 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; Mar. 31, 1937, c. 125, §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.

City of Virginia may under §131 of its charter transfer surplus utility funds to general funds for temporary use for other municipal purposes. Op. Atty. Gen. (59a-22), Nov. 9, 1936.

**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.

Village has no authority to issue warrants authorized under §1946-51 beyond the 60% provision of §2066-4. Op. Atty. Gen. (519i), Aug. 11, 1934.

Though there is no authority in city charter of Virginia so authorizing, such city may issue certificates of indebtedness under this act. Op. Atty. Gen. (59a-51), Sept. 29, 1934.

Warrant can only be issued on levy for present fiscal year and upon unextended levy of past year only when collected, and certificates cannot be issued to provide funds for present fiscal year to be taken up with funds from taxes levied for the next fiscal year. Op. Atty. Gen. (59a-51), Nov. 2, 1936.

**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.

Village may issue certificates of indebtedness payable out of special assessments against benefited property for purpose of constructing sidewalks, notwithstanding limitations of per capita tax laws. Op. Atty. Gen. (476a-4), Oct. 6, 1937.

**2066-7. Limitation of act.**—This Act shall apply to all villages and cities in the State of Minnesota having a population of more than 10,000 and less than 50,000 inhabitants and having an assessed valuation of taxable property (exclusive of monies and credits) of more than \$35,000,000.00. (Act Apr. 6, 1935, c. 134, §1.)

**2066-8. Limit of tax levy.**—The total amount of taxes levied in the years hereinafter designated by or for any such city or village for any and all general and special purposes whatsoever, exclusive of taxes levied for special assessments for local improvements upon property specially benefited thereby, shall not exceed, in the year of 1935, \$62.50 per capita of the population of such city or village; in the year 1936 shall not exceed \$60.00 per capita of the population of such city or village; in the year 1937 shall not exceed \$57.50 per capita of the population of such city or village; in the year 1938 shall not exceed \$55.00 per capita of the population of such city or village; in the year 1939 shall not exceed \$52.50 per capita of the population of such city or village; and in the year 1940 and in each year thereafter such total levy shall not exceed \$50.00 per capita of the population of such city or village.

Provided that if any such city or village subject to the provisions of Laws 1929, Chapter 208, has prior to the calendar year 1929 incurred by proper authority a valid indebtedness including bonds issued in 1929 to fund indebtedness incurred prior thereto, 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 sum 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. (Act Apr. 6, 1935, c. 134, §2.)

**2066-9. Federal census to govern.**—For the purposes of this Act the last respective state or federal census of population taken prior to the enactment hereof shall govern and be conclusive in determining hereunder the population of any such city or village in fixing all levies up to and including the levy of the year 1942. For levies subsequent to the year 1942 the last respective state or federal census prior to the calendar year in which any such levy may be made shall govern. Provided, that in the year 1945, and each tenth year thereafter, the council of such city or village may, in case it desires a special census, pass a resolution requesting the taking thereof by the Secretary of State, and shall furnish the Secretary of State a certified copy thereof; whereupon said Secretary of State shall cause such census to be taken under his immediate supervision, and under such rules and regulations as he may prescribe, and shall certify the result thereof to the council of such village or city within three months from the receipt by him of such certified copy of resolution. The expense of taking such census shall be paid by the city or village in which the same is taken. (Act Apr. 6, 1935, c. 134, §3.)

**2066-10. Limitation of levy.**—This act shall not authorize nor be construed as in any instance authorizing the levy of total amounts of taxes in any year in excess of the amount allowed by law at the time of the passage of this act, and this act shall be considered an additional limitation. (Act Apr. 6, 1935, c. 134, §4.)

**2066-11. County auditor to make levy within limit.**—If any such city or village shall return to the county auditor a levy greater than herein permitted, such county auditor shall extend only such amount of taxes as the limitations herein prescribed will permit. (Act Apr. 6, 1935, c. 134, §5.)

Sec. 6 of Act Apr. 6, 1935, cited, provides that the act shall take effect from its passage.

#### **2067. Same.**

Where parties were partners and close relation previously existing remained while activities were in progress to transform partnership into a corporation, actual confidential relations arising from domination and leadership of one of the former partners imposed upon dominant person a duty with which equitable powers will command compliance, where stock division was entirely based upon property contributed to the partnership by various promoters of the corporation, who became sole stockholders of the corporation. *Keough v. S.*, 285NW 809. See Dun. Dig. 2113.

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.

Section 2573 is controlling with respect to maximum levy. Op. Atty. Gen. (519k), Dec. 19, 1936.

Town levy for town road drainage is subject to maximum limitations contained in §2573(b) and §2580(a). Op. Atty. Gen. (519o), Feb. 9, 1937.

In enacting Laws 1937, c. 379, amending §2060(3), legislature did not intend to repeal tax limitation provision found in §§2573, 2067 or 1006. Op. Atty. Gen. (519o), Nov. 1, 1937.

**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 out-

standing 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*, 188M79, 246NW547. See Dun. Dig. 9334, 9336.

Relief accorded taxpayer as to taxes illegally assessed or collected. 15MinnLawRev692.

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

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

A salary schedule adopted by board of education of Duluth prior to enactment of the Teacher's Tenure Act does not determine the yearly salary to be paid its teachers after such act went into effect. The power of defendant to contract for the yearly salary of teachers is limited to the funds it is authorized to provide for conducting the schools for the same period. Teachers are charged with knowledge of extent of its power to contract. *Sutton v. B.*, 197M125, 266NW447. See Dun. Dig. 8672.

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.

School district may insure its buildings in a mutual insurance company providing contingent liability is held within maximum indebtedness of school district. Op. Atty. Gen., Jan. 9, 1934.

This section is applicable to board of education of Duluth. Op. Atty. Gen. (161b-10), Dec. 3, 1934.

Authority of villages to purchase personal property under conditional sales contract and necessity for bids, discussed. Op. Atty. Gen. (707a-15), Dec. 4, 1934.

City has no authority to issue warrants in payment of bonds without money in treasury for their payment or will be available under current tax levies. Op. Atty. Gen. (476c-4), Nov. 7, 1935.

Neither village council nor board of park commissioners may issue warrants where there is no money immediately available in treasury for their payment, unless in anticipation of current tax levy sufficient to cover, and anticipation warrants may not be discounted under any circumstances. Op. Atty. Gen. (476c-2), Apr. 19, 1937.

A tax for payment of that which is chargeable to village of Grand Rapids in making street improvement is to be deemed part of general corporation tax, and is subject to statutory limitation of 2% of assessed valuation of taxable property. Op. Atty. Gen. (396g-7), May 21, 1937.

Surplus derived from taxes levied for general school purposes may be used for paying part of cost of constructing new school building, where bond issue voted is inadequate. Op. Atty. Gen. (159b-2), Nov. 16, 1937.

Section is intended to apply to only those situations where municipality possesses general power to make a contract but exceeds debt limitation provided for, and does not apply to illegal purchase of a fire truck on a 30 month conditional sales plan. Op. Atty. Gen. (476B-7), April 3, 1939.

A municipality may not incur an indebtedness by issuing warrants for water and sewer expenses in excess of amount of money actually on hand and in process of collection from taxes actually levied. Op. Atty. Gen. (476c-4), Sept. 1, 1939.

This section cannot be avoided by naming a purchase on monthly installments as a lease. Op. Atty. Gen. (707b-2), Sept. 14, 1939.

#### 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.

In suit by state to quiet title based upon tax sale, defendant could not collaterally attack judgment and sale because section of land involved was assessed separately as sixteen 40-acre tracts, owned by one man, and delinquent tax list included whole section in a single description, and judgment and sale were based on single description. *State v. Aitkin County Farm Land Co.*, 204M495, 284NW63. See Dun. Dig. 9355, 9361.

#### 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.

Failure of county treasurer to comply with this section is not a defense in action against taxpayer to collect taxes. Op. Atty. Gen., Jan. 22, 1934.

Necessity for bids and awarding of contracts for publication and printing to lowest bidder are not abrogated by NRA code. Op. Atty. Gen. (707a-9), Dec. 31, 1934.

County board has no control over expenditure made or with designation of newspaper. Op. Atty. Gen. (277a-11), Feb. 25, 1936.

Money and credits tax should be included in published list. Op. Atty. Gen. (614f), Sept. 2, 1937.

#### 2073-2. Same—Form and contents.

Publication must list tax on money and credits. Op. Atty. Gen. (614i), Jan. 7, 1939.

County treasurer cannot exclude from a personal property tax list, including money and credit valuation and the money and credit tax, that information of a taxpayer who has already paid his tax. Op. Atty. Gen. (614i), Jan. 18, 1939.

#### 2073-3. Same—Proof of publication.

Where personal property tax list is given for publication to a newspaper without any agreement as to charges, the rate fixed by law as the limit of compensation becomes a part of the contract. Op. Atty. Gen. (277a-11), Feb. 25, 1936.

### COLLECTION BY TREASURER

#### 2074. Lists to treasurer.

Taxes on realty are assessed for calendar year as of May 1, upon which date they attach as a lien or charge thereon, and various steps in assessment and levy of taxes, whenever finished, relate back to and take effect as of May 1st. *Merle-Smith v. M.*, 195M313, 262NW865. See Dun. Dig. 9161.

#### 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.

Neither state nor any governmental subdivision has authority to accept home owner's loan bonds in payment of taxes or assessments. Op. Atty. Gen., Nov. 22, 1923.

After a weed lien has been assessed and entered on tax books, it becomes a part of the taxes, and treasurer has no authority to accept part payment thereof, or to accept payment of general taxes or weed lien separately because owner wishes to contest lien. Op. Atty. Gen. (322a-2), June 3, 1939.

#### 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.

Board may compel high school attendance of child under 16 who has completed eighth grade. Op. Atty. Gen. (169b), Nov. 29, 1937.

Person who pays taxes on his undivided interest has a good title to that interest regardless of whether owner of other interest ever pays taxes. Op. Atty. Gen. (412a-9), Aug. 26, 1938.

#### 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.

**2083. Apportionment and distribution of funds.**

Where there has been a tax settlement or apportionment of taxes collected, whereby the amount due to each taxing district for taxes levied by it is determined, each taxing district is entitled to its full apportioned share, and acceptance of a less amount over a period of years does not operate as a waiver or estoppel to claim the balance of its share. *Normania Tp. v. Y.*, 286NW881. See Dun. Dig. §261.  
 Loss of tax funds in depositaries is to be prorated and deducted from current settlement for past losses, including special school aid, the county not being liable. Op. Atty. Gen. (168c), May 4, 1937.

**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. 23, 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.

Penalties and interest collected on account of taxes levied on behalf of city of Minneapolis by special assessment or otherwise upon real estate in such city for local purposes should be paid over to treasurer of city. Op. Atty. Gen. (505), Aug. 14, 1936.

This section is not applicable to apportionment of penalties and interest collected on account of taxes levied on personal property, but under the general rule penalties and interest on personal property taxes levied on behalf of city of Minneapolis for city purposes should be paid over to city treasurer, and penalties and interest collected on personal property taxes levied by board of education should not be paid to city. Id.

Taxes levied upon real estate in Minneapolis by board of education for all school purposes are not levied for local purposes, and penalties and interest collected should not be apportioned to city. Id.

County is not liable for penalties and interest on special assessments collected by county treasurer, but such treasurer is liable to municipalities and owes duty to account therefor for a period of six years last past. Op. Atty. Gen. (408c), Apr. 18, 1933.

**2087-1. Additional appropriations by state to certain cities and villages where property exempt became subject to gross earnings tax equals or is greater than taxable value of other property—Amounts.**

Any town within whose boundaries, the nontaxable lands are equal to the taxable lands due to Gross Earnings Tax Law, the state auditor shall adjust the deficiency. Laws 1939, c. 324.

**2087-5. Certain towns to receive special relief.—**

Whenever the value of the property within the boundaries of the corporate limits of any town in the state of Minnesota, which is exempt from local taxation because taxes thereon are paid into the state treasury under the provisions of the gross earnings tax law, is equal to or greater than the taxable value of all real and personal property, exclusive of money and credits

within any such town, then such town shall be entitled to receive from the state treasury, in addition to all other taxes received thereby, such an amount as would be produced by computing a tax of one-third of the current tax rate for town purposes upon such property so exempt from local taxation, provided, that the amount which any such town shall receive shall not exceed \$1,500 in any year. (Act Apr. 20, 1939, c. 324, §1.)

**2087-6. Same—Shall make applications to state auditor.—**Any such town desiring to take advantage of this act shall apply in writing therefor to the state auditor, and such application shall contain the following facts:

(a) The valuation of the property within such town but not within the corporate limits of any city or village therein subject to taxation under the provisions of the gross earnings tax law.

(b) The value of all real and personal property, exclusive of moneys and credits, within any such town subject to local taxation.

(c) The rate of taxation in mills for town purposes for the current and next preceding year.

(d) The total amount spent for all town purposes by such town for the last preceding year, and an estimate of the expenses for town purposes for the current year.

(e) The number of persons actually residing in said town but not within the corporate limits of any city or village located therein, who are members of an immediate family in which some member thereof is employed in or on the property on which the gross earnings tax is paid.

The information called for in paragraph (a) shall be ascertained and certified upon the request of any such town by the railroad and warehouse commission; and information called for in paragraphs (b) and (c) shall be certified by the county auditor of the county or counties in which any such town is situated, and the information called for in paragraphs (d) and (e) shall be certified by the clerk of any such town. (Act Apr. 20, 1939, c. 324, §2.)

**2087-7. Same—State auditor to determine facts.—**

The state auditor shall immediately consider said matter and determine whether or not any such town is entitled to aid under the provisions of this act, and if he finds that any such town is entitled to aid he shall determine the amount to which it is entitled within the limitations of this act, and shall draw his warrant upon the state treasurer in favor of any such town, for the amount to which it is so entitled, and deliver the same thereto, taking proper vouchers and receipts therefor. (Act Apr. 20, 1939, c. 324, §3.)

**2087-8. Same—Payments to be made pro rata.—**

Not more than \$4,500 in the aggregate shall be disbursed in any one calendar year to all the towns entitled to aid under the provisions of this act, and in the event that said amount of \$4,500 shall be insufficient to pay the full amount to which said township shall be entitled annually hereunder, the state auditor shall apportion the said sums pro rata to each of said towns. (Act Apr. 20, 1939, c. 324, §4.)

**2087-9. Same—Appropriation.—**

The sum of \$4,500 for the year ending June 30, 1940, and the sum of \$4,500 for the year ending June 30, 1941, or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury not otherwise appropriated to be used to make the payments provided for in this act. (Act Apr. 20, 1939, c. 324, §5.)

**2087-10. Same—To be in force for ten years.—**

This act shall be in force for ten years from and after April 22, 1939. (Act Apr. 20, 1939, c. 324, §6.)

**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.

Default in payment of personal property tax before Mar. 1, cannot be removed by subsequently paying ½ thereof and penalty prior to July 1. Op. Atty. Gen., Mar. 19, 1934.

If half of amount of tax is not paid before March 1, penalty is figured on entire amount, and taxpayer has no right to pay tax in two installments though amount thereof exceeds \$10. Op. Atty. Gen. (421a-5), March 9, 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 compiled 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.)

Op. Atty. Gen. (421a-3), July 30, 1934; note under §2097. 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.

Procedure where answer is interposed. Op. Atty. Gen. (421a-5), May 6, 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.

Sheriff should collect a penalty of 8% on personal property tax in view of amendment to §2088. Op. Atty. Gen. (390c-13), Mar. 26, 1936.

Distress under §2199-2 is in addition to and distinct from distress as provided in this section. Op. Atty. Gen. (421a-5), May 11, 1933.

#### 2091. Payment under protest.

Relief accorded taxpayer as to taxes illegally assessed or collected. 15MinnLawRev692.

#### 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.

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. Op. Atty. Gen. (614f), Jan. 7, 1935.

#### 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.

Personal property tax judgment for last half of taxes is payable to treasurer except when execution is in sheriff's hands. Clerk's fees are to be entered and included in such judgment. Op. Atty. Gen. (421a-8), July 30, 1934.

In counties wherein clerk is to receive salary in full compensation for all services, fees allowed clerk for issuing citations and perfecting judgment in cases of delinquent personal property taxes must be remitted to county when collected. Op. Atty. Gen. (390c-1), Aug. 19, 1935.

Where clerk of district court is paid under Laws 1919, c. 229, he is not entitled to any fees for services rendered to county, in any suit in which county is a party, whether such suits be criminal or civil, and he is not entitled to fee when county recovers fees against opposing party in suit. Op. Atty. Gen. (144b-15), Aug. 25, 1937.

#### 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.

County board may not authorize collection of delinquent personal property taxes on commission basis. Op. Atty. Gen. (421a-5), Mar. 7, 1935.

#### 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.

Personal property tax judgment is not a lien against judgment debtor's statutory homestead. Op. Atty. Gen. (421a-9), Sept. 14, 1934.

State auditor has no authority to execute a release of judgment outstanding against homestead property, but executive council may authorize such claim to be released by attorney general. Op. Atty. Gen. (421-8), Dec. 15, 1937.

Personal property tax judgment outlaws in ten years. Op. Atty. Gen. (421a-8), Dec. 31, 1937.

#### 2103. Satisfaction of judgment.

Op. Atty. Gen. (421a-8), July 30, 1930; note under §2097.

### 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.

A taxpayer after 1933 taxes became delinquent and against whom a tax judgment had been issued may pay half of delinquent taxes together with penalties and costs to date at any time before premises are sold. Op. Atty. Gen. (412a-17), Apr. 2, 1935.

Payment by check does not pay the tax unless check is honored at bank, and where check is not paid, it is

duty of auditor to put back on tax rolls item marked paid. Op. Atty. Gen. (21f), July 3, 1935.

Receipt for second half of real estate taxes for current year cannot properly be issued until first half of taxes has been paid. Op. Atty. Gen. (474g-1), Aug. 15, 1935.

Payment without penalty may be made on following day when May 31st falls on Sunday. Op. Atty. Gen. (412a-9), May 19, 1936.

Where memorial day falls on Sunday, custom of observing following day as memorial day does not warrant treasurer in accepting payment of first half of taxes without penalty on June 1st. Op. Atty. Gen. (276f), May 26, 1937.

#### 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. 173M404, 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 received 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.)

### DELINQUENCY OF REAL ESTATE TAXES.

#### 5. Penalties for non-payment.

In addition to original amount of taxes for 1932 taxpayer must also pay additional penalty of 8% together with interest at 8% from first day of March, 1934. Op. Atty. Gen., Nov. 21, 1933.

Additional 3% penalty accruing on taxes on first Monday in January was abolished by Laws 1933, c. 121, §2, amending this section. Op. Atty. Gen., Nov. 27, 1933.

Amount of interest to be collected in redemption of land sold under Laws 1935, c. 387, for 1930 taxes in May, 1932, bid in by state and thereafter taxes for 1931, '32, '33, and '34 were not paid, and attached to state's judgment for the 1930 taxes and sold to an actual purchaser on June 30, 1936, for ¼ of taxes for 1930 to 1934 in-

clusive, is 10% on 1930 and 1931 taxes from June 30, 1936, and interest of 8% on  $\frac{1}{4}$  of the 1932, 1933, and 1934 taxes from June 30, 1936. Op. Atty. Gen. (425b-2), Apr. 4, 1938.

**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.)

Op. Atty. Gen., Nov. 21, 1933; note under §2105. 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.

Provision as to interest held not applicable to 1930 real estate taxes. Op. Atty. Gen., Dec. 27, 1933.

Interest on original amount of taxes and costs should be computed from the first day of March to date of the entry of judgment and included therein, and in computing interest to date of sale, interest should be figured from March 1 to date of sale on original amount of taxes and costs thereon. Id.

Interest is not to be included in amount of taxes published in delinquent tax list of 1932 taxes from Mar. 1, 1934, list being required to be published before that date. Op. Atty. Gen., Jan. 19, 1934.

Interest on 1932 taxes included in judgment and figured to date of sale is to be calculated on basis of two-thirds of 1% for any month or larger fraction thereof. Op. Atty. Gen., Mar. 13, 1934.

This section is not retroactive. Op. Atty. Gen. (412a-9), May 31, 1934.

Eight per cent rate specified by Laws 1933, c. 121, is applicable only to taxes for 1932 and subsequent years. Id.

Interest on 1932 taxes after May sale is to be figured from Mar. 1, 1934, on original amount of taxes and costs. Op. Atty. Gen. (412a-8), June 1, 1934.

Interest should be charged on original amount of taxes for year 1932 and costs at the rate of 8% per annum from 1st day of March, 1934. Op. Atty. Gen. (423c), Aug. 29, 1934.

Amounts paid for taxes for each year included in state assignment certificate need not be stated separately, nor rate of interest thereon, but statement of amount necessary to redeem for taxes of 1928 to 1933 should provide for interest from date of sale in May, 1935, on 1928 and 1929 taxes at rate of 12% per annum, and interest on 1930 and 1931 taxes from such date at rate of 10% per annum, and interest on 1932 and 1933 taxes from such date at rate of 8% per annum. Op. Atty. Gen. (425c-13), Aug. 23, 1935.

Last paragraph of §2105-1 is applicable to taxes for 1932 and subsequent years, and interest should be charged on original amount of taxes from March 1, following

year in which taxes become due. Op. Atty. Gen. (425b-2), Dec. 18, 1935.

Mason's Minn. Stat. 1927, §2188, providing that 12 per cent interest shall be given upon the lien allowed to the holder of an invalid certificate for taxes paid by him, was amended by Laws 1931, c. 315, and Laws 1933, c. 121, §3 (§2105-1). Bratrud v. S., 203M463, 281NW809. See Dun. Dig. 9279, 9331.

After November 1, taxpayers may at any time before next tax judgment sale pay an installment of 25% or more, together with all accrued penalties and costs on such installment, and prior to March 1 of year following year in which taxes become due no interest accrues, but taxpayer must, on or after November 1 of year in which taxes are due pay a penalty of 8%. Op. Atty. Gen. (412a-10), Nov. 10, 1937.

Amount of interest to be collected in redemption of land sold under Laws 1935, c. 387, for 1930 taxes sold in May, 1932, bid in by state and thereafter taxes for 1931, '32, '33, and '34 were not paid, and attached to state's judgment for the 1930 taxes and sold to an actual purchaser on June 30, 1936, for  $\frac{1}{4}$  of taxes for 1930 to 1934 inclusive, is 10% on 1930 and 1931 taxes from June 30, 1936, and interest of 8% on  $\frac{1}{4}$  of the 1932, 1933, and 1934 taxes from June 30, 1936. Op. Atty. Gen. (425b-2), Apr. 4, 1938.

Computation of penalties and interest on ditch liens. Op. Atty. Gen., (9211), Dec. 1, 1938.

**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 §52128, 2129, 2177. Land sold for 1933 taxes is not to be included in delinquent tax list. Op. Atty. Gen. (412a-13), Dec. 18, 1935.

Parcels of land as to which there has been confession of judgment under §2176-11 need not be included in delinquent tax list after default under §2106. Op. Atty. Gen. (314b-22), June 10, 1937.

#### THE DELINQUENT LIST GENERALLY

Delinquent tax lands of years 1933 to 1935, and judgments thereon. Laws 1933, c. 310.

##### 2. What taxes included.

Where judgment has been secured on account of 1931 taxes but land has not been sold for taxes, exception provided for in statute is not operative and description of premises should be included in delinquent tax list of 1932 taxes. Op. Atty. Gen., Jan. 17, 1934.

1931 taxes are not to be included in delinquent tax list where judgment has already been secured. Op. Atty. Gen., Jan. 22, 1934.

Description of tract of land against which there is a judgment for 1931 taxes and also a judgment for 1932 taxes and which was sold for delinquent taxes for 1932 at annual delinquent tax sale in May, 1934, should be included in delinquent tax list for 1933 delinquent taxes. Op. Atty. Gen. (412a-13), Jan. 23, 1935.

Description of a tract of land upon which all taxes are paid except for 1931 and 1933 must be included in delinquent tax list for delinquent taxes for 1933. Id.

Where judgment is declared invalid for failure to comply with §2109, taxpayer may not confess judgment pursuant to §2176-11, and taxes should be included in delinquent list filed pursuant to §2106. Op. Atty. Gen. (412a-13), Apr. 29, 1938.

##### 3. Lands bid in for state not included.

Where 1932 taxes are delinquent on land sold to state for taxes for 1926, 1927, 1928, 1929 or 1930 and not assigned by state or redeemed and taxes for 1931 became attached to prior sale, it is not necessary to include such parcel in delinquent tax list. Op. Atty. Gen., Jan. 17, 1934.

##### 6. Errors, irregularities or omissions not fatal.

In suit by state to quiet title based upon tax sale, defendant could not collaterally attack judgment and sale because section of land involved was assessed separately as sixteen 40-acre tracts, owned by one man, and delinquent tax list included whole section in a single description and judgment and sale were based on single description. State v. Aitkin County Farm Land Co., 204 M495, 284NW63. See Dun. Dig. 9355, 9361.

Tax judgment including several descriptions in a description of one tract are probably void. Op. Atty. Gen. (425b-3), Sept. 23, 1936.

#### 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, 183M79, 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.

Necessity for bids and awarding of contracts for publication and printing to lowest bidder are not abrogated by NRA code. Op. Atty. Gen. (707a-9), Dec. 31, 1934.

County board has no authority to pay newspapers for "introduction" or for any other "heading" at top of notice and list, headings at tops of columns of descriptions, or for the "termination" or certification by county auditor, or for such other matters as may be included in notice and list, compensation being confined to descriptions contained in list. Op. Atty. Gen. (314b-22), Feb. 25, 1935.

County board cannot compensate newspapers for description not published which has been removed from list prior to first publication. Op. Atty. Gen. (314b-22), Mar. 5, 1935.

Acceptance of bid by county board for publishing of official proceedings of county and official financial statement of county "and all other notices and publications required by law to be published by said county during year 1938" did not bind county with respect to publishing delinquent personal property tax lists under §2108 and §2109, or notices under §2160 and §2161, or any other notices or publications not within contemplation of board. Op. Atty. Gen. (700a-9), Apr. 11, 1938.

"Each description", applies to each description as assessed even though covering more than one division of a section. Op. Atty. Gen. (412a-23), April 17, 1939.

**2109. Designation of newspaper.****6. Filing certified copy of resolution.**

Where judgment is declared invalid for failure to comply with §2109, taxpayer may not confess judgment pursuant to §2176-11, and taxes should be included in delinquent list filed pursuant to §2106. Op. Atty. Gen. (412a-13), Apr. 29, 1938.

**9. Contract for publishing list—lowest bidder.**

Where all of newspapers in county agreed that only one would bid for county publication, and this fact was made known to county board, and a bid for highest legal rate was accepted on condition that publication be made in form of supplement and be distributed by all papers in county, bidder was entitled to recover whole contract price as against claim of county that agreement was fraudulent and illegal. Brainerd Dispatch Newspaper Co. v. C., 196M194, 264NW779. See Dun. Dig. 9321.

Although all newspapers of county have an understanding that they will make no publication for county only at legal rates and have divided up printing and submitted bids according to such understanding, mandamus will not lie to compel newspaper designated by county auditor to publish delinquent tax list at legal rate. Op. Atty. Gen. (314b-22), Feb. 9, 1937.

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

Publication of delinquent tax list legalized. Laws 1939, c. 370.

**1. Jurisdictional—Statute must be strictly followed.**

Errors in numbering of pages of newspaper will not invalidate publication. Op. Atty. Gen. (314b-22), Mar. 9, 1935.

Insertion of words "published as news only" in second publication of delinquent tax list might be held by the court to be an incurable jurisdictional defect. Op. Atty. Gen. (412a-13), April 4, 1939.

**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.

**2111. Publication corrected.**

Insertion of words "published as news only" in second publication of delinquent tax list might be held by the court to be an incurable jurisdictional defect. Op. Atty. Gen. (412a-13), April 4, 1939.

**2115. What defects jurisdictional.**

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

**1. General statement.**

Tax judgment including several descriptions in a description of one tract are probably void. Op. Atty. Gen. (425b-3), Sept. 29, 1936.

Insertion of words "published as news only" in second publication of delinquent tax list might be held by the court to be an incurable jurisdictional defect. Op. Atty. Gen. (412a-13), April 4, 1939.

**5. Collateral attack—General statement.**

In proceeding to obtain judgment for delinquent taxes every objection to enforcement of taxes appearing on list filed should be litigated and judgment thereon be final and conclusive, except against objection of payment or exemption, if court acquires jurisdiction. State v. Aitkin County Farm Land Co., 204M495, 284NW63. See Dun. Dig. 9333.

In suit by state to quiet title based upon tax sale, defendant could not collaterally attack judgment and sale because section of land involved was assessed separately as sixteen 40-acre tracts, owned by one man, and delinquent tax list included whole section in a single description and judgment and sale were based on single description. Id. See Dun. Dig. 9355, 9361.

**2115-1. Publication of delinquent tax list validated.**

—In any case where the publication of the annual notice and list of delinquent real estate taxes was regularly made as provided by law at any time before the passage of this act, except that in the second issue of such publication there was inserted immediately after the headline "Delinquent Tax List", and preceding the notice and list, the following: "(Published as news only.)", such publication is hereby legalized and made valid; provided, that this shall not affect any action pending at the time of the passage of this act. (Act Apr. 21, 1939, c. 370.)

**81.**

There would be serious doubt of constitutionality of this statute if it was intended to cure jurisdictional defects in publication of delinquent tax list. Op. Atty. Gen. (412a-13), April 28, 1939.

**2116. Who may answer—Form.**

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

Relief accorded taxpayer as to taxes illegally assessed or collected. 15MinnLawRev692.

**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, 188M79, 246NW547. See Dun. Dig. 9334, 9336.

**2117. Judgment when no answer—Form—Entry.****1/2. In general.**

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

Proposed changes in real estate tax judgment book and copy real estate tax judgment book consisting in listing one entry on each sheet and in using loose leaf books, although probably legal, should not be made until validity is upheld by supreme court. Op. Atty. Gen. (425d-2), Oct. 7, 1926.

**12. Effect as a lien.**

A tax title is a new and original grant from the state as sovereign of title in fee, which is paramount as against world and which supersedes and bars all other titles, claims and equities, including claims by adverse possession. Hacklander v. P., 204M260, 283NW406. See Dun. Dig. 9370b.

**2118. Proceedings on answer.**

Town may not employ attorney to appear in proceeding 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.**

Evidence held not to show that Federal Reserve Bank of Minneapolis was unlawfully or inequitably assessed. State v. Federal Reserve Bank, (DC-Minn), 25FSupp14.

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.

Owner is entitled to have his assessment so reduced as to avoid overvaluation. State v. Oliver Iron Mining Co., 198M385, 270NW609. See Dun. Dig. 9210.

Finding of court as to value of several mines in less amounts than as assessed by tax commission was binding. Id.

Where there were not sufficient sales to establish a sale or market price, for land, court properly heard and considered judgment and opinion of men acquainted with properties, their adaptability for use, and all other facts and circumstances having to do with value. Id.

While burden rests upon taxpayer burden is met when competent and credible evidence comes into case sufficient to overcome prima facie case made for state by introduction of delinquent tax list. Id.

Rule guiding court in review of findings of trial court in tax proceedings is same as that applied in ordinary civil actions, and to justify interference it must appear that they are clearly and manifestly against evidence. Id. See Dun. Dig. 9535.

Appointment of national bank conservator held not destructive of bank's corporate entity, especially where reorganization resulted and bank thereafter continued to function under its original charter, as affecting value of

stock for tax purposes. *Freeborn County v. F.*, 199M 29, 270NW908. See *Dun. Dig.* 9207.

Evidence held to sustain taxpayer's claim that bank stock was assessed "at a valuation greater than its real and actual value." *Id.*

**2123. Opening judgment.**—The court wherein any tax judgment is entered may, at any time, upon satisfactory proof, vacate and set aside such judgment on the ground that the tax in question was paid before judgment was rendered, or that the land in question was not subject to taxation. Application to open such judgment may be summary, upon such notice to the purchaser and county auditor as the court may direct; and, if a defense is allowed to be interposed, the case shall proceed in all respects as in defended cases. (As amended Apr. 20, 1939, c. 311.)

**2124. Copy of judgment to auditor.**

Proposed changes in real estate tax judgment book and copy real estate tax judgment book consisting in listing one entry on each sheet and in using loose leaf books, although probably legal, should not be made until validity is upheld by supreme court. *Op. Atty. Gen.* (425d-2), Oct. 7, 1936.

**2125. Clerk's fees.**

Clerk of district court is entitled to fee of 15c per description for entering real estate tax judgments where fees of the clerk are not fixed by special law. *Op. Atty. Gen.* (144b-15), June 4, 1935.

Clerk of court paid salary under Laws 1919, Chap. 229, which specifically excepts real estate tax proceedings, is entitled to fees set forth in §2125 in connection with answers in delinquent real estate tax proceedings. *Op. Atty. Gen.* (144b-15), July 1, 1936.

**2126. Payment before judgment.**

A taxpayer after 1933 taxes became delinquent and against whom a tax judgment had been issued may pay half of delinquent taxes together with penalties and costs to date at any time before premises are sold. *Op. Atty. Gen.* (412a-17), Apr. 2, 1935.

**DEFENSES OR OBJECTIONS TO TAXES ON REAL ESTATE**

**2126-1. Defense or objection to tax on land—Service and filing.**—Any person having any estate, right, title or interest in or lien upon any parcel of land who claims that such property has been partially, unfairly or unequally assessed, or that such parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied, may have the validity of his claim, defense or objection determined by the district court of the county in which the tax is levied by serving copies of a petition for such determination upon the county auditor, county treasurer and the county attorney and filing the same, with proof of such service, in the office of the clerk of the district court on or before the first day of June of the year in which such tax becomes payable. (Act Apr. 25, 1935, c. 300, §1.)

This statute merely emphasizes the necessity of uniformity and non-discrimination, which factors are not inconsistent with determination of value on a market value basis, and at most it is a mandate to the assessor and the board to give due weight to market value of land comparable in character, quality and location, so there will be uniformity in the values. *State v. Federal Reserve Bank*, (DC-Minn), 24FSupp14.

Lessees obligated by leases to pay all taxes may petition and claim invalidity of tax, and it is not necessary to make landowners parties. *International Harvester Co. v. S.*, 200M242, 274NW217. See *Dun. Dig.* 9330.

**2126-2. Form petition—Several parcels.**—Such petition need not be in any particular form, but shall clearly identify the land involved and shall set forth in concise language the claim, defense or objection asserted. Several parcels of land in or upon which the petitioner has an estate, right, title, interest or lien may be included in the same petition. (Act Apr. 25, 1935, c. 300, §2.)

**2126-3. Payment of portion of tax.**—Before filing such petition, and as a condition precedent thereto, the petitioner shall pay to the county treasurer at least 50 per cent of the tax levied for said year against the property involved, unless permission to file such petition without such payment is obtained as herein

provided, which payment shall be endorsed by the county treasurer on the original petition before the same may be filed. Permission to file such petition without such payment may be obtained as herein provided. The petitioner, upon ten days' notice to the county attorney and to the county auditor, given at least ten days prior to said 1st day of June, may apply to the court for permission to file said petition without such payment, and if it is made to appear (1) that the proposed review is to be taken in good faith, (2) that there is probable cause to believe that the property may be held exempt from the tax levied or that the tax may be determined to be less than 50 per cent of the amount levied, and (3) that it would work a hardship upon petitioner to pay 50 per cent of such taxes, the court may permit the petition to be filed without such payment, or may fix a lesser amount to be paid as a condition precedent to the right to file the same. Payment of the amount so fixed shall be endorsed on the order by the county treasurer.

If the court shall allow the filing of the petition without such payment or shall fix the amount to be paid, then the matter shall stand for trial without further payment. In all other cases, if the proceedings instituted by the filing of such petition have not been completed before November 1st next following the filing of such petition, the petitioner shall pay 50 per cent of the remaining unpaid taxes for the current year or 50 per cent of the remaining unpaid taxes based upon the probable value of said property, if such value has been found by the court upon application as aforesaid. Failure to make payment of such additional amount shall operate automatically to dismiss the petition and all proceedings thereunder unless such payment is waived by an order of the court upon application as hereinafter provided. The petitioner, upon 10 days' notice to the county attorney and to the county auditor, given at least 10 days prior to said November 1st, may apply to the court for an order waiving the requirement of such additional payment upon the same grounds as set forth herein for relief from the requirement to pay the original 50 per cent of such taxes, except that he must show that the tax may be determined to be less than 75 per cent of the amount levied. The county treasurer shall issue duplicate receipts for such additional payment, one of which shall be filed by the petitioner in such proceeding. (Apr. 25, 1935, c. 300, §3; Apr. 26, 1937, c. 483, §1.)

**2126-4. Treasurer must stamp tax lists.**—Upon the filing of such petition the treasurer shall write or stamp opposite the description of such parcel on the tax list the notation "Petition for review filed" and such parcel shall not be included in the delinquent tax list for said year. (Act Apr. 25, 1935, c. 300, §4.)

**2126-5. Trial of issues.**—Such petition, without any answer, return or other pleading thereto, shall stand for trial at any general term in session when the same is filed, or if the court be not then in session, then at the next general or special term appointed to be held in said county; and if no such term be appointed to be held within 30 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 in which said taxes are levied shall take charge of and prosecute such proceedings, but the county board may employ any other attorney to assist him. At the term at which such petition comes on for trial it shall take precedence of all other business before the court. The court shall without delay summarily hear and determine the claims, objections or defenses made by said petition and shall direct judgment accordingly, and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits.

Any time after the filing of such petition and before the trial of the issues raised thereby, when the defense or claim presented is that the property has been

partially, unfairly or unequally assessed, or that such parcel has been assessed at a valuation greater than its real or actual value, the attorney representing the state in said proceedings may serve on the petitioner or his attorney, and file with the clerk of the district court, an offer to reduce the valuation of any tract or tracts to a valuation set forth in the offer. If, within ten days thereafter, the petitioner or his attorney shall give notice in writing to the county attorney that the offer is accepted, he may file same with proof of such notice, and thereupon, the clerk shall enter judgment accordingly. Otherwise the offer shall be deemed withdrawn and evidence thereof shall not be given; and if a lower valuation than specified in said offer be not found by the court, no cost or disbursements shall be allowed to the petitioner, but the costs and disbursements of the state including interest at 6 per cent on the tax based on the amount of such offer from and after the 1st day of November of the year such taxes are payable, shall be taxed in its favor and included in the judgment and when collected shall be credited to the county revenue fund, unless the said taxes were paid in full before the 1st day of November of the year in which such taxes were payable in which event interest shall not be taxable. (Act Apr. 25, 1935, c. 300, §5; Apr. 26, 1937, c. 483, §2.)

Neither party is entitled to a jury trial. Op. Atty. Gen. (260a-13), June 22, 1937.

**2126-6. Other statutes to apply.**—Mason's Minnesota Statutes of 1927, Sections 2119, 2120, 2122, 2124, 2125 and 2126, shall apply insofar as the same are applicable thereto, except as herein otherwise provided. References in said sections to "answers" shall be understood as referring to petitions, and references to the "delinquent list" or "list" as referring to the tax list filed with the county treasurer. (Act Apr. 25, 1935, c. 300, §6.)

Clerk of court paid salary under Laws 1919, Chap. 229, which specifically exempts real estate tax proceedings, is entitled to fees set forth in §2125 in connection with answers in delinquent real estate tax proceedings. Op. Atty. Gen. (144b-15), July 1, 1936.

**2126-7. Judgment—Amount—Costs**—Judgment shall be for the amount of the taxes for the year as the court shall determine the same, less the amount paid thereon, if any. If the tax is sustained in the full amount levied, costs and disbursements shall be taxed and allowed as in delinquent tax proceedings and shall be included in the judgment. If the tax so determined shall be less than the amount thereof as levied, the court may in its discretion award disbursements to the petitioner, which shall be taxed and allowed and be deducted from the amount of the taxes as determined. If there be no judgment for taxes, a judgment may be entered determining the right of the parties and for the costs and disbursements as taxed and allowed. (Act Apr. 25, 1935, c. 300, §7.)

**2126-8. Penalties and interest.**—If the tax be sustained in full as levied, the judgment shall include any penalties and/or interest which have then accrued thereon for failure to pay the same, or any part thereof, at the time required by law. If the tax be reduced, no penalties and/or interest shall be included in the judgment because of the failure to pay such reduced tax prior to the entry thereof. Such judgment shall be subject to such interest and/or penalties as would under the law attach to the tax embraced therein after the entry thereof. (Act Apr. 25, 1935, c. 300, §8.)

**2126-9. Certified copies to auditor and treasurer.**—Upon entry of judgment a certified copy thereof shall be delivered to the auditor and to the treasurer if the tax list be still in the treasurer's possession, who shall correct the tax list and assessment rolls in accordance with the judgment, writing or stamping opposite such parcel in the tax list a notation "Judgment entered" and the date thereof. (Act Apr. 25, 1935, c. 300, §9.)

**2126-10. To be entered in judgment book.**—If such judgment has not then been paid, the auditor

shall enter the same in the certified copy of the real estate tax judgment book received by him pursuant to Mason's Minnesota Statutes of 1927, Section 2124, for the year for which such taxes were levied with the same effect as if judgment had been entered in said proceedings, adding thereto any interest and/or penalties that have accrued to the date of such entry, and in the event such judgment shall be entered subsequent to the publication of the notice of sale of said taxes on such delinquent list, the same shall be immediately advertised and sold. (Act Apr. 25, 1935, c. 300, §10.)

**2126-11. May pay full tax.**—Where a petition has been filed as herein provided, the taxes levied or any balance thereof may be paid without such payment waiving any of the claims, defenses or objections set forth in such petition and such proceeding shall continue as if such payment had not been made. (Act Apr. 25, 1935, c. 300, §11.)

**2126-12. Refunds of over-payment.**—If upon final determination the petitioner has paid more than the amount so determined to be due, judgment shall be entered in favor of said petitioner for such excess, and upon filing a copy thereof with the county auditor he shall forthwith draw a warrant upon the county treasurer for the payment thereof provided that, with the consent of the petitioner, the county auditor may, in lieu of drawing such warrant, issue to the petitioner a certificate stating the amount of such judgment, which amount may be used to apply upon any taxes due or to become due for the taxing district or districts whose taxes or assessments are reduced (or their successors in the event that a reorganization or reincorporation of any such taxing district). In the event the auditor shall issue a warrant for refund or certificates as hereinbefore provided he shall charge the amount thereof to the state and other taxing districts in proportion to the amount of their respective taxes included in said levy and deduct the same in the subsequent distribution of any tax proceeds to the state or such taxing districts, and upon receiving any such certificate in payment of other taxes, the amount thereof shall be distributed to the state and other taxing districts in proportion to the amount of their respective taxes included in said levy provided that if in said judgment the levy of one or more of said districts be found to be illegal, to the extent that the tax so levied is reduced on account of said illegal levies, the amount to be charged back as aforesaid shall be charged to said districts and the amount thereof deducted from any distributions thereafter made to them. (Act Apr. 25, 1935, c. 300, §12.)

**2126-13. Judgment to be final.**—The judgment entered in such proceedings, except for the right of review on appeal, shall be final and conclusive as to the taxes involved therein. No defense or objection which might have been interposed by proceedings hereunder shall be interposed in delinquent tax proceeding except the defense that the taxes levied have been paid or that the property is exempt from the taxes so levied. (Act Apr. 25, 1935, c. 300, §13.)

**2126-14. Effective January 1, 1936.**—This act shall not become effective until January 1, 1936, and shall not affect any delinquent tax proceeding then pending. (Act Apr. 25, 1935, c. 300, §14.)

#### TAX SALES

##### 2127. Mode of sale.

It is not policy of law that any man should forfeit his property because from inability, or even neglect, he has failed to meet his tax engagements punctually. Rather, it is for the welfare of every community that the law should favor the citizen in all reasonable measures for the preservation of his estate against losses which might result from his misfortunes or his faults, consistent with justice to others and to a proper regard for interest of public. State v. Hubbard, 203M111, 280NW9. See Dun. Dig. 9368.

It is policy of court to construe strictly any proceeding which divests a landowner of his title, and this policy manifests itself particularly in decisions involving tax

titles. *Bratrud v. S.*, 203M463, 281NW809. See *Dun. Dig.* 9368.

Purpose of a tax sale is to enable state to obtain funds and re-establish property on tax rolls. *Id.* See *Dun. Dig.* 9368.

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

A separate notice should be given on account of land for 1931 taxes at annual delinquent tax sale held on second Monday in May, 1935. *Op. Atty. Gen.* (425b-4), Apr. 23, 1935.

## 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.

### 2. Contents.

In suit by state to quiet title based upon tax sale, defendant could not collaterally attack judgment and sale because section of land involved was assessed separately as sixteen 40-acre tracts, owned by one man, and delinquent tax list included whole section in a single description, and judgment and sale were based on single description. *State v. Aitkin County Farm Land Co.*, 204 M495, 284NW63. See *Dun. Dig.* 9355, 9361.

**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.

## CERTIFICATE OF SALE

### 8. Assignment.

A state assignment certificate which actually included delinquent taxes for years 1922 to 1932 but which recited it was issued "pursuant to the real estate tax judgment \* \* \* to enforce the payment of taxes delinquent \* \* \* for the year 1926" and did not mention it also included taxes for 1922 to 1925 is fatally defective, but purchaser obtained lien for amount paid. *Bratrud v. S.*, 203M463, 281NW809. See *Dun. Dig.* 9398.

Certificate issued at annual May sale may be assigned after notice of expiration of redemption. *Op. Atty. Gen.* (425b-7), Oct. 31, 1935.

## RIGHTS OF CERTIFICATE HOLDER

### 9. Before expiration of redemption period.

Because certain tax certificates had been included, as to amount, in a judgment for mortgage debt and had thereby become merged, as to debt, they were discharged by settlement and satisfaction of judgment, and it was error to hold that such certificates held by third party for mortgagee evidenced a lien superior to plaintiff's mortgage. *Walton v. L.*, 200M337, 274NW239. See *Dun. Dig.* 6442.

Purchaser at tax sale is not entitled to possession or income during the redemption period. *Op. Atty. Gen.* (425b-4), June 25, 1935.

### 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. *Klasen v. T.*, 189M254, 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. *Klasen v. T.*, 189M254, 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.

Register of Deeds may purchase forfeited lands, provided price is fair value of property. *Op. Atty. Gen.*, (90B), August 21, 1939.

## 2134. Record of assignment.

Certificate issued at annual May sale may be assigned after notice of expiration of redemption. *Op. Atty. Gen.* (425b-7), Oct. 31, 1935.

**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.

A purchaser of a state assignment certificate who pays taxes which are due but not delinquent at time he acquires certificate is entitled to a lien for amount expended, even though certificate is fatally defective. *Bratrud v. S.*, 203M463, 281NW809. See *Dun. Dig.* 9394.

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.

Taxes for 1932 paid by owner of two tax certificates on January 16, 1934, could not be included in notice of expiration of redemption from sales and assignments of 1923 and 1926 taxes, but delinquent 1933 taxes should be included. *Op. Atty. Gen.* (425c), Apr. 26, 1935.

## 2137. Lands bid in for state.

## CERTIFICATE OF ASSIGNMENT

### 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.

### 3. Who may take.

Where delinquent taxes are paid and a delinquent receipt issued, one paying tax cannot later have receipt canceled and state assignment certificate issued in lieu thereof. *Op. Atty. Gen.* (407), Apr. 30, 1937.

### 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.

Last paragraph of §2105-1 is applicable to taxes for 1932 and subsequent years, and interest should be charged on original amount of taxes from March 1, following year in which taxes become due. *Op. Atty. Gen.* (425b-2), Dec. 18, 1935.

### 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 23, 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,

Mason's Minnesota Statutes of 1927, as amended. 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 30th day of June, 1936, 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. 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; Apr. 29, 1935, c. 387, §1.)

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 23, 1933.

Under Laws 1935, c. 387, §1, amending this section, parcels bid in for the state for taxes for years prior to 1926 and also for taxes for 1926 and subsequent years can be disposed of at August 1935 sale. Op. Atty. Gen. (425c), July 11, 1935.

Laws 1935, c. 387, intended to provide for annual sale. Op. Atty. Gen., July 18, 1935.

State school lands and other public lands described in §§6511, 6522-1, 6522-2, sold prior to the passing of act creating state forests, on revision to the state, could again be sold for tax delinquency under §6285. Op. Atty. Gen. (700-21), July 18, 1936.

Owner of land bid in for state for 1928 taxes at 1930 annual delinquent tax sale and held by the state cannot purchase an assignment at annual sale commencing on second Monday of August, 1936, and owner cannot redeem at discount rate provided for in that act. Op. Atty. Gen. (412a-5), Aug. 3, 1936.

Each parcel of land bid in for state for taxes for 1925 and prior years and not assigned to a purchaser or redeemed may be disposed of at sale commencing on second Monday of August, 1937, as provided by Laws 1935, c. 387, provided that stated period of redemption for such parcel has not expired. Op. Atty. Gen. (425c), July 27, 1937.

In unlawful detainer action to recover land acquired by state for taxes, county attorney may appear as sole counsel, but there can be no eviction for two years after forfeiture for taxes for 1926 or 1927. Op. Atty. Gen. (525), Sept. 12, 1937.

County may not expend funds to insure buildings on forfeited land. Op. Atty. Gen. (107b-10), May 23, 1938.

Sawdust pile upon land at time of delinquency and at time of forfeiture remains personal property and does not pass with realty. Op. Atty. Gen. (412a-24), July 7, 1939.

#### 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 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 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 for 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, if there be no bidders for the same for the amounts as hereinbefore authorized, any such parcels coming within the

following classifications may be disposed of for cash only, 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, (2) 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.

In the event that the taxes upon any parcel for 1930 or any part thereof have been bid in for and are held by the state, the county auditor of each county is hereby authorized and directed to dispose of the same together with all the interest of the state in such parcel and all taxes, assessments, interest and penalties attached thereto or thereon, except taxes not yet attached to a judgment by an assignment thereof for an amount not less than one-half of the total taxes and assessments against it, as originally assessed and taxed.

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 have been bid in for and are held by the state the county auditor is authorized and directed to dispose of the same together with all the interest of the state in such parcel and all taxes, assessments, interest and penalties attached thereto or thereon except taxes not yet attached to a judgment by an assignment thereof for an amount not less than three-fifths of the total taxes and assessments against it, as originally assessed and taxed. 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 have been bid in for and are held by the state the county auditor is authorized and directed to dispose of the same together with all the interest of the state in such parcel and all taxes, assessments, interest and penalties attached thereto or thereon except taxes not yet attached to a judgment by an assignment thereof for an amount not less than four-fifths of such taxes and assessments 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. (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. 414, §1; Apr. 29, 1935, c. 387, §2.)

Laws 1931, c. 325, validates sales made at improper place between second Monday in August, 1929, and Dec. 31st of that year.

The amendment of Apr. 29, 1935, eliminates subdivisions (e) and (f) as they appear in Mason's 1934 Supplement. 178M244, 226NW633.

Op. Atty. Gen., June 6, 1932; note under §2138.

Op. Atty. Gen., Dec. 20, 1933; note under §2139-14.

Op. Atty. Gen. (412a-9), May 31, 1934; note under §2164-1.

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

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Refund of penalties paid on 1930 tax of real estate is not permissible, but refund of penalty paid on 1931 tax is permissible, and refund warrants are transferable. Op. Atty. Gen., Nov. 8, 1933.

Land sold to state for taxes and not bid in at sale commencing on Aug. 2, 1933, may not now be sold to purchasers for one-half of total amount of taxes remaining unpaid for 1925 and prior years as originally assessed. Op. Atty. Gen., Mar. 9, 1934.

Sale provided for in section, as amended, ended on Dec. 31, 1933. Op. Atty. Gen., Mar. 20, 1934.

Laws 1935, c. 387, is constitutional. Op. Atty. Gen. (425b), June 14, 1935.

Sales could not be made at reduce price sale prior to second Monday in August under Laws 1935, c. 387. Op. Atty. Gen. (425b), June 17, 1935.

The word "1930" as it appears in second paragraph of subdivision (b) in Laws 1935, c. 387, §2, amending this section was intended to read "1926" and should be so construed. Op. Atty. Gen., June 18, 1935.

Sale provided by Laws 1935, c. 387, is not a tax judgment sale and one year's notice of expiration of redemption must be given. Op. Atty. Gen. (412a-23), June 18, 1935.

Where real estate was bid in for the state for the 1930 taxes and taxes for all prior years have been paid or sold or assigned to a purchaser other than the state, and no state assignment certificate had been issued for the 1930 or subsequent statute, the state may assign its interest in the land for four-fifths of the 1930, 1931, 1932 and 1933 taxes, as originally assessed. Op. Atty. Gen. (474i), June 29, 1935.

Lands bid in for the state for taxes for 1926 and subsequent years can be disposed of separately and assigned under conditions and subject to terms provided in Laws 1935, c. 387, §2. Op. Atty. Gen. (425c), July 11, 1935.

Forms provided for certificate of sale of land bid in by state for taxes for 1925 and prior years; and state assignment certificates of land bid in by the state for taxes for 1926 and subsequent years, for tax sales under Laws 1935, c. 378, amending this section. Op. Atty. Gen. (425c-16), July 24, 1935.

Under Laws 1935, c. 387, where a parcel of land has been bid in for taxes for 1922, and taxes are delinquent for all subsequent years, land must be offered for sale first for taxes for 1925 and prior years and, if there is no higher bid, can be sold for not less than one-fifth of total taxes remaining unpaid for 1925 and prior years as originally assessed, and unless this sale is first affected, or such taxes for 1925 and prior years are paid, there can be no disposal of such parcel for taxes for 1926 and subsequent years under the reduced rates provided in such act, and when state's interest in taxes for 1925 and prior years has been sold at the sale, county auditor may sell and assign state's interest in 1926 taxes and subsequent taxes, assessments, interest and penalties attached thereto, for one-half of the total amount of such taxes and assessments as originally assessed. Op. Atty. Gen. (425c-2), July 25, 1935.

Where taxes have not been paid for years 1922, 1923, 1931, 1932, 1933 and 1934, one has no right to purchase at sale commencing on second Monday of August, 1935, for taxes for year 1922 and 1923 for a fraction of taxes and at the same sale purchase assignment of delinquent taxes for years 1931 and subsequent years. Op. Atty. Gen. (425c-2), Aug. 2, 1935.

Applications for settlement at reduced rates after acceptance by tax commission are not agreements binding on applicants, and after expiration of period allowed for payment, the land may be sold for taxes and settlement made at a lower rate under Laws 1935, c. 387, than the basis on which the adjustment was made. Op. Atty. Gen. (425c-2), Aug. 13, 1935.

Where lands which were bid in by the state for taxes for 1925 and prior years are sold at sale held pursuant to Laws 1935, c. 387, the twelve-month notice of expiration of redemption provided for by Laws 1933, c. 356, should be given. Op. Atty. Gen. (425c-13), Aug. 20, 1935.

Where taxes have not been paid from 1922 to 1933 and have been bid in by the state, state must make separate sales for taxes for 1925 and prior years for not less than 20%, and thereafter may make assignments for not less than ¼ of taxes for 1926 and subsequent years, both sales to be made to the highest cash bidder, under Laws 1935, c. 387, assuming that no action has been taken pursuant to subdivision c of this section. Op. Atty. Gen. (425c-17), Aug. 22, 1935.

A twelve-month notice of expiration of redemption must be given as required by Laws 1933, c. 366, where property which has been bid in by the state for the taxes for 1925 and prior years has been sold at delinquent tax sale commencing on second Monday in August, 1935, pursuant to Laws 1935, c. 387. Op. Atty. Gen. (425c-7), Sept. 17, 1935.

Applications for tax adjustments do not require approval of tax commission with reference to parcels of land offered for sale at sale authorized by Laws 1935, c. 387, and minimum price set would be applicable only during period of sale. Op. Atty. Gen. (407o), Jan. 2, 1936.

Taxes for 1934 are now subject to discount under provisions of Laws 1935, c. 387, in cases where taxes are delinquent for years 1926, 1927, 1928 or 1929. Op. Atty. Gen. (412a-5), Jan. 13, 1936.

Under Laws 1935, c. 387, where taxes are unpaid and bid in for the state and unassigned for years 1929 to 1934 inclusive, owner cannot pay his taxes for 1929, 1930 and 1931 by purchasing certificate of assignment, and then confess judgment on 1932, 1933 and 1934 taxes, and pay them in installments, as assignment must include all attaching taxes. Op. Atty. Gen. (425b-7), June 3, 1936.

If taxes for 1923 and all prior years have been paid or sold or assigned to a purchaser other than the state, and taxes for 1930 are held by state, owner may purchase taxes for 1930 and all interest of state by taking an assignment at discount rate provided for in Laws 1935, c. 387, provided purchases are made prior to expiration of stated period of redemption. Op. Atty. Gen. (412a-5), June 17, 1936.

County auditor may sell or assign trust fund lands in state forest which has been sold under contract by the state, pursuant to Laws 1935, c. 387, but purchaser or assignee acquires only the interest held by contract holder. Op. Atty. Gen. (700d-1), July 15, 1936.

Laws 1935, c. 387, does not provide for payment of taxes at a discount, and taxpayer who meant to take an assignment of taxes for 1930 and subsequent years pursuant to such act, before July 1, 1936, is entitled to certificate. Op. Atty. Gen. (425c-2), Jan. 11, 1938.

(a). Under Laws 1935, c. 387, a parcel is subject to sale at discount rates at any time after sale opens unless there is present a person offering to pay more than such discount rates. Op. Atty. Gen. (425c-2), Aug. 5, 1935.

(b). Where land is disposed of under Laws 1935, c. 387, it is no longer subject to costs incurred in giving notice of expiration of redemption under Laws 1935, c. 278, §§7, 8. Op. Atty. Gen. (425c-3), Aug. 3, 1935.

Where taxes for year 1927, and years 1929 to 1933 are delinquent and unpaid, owner is entitled to purchase a state assignment certificate covering all of such taxes for an amount not less than three-fifths of such taxes as originally assessed and taxed, providing no action has been taken with respect to ditch liens and special assessments. Op. Atty. Gen. (425c-16), Sept. 13, 1935.

Each parcel of land bid in for state for taxes for 1932 at usual time and not assigned to a purchaser or redeemed may be offered for sale at forfeited tax sale commencing on second Monday in August 1937. Op. Atty. Gen. (425c), July 27, 1937.

No discount at sale commencing on second Monday in August 1937 may be allowed in selling any parcel bid in for state for taxes for any year subsequent to 1930, unless cash value thereof fairly determined by county board shall be less than aggregate taxes, penalties, interest and cost charged against it, in which case value so fixed and approved shall be minimum price for which property may be sold. Id.

At annual sale commencing on second Monday in August, 1937, discount rate specified in Laws 1935, c. 387, will apply to ditch liens and special assessments for local improvements included in taxes for year 1925 and prior years and 1926 and subsequent years in same manner as such discount rates will apply to general taxes, unless county board in case of a ditch lien, or governing body of municipality in case of a special assessment, shall have provided otherwise by resolution or ordinance, and unless a copy of such resolution or ordinance shall have been served on county auditors at least 30 days before second Monday in August, 1937. Id.

Laws 1935, c. 278, §9, prohibits disposition at annual forfeited tax sale provided for in Laws 1935 c. 387, of a parcel of land bid in by state for taxes for 1925 and any prior year and also bid in by state for taxes for 1926 or any subsequent year at any time after stated period of redemption of such parcel of land from sale for taxes for 1926 or any subsequent year has expired. Op. Atty. Gen. (425c-2), Oct. 29, 1937.

(c). In order to take ditch liens and special assessments out of scope of provisions of Laws 1935, c. 387, a copy of resolution of governing body of municipality must be served with county auditor at least 30 days before opening of August sale. Op. Atty. Gen. (425c-3), Aug. 5, 1935.

At annual sale commencing on second Monday in August, 1936, discount rate specified in Laws, 1935, c. 387, will apply to ditch liens and special assessments for local improvements included in taxes for year 1925 and prior years and 1926 and subsequent years in same manner as such discount rates will apply to general taxes, unless county board in case of a ditch lien, or governing body of municipality in case of a special assessment for local improvements shall have provided otherwise by Resolution or Ordinance. Op. Atty. Gen. (425c-2), June 15, 1936.

Under Laws 1935, c. 387, §2(c), discount rates provided for are not applicable to ditch liens and assessments against lands situated in Red Lake Game Preserve. Id.

Laws 1935, c. 387, did not modify or repeal Laws 1935, c. 287, §9, in so far as it limits time in which assignment of tax-delinquent land may be made. Id.

Each parcel of land bid in for state for taxes for any year subsequent to 1930 and not assigned to a purchaser or redeemed within three years from date of tax sale at which such parcel was offered, may be sold at annual tax sale commencing on second Monday in August 1937 at any time before stated period of redemption for such parcel shall have expired. Op. Atty. Gen. (425c), July 27, 1937.

Discount rate provided for in Laws 1935, c. 387, are not applicable to ditch liens and assessments against lands situated in Red Lake game reserve. Id.

**2139-½. 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.)

Laws 1931, c. 129, and Laws 1933, c. 414, are invalid insofar as they provide that taxes which are current or merely delinquent may be satisfied in full by payment of a fraction of amount originally assessed. *State v. Luecke*, 294M246, 260NW206. See Dun. Dig. 9141.

A state assignment certificate which actually included delinquent taxes for years 1922 to 1932 but which recited it was issued "pursuant to the real estate tax judgment . . . to enforce the payment of taxes delinquent . . . for the year 1926" and did not mention it also included taxes for 1922 to 1925 is fatally defective, but purchaser obtained lien for amount paid. *Bratrud v. S.*, 203M463, 281NW809. See Dun. Dig. 9391.

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 pro-

cedure being to make application to tax commission under §1983. Op. Atty. Gen., Aug. 24, 1933.

Special assessments certified to county auditor and included in real estate taxes are subject to same discount as other real estate taxes, though city has not adopted and filed a resolution fixing minimum amount of such assessments which shall be accepted. Op. Atty. Gen., Mar. 20, 1934.

Section applies only to those special assessments which have been included in real estate taxes. Id.

Notice of expiration of redemption issued upon sale of a tract of land to an actual purchaser for delinquent taxes for 1927, upon which tract delinquent taxes for year 1928 were paid by such purchaser, in setting forth amount which must be paid to cover delinquent taxes for 1929 and 1930 should disregard fact that taxes for these years may be paid at discount rate. Op. Atty. Gen. (423c), Aug. 29, 1934.

Power of county board to recommend granting of application to tax commission for reduction of taxes and ditch assessments was not abridged by resolutions under this section prohibiting reduction on penalties and interest on real estate taxes and ditch assessments. Op. Atty. Gen. (4070), Nov. 10, 1934.

A notice of expiration of redemption issued in 1933 upon certificate of sale for taxes for 1925, subsequent delinquent taxes not having been assigned by the state, should set forth separately in exact amount the taxes for the each subsequent year, including penalties and interest in full, and it was not necessary to set forth in the notice right to discount under Laws 1933, c. 414. Op. Atty. Gen. (425c-13), Dec. 14, 1934.

Where land is not sold for delinquent taxes, owner cannot pay 1930 and subsequent taxes at discount rates. Op. Atty. Gen. (412a-28), Dec. 29, 1934.

All sales of land for taxes for 1925 and prior years made pursuant to Laws 1933, c. 414, together with all proceedings had or to be had in connection with such sales for purpose of perfecting tax title are valid as against claim that statute is unconstitutional, though statute is unconstitutional in part. Op. Atty. Gen. (426c-16), July 24, 1935.

Validity of "tax bargain" statutes. 18MinnLawRev849. (c).

Subdivision (c) as amended by Laws 1933, c. 414, has no application to §2139. Op. Atty. Gen., Mar. 9, 1934.

The words, "this section" refer to Laws 1931, c. 129, §2, as amended by Laws 1933, c. 414, and this subdivision has no application to §2139, as amended. Op. Atty. Gen. (423k), Apr. 9, 1934.

Owner of land may pay or take assignments for 1934 and 1935 taxes and pay taxes for 1926 and subsequent years at discount. Op. Atty. Gen. (412a-27), May 18, 1934.

To secure discount all taxes must be paid. Op. Atty. Gen. (412a-5), June 15, 1934.

**2139-2. Attacking validity of sales.**—Any person interested may, within one year from the date of any tax sale hereafter held, apply to the court on notice to the county auditor and to the purchaser 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 court on such application may sustain, modify, or set aside the judgment whereon the sale was held; provided, that unless the judgment and sale be set aside the period of redemption shall not be extended thereby. 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 shall be entertained unless brought, interposed or made within one year from such sale. ('27, c. 119, §3; Apr. 27, 1929, c. 415, §3; Apr. 20, 1939, c. 342.)

**Editorial note.**—Sec. 2 of Act Apr. 20, 1939, cited, provides that the act shall be in effect after Nov. 1, 1939.

Amended. Laws 1935, c. 278. See §§2164-15, 2164-16.

Op. Atty. Gen. (423c), June 8, 1934; note under §2164-1.

Section 2164-1 extending time for redemption from delinquent tax sale and requiring notice of expiration of time, is valid as emergency legislation. *State v. Erickson*, 191M636, 253NW529. See Dun. Dig. 9142.

An application to tax commission for abatement of taxes is not an "application" within meaning of this section. *Calhoun Beach Holding Co.*, 287NW317. See Dun. Dig. 9577a.

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.

Notice required to be attached to delinquent tax list pursuant to this section should not be hereafter omitted on account of §2164-1. Op. Atty. Gen., Jan. 17, 1934.

Notice of expiration of redemption may be served so that twelve-month period of redemption provided for in §2164-1 will expire at the same time as the five-year period provided for in this section or later. Op. Atty. Gen. (423a), Aug. 14, 1934.

Expiration of redemption of lands sold for 1929 taxes on Aug. 8, 1932, and time for issuing notice of expiration of redemption. Op. Atty. Gen. (425b-5), Feb. 21, 1936.

Land belonging to village used for public purposes cannot be sold for taxes even though deed thereto has not been recorded, and such deed may be recorded without endorsement thereon of certificates showing payment of taxes, but village should secure order from tax commission cancelling all taxes. Op. Atty. Gen. (469a-15), Nov. 10, 1936.

Mineral leases may be executed by executive council against land acquired by state under this section, in view of §§2139-24, 6403, 53-3. Op. Atty. Gen. (928c-13), June 1, 1937.

No notice of expiration of redemption can be served by state under Laws 1935, c. 278, for taxes for 1925 or any prior year, and since taxes for 1926 and subsequent years do not attach to a judgment for taxes for 1925 or any prior year, stated period of redemption for taxes for 1926 or any subsequent year will not expire until five years after a separate judgment is entered for taxes for 1926 or subsequent years, and such taxes are sold at delinquent tax sale. Op. Atty. Gen. (425c-7), Nov. 5, 1937.

Notice of expiration of redemption of land sold for delinquent taxes for 1932, bid in for state at annual tax judgment sale in 1934, and not redeemed or assigned, should not be served until four years after date lands were bid in for state, and time for redemption would not expire until twelfth month thereafter. Op. Atty. Gen. (412a-23), Apr. 27, 1938.

Form for publication of delinquent tax list discussed. Op. Atty. Gen. (419), Feb. 14, 1939.

It is not duty of county attorney and county board to institute actions of forcible entry and unlawful detainer, to determine property rights or quiet title and pay expenses of such proceedings, of lands which have been forfeited to state, under provisions of this section, but Laws 1939, c. 341, §6, was enacted to permit county to proceed to quiet title, in order that land may become more saleable. Op. Atty. Gen. (412a-24), July 7, 1939.

Under this section land bid in at a tax judgment sale in May, 1934, would have become absolutely forfeited to state 5 years from date of sale, without right of redemption, but for passage of Laws 1935, c. 386, which was passed before absolute forfeiture occurred, and which required 12 months' notice of expiration of time for redemption. Op. Atty. Gen. (419f), August 4, 1939.

#### 2139-3. [Repealed.]

Repealed. Laws 1935, c. 386, §12.

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

#### 2139-4. [Repealed.]

Repealed. Laws 1935, c. 386, §12.

#### 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.)

Sale for delinquent taxes for 1932 is not postponed. Op. Atty. Gen., Jan. 12, 1934.

Postponement of sale prevents attachment of rents for taxes until premises are sold for delinquent taxes for 1931. Op. Atty. Gen., Mar. 20, 1934.

Time of redemption for land sold in May 1935 for taxes for year 1931 expires in May, 1940, and for lands sold in 1934 for taxes for year 1932 in May 1939, exact time being five years after date of actual sale. Op. Atty. Gen. (412a-23), Sept. 23, 1937.

If sale of land for 1931 taxes was held before enactment of Laws 1935, c. 278, twelve months' notice of expiration of time for redemption is required, but if sale

was held after enactment of that statute, sixty days' notice is required. Op. Atty. Gen. (419f-3), July 6, 1939.

In notice of expiration of time for redemption from sale for 1932 taxes, unpaid 1931 taxes must be included in amount required to redeem. Op. Atty. Gen. (419f), August 4, 1939.

**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.)

Where there are judgments for both 1931 and 1932 taxes, 1931 tax may be paid without also paying the 1932 and subsequent taxes and such taxes may be paid in installments until after tax judgment sale for such 1931 taxes on the second Monday in May, 1935. Op. Atty. Gen. (412a-13), Jan. 23, 1935.

**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.)

Last half of 1931 real estate taxes is payable prior to Jan. 1, 1935, without interest or penalty. Op. Atty. Gen., Jan. 4, 1934.

Amount which will have to be paid to redeem the 1931 taxes, no part of which were paid prior to Jan. 1, 1934, is amount remaining due on said date plus 10% penalty thereon, together with interest from Jan. 1, 1934, at rate of 10% per annum. Op. Atty. Gen. (423c), Aug. 29, 1934.

With reference to computation of interest on that part of original taxes for 1931 remaining unpaid on Jan. 1, 1935, upon which no penalty accrued on Jan. 1, 1934, interest should be computed from Jan. 1, 1935. Op. Atty. Gen. (412a-13), Jan. 24, 1935.

At time of sale of land in 1935 for 1931 delinquent taxes, interest on unpaid amount of ditch assessments included in 1931 taxes should be computed at rate of 10%. Op. Atty. Gen. (412a-9), May 7, 1935.

Where 1931 taxes attached to a tax judgment sale for prior taxes and 1931 taxes were not included in a state

assignment certificate which was issued prior to passage of this act, interest and penalty on 1931 taxes should be computed in manner provided by this act, but this act is not applicable where 1931 taxes were included in a state assignment certificate issued prior to statute. Op. Atty. Gen. (425b-2), July 9, 1935.

Amount required to redeem for 1932 taxes. Op. Atty. Gen. (423c), July 15, 1938.

**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.)

1931 taxes should not be included in delinquent tax list published in 1935, where description of land involved was included in delinquent tax list published in 1933 and before judgment was entered against them prior to passage and approval of this act. Op. Atty. Gen. (412a-13), Jan. 24, 1935.

Amount of interest and penalty included in original judgment entered by default should be disregarded and parcel should be sold for unpaid balance of original taxes for 1931 and costs together with penalty and interest provided by §2139-8. Op. Atty. Gen. (412a-9), Mar. 8, 1935.

A separate notice should be given on account of land for 1931 taxes at annual delinquent tax sale held on second Monday in May, 1935. Op. Atty. Gen. (425b-4), Apr. 23, 1935.

Amount for which parcel was sold in May, 1935, for 1931 taxes should bear interest at rate of 10% per annum from date of sale. Op. Atty. Gen. (425b-4), June 25, 1935.

Amounts paid for taxes for each year included in state assignment certificate need not be stated separately, nor rate of interest thereon, but statement of amount necessary to redeem for taxes of 1928 to 1933 should provide for interest from date of sale in May, 1935, on 1928 and 1929 taxes at rate of 12% per annum, and interest on 1930 and 1931 taxes from such date at rate of 10% per annum, and interest on 1932, and 1933 taxes from such date at rate of 8% per annum. Op. Atty. Gen. (425c-13), Aug. 23, 1935.

Time of redemption for land sold in May 1935 for taxes for year 1931 expires in May, 1940, and for lands sold in 1934 for taxes for year 1932 in May 1939, exact time being five years after date of actual sale. Op. Atty. Gen. (412a-23), Sept. 28, 1937.

**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.)

Refund of penalties paid on 1930 tax of real estate is not permissible, but refund of penalty paid on 1931 tax is permissible, and refund warrants are transferable. Op. Atty. Gen., Nov. 8, 1933.

Warrants to refund penalties on 1931 taxes are transferable. Op. Atty. Gen., Dec. 20, 1933.

Refund of interest and penalty on 1931 taxes cannot be made by checks payable in cash. Op. Atty. Gen. (424a-9), Aug. 6, 1934.

**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.)

This section is probably superseded by §2139-28.

Op. Atty. Gen. (423c), June 8, 1934; note under §2164-1. 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.

Land sold for 1926 and 1927 taxes may be redeemed within seven years from date of sale. Op. Atty. Gen., Jan. 12, 1934.

This section has no application to the period of redemption of lands sold for taxes for either of the years 1926 or 1927 to an actual purchaser prior to its passage or to lands bid in for the state for taxes for either of said years and assigned by the state prior to enactment. Op. Atty. Gen. (423k), Apr. 9, 1934.

**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.

Where 1929 to 1932 taxes were delinquent and land was bid in by state on 1929 and 1930 taxes, owner could pay up 4 years of delinquent taxes at rate of 72% of principal amount thereof prior to Jan. 1, 1934. Op. Atty. Gen., Dec. 16, 1933.

Ten per cent discount provided for in §3 is not allowable to purchaser at sale under §1, but allowable to purchaser when paying taxes under subdivision (f) of §1. Op. Atty. Gen., Dec. 20, 1933.

A notice of expiration of redemption issued in 1933 upon certificate of sale for taxes for 1925, subsequent delinquent taxes not having been assigned by the state, should set forth separately in exact amount the taxes for the each subsequent year including penalties and interest in full, and it was not necessary to set forth in the notice right to discount under Laws 1933, c. 414. Op. Atty. Gen. (425c-13), Dec. 14, 1934.

Where land is not sold for delinquent taxes, owner cannot pay 1930 and subsequent taxes at discount rates. Op. Atty. Gen. (412a-28), Dec. 29, 1934.

All sales of land for taxes for 1925 and prior years made pursuant to Laws 1933, c. 414, together with all proceedings had or to be had in connection with such sales for purpose of perfecting tax title are valid as against claim that statute is unconstitutional, though statute is unconstitutional in part. Op. Atty. Gen. (425c-16), July 24, 1935.

**2139-15. Classification as conservation or non-conservation—Matters and data considered—Reclassification—Sale to municipalities—Of tax-forfeited lands.**

(a) All parcels of land becoming the property of the state in trust under the provisions of any law now existing or hereafter enacted declaring the forfeiture of lands to the state for taxes, shall be classified by the county board of the county wherein such parcels lie as conservation or non-conservation. Such classification shall be made with consideration, among other things, to the present use of adjacent lands, the productivity of the soil, the character of forest or other growth, accessibility of lands to establish roads, schools, and other public services, and their peculiar suitability or desirability for particular uses. Such classification, furthermore, shall aim: to encourage and foster a mode of land utilization that will facilitate the economical and adequate provision of transportation, roads, water supply, drainage, sanitation, education, and recreation; to facilitate reduction of governmental expenditures; to conserve and develop the natural resources; and to foster and develop agriculture and other industries in the districts and places best suited thereto. In making such classification the county board may make use of such data and information as may be made available by any office or department of the federal, state, or local governments, or by any other person or agency possessing information pertinent thereto at the time such classification is made. Such lands may be reclassified from time to time as the county board may deem necessary or desirable. And, provided further that if any such lands are located within the boundaries of any organized town, or incorporated municipality, the classification or reclassification shall first be approved by the town board of such town or the governing body of such municipality in so far as the lands located therein are concerned. Any tax-forfeited lands may be sold by the county board to any organized or incorporated governmental subdivision of the state for any public purpose for which such subdivision is authorized to acquire property at not less than their appraised value as determined by the county board.

(b) **Supervision of conservation lands—Use by counties—Approval by conservation commissioner.**—Lands classified as conservation lands, unless reclassified as non-conservation lands, or sold to a governmental subdivision of the state, as hereinbefore provided, will be held under the supervision of the county board of the county within which such parcels lie.

Provided, however, that the said county board may by resolution duly adopted resolve that certain lands classified as conservation lands shall be devoted to conservation uses and may submit such resolution to the commissioner of conservation together with a request for his cooperation in the development and management of such lands. If upon, [sic] investigation the commissioner of conservation determines that the lands covered by such resolution can be managed and developed for conservation purposes, he may cooperate with the county in the development and management of such lands in the same manner as in the development and management of other state lands, but such lands shall remain under the jurisdiction of the county board and sale of timber, leasing of hay stumps or land shall be conducted by the county auditor in the manner hereinafter provided. Proceeds derived therefrom shall be distributed in the same manner as provided in Section 2139-18.

(c) **Sale of non-conservation lands—Appraisal and reappraisal—Timber—Separating or grouping tracts.**—All such parcels of land classified as non-conservation, except those which may be reserved, as hereinafter provided, shall be sold at public or private sale, as hereinafter provided, if it shall be determined, by the county board of the county wherein such parcels lie, that it is advisable to do so, having in mind their accessibility, their proximity to existing public improvements, and the effect of their sale

and occupancy on the public burdens. Any parcels of land proposed to be sold shall be first appraised by the county board of the county wherein such parcels lie, and such parcels may be reappraised whenever the county board deems it necessary to carry out the intent of this act; provided that in such appraisal the value of the land and any standing timber thereon shall be separately determined, and, provided further, that before any parcel of land is sold the appraised value of the timber thereon shall first have been approved by the commissioner of conservation. In classifying, appraising and selling such lands, the county board may designate the tracts as assessed and acquired, or may by resolution provide for the subdivision of such tracts into smaller units or for the grouping of several of such tracts into one tract when such subdivision or grouping is deemed advantageous for the purpose of sale, but each such smaller tract or larger tract must be classified and appraised as such before being offered for sale.

(d) **Conduct of sale—Terms and conditions—Interest—Possession.**—Such sale shall be conducted by the county auditor at the county seat of the county in which such parcels lie, and such parcels shall be sold for cash only and at not less than the appraised value, unless the county board of said county shall have adopted a resolution providing for their sale on terms, in which event such resolution shall control with respect thereto. Provided, however, that when the sale is made on terms other than for cash only a payment of at least ten per cent of the purchase price must be made at the time of purchase, thereupon the balance shall be paid in not to exceed ten equal annual installments, and providing further that no standing timber or timber products shall be removed from said lands until an amount equal to the appraised value of all such timber or timber products as may have been standing on such lands at the time of purchase has been paid by the purchaser. When sales are made on such terms the interest rate on the unpaid portion shall be four per cent per annum. The purchaser at such sale shall be entitled to immediate possession, subject to the provisions of any existing valid lease made in behalf of the state.

(e) **Certificate to purchaser—Default—Cancellation—Resale or lease—Trespass.**—When sales are made on terms the purchaser shall receive a certificate from the county auditor in such form, consistent with the provisions of this act and setting forth the terms of sale, as may be prescribed by the attorney general. Failure of the purchaser or any person claiming under him to pay any of the deferred installments, with interest and current taxes, upon the lands sold before they become delinquent shall constitute default, and the state may, by order of the county board, during the continuance of such default, without notice, declare such certificate cancelled and take possession of such lands and resell or lease the same in the same manner and under the same rules as other lands forfeited to the state for taxes are sold or leased. When such lands have been reappraised and publicly offered for sale, the cancellation of such certificate shall be deemed complete, and a reentry shall be deemed to have been made on the part of the state, without any other act or deed whatsoever, and without any right of redemption by the purchaser or any one claiming under him, and the original purchaser in default or any person claiming under him, who shall remain in possession or enter thereon shall be deemed a willful trespasser, and shall be punished as such.

(f) **Reports to tax commission—Defaults by purchasers—Extension of time—Conveyance.**—When any sale has been made by the county auditor under this act, he shall immediately certify to the Minnesota tax commission such information relating to such sale, on such forms as the commission may prescribe as will enable said commission to prepare an appropriate deed if the sale is for cash, or keep its necessary rec-

ords if the sale is on terms; and not later than October 31 of each year the county auditor shall submit to the tax commission a statement of all instances wherein any payment of principal, interest or current taxes on lands held under certificate, due or to be paid during the preceding years, are still outstanding at the time such certificates [sic] is made. When such statement shows that a purchaser or his assignee is in default, the tax commission may instruct the county board of the county in which the land is located to take possession of such land, appraise it and offer it for sale in the manner provided by subdivisions (d) and (e) of this section, provided that upon recommendation of the county board, and where the circumstances are such that the tax commission after investigation is satisfied that the purchaser has made every effort reasonable to make payment of both the annual installment and said taxes, and that there has been no willful neglect on the part of the purchaser in meeting these obligations, then the said tax commission may extend the time for said payment for such period as it may deem warranted, not to exceed one year. On payment in full of the purchase 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 patent from the state.

(g) Commencement and continuance of sales—Order of offers—Annual addition to sale list—Bids—Amount—Trust to continue—Use prior to sale.—The sale herein provided for shall commence at such time as the county board of the county wherein such parcels lie, shall direct. The county auditor shall offer the parcels of land in the order in which they appear in the notice of sale, and shall sell them to the highest bidder, but not for a less sum than the appraised value, until all of the parcels of land shall have been offered, and thereafter he shall sell any remaining parcels to anyone offering to pay the appraised value thereof. Said sale shall continue until all such parcels are sold or until the county board shall order a reappraisal or shall withdraw any or all such parcels from sale. Such list of lands may be added to annually by publishing the descriptions and appraised values of such parcels of land as shall have become forfeited and classified as non-conservation since the commencement of any prior sale and such parcels as shall have been reappraised, or such parcels as shall have been reclassified as non-conservation, in the same manner as hereinafter provided for the publication of the original list, provided that any parcels added to such list shall first be offered for sale to the highest bidder before they are sold at appraised value. All parcels of land not offered for immediate sale, as well as parcels of such land as are offered and not immediately sold shall continue to be held in trust by the state for the taxing districts interested in each of said parcels, under the supervision of the county board, and such parcels may be used for public purposes until sold, as the county board may direct. (Act Apr. 29, 1935, c. 386, §1; Jan. 27, 1936, Ex. Sess., c. 105, §1; Apr. 20, 1939, c. 328, §1.)

**Editorial note.**—See notes under §§2139-21, 5620-13½b, 5620-13½d with respect to title of 1939 act. The title does not give a precise description of the scope and contents of the amendatory act.

Validation of sales of tax forfeited land. Laws 1939, c. 295.

Classification of state owned tax forfeited lands into agricultural and non-agricultural. Laws 1939, c. 320.

County cannot lease or sell reverted state lands or land within state forests of reforestation and flood control projects. Op. Atty. Gen. (983d), Aug. 8, 1935.

In view of this section, §2139-29 is inoperative. Op. Atty. Gen. (21j), Sept. 25, 1935.

Sale of land to government for national forestry purposes. Op. Atty. Gen. (700a-8), Mar. 5, 1936.

There is no irreconcilable conflict between Laws 1935, c. 386 (§§2139-15 to 2139-27), and Laws 1933, c. 407 (§§2176-3 to 2176-8), and there was implied repeal, though there can be no sale to the general public of lands to which Laws 1933, c. 407, is applicable until one year after title passes to the state, and this means one year

after the one year period following notice of expiration of redemption. Op. Atty. Gen. (425a), Apr. 4, 1936.

Commissioner of conservation has authority to use money from his contingent funds to pay portion of cost of classifying lands acquired for taxes if such classification will promote emergency conservation work. Op. Atty. Gen. (983j), Aug. 31, 1936.

Forms provided by Attorney General for conveyances. Op. Atty. Gen. (700d-32), Sept. 18, 1936.

Laws 1931, c. 156, has not been wholly or partially repealed by Laws 1933, c. 407, or Laws 1935, c. 386, and neither subsequent law is applicable to laws affected by former laws. Op. Atty. Gen. (412-13), Oct. 26, 1936.

Land belonging to village used for public purposes cannot be sold for taxes even though deed thereto has not been recorded, and such deed may be recorded without endorsement thereon of certificates showing payment of taxes, but village should secure order from tax commission cancelling all taxes. Op. Atty. Gen. (469a-15), Nov. 10, 1936.

Prior owner of land which has become absolute property of state has no prior claim or right over any other bidder at sale. Op. Atty. Gen. (700d-28), May 28, 1937.

Purchaser is entitled to possession when first installment has been paid. Op. Atty. Gen. (525), June 30, 1937.

Lease made pursuant to §2139-15 is subject to option of former owner to repurchase and obtain immediate possession under §2176-3. Op. Atty. Gen. (425g), July 9, 1937.

Lease of lands under Laws 1935, c. 386, is subject to right of former owner to repurchase under Laws 1933, c. 407, and there is no authority for reimbursement to lessee who has paid rents in advance, but lessee may remove crops already planted. Op. Atty. Gen. (700d-18), Aug. 5, 1937.

Sale of land acquired for taxes and coming within purview of Laws 1937, Ex. Sess., c. 88, is not permissible under Laws 1935, c. 386, until March 1, 1938. Op. Atty. Gen. (525), Aug. 24, 1937.

Registered land may be sold under this act. Op. Atty. Gen., Mar. 11, 1938.

Failure to serve notice of expiration of redemption on actual occupant prevents forfeiture, and new notice should be served, and land cannot be sold by state as forfeited land. Op. Atty. Gen. (425b-4), Apr. 4, 1938.

In bringing action for trespass, and in seizing and selling timber cut in trespass, procedure outlined in Laws 1925, c. 276, (6394-1 et. seq.) may be followed, though responsibility for supervision of forfeited land is divided between counties and conservation commission. Op. Atty. Gen. (700a-9), Apr. 29, 1938.

Counties or villages may purchase forfeited land for park or for other public purposes at sales held pursuant to this act. Op. Atty. Gen. (425c-10), May 4, 1938.

Purchaser upon payment of 10% down payment required by resolution of county board is entitled to immediate possession, and may resort to ejectment. Op. Atty. Gen. (425a), May 23, 1938.

Cities, villages, and towns may not be permitted to take over management and development of tax forfeited lands as community forests. Op. Atty. Gen. (700a-1), May 24, 1938.

County board has implied authority to withdraw land from sale either before or after date for public sale. Op. Atty. Gen. (425c-5), June 7, 1938.

Person other than former owner purchasing land will get a title free from lien of a prior mortgage, but where land is purchased by former owner, a prior mortgage will probably remain as a lien. Op. Atty. Gen. (425i), Mar. 9, 1938.

County may buy land forfeited to state for a gravel pit. Op. Atty. Gen. (425c-10), Mar. 24, 1938.

County is not authorized to purchase land forfeited to state for taxes for purposes of renting it to private persons. Id.

Public offers of persons bidding must be accepted by county auditor, but if no offer is made at public sale, auditor may sell at more than appraised value at private sale. Op. Atty. Gen. (425c-18), Apr. 13, 1938.

Deed executed by state is not a warranty deed, and state need not defend suits against purchaser. Op. Atty. Gen. (425i), Apr. 25, 1938.

Existing law provides no method for reimbursement where land which state does not own is sold. Op. Atty. Gen. (425), June 16, 1938.

Form of contract of sale suggested by attorney general. Op. Atty. Gen. (425), July 7, 1938.

Proceeds of sale of land and hay and rentals are to be handled by county treasurer; county may appoint a land commissioner to assist auditor in leasing and sale of land. Op. Atty. Gen. (450f-2), July 28, 1938.

Where registered land is conveyed by state, applications must be made for a new certificate pursuant to §8313. Op. Atty. Gen., (374j), Sept. 14, 1938.

Statute contemplates an annual sale and an appraisal not more often than each year. Op. Atty. Gen., (425c-5), Sept. 15, 1938.

New certificates of registration may be issued upon presentation of duplicate certificate of former owner, state deed, and quitclaim deed from original owner. Op. Atty. Gen., (409), Sept. 21, 1938.

There is no way city may acquire title to tax forfeited lands except at a sale held under provisions of this act. Op. Atty. Gen., (425i), Oct. 4, 1938.

County board is not authorized to employ one of its members as auctioneer. Op. Atty. Gen., (425c), Nov. 1, 1938.

One purchasing a lot upon which appraisal card showed a house, which was in fact located upon another lot, was not entitled to a refund, at least without a court order. Op. Atty. Gen., (424a-16), Nov. 12, 1938.

Where lands were sold under contract and purchasers desire to give up their contracts, a quitclaim deed should be taken to the state, and lands would then revert to same status they had at time of sale, and should be included in notice of next sale. Op. Atty. Gen. (425B), Feb. 24, 1939.

Upon default in payment of deferred installments by purchaser under laws 1937, ex. sess., c. 88, purchaser automatically loses his rights and title, and state may sell land without notice under laws 1935, c. 386. Op. Atty. Gen. (412a-17), April 29, 1939.

Where land was sold on installment plan under laws 1935, c. 386, prior to amendment by laws 1939, c. 328, and default was made in payment, cancellation is governed by law in force at time of sale, in accordance with form of notice and procedure provided by §9576. Op. Atty. Gen. (407i), May 24, 1939.

Sale to highest bidder under Laws 1935, c. 386 cannot be cancelled because on day of and prior to sale prior owner appeared at auditor's office and was told that there was no law permitting him to repurchase, auditor being ignorant of passage of Laws 1939, c. 283. Op. Atty. Gen. (412a-23), May 25, 1939.

As to sale of land and timber together, commissioner of conservation has only right to pass upon appraisal of timber, and has no power to veto sale, but as to sale of timber separately, it is entirely within discretion of commissioner to permit or prohibit a sale proposed by county board. Op. Atty. Gen. (525), May 26, 1939.

Neither commissioner of conservation nor any other state agency has any controlling authority in matter of classification of land. Id.

Term "timber" means merchantable timber and term "timber land" means land bearing such timber. Id.

County board may grant easement for alley to a city desiring to widen alley. Op. Atty. Gen. (700a-3), May 31, 1939.

Power of county board to classify land and to subdivide it, is sufficiently broad to include setting aside of easement for highway purposes and making a sale thereof at appraised value, where land is so situated that neither adjoining owner nor state is able to get upon its land from a public highway without passing over land of the other. Op. Atty. Gen. (700a-3), July 6, 1939.

Register of Deeds may purchase forfeited lands, provided price is fair value of property. Op. Atty. Gen. (90B), August 21, 1939.

(f). Form prescribed for auditor's certificate to commissioner of taxation of payment in full for lands sold. Op. Atty. Gen. (409B-3), Sept. 21, 1939.

Form provided for conveyance of forfeited lands. Op. Atty. Gen. (425i), Sept. 21, 1939.

**2139-16. List of lands to be offered for sale.**—Immediately after classification and appraisal of the land, and, in the case of timbered land, after approval of the appraisal of the timber by the commissioner of conservation, the county board shall provide and file with the county auditor a list of parcels of land to be offered for sale. Said list shall contain a description of the parcels of land and the appraised value thereof; provided that the description and appraised value may be omitted in the discretion of the county board. The auditor shall publish a notice of the forfeiture and intended public sale of such parcels of land and a copy of the resolution of the county board fixing the terms of the sale, if other than for cash only, by publication once a week for two weeks in an official newspaper of the county, the last publication to be not less than 10 days previous to the commencement of said sale. A notice in substantially the following form shall be sufficient:

"Notice is hereby given that I shall sell to the highest bidder at my office in the court house in the city or village of ..... in the county of ..... the following described parcels of land forfeited to the state for non-payment of taxes which have been classified and appraised as provided by law. Said sale will be governed, as to terms, by the resolution of the county board authorizing the same, and shall commence at ..... o'clock A. M. on the ..... day of ..... 19.....

Description ..... Appraised value  
Subdivision Sec. Twp. Range \$  
or or  
Lot Block  
Given under my hand and seal this ..... day of  
..... 19.....

County Auditor

..... County, Minnesota."

(Act Apr. 29, 1935, c. 386, §2; Apr. 20, 1939, c. 328, §2.)

Notice of sale of land must describe each parcel of land, and may not substitute a reference to a list posted in county auditor's office. Op. Atty. Gen. (700a-8), Mar. 25, 1937.

Department of conservation may make sales of dead and down timber on tax reverted lands within the Red Lake game reserve and other conservation areas, but sales of such timber on other tax reverted lands are made by county auditor subject to certain rights of former owners. Op. Atty. Gen. (700d-31), Aug. 16, 1937.

Where lands forfeited to state for taxes are leased pursuant to Laws 1935, c. 386, and thereafter repurchased pursuant to Laws 1937, Ex. Sess., c. 88, purchaser is entitled to rent subsequently accruing, and to unsevered crops to which state would be entitled if leased on share crop basis, but state is entitled to its share of severed crops. Op. Atty. Gen. (412a-8), Sept. 28, 1937.

Notices referred to should be published in official newspaper of county referred to in §662. Op. Atty. Gen. (277a-10), Jan. 5, 1938.

Notice of expiration of redemption for 1932 taxes should be in official newspaper. Op. Atty. Gen., (419), Sept. 2, 1938.

Omission of descriptions and appraised values. Op. Atty. Gen. (425c-7), May 20, 1939; see notes of June 5, 1939.

List of lands to be filed with county auditor by county board, after classification and appraisal, must in all cases contain descriptions and appraised values, and descriptions and appraised values of the several parcels should be included in published notice of sale, unless it is determined by county board by resolution to omit them, but to be safe in view of fact that legislature inserted clause authorizing omission of descriptions and appraised values in wrong place in 1939 amendatory act, such descriptions and appraised values should be included in notices of sale until Nov. 1, 1939, in view of right given former owners of tax forfeited lands to purchase until that date by laws 1939, c. 283. Op. Atty. Gen. (419B), June 5, 1939.

**2139-17. Limitations in use of lands.**—There may be attached to the sale of any parcel of forfeited land, under section 2 hereof or otherwise, if in the judgment of the county board it seems advisable, conditions limiting the use of the parcel so sold and/or limiting the public expenditures that shall be made for the benefit of said parcel and/or otherwise safeguarding against the sale and occupancy of said parcels unduly burdening the public treasury. (Act Apr. 29, 1935, c. 386, §3.)

State does not authorize expenditure of county funds for insurance premiums, upkeep and repairs on lands becoming absolute property of the state for nonpayment of taxes. Op. Atty. Gen. (700a-9), June 14, 1937.

**2139-18. County Auditor may sell hay stumpage and lease lands—Repairs or improvements—Demolition of buildings—Partition of undivided interests.**—

(a) The county auditor may sell hay stumpage on tax-forfeited land and may lease conservation and non-conservation lands as directed by the county board, and may sell dead, down and mature timber upon any tract that may be designated by the conservation commissioner, applying the net proceeds from such rentals and sales in the same manner as if the parcel had been sold. Such sale of hay stumpage and timber products or lease of tax-forfeited lands shall be made for cash at not less than the appraised value determined by the county board to the highest bidder after not less than one week's published notice in an official paper within the county. Provided that any hay stumpage, timber or leases offered at such public sale and not sold may thereafter be sold at private sale by the county auditor at not less than the appraised value thereof. Provided, however, that the appraised value of the timber and the forestry practices to be followed in the cutting of said timber shall be approved by the commissioner of conservation. Non-conservation lands may be leased for not to ex-

ceed one year, and any subsequent sale of such leased lands shall be subject to the provisions of any valid existing lease.

(b) Until after the sale of a parcel of forfeited land the county auditor may, with the approval of the county board of commissioners, provide for the repair and improvement of any building or structure located upon such parcel, if it is determined by the county board that such repairs or improvements are necessary for the operation, use, preservation and safety thereof. Such county auditor may, with the approval of the county board, provide for the demolition of any such building or structure, which has been determined by the county board to be within the purview of Section 5961, Mason's Minnesota Statutes of 1927, and for the sale of salvaged materials therefrom. The net proceeds from any sale of such salvaged materials shall be deposited in the forfeited tax sale fund.

(c) Where an undivided portion of any parcel of land is forfeited to the state for taxes, the owner or owners of the portions of said parcel not forfeited, may, in the manner provided by Chapter 82, Mason's Minnesota Statutes of 1927, maintain an action for the partition of said parcel, making the state a defendant in said action. If the state is made a defendant in said action, the summons shall be served upon the county auditor of the county in which the land is located, and the county attorney shall appear for the state. (Act Apr. 29, 1935, c. 386, §4; Apr. 20, 1939, c. 328, §3.)

Op. Atty. Gen. (419B), June 5, 1939; note under §2139-16. Lands acquired for taxes for 1926 and 1927, if occupied by owner at time of forfeiture, may not be leased during year when owner has option to repurchase, but if not occupied by owner, lands may be leased subject to immediate termination in case former owner exercises right to repurchase. Op. Atty. Gen. (700d-18), Sept. 26, 1936.

Lease should run in name of state and be signed "State of Minnesota, by Joe Doe, County Auditor of ..... County." Op. Atty. Gen. (700d-18), Oct. 24, 1936.

Former owner repurchasing land under §2176-3 has absolute right to immediate possession against person who has leased land from county auditor under §2139-18. Op. Atty. Gen. (425b-5), Mar. 25, 1937.

Former owner of land forfeited for failure to pay 1926 and 1927 taxes is immune from eviction during period of two years after forfeiture, but his position is merely that of a holder of an option to repurchase, and he has no such interest in land as will support a lease of land to a stranger, and subject to such limited rights county auditor may lease land. Op. Atty. Gen. (700a-8), Mar. 30, 1937.

Form for lease of land under this section prescribed by attorney general. Op. Atty. Gen. (700d-18), May 27, 1937.

Notice prescribed should be published annually. Op. Atty. Gen. (277a), Mar. 30, 1938.

Receipts from leases or timber sales on tax forfeited lands within state forests are to be distributed in manner provided for distribution of receipts from other lands in state forest areas. Op. Atty. Gen. (700a-9), May 26, 1938.

Land purchased pursuant to this act is subject to valid existing lease made under act. Op. Atty. Gen. (425c-10), Mar. 24, 1938.

Proceeds of sale of land and hay and rentals are to be handled by county treasurer; county may appoint a land commissioner to assist auditor in leasing and sale of land. Op. Atty. Gen. (450f-2), July 28, 1938.

County auditor may sell timber products to relief office following proper advertisement, but compensation may not be part of timber sold. Op. Atty. Gen., (425b-6), Dec. 7, 1938.

Omission of descriptions and appraised values. Op. Atty. Gen. (425c-7), May 20, 1939; see notes of June 5, 1939.

**2139-19. Proceeds to be apportioned.**—The net proceeds received from the sale or rental of forfeited lands shall be apportioned to the general funds of the state or municipal subdivision thereof in the manner hereinafter provided and shall be first used by said municipal subdivision to retire any indebtedness then existing. (Act. Apr. 29, 1935, c. 386, §5.)

Counties have no authority to permit cutting of timber upon tax delinquent lands within boundaries of state forests or game refuges, even though contract is let for purpose of obtaining money for relief of poor. Op. Atty. Gen. (27g), Dec. 10, 1936.

**2139-20. Lands exempt from provisions of act.**—Lands becoming the absolute property of the state embraced within any game preserve, created by and established under authority of Laws 1929, chapter

258 [§§5620-1 to 5620-13], or any like act, or embraced within any reforestation or flood control project created by and established under authority of Laws 1931, Chapter 407 [§§6452-1 to 6452-13], or Laws 1933, Chapter 402 [§§4031-75 to 4031-88], except lands in villages and cities, shall not be subject to the provisions of this act. (Act Apr. 29, 1935, c. 386, §6.)

Tax delinquent lands located within boundaries of state forest created by Laws 1933, c. 419, and Laws 1935, c. 372, and also lands in forest area created by Laws 1917, c. 448, suitable for forest purposes, are not subject to sale after title has reverted to state in fee under Laws 1935, c. 386, §6. Op. Atty. Gen. (700a-9), Aug. 17, 1937.

**2139-21. Auditor to cancel taxes.**—Immediately after forfeiture to the state of any parcel of land, as provided by Laws 1935, Chapter 278 [§§2164-5 to 2164-14], the county auditor shall cancel all taxes and tax liens appearing upon the records, both delinquent and current, and all special assessments, delinquent or otherwise. When the interest of a purchaser of state trust fund land sold under certificate of sale, or of his heirs or assigns or successors in interest, shall by reason of tax delinquency be transferred to the state as provided by law, such interest shall pass to the state free from any trust obligation to any taxing district and free from all special assessments and such land shall become unsold trust fund land. (Apr. 29, 1935, c. 386, §7; Jan. 27, 1936, Ex. Sess., c. 105, §2.; Apr. 21, 1937, c. 326, §1.)

**Editorial note.**—The title of Act Apr. 20, 1939, c. 328, purports to amend this section, but no amendment appears in the body of the act.

State v. Aitkin County Farm Land Co., 204M495, 284NW 63.

Lands acquired by state for taxes for 1926 and 1927, unless trust fund land, may be stricken from tax rolls by county auditor immediately after forfeiture. Op. Atty. Gen. (700d-18), Sept. 26, 1936.

Taxes, tax liens and special assessments should be cancelled as soon as tax delinquent lands become forfeited to the state for nonpayment of taxes for 1926, 1927, 1928 or 1929, but should not be advertised or sold during year following date of forfeiture, but may be classified and appraised during such year. Op. Atty. Gen. (407i), Nov. 10, 1936.

Upon forfeiture of lands to state, auditor must cancel all taxes and special assessments on the record. Op. Atty. Gen. (407), Mar. 25, 1937.

After forfeiture to state, all ditch liens must be cancelled, whether delinquent or otherwise. Op. Atty. Gen. (425c-3), Mar. 27, 1937.

Land sold for taxes under this act are not subject to 1936 taxes. Op. Atty. Gen. (407h), May 28, 1937.

County auditor may cancel taxes and assessments against state trust fund lands where rights of purchaser under certificate of sale have been forfeited to state. Op. Atty. Gen. (525), May 28, 1937.

In view of Laws 1937, c. 326, where lands have become forfeited to state pursuant to §2164-7, interest payments should not be accepted and redemption should not be permitted under §6291. Op. Atty. Gen. (425g), June 2, 1937.

All unpaid city assessments and any unpaid installments of local assessments are cancelled. Op. Atty. Gen. (525), June 30, 1937.

After land has been forfeited to state for nonpayment of taxes and tax liens have been cancelled pursuant to §2139-21, it is not necessary to file auditor's certificate provided for by §6840-51. Op. Atty. Gen. (425c), July 28, 1937.

No right to repurchase by former owner of trust fund lands was authorized by Laws 1937, c. 485, or Laws 1937, Ex. Sess., c. 88, since such lands became absolute property of state on forfeiture for taxes and could only be resold at public sale. Op. Atty. Gen. (525), Aug. 11, 1937.

Laws 1937, Ex. Sess., c. 88, §1, permitting owner to repurchase land by paying percentage of accrued ditch liens, is constitutional. Op. Atty. Gen. (423d), Sept. 11, 1937.

After forfeiture of land to state all ditch liens are cancelled. Op. Atty. Gen. (408), Oct. 11, 1937.

State forfeited tax lands are not subject to assessment, and assessment will be cancelled upon lot to which state subsequently acquires title. Op. Atty. Gen. (387b-1), Oct. 22, 1937.

§2211 does not prevent recording of deed of land as to which taxes have been cancelled under this section. Op. Atty. Gen. (131e), Dec. 15, 1937.

Land repurchased pursuant to Laws 1937, Ex. Sess., c. 88, §1, were subject to personal property tax judgments. Op. Atty. Gen. (421a-8), Jan. 18, 1938.

Taxes may not be abated after property has been forfeited to state. Op. Atty. Gen. (414a-9), Feb. 11, 1938.

Lands forfeited to state are not subject to special assessments for local improvements. Op. Atty. Gen. (700a-8), Apr. 5, 1938.

Amendatory provisions of Laws 1937, c. 326, apply only to state trust fund lands. Op. Atty. Gen. (700a-9), May 6, 1938.

Special assessments cancelled includes future installments of ditch liens. Op. Atty. Gen. (425b-5), Mar. 23, 1938.

Special assessments on land forfeited to state are required to be cancelled. Op. Atty. Gen. (408c), July 7, 1938.

Proceeds of sale of land and hay and rentals are to be handled by county treasurer; county may appoint a land commissioner to assist auditor in leasing and sale of land. Op. Atty. Gen. (450f-2), July 28, 1938.

Ditch liens on forfeited lands are cancelled by laws 1935, c. 386, and are not reinstated on repurchase under laws 1933, c. 407. Op. Atty. Gen. (921B), May 9, 1939.

Equity of a certificate holder of state trust fund land passes to state if holder has allowed land to forfeit for delinquent taxes pursuant to laws 1935, c. 278. Op. Atty. Gen. (700a), May 15, 1939.

Certificate holder of state trust fund land which has forfeited for nonpayment of taxes has no right to redeem by complying with §6291. Id.

Former owner of tax forfeited lands may not redeem under certificate of sale of state trust lands. Op. Atty. Gen. (525), June 9, 1939.

**2139-22. Apportionment of receipts.**—The net proceeds from the sale or rental of any parcel of forfeited land, or from the sale of any products therefrom, shall be apportioned by them county auditor, to the taxing districts interested therein, as follows:

(a) Such portion as may be required to discharge any special assessment chargeable against such parcel for drainage or other purpose, whether due or deferred at the time of forfeiture, shall be apportioned to the municipal subdivision entitled thereto.

(b) Such portion of the remainder as may have been theretofore levied on said parcel of land for any bond issue of the school district, township, city, village or county, wherein said parcel of land is situated shall be apportioned to said municipal subdivisions in the proportions of their respective interest. (c) Any balance remaining shall be apportioned as follows: State ten per cent, county 30 per cent, township, village or city 20 per cent and school district 40 per cent. (Act Apr. 29, 1935, c. 386, §3; Apr. 20, 1939, c. 328, §4.)

Holder of a certificate of trust fund land may not confess judgment under Laws 1937, c. 486, after his interest has been forfeited pursuant to Laws 1935, c. 278. Op. Atty. Gen. (412a-10), Dec. 28, 1937.

Amendatory provisions of Laws 1937, c. 326, apply only to state trust fund lands. Op. Atty. Gen. (700a-9), May 6, 1938.

Receipts from leases or timber sales on tax forfeited lands within state forests are to be distributed in manner provided for distribution of receipts from other lands in state forest areas. Op. Atty. Gen., (700a-9), May 26, 1938.

(a) Expense incurred by state forestry division in collection of trespass was not chargeable against proceeds of settlement. Op. Atty. Gen. (928c), March 3, 1939.

**2139-23. Forfeited tax sale fund—Compensation of county board members—Annual settlement.**—The county auditor and county treasurer shall place all monies received through the operation of this act in a fund to be known as the "Forfeited Tax Sale Fund" and all disbursements and costs shall be charged against said fund, when allowed by the county board, including compensation of the members of the county board at not to exceed \$3.00 per day and mileage as now fixed by law and such compensation as the county board shall allow the county auditor and for other necessary clerical help. Compensation allowed to members of county boards hereunder shall be in addition to other compensation allowed by law, provided that the amount received hereunder shall not increase the total compensation received by any such member to more than \$1200 in any one year. Provided, that when disbursements are made from the fund for repairs, refundments, expenses of actions to quiet title or any other purpose which particularly affects specific parcels of forfeited lands, the amount of such disbursements shall be charged to the account of the taxing districts interested in such parcels. The county auditor shall make an annual settlement of the net proceeds received from sales and rentals by the operation of this act, at the regular March settlement, for

the preceding calendar year. (Act Apr. 29, 1935, c. 386, §9; Apr. 20, 1939, c. 328, §5.)

Tax delinquent lands cannot be rendered or sold under this act until after state acquires title thereto. Op. Atty. Gen. (474i), Sept. 19, 1935.

Payment of expenses of classification and appraisal of tax delinquent lands forfeited to state may not be paid out of county revenue funds or any fund other than forfeited tax sale fund, but forfeited tax sale fund may borrow temporarily from county revenue fund. Op. Atty. Gen. (700d-2), Nov. 14, 1936.

County commissioner in carrying out duties under §2139-23 is entitled to mileage under §657 and not under §254-47. Op. Atty. Gen. (124j), Jan. 19, 1937.

Money received from land sold pursuant to Laws 1937, Ex. Sess., c. 88, is not received through operation of this act and costs and disbursements by county may not be deducted from proceeds of sale. Op. Atty. Gen. (199a-1), Aug. 10, 1937.

Per diem and mileage payable to individual members of board acting as a committee under direction of county board is not limited to any particular number of committee meetings, but when board acts as a whole services may not be classified as committee work. Op. Atty. Gen. (124a), Apr. 20, 1938.

Money collected for trespass upon tax forfeited lands should be forwarded to county treasurer. Op. Atty. Gen. (450a-6), Dec. 12, 1938.

County board may allow claim for expense of classification and appraisal of tax delinquent land under a former county auditor. Op. Atty. Gen. (412a), Jan. 30, 1939.

In computing \$1200 of compensation to county commissioners, mileage and other expenses are to be excluded, word "compensation" being "salary". Op. Atty. Gen. (124h), May 26, 1939.

**2139-24. All minerals reserved.**—Any sale of such forfeited lands shall be subject to exceptions and reservations in this state, in trust for the taxing districts of all minerals and mineral rights. (Act. Apr. 29, 1935, c. 386, §10.)

Mineral leases may be executed by executive council against land acquired by state under §2139-2. Op. Atty. Gen. (928c-13), June 1, 1937.

**2139-25. May appoint land commissioner.**—The county board may appoint a land commissioner to assist the county auditor in the sale and rental of forfeited lands and to gather data and information to assist the county board in making classifications and appraisals of such lands. Such appointment shall be for such time as the county board may determine. The compensation of said land commissioner shall be fixed by the county board at the time of appointment and both the salary and expenses of said land commissioner shall be paid from the Forfeited Tax Sale Fund. Any funds required by the tax commission for the purpose of cancellation of contracts, as provided in Section 1 of this act, shall be advanced by the county auditor upon the written order of the chairman of the tax commission from any monies then available in said fund. (Act Apr. 29, 1935, c. 386, §11.)

Proceeds of sale of land and hay and rentals are to be handled by county treasurer; county may appoint a land commissioner to assist auditor in leasing and sale of land. Op. Atty. Gen. (450f-2), July 28, 1938.

**2139-26. Laws repealed.**—Mason's Minnesota Statutes of 1927, Sections 2139-3 and 2139-4 are hereby expressly repealed. (Act Apr. 29, 1935, c. 386, §12.)

**2139-27. Provisions separable.**—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Apr. 29, 1935, c. 386, §13.)

**2139-27a. Sales of tax forfeited lands validated.**—Sales of land heretofore made under Chapter 386, Laws of 1935, as amended where the classification of such lands was not approved by the Commissioner of Conservation before the sales were held, are hereby validated. Provided that this act shall not be construed to require the State to refund any monies recovered from any purchaser or his assigns for timber trespass or other use of such lands. (Act Apr. 17, 1939, c. 295, §1.)

**2139-27b. Classification and appraisal of forfeited lands within conservation areas—Sale.**—All parcels of land becoming the absolute property of the state under the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 2139-2, and acts amendatory thereof or supplementary thereto, situated within any conservation or reforestation area created under the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 6452-1 to 6452-10, inclusive, 6452-12, 6452-13, or Sections 4031-75 to 4031-88, inclusive, shall be classified by the county board of the county wherein such parcels lie as agricultural and non-agricultural, which classification shall be approved by the conservation commissioner before any lands are offered for sale. The county board of the county wherein such parcels lie shall determine the appraised value of all lands classified and approved as agricultural and may re-appraise annually if in their judgment it be deemed necessary to carry out the intent of this act. Provided, further, that any merchantable timber on such agricultural land shall be appraised separately, and such appraisal approved by the conservation commissioner. All such parcels of land, classified as agricultural, shall be sold by the state at public sale, as hereinafter provided, whenever it shall be determined by the county board of the county wherein such parcels lie, that it is advisable to do so. Provided, however, that no such lands shall be sold by the board of county commissioners without the approval of the conservation commissioner. All sales of land shall be made in accordance with the subdivisions thereof by the United States surveys unless the same shall have been subdivided into smaller parcels or lots, but no land shall be sold in larger quantity than 160 acres. (Act Apr. 20, 1939, c. 320, §1.)

Prior to classification and approval land may be leased by conservation commissioner for such short term as may be necessary to protect interest of state, but such leases must be subject to classification of land. Op. Atty. Gen. (983m), May 2, 1939.

Proper procedure for securing approval of sales by conservation commissioner specified. Op. Atty. Gen. (425), July 22, 1939.

Conservation commissioner's approval of classification, the sale, and the appraisal of merchantable timber should all be obtained before the sale, and preferably before publication of notice is commenced. Id.

Approval of conservation commissioner is not required as to appraisal of lands bearing no merchantable timber, but his approval is required for classification and sale. Id.

**2139-27c. Same—Sales, how conducted—Terms—Contract for deed—Report to state auditor—Restoration to tax rolls.**—Such sale shall be conducted by the county auditor of the county wherein such parcels lie and shall be sold to the highest bidder but not for less than the appraised value. Such sales shall be for cash or on the following terms: The appraised value of all merchantable timber on such agricultural lands shall be paid for in full at the date of sale. At least 15 per cent of the purchase price of the land shall be paid in cash at the time of purchase, and the balance in not to exceed 20 equal annual installments with interest at the rate of four per cent per annum on the unpaid balance each year, both principal and interest to become due and payable on December 31st each year following that in which the purchase was made. The purchaser may pay any number of installments of principal and interest on or before their due date. When the sale is on terms other than for cash in full the purchaser shall receive from the county auditor a contract for deed, in such form as shall be prescribed by the attorney general. The county auditor shall make a report to the state auditor and to the commissioner of conservation not more than 30 days after each public sale, showing the lands sold at such sales.

All lands sold pursuant to the provisions hereof shall, on the first day of May following the date of such sale, be restored to the tax rolls and become subject to taxation in the same manner as the same were

assessed and taxed before becoming the absolute property of the state. (Act Apr. 20, 1939, c. 320, §2.)

Board may require a larger down payment than 15% and may require unpaid balance to be paid in any number of equal annual installments, not exceeding 20. Op. Atty. Gen. (425), July 22, 1939.

Form of contract for deed prescribed by attorney general. Op. Atty. Gen. (410B), August 19, 1939.

**2139-27d. Same—Public sale—Notice.**—All lands so classified and appraised and remaining unsold shall be offered for sale at a public sale to be held by the county auditor on the third Monday in August of each year. Notice of such sale shall be given as provided in Mason's Minnesota Statutes of 1927, Section 2127, in substantially the following form:

**NOTICE OF SALE OF AGRICULTURAL LANDS**

"Notice is hereby given that I shall sell to the highest bidder at my office in the courthouse in the city or village of ..... in the county of ....., the following described parcels of land forfeited to the state for nonpayment of taxes, which have been classified and appraised as provided by law. Said sale will be governed by Laws 1939, Chapter ..... and will commence at ..... o'clock A. M., on the ..... day of ..... 19.....

Subdivision	Sec. Twy. Range	or Lot Block	Appraised Value	Appraised Value
			of Land	of Timber
			\$	\$

Given under my hand and seal this... day of... 19.....

.....  
County Auditor

..... County, Minnesota."

(Act Apr. 20, 1939, c. 320, §3.)

Act does not permit individual sales at appraised value after close of public sale. Op. Atty. Gen. (425), July 22, 1939.

Each annual sale must be held and completed on designated day, unless it would be impossible to offer all parcels of land for sale on the first day, in which case sale may be adjourned and continued from day to day so long as may be reasonably necessary, but no longer, and in case of adjournment auditor should announce publicly reason therefor, and time to which adjournment is taken. Id.

**2139-27e. Same—Default—Cancellation of contracts.**—If the purchaser shall default in the payment of any installment or of any interest when due, or shall fail to pay before they become delinquent all taxes that may be levied upon the lands so purchased, the contract shall be cancelled in the manner now or hereafter provided by law for the cancellation of certificates of sale of lands forfeited to the State for delinquent taxes, and thereupon the land described in the contract shall be subject to disposition as hereinbefore provided. (Act Apr. 20, 1939, c. 320, §4.)

**2139-27f. Same—County Auditor to lease lands.**—Until after the sale of any parcel of forfeited land, classified as agricultural, the county auditor may lease such land, as directed by the county board. (Act Apr. 20, 1939, c. 320, §5.)

**2139-27g. Same—County treasurer to collect payments—Special fund—Compensation of county board members—Payment to state auditor.**—The county treasurer shall collect all payments of principal and interest made under this act and shall place the same in a special fund and shall report all collections to the state auditor. There shall be transferred from such special fund to the revenue fund of the county the cost of giving the notices herein required, and there shall be paid from such fund to the members of the county board upon warrant of the county auditor Three Dollars per day for each day necessarily consumed in the classification and appraisal of the lands under this act, and mileage at the rate of five cents per mile for necessary travel. The net amount remaining in said fund shall be transmitted by the county treasurer to the state auditor at the times pro-

vided for tax settlements, and shall be disposed of as provided by the laws governing the funds derived from the respective areas in which the lands sold were situated. (Act Apr. 20, 1939, c. 320, §6.)

County board may not appoint a land commissioner to make sales, or make any expenditures not provided for. Op. Atty. Gen. (425), July 22, 1939.

**2139-27h. Same—Reservation of minerals.**—Any sale of such forfeited lands shall be subject to exceptions and reservations in this state of all minerals and mineral rights. (Act Apr. 20, 1939, c. 320, §7.)

**2139-27i. Same—Conveyance.**—Upon payment in full of the purchase price, appropriate conveyance in fee in such form as may be prescribed by the attorney general shall be issued by the state auditor to the purchaser or his assigns, and said conveyance shall have the force and effect of a patent from the state. (Act Apr. 20, 1939, c. 320, §8.)

**2139-27j. Same—Non-agricultural lands reserved.**—That the lands classified as non-agricultural, as provided under section one hereof, shall be reserved and dedicated to conservation purposes to be managed as provided by the laws governing the respective areas in which the same are situated. (Act Apr. 20, 1939, c. 320, §9.)

**2139-27k. Same—Provisions severable.**—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Apr. 20, 1939, c. 320, §10.)

**2139-27l. Refundment of purchase price in certain cases.**—Wherever, prior to the passage of this act, the forfeiture to the state for taxes of any parcel of land heretofore sold pursuant to Laws 1935, Chapter 386 [§§2139-15 to 2139-27] has been invalidated in a proceeding in court, the purchaser from the state or his assigns shall be reimbursed out of any money in the forfeited tax sale fund for the amount of the purchase price or the portion thereof actually paid, with interest at four per cent. Application for such reimbursement shall be made to the county auditor of the county where such parcel is located, and shall be accompanied by a certified copy of the judgment or decree invalidating such forfeiture and a quit claim deed from the purchaser or his assignee running to the state in trust for its interested taxing districts as grantee. The county auditor shall present the instruments herein referred to, to the county attorney and after receiving an opinion in writing from the county attorney that the applicant is entitled to reimbursement under this section, he shall draw an order, in favor of the applicant for the sum to which the applicant is entitled, upon the county treasurer, which shall be paid by the treasurer out of monies in the forfeited tax sale fund. If there are not sufficient monies in said fund to pay said order, money to care for the deficiency shall be temporarily transferred from the general revenue fund of the county. After such refundment is made any taxes or assessments heretofore cancelled shall be reinstated and the amount of taxes and assessments that would have been levied subsequent to the date of the supposed forfeiture shall be assessed and levied against the land as omitted taxes, and the lien of the state for any such taxes or assessments may be enforced as in other cases where taxes are delinquent. (Act Apr. 20, 1939, c. 328, §8.)

Decree or judgment required for reimbursement by county auditor must be in an action brought to test validity of forfeiture proceedings. Op. Atty. Gen. (424a-16), Sept. 12, 1939.

**2139-27m. Application of act.**—Where prior to the passage of this act, any county has instituted proceedings leading to the sale of tax-forfeited lands pursuant to section 2139-15 of the 1938 Supplement to Mason's Minnesota Statutes of 1927, and has ordered the first publication under Section 2139-16 of said supplement, and the said sale is to commence prior

to May 15, 1939, the amendatory provisions of this act shall not be construed to prohibit such county from proceeding with such sale, and using a publication, a classification and an appraisal made pursuant to the law prior to its amendment by this act. (Act Apr. 20, 1939, c. 328, §9.)

**2139-27n. State may quiet title—Torrens title.**—That in all cases where a prospective purchaser advances the expense therefor said county auditor may employ a special attorney to act for the state of Minnesota in prosecuting to judgment an action to quiet title and a proceeding to register title of any tract of land which said prospective purchaser is interested in purchasing when the state shall have first procured a Torrens Certificate of title therefor; or for the purpose of procuring a new certificate of title in favor of the state of Minnesota by the necessary proceeding for that purpose where the title to the land is already registered under the Torrens System. (Act Apr. 20, 1939, c. 328, §10.)

**2139-27o. Provisions severable.**—The provisions of this act are hereby declared to be severable and if any section or part thereof shall be declared to be unconstitutional or invalid, the remainder of this act shall not be affected thereby. (Act Apr. 20, 1939, c. 328, §11.)

**2139-28. Period of redemption extended to July 1, 1936.**—The period of redemption of lands sold for the taxes for the years 1926, 1927, 1928 and 1929 which were bid in for the State and have not been assigned is hereby extended to July 1, 1936. (Act Apr. 29, 1935, c. 387, §3.)

Time of redemption will not expire on July 1, 1936, but one year from time of filing of proof of public notice and sheriff's return of service. Op. Atty. Gen. (412a-23), June 18, 1935.

**2139-29. Application of part payments.**—Any person who has paid any sum or sums of money for the payment of taxes under Chapter 414, Laws of 1933 [§§2139-½, 2139-13, 2139-14], which for any reason cannot be applied in full or in part payment of the taxes on the parcel of land on which said taxes were purported to have been paid, such person, his heirs, executors, administrators or assigns shall be entitled to application to the county auditor to have said sum of money applied as a credit upon the purpose of an assignment of the State's interest, if any, in the said parcel of land upon which said taxes were purported to have been paid. (Act Apr. 29, 1935, c. 387, §4.)

Moneys paid under Laws 1933, c. 414, may be used as a credit in part payment for state assignment certificates of the same land. Op. Atty. Gen., June 18, 1935.

In view of §§2139-15 this section is inoperative. Op. Atty. Gen. (21j), Sept. 25, 1935.

**2139-30. Provisions separable.**—The provisions of the act shall be separable and if any provision hereof or the application of any provision hereof, in any case shall be declared invalid, it shall not affect the validity or application of the provisions hereof, otherwise so far as it is practicable to maintain the same in force. (Act Apr. 29, 1935, c. 387, §5.)

**2139-31. Inconsistent acts repealed.**—All acts and parts of acts inconsistent herewith are hereby amended, modified or repealed in so far as they are inconsistent with this act. (Act Apr. 29, 1935, c. 387, §6.)

**2139-32. Tax payments made under unconstitutional act validated.**—In every case where the proper public officials acting under and pursuant to Laws 1931, Chapter 129, or Laws 1933, Chapter 414 [§§2138, 2139, 2139½, 2139-13, 2139-14], or any other applicable statute, have heretofore certified and accepted in full payment and discharge of any taxes and assessments and penalties, interest and costs thereon against any parcel of land or for an assignment thereof, an amount which was less than the full amount of such taxes and assessments and penalties, interest and costs, but not less than the amount fixed

by said laws, the said amount for which receipt in full or assignment was given shall constitute payment in full of such taxes and assessments and penalties, interest and costs in so far as the state and any of its subdivisions are concerned; and any and all liens of the state and its subdivisions against such parcel of land on account of such taxes and assessments and penalties, interest and costs are hereby released and discharged. Such payment shall have the same force and effect for all purposes as if the said taxes and assessments and penalties, interest and costs had been paid in full. Where any assignment has been given pursuant to said laws, and upon payment therefor of an amount not less than the amount fixed thereby such assignment, and all notices of expiration of the time for redemption, or other proceedings taken thereunder, are hereby legalized and validated as against any claims or defenses of the state and its subdivisions, or any person having or claiming any right, title or interest in the premises involved therein. (Act Apr. 24, 1935, c. 258, §1.)

**2139-33. Recordings and filings legalized—pending actions not affected.**—In every case where any taxes and assessments and penalties, interest and costs thereon against any parcel of land have heretofore been paid or assigned, for less than the full amount thereof under and pursuant to Laws 1931, Chapter 129, or Laws 1933, Chapter 414, or any other applicable statute, but not less than the amounts fixed by said laws, the record or filing of any deed or other instrument conveying such parcel of land, which was recorded in the office of the register of deeds, or filed in the office of the registrar of titles of the proper county subsequent to the making of such payment and prior to the passage of this act, is hereby legalized and made valid and effective to all intents and purposes as against the objection that the full amount of such taxes and assessments and penalties, interest and costs had not been paid prior to the recording or filing of such instrument; provided that the provisions of this section shall not affect any action or proceeding now pending in any of the courts in this state. (Act Apr. 24, 1935, c. 258, §2.)

**2140. Purchaser to receive deed.**

In ejectment plaintiff relying upon tax proceedings for title held not to have shown that lot included property along lake shore or that plat should be reformed to include such property. *Rahm v. W.*, 190M508, 252NW 432. See Dun. Dig. 9486.

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.

When state owned lands revert to state, tax title of purchaser at a tax sale is extinguished, such tax title purchaser acquiring only interest of vendee of land. Op. Atty. Gen., Nov. 7, 1933.

**2141. How and when.**

Great seal of Minnesota is not necessary on tax deed. Op. Atty. Gen. (410), Sept. 1, 1939.

**2141-1. Tax deeds validated.**—All tax deeds for the conveyance of real estate executed by the county auditor of any county in this state and filed for record in the office of the register of deeds in the county wherein the land described in such tax deed is situated, provided such tax deeds were so executed and filed for record prior to the year 1867, are hereby validated and legalized, and the recording thereof is validated and legalized, and such conveyances are hereby made valid as to the extent of the interest described in and conveyed by such instrument. (Jan. 24, 1936, Ex. Ses., c. 77, §1.)

**2141-2. Same—pending actions.**—Nothing herein contained shall affect any action now pending to de-

termine the validity of any instrument validated hereby. (Jan. 24, 1936, Ex. Ses., c. 77, §2.)

**2144. County auditor to collect fee.**

Fees of county auditor under §2144 and §2232 are controlled by Laws 1937, c. 491, §14, in counties covered by that act, and auditor must turn in 22% thereof, as well as any fees collected from such source over and above the limit of \$3600 per year, such statute placing an absolute limit of compensation, except mileage and expenses. Op. Atty. Gen. (23d), July 20, 1939.

**2145-1. Cancellation of certificates; on request of holder.**—Upon request of the holder of a real estate tax judgment sale certificate, state assignment certificate or forfeited tax sale certificate and surrender of the same, whether notice of expiration of time of redemption has been issued and served or not, the county auditor shall cancel the same, making an entry in the proper copy real estate tax judgment book opposite the description of land covered by the certificate, "Cancelled by surrender of certificate." (July 16, 1937, Sp. Ses., c. 71, §1.)

**2145-2. Same—Notice of expiration of time for redemption not given within six years.**—The county auditor shall annually, as soon as practicable after the second Monday of May, cancel of record all real estate tax judgment sale certificates, state assignment certificates and forfeited tax sale certificates upon which notice of expiration of time of redemption has not been given within a period of six years next following the date of the issuance of such certificate, by making an entry in the proper copy real estate tax judgment book opposite the description of land covered by such certificate, "Cancelled by limitation." (July 16, 1937, Sp. Ses., c. 71, §2.)

Legislature did not intend to require cancellation of certificates during periods in history when service of expiration of redemption was unnecessary. Op. Atty. Gen. (409a-1), May 6, 1938.

Only those certificates more than six years old upon which no notice has been served within six year period should be cancelled. Op. Atty. Gen. (409a-1), Aug. 8, 1938.

**2145-3. Same—Judicial order.**—Upon the petition of any person interested in the land covered by a real estate tax sale certificate, state assignment certificate or forfeited tax sale certificate, and upon the giving of such notice to the holder of such certificate as may be ordered, the district court, in the proceedings resulting in the judgment upon which a real estate tax judgment sale certificate, state assignment certificate or forfeited tax sale certificate is based, may order the cancellation of a real estate tax judgment sale certificate, state assignment certificate or forfeited tax sale certificate upon which notice of expiration of time of redemption has been issued when the certificate or a deed issued thereon has not been recorded in the office of the register of deeds or filed in that of the register of titles, if the land is registered, within seven years after the date of the issuance of such certificate; the county auditor, on the filing of the order, shall make an entry in the proper copy real estate tax judgment book opposite the description of the land, "Cancelled by order of court"; the rights of the holder under his certificate or his assigns shall thereupon be terminated of record in the office of the county auditor. (July 16, 1937, Sp. Ses., c. 71, §3.)

**2145-4. Same—Effective date.**—This act shall take effect and be in force from and after January 1, 1938. (July 16, 1937, Sp. Ses., c. 71, §4.)

**2148. Invalid certificate.**

*State v. Erickson*, 191M636, 253NW529; note under §2139-2.

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, 219NW545.

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.

**2148-1. Refundment to tax sale purchaser where notice of sale invalid; limitation; reassessment.**—Whenever any sale of land held pursuant to Section 2127, Mason's Minnesota Statutes of 1927, shall have been conducted by the county auditor, without two weeks' published notice of said sale having been first given as required by said section, the purchaser of any parcel of land at said sale or the purchaser or holder, or the assigns or representatives of said purchaser or holder, of a state assignment certificate of said sale to said parcel acquired pursuant to Section 2137, Mason's Minnesota Statutes of 1927, shall be entitled to refundment of the amount paid for such parcel, without interest, upon production and surrender to the county auditor of the county in which such parcel of land is situated, of the certificate of sale, and evidence of the assignment thereof, if any, by issuance and payment of the warrant of the county auditor or the county treasury therefor; provided, however, that the right to refundment shall be exercised within six years from the date of such tax sale, and the amounts paid shall be charged to the proper funds, and extended against the respective parcels of land with the current taxes, and collected herewith. (July 15, 1937, Sp. Ses., c. 61.)

**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—Attachment of rents, crops, etc.**—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 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 purchaser, or selling the land at a forfeited tax sale under the present laws or any laws hereafter enacted.

In case any unplatted land is bid in for the state and is cropped upon a share agreement with the owner, or by a trespasser, the owner's share of such crop, or in case of a trespasser, all or any part of such crops, may be attached and collected in the same manner as rents and applied upon delinquent taxes. The term "crops" shall include hay and grass. In case there is no agreement for rent or in case of an occupant or trespasser on the unplatted land without any agreement for rent, then the attachment shall attach to and bind all of the grass, hay and crops produced on such lands, provided, however, that the district court may upon application by such occupant, upon ten days' notice to the owner and the county auditor, and a showing by him to the satisfaction of the court that his occupancy was not a wilful trespass, release to such occupant the excess of such crops over and above the owner's or landlord's share of the grass, hay and crops of said premises as determined by the court. Such application must, however, be made not later than 60 days after the date of the service of the writ of attachment upon such occupant and if not made within said time it shall be considered that such occupant has waived all right and claim to such crops. The county auditor may give to the owner or person entitled to the possession of such unplatted land during the crop season, at least 10 days notice in writing, by mail or otherwise, specifying the time and place at which application will be made to the District Court for an order permitting the leasing of such land and the District Court may, if it deems it to be for the best interest of such person and of the public, make an order fixing the terms upon which such lease may be made by the county auditor in the name of the county. Such county auditor may then execute in the name of the county such lease in writing as the court shall order. No such lease shall be for a longer term than the current crop season. If the name or address of such person is unknown to the county auditor such notice may be given by one publication in a legal newspaper in the county. If the owner or person entitled to such possession shall show to the court that he intends to lease such unplatted land or make a contract for cropping the same upon shares the court may make such order as it deems best to provide for an attachment of all or a part of the rents or crop share of such person and for applying the same upon the delinquent taxes. Provided, further, that from and after the passage and approval of this act in any proceeding for the collection of rents on unplatted land on which the taxes have been bid in by the State and not assigned, the court may upon motion, order that payment when made as to any part or the whole be paid to the county treasurer to apply upon taxes. Provided, further, that the owner of such unplatted properties may make application to the District Court to release him from applying all or a portion of such rents upon such taxes upon his show-

ing by reason of the condition, cost of upkeep of the property, or other cause, undue hardship upon such owner and/or detriment to such property. Provided, further, that the provisions of this law affecting unplatted lands shall not apply to lands or real estate actually used or occupied by the owner thereof.

The county board may allow additional clerk hire to the county auditor for his work in making such leases which leases shall be made in the name of the county and the said county shall have the right to bring suit for unpaid rents under such leases and to bring the necessary actions to secure evictions of tenants to whom it has leased.

Attachments, lease and proceedings issued and made pursuant to this law shall not be deemed unfinished business that may be retained by the sheriff at expiration of his term as provided by Mason's Minnesota Statutes of 1927, Section 913.

The right of the county auditor to assign the taxes on any unplatted lands to an actual purchaser, or to sell the land at the forfeited tax sale, shall continue until all delinquent taxes described in the writ of attachment are paid. The various parts and provisions of this section shall be severable and if any paragraph or portion of this section shall hereafter be held invalid, the remaining parts and provisions of this section shall not be invalid. (R. L. '05, §944; G. S. '13, §2136; Apr. 20, 1929, c. 266, §1; Apr. 24, 1935, c. 246, §1.)

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

This section is constitutional and capable of enforcement. Taxes Delinquent, 197M266, 266NW867. See Dun. Dig. 9581.

There is nothing to prevent county auditor from entering into contract with various tenants whereby latter, in consideration of a reduced rental, would covenant to make necessary repairs. Id.

County auditor may agree with owner of buildings with respect to furnishing of necessary services such as heat, light and water or rent heating plant or rent heating plant out to private enterprise. Id.

County auditor may take over properties consisting of three office buildings in business district, together with heating plant, and may act somewhat in nature of a receiver, but without such complete authority. Id.

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 tenable, 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.

Rents from real estate cannot be attached for 1931 taxes until after premises are sold for delinquent taxes for 1931, but this does not prevent attachment of rents where premises have been bid in for state for taxes for years prior to 1931. Op. Atty. Gen., Mar. 20, 1934.

Mere fact that taxes are delinquent does not in itself give to any state official authority to lease the lands. Op. Atty. Gen. (412a-11), July 5, 1934.

Affidavit should not set forth unpaid taxes which have not yet become delinquent, which time does not arrive until first Monday in January of second year following year of levy. Op. Atty. Gen. (412), Aug. 29, 1934.

County may not rent unoccupied and abandoned tax delinquent lands, and may not lease lands already leased upon expiration of such lease where attachment has been issued but rents on present lease were paid in advance. Op. Atty. Gen. (412a-25), Nov. 13, 1934.

Auditor is not entitled to additional compensation for preparing affidavit under this section. Op. Atty. Gen. (18E), Nov. 14, 1934.

If sheriff prior to expiration of term of office has begun to execute writ of attachment against rent of tax delinquent land, levy or collection of money thereon, he may execute and return the same after expiration of his term of office. Op. Atty. Gen. (412a-25), Dec. 28, 1934.

County may not lease vacant and unoccupied tax delinquent land. Op. Atty. Gen. (412a-25), Jan. 23, 1935.

The word "may" as used in Laws 1935, c. 246, with reference to the county auditor, is in each case permissive and not mandatory. Op. Atty. Gen. (21j), June 4, 1935.

County funds may not be spent to repair buildings on land sold to state for delinquent taxes. Op. Atty. Gen. (107b-21), June 5, 1935.

Rent of state lands sold under contract for deed are subject to attachment by counties for delinquent taxes. Op. Atty. Gen. (425g), July 18, 1935.

County auditor cannot legally proceed to rent tax delinquent land owned by a corporation adjudged bankrupt prior to institution of proceedings. Op. Atty. Gen. (21j), Aug. 1, 1935.

Sheriff is not entitled to mileage in connection with service of writ. Op. Atty. Gen. (390c-1), Aug. 19, 1935.

County auditor is without authority to rescind action causing attachment of rent, and courts cannot release attachment on showing that same works hardship. Op. Atty. Gen. (474b-4), Nov. 14, 1935.

Section 9347 is applicable to returns on writs of attachment made under this section. Id.

All amounts collected by sheriff under writ of attachment should be turned over to county treasurer as soon as collected. Id.

Holder of state assignment certificate cannot attach rent to enforce payment of taxes. Op. Atty. Gen. (412a-27), May 5, 1936.

Attachment of rents under §2150 will not prevent confession and entry of judgment under §2176-11, but will suspend collection of such rents—interest accruing subsequent to attachment on delinquent taxes should be collected under attachment proceedings. Op. Atty. Gen. (412a-25), May 6, 1936.

Failure to remove crops before forfeiture to state of tax delinquent land does not deprive owner of interest in crops of tenant, under §2164-6(a), but expiration of time for redemption before removal of crops will not deprive state of its rights where owner's share has been attached under §2150. Op. Atty. Gen. (474b-3), May 7, 1936.

Attachment of rents does not prevent confession and entry of composite judgment under §2176-11, but confession and entry of judgments prevents collection under attachment proceedings until default occurs under §2150. Rents collected should be applied on delinquent taxes before confession and entry of judgment. Op. Atty. Gen. (412a-25), May 8, 1936.

After cancellation of state assignment certificate county auditor cannot issue new certificate. Op. Atty. Gen. (409c), May 23, 1936.

Possession by tenant of auditor on tax-delinquent land constitutes occupancy by owner under §2176-3. Op. Atty. Gen. (700d-28), June 29, 1936.

County auditor cannot grant easement over tax delinquent land either before or after forfeiture. Op. Atty. Gen. (21j), July 9, 1936.

Attachment will not lie where lease has been cancelled. Op. Atty. Gen. (412a-25), July 15, 1936.

Laws 1935, c. 278 (§§2164-5 et seq.) does not supersede Laws 1935, c. 246, amending §2150. Op. Atty. Gen. (700d-21), July 18, 1936.

Where, on default of purchaser state readvertised and reoffered trust fund land for sale, and land was not sold, fact that purchaser failed also to pay taxes did not give county officials authority to rent a stump field, the interest in the land covered by taxes gave merely right to redeem. Op. Atty. Gen. (700d-18), July 23, 1936.

Crops attached are to be sold under court order. Op. Atty. Gen. (412a-24), Aug. 18, 1936.

Lessee having hay crop on land should be served with notice of expiration of redemption as occupant of premises. Op. Atty. Gen. (425c-7), Mar. 27, 1937.

The only power given to a court commissioner by Laws 1935, c. 246, is power to issue an attachment for rents, and he does not have authority to pass upon leasing of tax delinquent lands. Op. Atty. Gen. (128b), Aug. 2, 1937.

In unlawful detainer action to recover land acquired by state for taxes, county attorney may appear as sole counsel, but there can be no eviction for two years after forfeiture for taxes for 1926 or 1927. Op. Atty. Gen. (525), Sept. 12, 1937.

Sheriff attaching rents under §2150 must pay amount collected at once to county treasurer, and owes no duty to owner to confess judgment under §2176-11. Op. Atty. Gen. (390c-13), March 1, 1939.

#### 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.

**1. Statutory.**

There is no constitutional right to redeem from tax sales, nor any right to notice of expiration of redemption from such sale. State v. Aitkin County Farm Land Co., 204M495, 284NW63. See Dun. Dig. 9405.

**2. Governed by law at time of sale.**

As between purchaser at a tax sale and owner of property sold, a contract relationship arises, and law as then in existence determines contractual rights and obligations of parties. State v. Aitkin County Farm Land Co., 204M495, 284NW63. See Dun. Dig. 9406.

**3. When may be made.**

Time of redemption for land sold in May 1935 for taxes for year 1931 expires in May, 1940, and for lands sold in 1934 for taxes for year 1932 in May 1939, exact time being five years after date of actual sale. Op. Atty. Gen. (412a-23), Sept. 28, 1937.

**5. Who may redeem.**

Where notice of expiration of redemption has been issued and served on account of prior tax sale but certificate has not been recorded in seven years from date of sale, purchaser thereof cannot redeem from subsequent sale. Op. Atty. Gen. (425b-5), Aug. 22, 1935.

Owner of mortgage covering undivided one-half of land sold for taxes may redeem such undivided one-half. Op. Atty. Gen. (412a-23), Nov. 8, 1935.

One making entry upon land of United States subject to a ditch lien has a right to redeem, and tax commission has authority to abate the ditch liens. Op. Atty. Gen. (921j), Aug. 9, 1937.

**2152. Amount payable.**

**½. In general.**

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.

Where there are judgments for both 1931 and 1932 taxes, 1931 tax may be paid without also paying the 1932 and subsequent taxes and such taxes may be paid in installments until after tax judgment sale for such 1931 taxes on the second Monday in May, 1935. Op. Atty. Gen. (412a-13), Jan. 23, 1935.

Taxes for 1932 paid by owner of two tax certificates on January 16, 1934, could not be included in notice of expiration of redemption from sales and assignments of 1923 and 1926 taxes, but delinquent 1933 taxes should be included. Op. Atty. Gen. (423c), Apr. 26, 1935.

In order to redeem from owner of state land certificate covering taxes for the years 1926, 1927 and 1928 the owner must pay taxes and penalties for the years 1929, 1930, 1931, 1932 and 1933. Op. Atty. Gen. (423a), July 17, 1935.

County auditor cannot accept less than full amount of delinquent taxes, interest, penalties and cost. Op. Atty. Gen. (412a-9), Dec. 11, 1935.

Where taxes for two or more years have gone to sale, one year may not be redeemed separately. Op. Atty. Gen. (412a-10), Nov. 10, 1937.

If the taxes for one or more years have gone to sale, and subsequent year to judgment only, and not to sale, subsequent year may not be redeemed separately prior to time it goes to sale. Id.

**1. When land sold to private purchaser at annual delinquent sale.**

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.

Where land was sold May 13, 1929, covering delinquent taxes for 1927, and purchaser paid delinquent taxes for 1928 and 1929, and taxes for 1930, 1931, and 1932, and 1933 are delinquent and unpaid, amount required to redeem is amount paid by purchaser to cover taxes for 1928 and 1929 and all penalties, costs and interest thereon, together with interest on amount so paid at rate of 12% per annum, and amount for which land was bid in for the state for 1930 taxes with interest at rate of 10% from time land was bid in, and original amount of taxes for 1931 plus a penalty of 10% thereon together with interest on such taxes and penalty at rate of 10% per annum from January 1, 1934, and original amount of 1932 taxes plus a penalty of 8% thereon together with interest on original amount of such taxes at rate of 8%

per annum from March 1, 1934, and original amount of 1933 taxes plus a penalty of 8% thereon together with interest on original amount at rate of 8% per annum from March 1, 1935. Op. Atty. Gen. (423c), Mar. 13, 1935.

Amount of taxes included in state assignment certificate should be ignored in drawing up notice issued upon certificate of absolute property sale, but amount of delinquent taxes for years subsequent to taxes which are covered by assignment certificates should be specified in notice as being a part of amount required to redeem. Op. Atty. Gen. (423c), Mar. 14, 1935.

Notice of expiration of redemption was insufficient where amount required to redeem was not properly stated. Op. Atty. Gen. (339o-2), Apr. 15, 1937.

**2. When land bid in for State and subsequently assigned.**

Person redeeming must pay subsequent delinquent taxes whether reduced to judgment or not. Op. Atty. Gen. (423a), Nov. 10, 1938.

**3. What are delinquent taxes?**

State v. Erickson, 191M636, 253NW529; note under §2139-2.

Op. Atty. Gen., Dec. 27, 1933; note under §2163.

1929 taxes cannot be paid without paying subsequent taxes. Op. Atty. Gen. (412a-19), July 11, 1934.

Notice of expiration of redemption should set forth as a part of the amount required to redeem the amount of all unpaid delinquent taxes, interest, cost and penalties accruing subsequently to sale and such amount must be paid by the person redeeming the land. Op. Atty. Gen. (423a), Aug. 14, 1934.

Where parcel was bid in for state and not assigned, redemptioner must pay subsequent delinquent taxes. Op. Atty. Gen. (425d-5), June 3, 1936.

Owner desiring to redeem assigned tax certificate for 1930 taxes is not required to pay subsequent taxes if judgment has been confessed pursuant to §2176-12. Op. Atty. Gen. (412a-19), Sept. 15, 1937.

Amount required to redeem for 1932 taxes. Op. Atty. Gen. (423c), July 15, 1938.

**4. Interest.**

Amounts paid for taxes for each year included in state assignment certificate need not be stated separately, nor rate of interest thereon, but statement of amount necessary to redeem for taxes of 1928 to 1933 should provide for interest from date of sale in May, 1935, on 1928 and 1929 taxes at rate of 12% per annum, and interest on 1930 and 1931 taxes from such date at rate of 10% per annum, and interest on 1932 and 1933 taxes from such date at rate of 8% per annum. Op. Atty. Gen. (425c-13), Aug. 23, 1935.

Where land is bid in for state at annual May sale for delinquent taxes for 1932 and subsequent years and is subsequently assigned, interest is figured at 8% instead of 12% and is figured on amount of original tax from first day of March following year in which taxes became due and also upon costs authorized by law, and no interest is to be charged on penalties which have accrued and face amount of penalties only is included in amount required to be paid for redemption. Op. Atty. Gen. (412a-9), March 6, 1939.

**2153. Auditor's certificate.**

Auditor should not include in certificate taxes included in a certificate of tax judgment sale, a state assignment certificate, or a certificate issued to an actual purchaser at a forfeited tax sale, where more than six years have expired after issuance, unless notices of expiration of redemption have been issued within six year period. Op. Atty. Gen., (409a-1), Aug. 8, 1938.

Money paid to county auditor for redemption of land sold for taxes may not be recovered by holder of certificate after expiration of 6 years from date of notice. Op. Atty. Gen. (423f), Dec. 13, 1938.

**2156. Undivided part.**

Owner of mortgage covering undivided one-half of land sold for taxes may redeem such undivided one-half. Op. Atty. Gen. (412a-23), Nov. 8, 1935.

**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.

One obtaining quitclaim deed to 160 acres of a 320-acre tract is entitled to redeem 160 acres. Op. Atty. Gen. (425b-5), Sept. 13, 1935.

One holding mortgage covering only part of tract may redeem such part. Op. Atty. Gen. (425b-5), Dec. 31, 1935.

**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.

Necessity for bids and awarding of contracts for publication and printing to lowest bidder are not abrogated by NRA code. Op. Atty. Gen. (707a-9), Dec. 31, 1934.

Acceptance of bid by county board for publishing of official proceedings of county and official financial statement of county "and all other notices and publications required by law to be published by said county during year 1938" did not bind county with respect to publishing delinquent personal property tax lists under §2108 and §2109, or notices under §2160 and §2161, or any other notices or publications not within contemplation of board. Op. Atty. Gen. (700a-9), Apr. 11, 1938.

**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—To whom given—Form of notice.**

See §§2164-5 to 2164-18.

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.

**1/2. In general.**

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

**1. To what sales applicable.**

Notice of expiration of redemption may be issued on certificate of absolute property sale and state assignment certificate made at same time. Op. Atty. Gen. (423c), Apr. 26, 1935.

Purchaser at annual delinquent tax sale in 1930 for 1928 taxes must give notice of expiration of redemption as provided by Laws 1933, c. 366, and is not entitled to record certificate until expiration of such period. Op. Atty. Gen. (425b-4), June 25, 1935.

**2. What law governs.**

Procedure provided for termination of right of redemption under Laws 1935, c. 278, Mason's Minn. Stat. Supp. 1938, §§2164-5 to 2164-18, while different from the procedure prescribed by Mason's Minn. Stat. 1927, §2163, falls within permissible legislative changes respecting remedy and does not substantially impair any contract obligation. State v. Aitkin County Farm Land Co., 204M 495, 284NW63. See Dun. Dig. 1617(11, 12).

Notice of expiration of redemption of land sold for delinquent taxes for 1932, bid in for state at annual tax judgment sale in 1934, and not redeemed or assigned, should not be served until four years after date lands were bid in for state, and time for redemption would not expire until twelfth month thereafter. Op. Atty. Gen. (412a-23), Apr. 27, 1938.

Notice of expiration of time for redemption from delinquent taxes for year 1932, not redeemed or assigned, should be served in manner provided by §2163, except that words "twelve months" should be substituted for words "sixty days", and should not be served until four years after sale, which took place in 1934. Op. Atty. Gen., (425b-4), May 20, 1938.

Lands bid in at a tax judgment sale between passage of Laws 1933, c. 366, and Laws 1935, c. 278, is governed by Laws 1935, c. 278, §2(b) and 5 (§2164-6, §2164-9), and by Laws 1933, c. 366, (§2164-1, §2164-2), and by this section. Op. Atty. Gen. (419f), August 4, 1939.

**6. When may be served.**

Time of redemption for land sold in May 1935 for taxes for year 1931 expires in May, 1940, and for lands sold in 1934 for taxes for year 1932 in May 1939, exact time being five years after date of actual sale. Op. Atty. Gen. (412a-23), Sept. 23, 1937.

Where land was bid in for 1932 taxes at regular tax judgment sale in May, 1934, and was thereafter sold to an individual purchaser by assignment certificate covering 1932, 1933, and 1934 taxes, 12 months' notice of expiration of time for redemption may now be served at any time. Op. Atty. Gen. (419f), August 4, 1939.

**6 1/2. 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.

Taxes for 1932 paid by owner of two tax certificates on January 16, 1934, could not be included in notice of expiration of redemption from sales and assignments of 1923 and 1926 taxes, but delinquent 1933 taxes should be included. Op. Atty. Gen. (423c), Apr. 26, 1935.

Taxes included in composite judgment are not assignable where no default in such judgment exists and composite judgment and delinquent taxes for 1931, 1932, 1933 and 1934 taxes, included therein, are not to be mentioned in notice of expiration of redemption upon tax certificate

covering 1930 taxes. Op. Atty. Gen. (412a-23), July 14, 1936.

**8. 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.

Notice of expiration of redemption to include and describe subsequent delinquent taxes held by state and in redeeming such delinquent taxes must be paid. Op. Atty. Gen., Dec. 27, 1933.

A notice of expiration of redemption issued in 1933 upon certificate of sale for taxes for 1925, subsequent delinquent taxes not having been assigned by the state, should set forth separately in exact amount the taxes for the each subsequent year including penalties and interest in full, and it was not necessary to set forth in the notice right to discount under Laws 1933, c. 414. Op. Atty. Gen. (425c-13), Dec. 14, 1934.

Amounts paid for taxes for each year included in state assignment certificate need not be stated separately, nor rate of interest thereon, but statement of amount necessary to redeem for taxes of 1928 to 1933 should provide for interest from date of sale in May, 1935, on 1928 and 1929 taxes at rate of 12% per annum, and interest on 1930 and 1931 taxes from such date at rate of 10% per annum, and interest in 1932 and 1933 taxes from such date at rate of 8% per annum. Op. Atty. Gen. (425c-13), Aug. 23, 1935.

Notice of expiration of redemption was insufficient where amount required to redeem was not properly stated. Op. Atty. Gen. (3390-2), Apr. 15, 1937.

In notice of expiration of time for redemption from sale for 1932 taxes, unpaid 1931 taxes must be included in amount required to redeem. Op. Atty. Gen. (419f), August 4, 1939.

**10. Statement of time to redeem—Notice held sufficient.**

Notice of expiration of redemption from sale of land on May 12, 1930, for delinquent taxes for 1928 should state that time for redemption will expire 12 months after service of notice and proof thereof has been filed in office of county auditor. Op. Atty. Gen. (423c), Sept. 18, 1934.

Copy of notice must be mailed to holder of mortgage sufficient length of time prior to expiration of redemption period. Op. Atty. Gen. (412a-23), Sept. 3, 1936.

**12. To whom directed, upon whom served, and return of service.**

Under Laws 1935, c. 278, notice of expiration of redemption need not be mailed as provided in this section to mortgagees and licensees. Op. Atty. Gen. (425b-5), Sept. 17, 1935.

Notice must be served upon lessee of county auditor having hay crop on land pursuant to §2150. Op. Atty. Gen. (425c-7), Mar. 27, 1937.

**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.

Necessity for bids and awarding of contracts for publication and printing to lowest bidder are not abrogated by NRA code. Op. Atty. Gen. (707a-9), Dec. 31, 1934.

Notice of expiration of redemption for 1932 taxes should be in official newspaper. Op. Atty. Gen., (419), Sept. 2, 1938.

Personal service on owner outside county should be a good substitute for publication. Op. Atty. Gen. (419d), July 31, 1939.

**19. History of legislation.**

There is no constitutional right to redeem from tax sales, nor any right to notice of expiration of redemption from such sale. State v. Aitkin County Farm Land Co., 204M495, 284NW63. See Dun. Dig. 9405.

**2164. Expiration of redemption—Notice.**

Six years within which notice of expiration of redemption upon a state assignment certificate may be issued or served commences to run from date of state assignment certificate. Op. Atty. Gen. (423c), Jan. 24, 1935.

Offer by owner in writing to sell land to the United States, which was accepted by director of land program of PERA during year of redemption, without execution or delivery of any instrument of conveyance, did not vest in United States such an interest as to render notice of expiration of redemption ineffectual to divest owner of his title, and owner was not entitled to redeem after expiration of year. Op. Atty. Gen. (700d-28), Apr. 3, 1937.

Service of notice of expiration of time for redemption for taxes for 1931 is controlled by Laws 1935, c. 278, §8. Op. Atty. Gen. (425c-7), Apr. 5, 1938.

**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.)

See §2164-16 repealing this section in part. Op. Atty. Gen. (423c), Apr. 30, 1934; note under §2170. This act is constitutional as an emergency measure.

State v. Erickson, 191M636, 253NW529. See Dun. Dig. 9142.

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 for 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.

Purchaser of land in 1929 for delinquent taxes for 1927 must give a year's notice of expiration of redemption, but is not necessary for him to wait until expiration of 5 years from date of sale as long as notice will not expire until after five-year period is up. Op. Atty. Gen., Dec. 20, 1933.

Notice required to be attached to delinquent tax list under §2139-2 should not be omitted on account of this act. Op. Atty. Gen., Jan. 17, 1934.

Notice of expiration of redemption should not be issued until the unexpired time is one year or less. Op. Atty. Gen., Mar. 1, 1934.

Notice of expiration of redemption may be served so that twelve-month period required by Laws 1933, c. 366 will expire simultaneously with or shortly after the five-year period specified by Laws 1927, c. 119. Op. Atty. Gen. (412a-9), May 31, 1934.

Notice of expiration of redemption must be served before state can own lands bid in for state for taxes for 1926 and subsequent years; but such notice cannot now be issued. Op. Atty. Gen. (423c), June 8, 1934.

Notice of expiration of redemption from sale of land on May 12, 1930, for delinquent taxes for 1928 should state that time for redemption will expire 12 months after service of notice and proof thereof has been filed in office of county auditor. Op. Atty. Gen. (423c), Sept. 18, 1934.

One purchasing a certificate of tax judgment sale dated May 8, 1922, covering land sold for delinquent taxes for 1920 and subsequently pay taxes for certain years and secured state assignment certificate covering taxes for certain other years and last state assignment certificate is dated Sept. 6, 1933, and covers taxes for year 1928, he must serve notice of expiration of time of redemption before he can acquire title, and this must be issued upon the certificate dated September 6, 1933, as the time within which notice of expiration of time of redemption can be issued upon certificate dated May 8, 1922, has expired. Op. Atty. Gen. (412a-23), Feb. 16, 1935.

Purchaser at annual delinquent tax sale in 1930 for 1928 taxes must give notice of expiration of redemption as provided by Laws 1933, c. 366, and is not entitled to record certificate until expiration of such period. Op. Atty. Gen. (425b-4), June 25, 1935.

At the present time this act is applicable only to tax sales mentioned in §5 of Laws 1935, c. 278, as respects notice of expiration of redemption. Op. Atty. Gen. (425b-4), July 25, 1935.

Purchaser at 1923 forfeited tax sale must give notice of expiration of twelve months as required by Laws 1933, c. 366. Op. Atty. Gen. (425c-7), Sept. 5, 1935.

Where taxes for 1925 and subsequent taxes have not been paid and land was bid in for state for 1925 taxes and on June 29, 1935, county auditor posted a notice of expiration of redemption, it will be necessary for the buyer from the state to serve notice of expiration of redemption, and he will obtain title to the property twelve months after proof of service of notice has been filed. Op. Atty. Gen. (425b-5), Dec. 18, 1935.

A 12-month notice of expiration of redemption from sale to purchaser for 1929 taxes may be issued at this time. Op. Atty. Gen. (425b-5), Feb. 6, 1936.

Where delinquent taxes of 1927 to 1931, inclusive, were assigned to a private purchaser on July 1, 1933, 12 months' notice of expiration of redemption may be issued and given at this time. Op. Atty. Gen. (412a-27), Feb. 21, 1936.

Copy of notice must be mailed to holder of mortgage sufficient length of time prior to expiration of redemption period. Op. Atty. Gen. (412a-23), Sept. 3, 1936.

Notice of expiration of redemption of land sold for delinquent taxes for 1932, bid in for state at annual tax judgment sale in 1934, and not redeemed or assigned, should not be served until four years after date lands were bid in for state, and time for redemption would not expire until twelfth month thereafter. Op. Atty. Gen. (412a-23), Apr. 27, 1938.

Twelve month time provision is applicable to land sold for 1932 taxes. Op. Atty. Gen. (425b-4), May 20, 1938.

Notice of expiration of time for redemption from delinquent taxes for year 1932, not redeemed or assigned, should be served in manner provided by §2163, except that words "twelve months" should be substituted for words "sixty days", and should not be served until four years after sale, which took place in 1934. Id.

If sale of land for 1931 taxes was held before enactment of Laws 1935, c. 278, twelve months' notice of expiration of time for redemption is required, but if sale was held after enactment of that statute, sixty days notice is required. Op. Atty. Gen. (419f-3), July 6, 1939.

**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.

See §2164-16 repealing this section in part.

**2164-3. Certain tax proceedings legalized.**—Any proceedings heretofore taken for the acquisition of title to real property under the laws of this State relating to taxation are hereby legalized and the title acquired thereby validated when such proceedings were in all respects properly taken and conducted, except that the notice of expiration of time of redemption states that interest at the rate of 8% per annum be added to the amount paid by a purchaser of a tax certificate from the date of such purchase to the day of redemption. (Act Apr. 17, 1935, c. 198, §1.)

**2164-4. Pending actions not affected.**—This Act shall not affect any action or proceeding now pending in any of the courts of this state. (Act Apr. 17, 1935, c. 198, §2.)

**2164-4a. Notice of expiration of redemption validated in certain cases.**—In the case of any real estate tax judgment sale heretofore held, where notice of expiration of the time of redemption was duly issued upon a tax certificate and served by publication in or prior to the year 1931, and where the return of the sheriff of the county in which the lands affected are situated that the persons to whom the notice was directed could not be found in said county and that no one was in possession of said lands was filed in the office of the auditor of said county after the commencement of said publication, such tax certificate and such notice of expiration of the time of redemption and the service of the latter, if otherwise correct, shall be sufficient for all purposes, and shall not be affected by reason of the aforesaid irregularities; and in any such case, where, in addition to such filing of such return, proof of such service by publication has been filed in the office of such county auditor and the auditor has duly certified that the time for redemption from such sale has expired and that no redemption has been made, and the original tax certificate under which such notice of expiration was issued, and a certified copy of such notice of expiration, with proof of service of the same by publication, and of the filing of such proof and of said return hereinbefore described, and the auditor's certificate that the time for redemption has expired and no redemption made, have been heretofore presented to the Minnesota Tax Commission, or shall be so presented within three months after the passage of this act, said Tax Commission shall issue to the holder of such tax sale certificate a state tax deed of the lands involved, as in other cases, and such deed shall be valid for all purposes notwithstanding said irregularities; and such tax certificate, together with the certificate of the county auditor that the time for redemption from such sale has expired, or such tax deed as shall be issued thereon, may be recorded within six months after the passage of this act in the office of the register of deeds of the county in which the lands concerned are situated, notwithstanding that the date of

such recording may be more than seven years after the date of such tax judgment sale, and when so recorded, the same shall have the same effect as if duly recorded within seven years from the date of such tax judgment sale; and the validity of such tax certificate or tax deed, or the record thereof, shall not be questioned by reason of any of the aforesaid irregularities. (Act Apr. 24, 1935, c. 277, §1.)

**2164-4b. Not to affect pending actions.**—This act shall not affect any action at law or in equity which is now pending or which may be commenced within three months after the passage of this act. (Act Apr. 24, 1935, c. 277, §2.)

Act Apr. 24, 1935, c. 277, §3, provides that the act shall take effect from its passage.

**2164-4c. Judgment for delinquent taxes on land bid in by state between passage of 1933 and 1935 acts.**—Where lands bid in for the State for delinquent taxes between the passage of Chapter 366, Laws of 1933 [§§2164-1, 2164-2], and the passage of Chapter 278, Laws of 1935 [§§2164-5 to 2164-18], have not been assigned to actual purchasers, the county board of the county in which such lands are located may adopt a resolution instructing the county auditor to list such lands as delinquent for taxes for 1938 and to file and docket such list with the clerk of the district court as though said taxes for 1938 were the first delinquent taxes against said lands and judgment shall be entered and proceedings taken with reference to such lands as though the delinquent taxes for the year 1938 constituted the first instance of real estate tax delinquency with respect thereto; provided, however, that nothing herein contained shall impair the right of the State to enforce any lien in its favor which has accrued by reason of the delinquency or nonpayment of taxes for any year prior to the year 1938. (Act Apr. 20, 1939, c. 310.)

**2164-5. Stated period of redemption.**—The term "stated period of redemption" as used in this act shall mean the period of time specified in this act or in any other law for redemption of lands from any tax judgment sale, including any extension of the period originally prescribed, but not including any further time allowed for redemption on account of requirements for giving notice of expiration. (Act Apr. 24, 1935, c. 278, §1.)

Procedure provided for termination of right of redemption under Laws 1935, c. 278, Mason's Minn. Stat. Supp. 1938, §§2164-5 to 2164-18, while different from the procedure prescribed by Mason's Minn. Stat. 1927, §2163, falls within permissible legislative changes respecting remedy and does not substantially impair any contract obligation. *State v. Aitkin County Farm Land Co.*, 204M 495, 284NW65. See Dun. Dig. 1617(11, 12).

Confession of judgment statute (Ex. Sess. Laws 1935-36, c. 72, as amended) and repurchase statute (Ex. Sess. Laws 1937, c. 88) did not do away with necessity on part of delinquent taxpayer to comply with notice of expiration of redemption issued and served pursuant to Laws 1935, c. 278, Mason's Supp. 1938, §§2164-5 to 2164-18, inasmuch as taxpayer made no effort to bring himself within provisions of either of mentioned acts. *Id.* See Dun. Dig. 9405.

Date of expiration of date of period of redemption for land sold for taxes for years 1926 to 1933, inclusive, stated and discussed. Op. Atty. Gen. (425b-5), July 16, 1935.

At the present time the manner of giving notes of expiration of redemption in all cases is fixed by this act. Op. Atty. Gen. (425b-4), July 25, 1935.

Laws 1935, c. 278 (§§2164-5 et seq.), does not supersede Laws 1935, c. 246, amending §2150. Op. Atty. Gen. (700d-21), July 18, 1936.

Where taxes and interest on state land certificates of state trust lands, neither county nor any other taxing district has any authority to sell the land or serve notice of expiration of redemption, as the only interest in such lands that may be sold for delinquent taxes is interest vested by land sale certificate in owner, which may be lost after revesting of title in state under certificate and re-offer of land by the sale. Op. Atty. Gen. (700a-8), July 20, 1936.

Laws 1933, c. 407 (§§2176-3 et seq.), was not repealed by Laws 1935, c. 278 (§§2164-5 et seq.). Op. Atty. Gen. (425b), July 21, 1936.

Land belonging to village used for public purposes cannot be sold for taxes even though deed thereto has not been recorded, and such deed may be recorded without endorsement thereon of certificates showing payment of taxes, but village should secure order from tax commis-

sion cancelling all taxes. Op. Atty. Gen. (469a-15), Nov. 10, 1936.

Condemnation proceedings by the state does not operate to extend time for redemption at reduced rates. Op. Atty. Gen. (412a-5), May 28, 1937.

**2164-6. Period of redemption extended to July 1, 1936.**—(a) The stated period of redemption of all lands bid in for the state at tax judgment sales heretofore held for taxes for the years 1926, 1927, 1928, and 1929, where such lands have not heretofore been sold or assigned to actual purchasers, is hereby extended to and including July 1, 1936, provided, that if any parcel of such land is actually occupied on said date by any person, who has any crop then growing thereon, or heretofore grown thereon during said year, such occupant may remain in possession of such parcel for the purpose of removing such crop, until and including December 1, 1936.

(b) Except as provided in Subdivision (a) of this section, the stated period of redemption of all lands sold to actual purchasers or bid in for the state at tax judgment sales heretofore held shall be as provided by existing laws.

(c) The stated period of redemption of all lands sold to actual purchasers or bid in for the state at any tax judgment sale hereafter held shall be five years from the date of sale. (Act Apr. 24, 1935, c. 278, §2.)

Notice of expiration of redemption may be served in some cases where land has been bid in by the state or the certificates is owned by an individual, before five years after date of tax sale. Op. Atty. Gen. (425b-4), July 25, 1935.

Provisions of this act do not repeal or affect provisions of §2169 or §2170. *Id.*

Expiration of redemption of lands sold for 1929 taxes on Aug. 8, 1932, and time for issuing notice of expiration of redemption. Op. Atty. Gen. (425b-5), Feb. 21, 1936.

There is no irreconcilable conflict between Laws 1935, c. 336 (§§2139-15 to 2139-27) and Laws 1933, c. 407 (§§ 2176-3 to 2176-8), and there was implied repeal, though there can be no sale to the general public of lands to which Laws 1933, c. 407, is applicable until one year after title passes to the state, and this means one year after the one year period following notice of expiration of redemption. Op. Atty. Gen. (425a), Apr. 4, 1936.

Making of state assignment certificates covering parcels sold for 1926, 1927, 1928 or 1929 taxes is prohibited after July 1, 1936. Op. Atty. Gen. (412a-27), June 13, 1936.

Time of redemption for land sold in May 1935 for taxes for year 1931 expires in May, 1940, and for lands sold in 1934 for taxes for year 1932 in May 1939, exact time being five years after date of actual sale. Op. Atty. Gen. (412a-23), Sept. 28, 1937.

No notice of expiration of redemption can be served by state under Laws 1935, c. 278, for taxes for 1925 or any prior year, and since taxes for 1926 and subsequent years do not attach to a judgment for taxes for 1925 or any prior year, stated period of redemption for taxes for 1926 or any subsequent year will not expire until five years after a separate judgment is entered for taxes for 1926 or subsequent years, and such taxes are sold at delinquent tax sale. Op. Atty. Gen. (425c-7), Nov. 5, 1937.

Assignment may be made any time prior to expiration of stated period of redemption, and county auditor may issue new notice of expiration of redemption at request of purchaser. Op. Atty. Gen. (423k), Dec. 6, 1937.

(a) This section has no application to lands which prior to its enactment had been sold to actual purchasers at tax judgment sales. Op. Atty. Gen. (409a-9), Dec. 17, 1935.

Failure to remove crops before forfeiture to state of tax delinquent land does not deprive owner of interest in crops of tenant, under §2164-6(a), but expiration of time for redemption before removal of crops will not deprive state of its rights where owner's share has been attached under §2150. Op. Atty. Gen. (474b-3), May 7, 1936.

Provision as to actual occupancy refers only to time between July 1, 1936, and Dec. 1, 1936. Op. Atty. Gen. (412a-24), Sept. 2, 1939.

(b) Notice of expiration of redemption of land sold for delinquent taxes for 1932, bid in for state at annual tax judgment sale in 1934, and not redeemed or assigned, should not be served until four years after date lands were bid in for state, and time for redemption would not expire until twelfth month thereafter. Op. Atty. Gen. (412a-23), Apr. 27, 1938.

**2164-7. Lands may be redeemed.**—Every parcel of land heretofore sold to an actual purchaser or bid in for the state at any tax judgment sale and now subject to redemption, and every parcel of land hereafter sold to an actual purchaser or bid in for the state at any such sale, shall continue subject to redemption

until the expiration of the time allowed for redemption after the giving of notice of expiration as provided by law. Upon the expiration of such time absolute title to such parcel, if not theretofore redeemed, shall vest in the state, the purchaser, or its or his assigns, as the case may be. (Act Apr. 24, 1935, c. 278, §3.)

Time for redemption expires one year after giving of notice of expiration of redemption and filing of proof thereof in office of county auditor, unless parcel shall have been assigned or redeemed prior to that time. Op. Atty. Gen. (425b-5), June 3, 1936.

Judgment cannot be confessed after period of redemption has expired. Op. Atty. Gen. (425d), June 13, 1936.

Land forfeited to state cannot be redeemed even though forfeiture resulted from excusable negligence. Op. Atty. Gen. (412a-8), Oct. 7, 1936.

Taxes, tax liens and special assessments should be cancelled as soon as tax delinquent lands become forfeited to the state for nonpayment of taxes for 1926, 1927, 1928 or 1929, but should not be advertised or sold during year following date of forfeiture, but may be classified and appraised during such year. Op. Atty. Gen. (407i), Nov. 10, 1936.

In view of Laws 1937, c. 326, where lands have become forfeited to state pursuant to §2164-7, interest payments should not be accepted and redemption should not be permitted under §6291. Op. Atty. Gen. (425g), June 2, 1937.

**2164-8. Who may redeem.**—Redemption of any parcel of land referred to in Section 3 of this act may be made by any person interested in such parcel in the manner otherwise provided by law. (Act Apr. 24, 1935, c. 278, §4.)

**2164-9. To what sales applicable.**—The expiration of the time for redemption of all lands now subject to redemption from sales for delinquent taxes heretofore made and the giving of notice of such expiration shall be governed by the provisions of Laws 1933, Chapter 366 [§§2164-1, 2164-2], and other laws in force at the time of the passage of this act, so far as applicable, in the following cases: (1) where such lands have been sold to actual purchasers at any time before the passage of this act; (2) where such lands have been bid in for the state at any time before the passage of this act and have heretofore been or shall hereafter be assigned to actual purchasers; (3) where such lands were bid in for the state between the passage of said Chapter 366 and the passage of this act, whether assigned to actual purchasers or not. (Act Apr. 24, 1935, c. 278, §5.)

Purchaser at annual delinquent tax sale in 1930 for 1928 taxes must give notice of expiration of redemption as provided by Laws 1933, c. 366, and is not entitled to record certificate until expiration of such period. Op. Atty. Gen. (425b-4), June 25, 1935.

At the present time, Laws 1933, c. 366, is applicable only to tax sales mentioned in this section. Op. Atty. Gen. (425b-4), July 25, 1935.

Where lands which were bid in by the state for taxes for 1925 and prior years are sold at sale held pursuant to Laws 1935, c. 387, the twelve-month notice of expiration of redemption provided for by Laws 1933, c. 366, should be given. Op. Atty. Gen. (425c-13), Aug. 20, 1935.

Purchaser at 1923 forfeited tax sale must give notice of expiration of twelve months as required by Laws 1933, c. 366. Op. Atty. Gen. (425c-7), Sept. 5, 1935.

Notices on sales of land at forfeited tax sale for 1925 and prior years require a one-year period for redemption. Op. Atty. Gen. (425c-7), Sept. 6, 1935.

Under this act notice of expiration of redemption need not be mailed as provided in §2163 to mortgagees and licensees. Op. Atty. Gen. (425b-5), Sept. 17, 1935.

Twelve months' notice of expiration of redemption must be given as required by Laws 1933, c. 366, in cases where state assignment certificates covering delinquent taxes for 1926 and subsequent years are purchased at delinquent tax sale commencing on second Monday in August, 1935, under Laws 1935, c. 387, and a twelve-month notice of expiration of redemption as required by Laws 1933, c. 366, must be given in all cases where real estate was bid in for the state for delinquent taxes at any time prior to passage and approval of this act, and state assignment certificates are issued subsequent to passage and approval. Op. Atty. Gen. (425c-7), Sept. 17, 1935.

Where taxes for 1925 and subsequent taxes have not been paid and land was bid in for state for 1925 taxes and on June 29, 1935, county auditor posted a notice of expiration of redemption, it will be necessary for the buyer from the state to serve a notice of expiration of redemption, and he will obtain title to the property twelve months after proof of service of notice has been filed. Op. Atty. Gen. (425b-5), Dec. 18, 1935.

A 12-month notice of expiration of redemption from sale to purchaser for 1929 taxes may be issued at this time. Op. Atty. Gen. (425b-5), Feb. 6, 1936.

Notice of expiration of redemption is necessary where taxes are assigned after giving of notice by county auditor. Op. Atty. Gen. (419f-1), July 9, 1936.

Land delinquent for taxes for year 1932, bid in for state before passage of this act and not assigned is not subject to forfeiture by a posted notice of expiration of redemption. Op. Atty. Gen. (425c-13), Mar. 30, 1938.

Notice of expiration of redemption of land sold for delinquent taxes for 1932, bid in for state at annual tax judgment sale in 1934, and not redeemed or assigned, should not be served until four years after date lands were bid in for state, and time for redemption would not expire until twelfth month thereafter. Op. Atty. Gen. (412a-23), Apr. 27, 1938.

Notice of expiration of time for redemption from delinquent taxes for year 1932, not redeemed or assigned, should be served in manner provided by §2163, except that words "twelve months" should be substituted for words "sixty days", and should not be served until four years after sale, which took place in 1934. Op. Atty. Gen. (425b-4), May 20, 1938.

**2164-10. Notice of expiration of redemption.**—Notice of expiration of the time for redemption of any parcel of lands sold to an actual purchaser at any tax judgment sale hereafter held, or bid in for the state at any such sale and thereafter assigned to an actual purchaser, shall be given and served as provided by Mason's Minnesota Statutes of 1927, Section 2163. Such notice may be issued and served at any time not earlier than 60 days before the expiration of the stated period of redemption of such parcel from such sale. The time for redemption of any such parcel from such sale shall expire 60 days after the service of such notice and the filing of proof thereof in the office of the county auditor. (Act Apr. 24, 1935, c. 278, §6.)

Where no taxes have been extended against state lands, no notice of expiration can be issued or served. Op. Atty. Gen. (423k), May 20, 1936.

Condemnation proceedings by the state does not operate to extend time for redemption at reduced rates. Op. Atty. Gen. (412a-5), May 28, 1937.

Land does not forfeit to the state where sheriff fails to serve notice. Op. Atty. Gen. (425b-4), July 5, 1938.

If sale of land for 1931 taxes was held before enactment of Laws 1935, c. 278, twelve months notice of expiration of time for redemption is required, but if sale was held after enactment of that statute, sixty days notice is required. Op. Atty. Gen. (419f-3), July 6, 1939.

**2164-11. County auditor to give notice.**—(a) In case any parcel of land bid in for the state at any tax judgment sale heretofore held has not been sold or assigned to an actual purchaser by one year before the expiration of the stated period of redemption of such parcel, it shall be the duty of the county auditor thereupon forthwith to give notice of expiration of the time for redemption of such parcel as herein provided. Subject to the provisions of Section 5 of this act so far as applicable, such notice shall be given and all other things done with respect to all such parcels as provided by Section 8 of this act, except that the notice shall state that the time for redemption will expire one year after service of notice and the filing of proof thereof, instead of 60 days. Otherwise all the provisions of said Section 8 shall apply to and govern the corresponding matters under this section.

(b) The time for redemption of any parcel of land as to which notice of expiration has been given as provided in this section shall expire one year after the giving of such notice and the filing of proof thereof in the office of the county auditor, unless such parcel shall theretofore be assigned to an actual purchaser as herein provided. (Act Apr. 24, 1935, c. 278, §7.)

Publication of notice of expiration of period of redemption of land sold for taxes for years 1926, 1927, 1928 and 1929, where lands have not been sold to actual purchasers, should not commence until July 2, 1935. Op. Atty. Gen. (425b-4), June 11, 1935.

Where land is disposed of under Laws 1935, c. 387, it is no longer subject to costs incurred in giving notice of expiration of redemption under Laws 1935, c. 278, §§7, 8. Op. Atty. Gen. (425c-3), Aug. 3, 1935.

Requirement that county auditor issue notices of expiration of redemption on taxes for years of 1926 to 1929, inclusive, is mandatory, and such notices should be issued within a reasonable time after July 1, 1935. Op. Atty. Gen. (425b-5), Aug. 17, 1935.

It is duty of county auditor to disregard alleged defects in proceedings prior to sale to state and issue notices of expiration of redemption. Op. Atty. Gen. (21j), Sept. 13, 1935.

Notice to be served may be printed. Op. Atty. Gen. (425b-5), Oct. 25, 1935.

There is no irreconcilable conflict between Laws 1935, c. 386 (§§2139-15 to 2139-27), and Laws 1933, c. 407 (§§2176-3 to 2176-8), and there was implied repeal, though there can be no sale to the general public of lands to which Laws 1933, c. 407, is applicable until one year after title passes to the state, and this means one year after the one-year period following notice of expiration of redemption. Op. Atty. Gen. (425a), Apr. 4, 1936.

Time for redemption expires one year after giving of notice of expiration of redemption and filing of proof thereof in office of county auditor, unless parcel shall have been assigned or redeemed prior to that time. Op. Atty. Gen. (425b-5), June 3, 1936.

One year's notice of expiration of redemption is required for sales made for 1930 and 1932, and 60 days' notice is required for tax sales for all other years. Op. Atty. Gen. (412a-27), June 13, 1936.

Posted notice of expiration of redemption is fatally defective unless signed and sealed by county auditor, but service of notice on occupants may be made within a reasonable time after 30-day period prescribed by statute has expired. Op. Atty. Gen. (423c), Dec. 5, 1936.

Lands forfeited to state for delinquent taxes according to §2164-11 cannot be included in confession of judgment pursuant to §2176-11. Op. Atty. Gen. (412a-23), June 18, 1937.

Where notice of expiration of redemption is served under Laws 1935, c. 278, and owner thereafter confesses judgment under Laws 1935, Ex. Sess., c. 72, before expiration of period of redemption, confession of judgment annuls notice of expiration of redemption, and owner who confesses judgment under c. 72 of Laws 1935, Ex. Sess., and defaults is not ineligible to confess judgment under Laws 1937, c. 486. Op. Atty. Gen. (412a-10), July 20, 1937.

Former owner may not repurchase under Laws 1937, Ex. Sess., c. 88, until one year after filing of proof of service of notice by sheriff with county auditor. Op. Atty. Gen. (425c-5), Sept. 1, 1937.

Notice of expiration of redemption of land sold for delinquent taxes for 1932, bid in for state at annual tax judgment sale in 1934, and not redeemed or assigned, should not be served until four years after date lands were bid in for state, and time for redemption would not expire until twelfth month thereafter. Op. Atty. Gen. (412a-23), Apr. 27, 1938.

Auditor must serve notice for 1932 taxes regardless of existence of judgment for 1931 taxes also. Op. Atty. Gen. (412a-23), May 26, 1938.

(a) Notice of expiration of time for redemption from delinquent taxes for year 1932, not redeemed or assigned, should be served in manner provided by §2163, except that words "twelve months" should be substituted for words "sixty days", and should not be served until four years after sale, which took place in 1934. Op. Atty. Gen. (425b-4), May 20, 1938.

(b) Where period of redemption will expire on July 1, 1936, posted notice should not be posted and publication of published notice should not be commenced prior to July 2, 1935. Op. Atty. Gen. (423c), July 17, 1935.

Published notice is mandatory. Id. One year begins to run after filing of proof of publication, filing of proof of posting and filing of sheriff's return of service or of vacancy. Id.

Year of redemption does not expire until one year after filing of proof with County Auditor. Op. Atty. Gen. (407h), Dec. 7, 1937.

Owner should be permitted to redeem at any time before expiration of one year from notice, though former county auditor neglected to get out notice, and in event parcel has been assigned to an actual purchaser after service of notice by the state, such service becomes ineffective and a new notice must be served by certificate holder. Op. Atty. Gen. (423f), July 29, 1938.

**2164-12. Form of notice.**—(a) In case any parcel of land bid in for the state at any tax judgment sale hereafter held has not been sold or assigned to an actual purchaser by 60 days before the expiration of the stated period of redemption of such parcel, it shall be the duty of the county auditor thereupon forthwith to give notice of expiration of the time for redemption of such parcel as herein provided; provided, that delay in giving such notice shall not affect the validity thereof.

(b) All parcels of land bid in at the same tax judgment sale and having the same stated period of redemption shall be covered by a single posted notice, but a separate notice may be posted for any parcel which may be omitted. Such notice shall be sufficient if substantially in the following form:

Notice of Expiration of Redemption  
Office of the County Auditor  
County of . . . . ., State of Minnesota  
To all person interested in the lands hereinafter described:

You are hereby notified that the parcels of land hereinafter described, situated in the County of . . . . ., State of Minnesota, were bid in for the state on the . . . . . day of . . . . . 19 . . . . . at the tax judgment sale of land for delinquent taxes for the year 19 . . . . .; that the descriptions of said parcels and the names of the persons to whom the same are assessed, respectively are as follows:

Description	Persons to whom assessed
.....	.....

That the time for redemption of said lands from said sale will expire 60 days after service of notice and the filing of proof thereof in my office as provided by law.

Witness my hand and official seal this . . . . . day of . . . . ., 19 . . . . .  
(Official Seal)

County Auditor  
Such notice shall be posted by the auditor in his office, subject to public inspection, and shall remain so posted until at least one week after the date of the last publication of notice as hereinafter provided. Proof of such posting shall be made by the certificate of the auditor, filed in his office.

(c) As soon as practicable after the posting of the notice prescribed in Subdivision (b) of this section, the county auditor shall cause to be published for three successive weeks in the official newspaper of the county a notice in substantially the following form:

Notice of Expiration of Redemption  
Office of the County Auditor  
County of . . . . ., State of Minnesota

Notice is hereby given that the time for redemption of certain lands bid in for the state on the . . . . . day of . . . . ., 19 . . . . ., at the tax judgment sale of lands for delinquent taxes for the year 19 . . . . ., will expire 60 days after service of notice and the filing of proof thereof in my office as provided by law; that a notice containing a description of said lands and the names of the persons to whom the same are assessed has been posted in my office, subject to public inspection, as required by law.

Dated . . . . ., 19 . . . . .  
County Auditor.

Proof of publication of such notice affidavit as provided by law shall be filed in the office of the county auditor. A single published notice shall be sufficient for all parcels of land bid in at the same tax judgment sale, having the same stated period of redemption, and covered by a notice or notices kept posted during the time of the publication as hereinbefore provided. Provided, however, that as to either service upon persons in possession or return as to vacant lands the sheriff shall charge mileage only for one trip if the occupants of more than two tracts are served simultaneously, and in such case such mileage shall be pro-rated and charged equitably against all such owners.

Forthwith after the commencement of such publication the county auditor shall deliver to the sheriff of the county a sufficient number of copies of such published notice for service upon the persons in possession of all parcels of such land as are actually occupied, together with a copy of the posted notice or notices referred to in such published notice. Within 30 days after receipt thereof, the sheriff shall make such investigation as may be necessary to ascertain whether the parcels covered by such notice are actually occupied or not, and shall serve a copy of such published notice upon the person in possession of each parcel found to be so occupied in the manner prescribed for serving summons in a civil action. The sheriff shall make prompt return to the auditor as to all notices so served and as to all parcels found vacant and unoccupied. Such return shall be made upon a copy of such published notice and of the posted notice or notices covered thereby, and shall be prima facie evidence of the facts therein stated. Unless compensation for such services is

otherwise provided by law, the sheriff shall receive from the county, in addition to his other compensation prescribed by law, such fees and mileage for service on persons in possession as are prescribed by law for such service in other cases, and shall also receive such compensation for making investigation and return as to vacant and unoccupied lands as the county board may fix, subject to appeal to the district court as in case of other claims against the county.

(d) The time for redemption of any parcel of land as to which notice of expiration has been given as provided in Subdivisions (b) and (c) of this section shall expire 60 days after the giving of such notice and the filing of proof thereof in the office of the county auditor, unless such parcel shall theretofore be assigned to an actual purchaser as hereinafter provided.

(e) The cost of giving notice as provided by Subdivisions (b) and (c) of this section shall be paid by the county.

(f) After the time for redemption of any lands shall have expired after notice given as provided in Subdivisions (b) and (c) of this section, the county auditor shall execute a certificate describing the lands, specifying the tax judgment sale at which the same were bid in for the state, and stating that the time for redemption thereof has expired after notice given as provided by law and that absolute title thereto has vested in the State of Minnesota. Such certificate shall be recorded in the office of the register of deeds and thereafter filed in the office of the county auditor, except that in case of registered land such certificate shall be filed in the office of the registrar of titles and a duplicate filed in the office of the county auditor. Such certificate and the record thereof shall be prima facie evidence of the facts therein stated, but failure to execute or record or file such certificate shall not affect the validity of any proceedings hereunder respecting such lands or the title of the state thereto. (Act Apr. 24, 1935, c. 278, §8.)

Defects in posting legalized. Laws 1939, c. 237. Time of redemption will not expire on July 1, 1936, but one year from time of filing of proof of public notice and sheriff's return of service. Op. Atty. Gen. (412a-23), June 18, 1935.

A year's notice must be given in all cases except where taxes are offered for sale after passage of this act, or after April 24th, 1935. Op. Atty. Gen. (425c), July 11, 1935.

"Forthwith" means within such reasonable time after the 60th day prior to expiration of date of period of redemption as work of preparing necessary notices can be completed by reasonable exertion. Op. Atty. Gen. (423c), July 11, 1935.

It is mandatory that notice be given. Id. Using a separate notice for each separate description and having these bound as a loose leaf book would be of doubtful validity. Op. Atty. Gen. (425b-4), July 24, 1935.

Only a copy of the published notice is required to be served on occupant, and it is not necessary to also serve a copy of posted notice. Id.

Sheriff need not serve a copy of public notice on occupants in addition to the public notice. Op. Atty. Gen. (423c), July 11, 1935.

Form provided for return of sheriff. Id.

All returns affecting land included in a copy of a posted notice may be attached to one copy of such notice or such returns may be attached to different copies thereof, but the copy of the posted notice used must be a full and complete copy, including all descriptions found in original notice. Op. Atty. Gen. (425b-4), July 24, 1935.

Forms given for return by sheriff. Op. Atty. Gen. (423c), July 17, 1935.

Forms provided for use by county auditor in certifying that he has posted notice. Id.

Where land is disposed of under Laws 1935, c. 387, it is no longer subject to costs incurred in giving notice of expiration of redemption under Laws 1935, c. 278, §7, 8. Op. Atty. Gen. (425c-3), Aug. 3, 1935.

Affidavit of publication must be filed; county auditor's affidavit of posting must show that posted notice was kept posted for at least one week after last notice of publication; sheriff's return should show place of service; posted notice must show date of judgment sale and year for which taxes were delinquent; and where defective notice has been posted, county officials may proceed to issue a new notice of expiration of redemption. Op. Atty. Gen. (419f-3), Aug. 7, 1937.

Land delinquent for taxes for year 1932, bid in for state before passage of this act and not assigned is not subject to forfeiture by a posted notice of expiration of redemption. Op. Atty. Gen. (425c-13), Mar. 30, 1938.

Notice of expiration of time for redemption for land upon which a default judgment was entered for taxes for 1931, should not be served until 60 days before expiration

of five year period beginning from date of annual delinquent tax sale held second Monday of May, 1935. Op. Atty. Gen. (425c-7), Apr. 5, 1938.

(a). "Forthwith" means within a reasonable time, taking into consideration work to be done by auditor. Op. Atty. Gen. (423c), July 17, 1935.

(b). All costs of service, investigation and return including not only mileage and service fee if land is occupied, but also mileage and other compensation therein indicated with reference to investigation and return as to vacant land, should be included in amount required to redeem. Op. Atty. Gen. (423c), July 17, 1935.

A separate published notice should be published and a separate posted notice be posted for tax judgment sale of each of years 1926, 1927, 1928 and 1929. Id.

Posted notice should give names of persons to whom land is assessed at time of posting. Op. Atty. Gen. (425b-4), Sept. 14, 1935.

Where same person is in possession of a number of forties, it is sufficient to serve him with only one notice. Op. Atty. Gen. (425b-5), Sept. 23, 1935.

All parcels bid in at same tax judgment sale and having same stated period of redemption should be included in one posted notice, and auditor must not intentionally post a partial list. Id.

(c). Sheriff should serve a copy of the published notice and not the posted notice. Op. Atty. Gen. (423c), July 17, 1935.

Provision that sheriff has certain days to make service on tax delinquent lands is directory and not mandatory. Op. Atty. Gen. (390a-6), Aug. 2, 1935.

Investigation by sheriff and service of notice within 30 days is not essential to validity. Op. Atty. Gen. (425b-4), Aug. 16, 1935.

If a person is entitled to possession of all of a large tract of land and actually uses part of it, he would probably be held to be in possession of the entire tract providing it is contiguous, but if part of tract is not contiguous with occupied tract, sheriff must use all reasonable means to determine whether it is in fact used for any purpose by the owner or tenants. Op. Atty. Gen. (425b-5), Sept. 23, 1935.

Improvements are not necessary to possession and owner of a fourth contiguous, but unimproved forty will be found to have possession of such forty. Id.

If sheriff serves ten persons and travels only one mile each way, the mileage should be 30c divided between the ten owners. Op. Atty. Gen. (423c), Oct. 19, 1935.

Where party in possession of tax delinquent property lived in another county, papers should be sent to sheriff of the other county for service. Op. Atty. Gen. (425b-4), Oct. 31, 1935.

If sheriff before he makes his return, learns that someone has gone into occupancy of land, he should make service on the occupant, but having once investigated and found that a tract was not occupied, he need not make a second investigation to determine that it remains unoccupied on date he makes his return. Id.

Person conducting logging operation is in possession of tract he is logging, but workmen in his employ cutting timber on the land but not living on it are not in possession, but person cutting timber "by piece work" who lives in a shack on the tract is probably in possession. Id.

A logger who has completed his operations and who under his contract has no further right to possession cannot be considered in possession. Id.

Where owner living in his home takes in roomers, latter should be served. Id.

Where owner rents first floor of building to storekeeper, and rents offices on second floor and apartments on third floor, storekeeper, but not his clerks, must be served, persons renting offices, but not their employees, need be served, and tenants and their subtenants on third floor should be served. Id.

Transient guests in a hotel need not be served, but permanent guests should be served. Id.

In absence of special acts applicable to county, sheriff is entitled to be paid for serving notice of expiration of redemption same rate of mileage as for service of a summons in civil action. Op. Atty. Gen. (390c-13), Nov. 30, 1935.

Fees of sheriff for serving notice. Op. Atty. Gen. (390c-8), Jan. 30, 1936.

Sheriff of another county should be paid for serving notice on occupants in same manner as sheriff of county in which land lies. Op. Atty. Gen. (390a-7), Nov. 13, 1936.

Posted notice of expiration of redemption is fatally defective unless signed and sealed by county auditor, but service of notice on occupants may be made within a reasonable time after 30-day period prescribed by statute has expired. Op. Atty. Gen. (423c), Dec. 5, 1936.

If notice was not in fact served upon persons in possession of land, time for redemption did not expire, though sheriff's return shows proper service was made on occupants, but redemption should be permitted only on order of court. Op. Atty. Gen. (423c), Dec. 11, 1936.

(e). Failure to serve notice of expiration of redemption on actual occupant prevents forfeiture, and new notice should be served, and land cannot be sold by state as forfeited land. Op. Atty. Gen. (425b-4), Apr. 4, 1938.

(e).

All costs of service, investigation and return including not only mileage and service fee if land is occupied, but also mileage and other compensation therein indicated with reference to investigation and return as to vacant land, should be included in amount required to redeem. Op. Atty. Gen. (423c), July 17, 1935.

If regular deputies who are appointed by sheriff of Ramsey County under Laws 1931, c. 258, are insufficient in number to serve notices of expiration of redemption and to make investigation and returns required by law, sheriff has power to appoint a sufficient number of deputies, and there is no statute that prohibits payment of such deputies, through a federal project. Op. Atty. Gen. (390b-1), Sept. 5, 1935.

Notice of expiration of redemption for 1932 taxes should be in official newspaper. Op. Atty. Gen. (419), Sept. 2, 1938.

(f).

Cancellation of certificates of forfeiture that have been erroneously recorded and filed. Laws 1939, c. 312.

Actions on titles to lands forfeited by tax sales. Laws 1939, c. 341.

Where registered land forfeits to state certificate referred to in Laws 1935, c. 278, §8 (s), should be entered by registrar of titles on memorial, but when former owner purchased land under Laws 1937, Ex. Sess., c. 88, it is not necessary that a new certificate be issued or that provisions of §§8813 or 8316 be complied with. Op. Atty. Gen. (412a-23), Aug. 8, 1938.

**2164-12a. Cancellation of certificates of forfeiture where lands were exempt.**—Where a certificate of forfeiture required by Laws of 1935, Chapter 278, Section 8, Subdivision (f), describing lands which were exempt from taxation under the Laws of the United States in the year upon which the supposed forfeiture is based, or which describes lands that were owned by the State of Minnesota or some department or subdivision thereof at the time the supposed forfeiture took place or lands which, because of defective service of the notice of forfeiture or other reason, the title thereto did not in fact forfeit to the State, has been erroneously recorded or filed, such certificate may be canceled by the Minnesota Tax Commission and the County Auditor of the county in which said lands are located in the manner herein provided. (Act Apr. 20, 1939, c. 312, §1.)

**2164-12b. Same—Applications by owner.**—The owner at the time of forfeiture or someone authorized to act in his or its behalf shall file an application for cancellation with the County Auditor submitting therewith a statement of the facts of the case and satisfactory proof that such lands were exempt from taxation in the year upon which the supposed forfeiture was based, or that the lands were owned by the State of Minnesota or some department or subdivision thereof at the time of the supposed forfeiture. Such application shall be considered by the County Board and the County Auditor as in the case of application under Section 1983 of Mason's Minnesota Statutes of 1927, and shall thereafter be submitted to the Minnesota Tax Commission with the recommendation of the County Board and the County Auditor. The Tax Commission shall consider said application and if it determines that the conditions above referred to exist, it shall order the County Auditor to record and file in the manner in which the original certificate of forfeiture was recorded and filed, a certificate of cancellation which shall refer to said original certificate, the provisions of this act and the proceedings taken pursuant hereto and state that the original certificate is void because the lands described therein were exempt from taxation under the Laws of the United States during the year upon which the supposed forfeiture was based, or that the said certificate is void because such lands were owned by the State or some subdivision or department thereof at the time said supposed forfeiture took place or that such title did not in fact forfeit to the State because the service of the notice of forfeiture was defective or other reason. If the lands described in such certificate became subject to taxation in any year subsequent to the year upon which the supposed forfeiture was based, but the taxes for such subsequent year or years were not levied or assessed against said lands, or if levied and assessed have been cancelled, taxes shall be levied and

assessed against said lands as in the case of omitted taxes and any cancelled taxes shall be reinstated as the case may require; and in the case of non-exempt lands any cancelled taxation shall be reinstated. Taxes for all years subsequent to the supposed forfeiture shall be levied and assessed as in the case of omitted taxes. (Act Apr. 20, 1939, c. 312, §2.)

**2164-13. Land subject to assignment.**—Every parcel of land heretofore bid in for the state at any tax judgment sale and not heretofore sold or assigned to an actual purchaser, and every parcel of land hereafter bid in for the state at any such sale, unless redeemed, shall remain subject to assignment to an actual purchaser in the manner provided by law until the expiration of the stated period of redemption of such parcel, but no longer. In case any such parcel shall be so assigned after notice of expiration of redemption has been given by the county auditor, such notice shall be ineffectual as to such parcel, and the time for redemption of such parcel shall continue until terminated after notice given as in other cases of parcels assigned to actual purchasers. Provided, however, that in the case of those tracts entitled to the benefit of one year's notice of expiration of the period of redemption such one year period shall not be shortened by reason of any sale or assignment of the tax judgment or certificate covering said tract. (Act Apr. 24, 1935, c. 278, §9.)

It is determination of the stated period of redemption which terminates right to assign, not termination of period allowed by law in which to redeem after service of notice of expiration of redemption. Op. Atty. Gen. (423c), July 17, 1935.

Making of state assignment certificates covering parcels sold for 1926, 1927, 1928 or 1929 taxes is prohibited after July 1, 1936. Op. Atty. Gen. (412a-27), June 13, 1936.

Laws 1935, c. 278, prohibiting disposition at annual sale in August of 1936 of any parcel of land bid in for and held by state for taxes for 1925 or any prior year and also bid in for and held by state for taxes for 1926 or any subsequent year at any time after stated period of redemption of such parcel of land from the sale for taxes for 1926 or any subsequent year has expired, but any parcel of land bid in for and held by the state for taxes for 1925 or any prior year which has not been sold for taxes for 1926 or any subsequent year or upon which the delinquent taxes for 1926 and all subsequent years have been paid or assigned to a purchaser other than the state, may be sold at annual sale in August, 1936, at discount rates specified in Laws 1935, c. 387. Op. Atty. Gen. (425c-2), June 15, 1936.

Under Laws 1935, c. 387, §2(c), discount rates provided for are not applicable to ditch liens and assessments against lands situated in Red Lake Game Reserve. Id.

Laws 1935, c. 387, did not modify or repeal Laws 1935, c. 287, §9, in so far as it limits time in which assignment of tax-delinquent land may be made. Id.

At annual sale commencing on second Monday in August, 1936, discount rates specified in Laws 1935, c. 387, will apply to ditch liens and special assessments for local improvements included in taxes for year 1925 and prior years and 1926 and subsequent years in same manner as such discount rates will apply to general taxes, unless county board in case of a ditch lien, or governing body of municipality in case of special assessment for local improvements shall have provided otherwise by Resolution or Ordinance. Id.

Notice of expiration of redemption is necessary where taxes are assigned after giving of notice by county auditor. Op. Atty. Gen. (419f-1), July 9, 1936.

Lands bid in for state for taxes for 1926, 1927, 1928, or 1929, and held by state cannot be assigned by state assignment certificate after July 1, 1936. Op. Atty. Gen. (425b-7), Sept. 10, 1936.

This section prohibits disposition at annual forfeited tax sale provided for in Laws 1935, c. 387, of a parcel of land bid in for and held by state for taxes for 1925 or any prior year and also bid in for state for taxes for 1926 or any subsequent year at any time after stated period of redemption of such parcel of land from sale for taxes for 1926 or any subsequent year has expired. Op. Atty. Gen. (425c-2), Oct. 29, 1937.

Assignment may be made any time prior to expiration of stated period of redemption, and county auditor may issue new notice of expiration of redemption at request of purchaser. Op. Atty. Gen. (423k), Dec. 6, 1937.

New notice is required after assignment by state. Op. Atty. Gen. (419f), May 8, 1939.

**2164-14. Titles to be held in trust by the state.**—Except as provided by Laws 1929, Chapter 258 [§§ 5620-1 to 5620-13], Laws 1931, Chapter 407 [§§ 6452-1 to 6452-13], Laws 1933, Chapter 402 [§§ 4031-75 to 4031-88], or as otherwise provided by law,

the title to every parcel of land acquired by the state as provided by this act shall be held by the state in trust for the respective taxing districts interested in the taxes, assessments, penalties, interest, and costs accrued against such parcel at the time of such acquisition, in proportion to the respective interests of such taxing districts therein. (Act Apr. 24, 1935, c. 278, §10.)

Preference as between general taxes and special assessments is regulated by §2139-22. Op. Atty. Gen. (412a-3), June 18, 1937.

Where tax delinquent land was condemned for state highway and state warrants for damages were issued jointly to owner and county, and thereafter land became forfeited to state for taxes, county auditor should not indorse warrants to private owners until ordered to do so by court. Op. Atty. Gen. (450f-6), Aug. 30, 1937.

Holder of a certificate of trust fund land may not confess judgment under Laws 1937, c. 486, after his interest has been forfeited pursuant to Laws 1935, c. 278. Op. Atty. Gen. (412a-10), Dec. 23, 1937.

Land forfeited to state for taxes is not subject to lien of judgment entered against state pursuant to Laws 1933, c. 213, §11. Op. Atty. Gen. (425d-2), Apr. 26, 1938.

Land forfeited to state is not subject to special assessments. Op. Atty. Gen. (408c), Sept. 21, 1938.

**2164-15. Notice.**—The language required by Mason's Minnesota Statutes of 1927, Section 2139-2 (Laws 1927, Chapter 119, Section 3), as amended by Laws 1929, Chapter 415, Section 3, to be contained in the notice attached to the delinquent tax list shall not hereafter be included in such notice. (Act Apr. 24, 1935, c. 278, §11.)

Form for publication of delinquent tax list discussed. Op. Atty. Gen. (419), Feb. 14, 1939.

**2164-16. Law repealed.**—Laws 1933, Chapter 366 [§§2164-1, 2164-2], is hereby repealed except so far as hereinbefore expressly continued in force. All acts and parts of acts repealed, superseded, modified, or amended by said Chapter 366 are hereby revived and restored to full force and effect in so far as they would now be in force if said Chapter 366 had not been enacted, subject, however, to the provisions of this act and to any other applicable laws not inconsistent herewith. (Act Apr. 24, 1935, c. 278, §12.)

Purchaser at annual delinquent tax sale in 1930 for 1928 taxes must give notice of expiration of redemption as provided by Laws 1933, c. 366, and is not entitled to record certificate until expiration of such period. Op. Atty. Gen. (425b-4), June 26, 1935.

**2164-17. Inconsistent acts repealed.**—All existing laws relating to the subject matter of this act shall apply to the matters governed by this act, so far as applicable and not inconsistent herewith. All acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 24, 1935, c. 278, §13.)

**2164-18. Provisions severable.**—The provisions of this act shall be separable, and if any provision hereof or the application of any provision hereof in any case shall be declared invalid, it shall not effect the validity or application of the provisions hereof otherwise so far as it is practicable to maintain the same in force. (Act Apr. 24, 1935, c. 278, §14.)

**2164-19. Proceedings validated.**—Any proceedings heretofore taken for the acquisition of title to real property by the State of Minnesota under the laws of this State relating to taxation are hereby legalized and the title acquired thereby validated when such proceedings were in all respects properly taken and conducted except that in complying with the requirements for posted notice by the Auditor as provided by Laws 1935, Chapter 278, Section 8, instead of a single posted notice for all parcels, the Auditor made up separate posted notices, and there being so large a number of such notices that it would have been impractical to affix them to a wall, post, or bulletin board, the Auditor posted the said notices in his office by placing them in loose leaf binders, and by keeping and maintaining the said loose leaf binders on a counter in his office, subject to public inspection, and to which all who desired had access. (Act Apr. 13, 1939, c. 237, §1.)

**2164-20. Not to affect pending actions.**—The provisions of this Act shall not apply to any action now pending in any of the Courts of this State. (Act Apr. 13, 1939, c. 237, §2.)

**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.*, 189M254, 248NW817. See *Dun. Dig.* §395.

Where provisions under §2169 and §2170 are inconsistent, provisions of latter section govern. Op. Atty. Gen. (423a), Aug. 4, 1934.

Laws 1935, c. 278, does not repeal or affect provisions of this section. Op. Atty. Gen. (425b-4), July 25, 1935.

This section is superseded by §2170. *Id.*

Notice of expiration of redemption may be served in some cases where the land has been bid in by the state or the certificate is owned by an individual, before five years after date of tax sale. *Id.*

Legislature did not intend by Laws 1937, ex. sess., c. 71, to require cancellation of certificates issued during period of history of state when service of notice of expiration of redemption was unnecessary. Op. Atty. Gen. (409a-1), May 6, 1938.

**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.

Where land was bid in by state on May 9, 1928, for taxes for the year 1926 and on Sept. 13, 1928, such sale was assigned, notice of expiration of redemption is required, and must be served prior to expiration of six years from date of the assignment certificate so that such certificate can be recorded in the office of the register of deeds within seven years from date of such assignment certificate, and owner may redeem at any time within twelve months after filing of a proof of service of the notice. Op. Atty. Gen. (423c), Apr. 30, 1934.

Where provisions under §2169 and §2170 are inconsistent, provisions of latter section govern. Op. Atty. Gen. (423a), Aug. 14, 1934.

Notice of expiration of redemption of land sold at May annual tax sale may be served so that the twelve month period of redemption provided for in §2164-1 will expire at the same time as the five-year period provided for in §2139-2 or later and proof of service need not be filed within six-year period provided for in this section. Op. Atty. Gen. (423a), Aug. 14, 1934.

Where a state assignment certificate was issued August 25, 1928, covering taxes for year 1926 and holder of certificate paid subsequent taxes up to and including 1929, noted on the certificate, time for issuing notice of expiration of redemption has expired. Op. Atty. Gen. (419f-1), Dec. 11, 1934.

Six years within which notice of expiration of redemption upon a state assignment certificate may be issued or served commences to run from date of state assignment certificate. Op. Atty. Gen. (423c), Jan. 24, 1935.

One purchasing a certificate of tax judgment sale dated May 8, 1922, covering land sold for delinquent taxes for 1920 and subsequently pay taxes for certain years and secured state assignment certificate covering taxes for certain other years and last state assignment certificate is dated Sept. 6, 1933, and covers taxes for year 1928, he must serve notice of expiration of time of redemption before he can acquire title, and this must be issued upon the certificate dated September 6, 1933, as the time within which notice of expiration of time of redemption can be issued upon certificate dated May 8, 1922, has expired. Op. Atty. Gen. (412a-23), Feb. 16, 1935.

No notice of expiration of time of redemption may be issued or served after expiration of six years from date of tax judgment sale and no certificate may be recorded after seven years from date of sale or date of assignment certificate. Op. Atty. Gen. (425b-7), June 10, 1935.

Laws 1935, c. 278, does not repeal or affect provisions of this section. Op. Atty. Gen. (425b-4), July 25, 1935.

This section supersedes §2169. *Id.*

At the present time, manner of giving notice of expiration of redemption in all cases is fixed by Laws 1935, c. 278. *Id.*

Notice of expiration of redemption may be served in some cases where the land has been bid in by the state or the certificate is owned by an individual, before five years after date of tax sale. *Id.*

Where notice of expiration of redemption has been issued and served on account of prior tax sale but certificate has not been recorded in seven years from date of sale, purchaser thereat cannot redeem from subsequent sale. Op. Atty. Gen. (425b-5), Aug. 22, 1935.

Tax certificates issued on May 10, 1926, May 9, 1927, and May 13, 1929, are now all void, no notice having been served within period of six years. Op. Atty. Gen. (409a-9), Dec. 17, 1935.

Copy of notice must be mailed to holder of mortgage sufficient length of time prior to expiration of redemption period. Op. Atty. Gen. (412a-23), Sept. 3, 1936.

Purchaser of land at a tax judgment sale for 1927 taxes cannot give notice of expiration of redemption in 1936.

and there is no lien on the land, nor can state acquire title by reason of such taxes, or subsequent taxes paid by purchaser. Op. Atty. Gen. (425b-4), Sept. 10, 1936.

Where in 1926 taxes for 1924 were assigned to an individual and he later paid 1924 and 1925 taxes as subsequent, and notice of expiration of redemption was served and proof thereof filed in office of county auditor, and period of redemption expired Aug. 20, 1929, but certificate was not recorded to acquire title in fee simple, the certificate appears to be void under §2170, although this does not conclusively and incontestably appear from county auditor's records, and county auditor should include outstanding tax certificates in certification under §2231. Op. Atty. Gen. (21a), Apr. 12, 1937.

Legislature did not intend by Laws 1937, ex. sess., c. 71, to require cancellation of certificates issued during period of history of state when service of notice of expiration of redemption was unnecessary. Op. Atty. Gen. (409a-1), May 6, 1938.

Certificate of tax judgment sale not recorded within seven years of date of sale has no validity. Op. Atty. Gen. (409b-10), Mar. 30, 1938.

Auditor making a certificate of delinquent taxes pursuant to §2153, should not include taxes included in a certificate of tax judgment sale, a state assignment certificate, or a certificate issued to an actual purchaser at forfeited tax sale, where more than six years have expired after issuance of such certificate, unless notice of expiration of redemption has been issued within six year period. Op. Atty. Gen. (409a-1), Aug. 8, 1938.

#### 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 repurchase 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.)

Under Laws 1933, c. 407, in determining 50 per cent of taxes for years 1926 and 1927 accrued against real estate at date of forfeiture to state, amount of tax resulting from special assessments for local improvements is not to be excluded from computation. State v. Monck, 201M635, 277NW211. See Dun. Dig. 9419.

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.

Land sold for 1926 and 1927 taxes may be redeemed within seven years from date of sale. Op. Atty. Gen., Jan. 12, 1934.

There is no irreconcilable conflict between Laws 1935, c. 386 (§§2139-15 to 2139-27), and Laws 1933, c. 407, (§§2176-3 to 2176-8) and there was implied repeal, though there can be no sale to the general public of lands to which Laws 1933, c. 407, is applicable until one year after title passes to the state, and this means one year after the one-year period following notice of expiration of redemption. Op. Atty. Gen. (425a), Apr. 4, 1936.

This act is constitutional. Opp. Atty. Gen. (425c-13), June 19, 1936.

Character of occupancy referred to is same as occupancy mentioned in statute dealing with notice of expiration of redemption and service upon persons in possession of tax-delinquent land. Op. Atty. Gen. (700d-28), June 29, 1936.

Land rented only for hay is sufficiently occupied. Id.

Occupancy of land by tenant of auditor under §2150 constitutes occupancy by owner under this section. Id.

Laws 1933, c. 407 (§§2176-3 et seq.), was not repealed by Laws 1935, c. 278 (§§2164-5 et seq.). Op. Atty. Gen. (425b), July 21, 1936.

Option to repurchase may be exercised by heir, or a purchaser from him. Op. Atty. Gen. (425c-13), Sept. 1, 1936.

Laws 1931, c. 156, has not been wholly or partially repealed by Laws 1933, c. 407, or Laws 1935, c. 386, and neither subsequent law is applicable to laws affected by former laws. Op. Atty. Gen. (412a-13), Oct. 26, 1936.

Taxes accrued at time of forfeiture on forfeited tax delinquent land sold for 1926 or 1927 taxes cannot be abated or cancelled by tax commission after such forfeiture. Op. Atty. Gen. (407i), Nov. 10, 1936.

Taxes, tax liens and special assessments should be cancelled as soon as tax delinquent lands become forfeited to the state for nonpayment of taxes for 1926, 1927, 1928 or 1929, but should not be advertised or sold during year following date of forfeiture, but may be classified and appraised during such year. Op. Atty. Gen. (407i), Nov. 10, 1936.

County auditor may require affidavit showing purchaser's right to repurchase. Op. Atty. Gen. (423d), Nov. 10, 1936.

State has right to collect rents and profits from tenant of owner pending option of owner to repurchase. Op. Atty. Gen. (700d-8), Feb. 16, 1937.

Former owner repurchasing land under §2176-3 has absolute right to immediate possession against person who has leased land from county auditor under §2139-18. Op. Atty. Gen. (425b-5), Mar. 25, 1937.

Land which has been sold to state for taxes for years 1926 and 1927 and upon which taxes for years prior to 1926 were delinquent and unpaid, may be repurchased pursuant to this act. Op. Atty. Gen. (700a-8), Mar. 25, 1937.

Owner may repurchase 320 acres in each of several counties. Op. Atty. Gen. (425c-13), May 6, 1937.

Mortgagee is an "owner" and cannot repurchase under this statute either before foreclosure or after foreclosure, but prior to date of expiration of period of redemption. Op. Atty. Gen. (425b-5), May 10, 1937.

Lands forfeited to state for taxes for 1926 and 1927 are subject to repurchase under this act. Op. Atty. Gen. (425c-13), May 15, 1937.

Assignee or grantee of owner may repurchase. Op. Atty. Gen. (525), May 20, 1937.

Where state acquired title to land November 26, 1936, by reason of nonpayment of 1926 and 1927 taxes, one holding unrecorded deed before date of such forfeiture was entitled to record the deed upon payment only of 1936 taxes, and was eligible to repurchase from the state, and for purpose of recording deed unpaid installments on confessed judgment are not deemed taxes. Op. Atty. Gen. (425c-13), May 21, 1937.

Lease made pursuant to §2139-15 is subject to option of former owner to repurchase and obtain immediate possession under §2176-3. Op. Atty. Gen. (425g), July 9, 1937.

Former owner is entitled to immediate possession after repurchase, and person purchasing land from former owner after such repurchase is also entitled to immediate possession, and heirs of former owner are entitled to repurchase. Op. Atty. Gen. (425c-13), July 24, 1937.

During period of redemption from mortgage foreclosure sale, mortgagor, and not mortgagee, is owner. Op. Atty. Gen. (425c-13), July 26, 1937.

Proceeds from sales are to be distributed to various taxing districts in proportion of their respective interests. Op. Atty. Gen. (425c-13), July 29, 1937.

Right to repurchase under Laws 1933, c. 407, applies only to lands sold for taxes for either year 1926 or 1927. Op. Atty. Gen. (425c-13), July 29, 1937.

Former owner repurchasing land forfeited on September 1, 1936, is not required to pay 1936 taxes. Op. Atty. Gen. (425c-13), Aug. 5, 1937.

Mortgagee is not an owner. Id.

Lease of lands under Laws 1935, c. 386, is subject to right of former owner to repurchase under Laws 1933, c. 407, and there is no authority for reimbursement to lessee who has paid rents in advance, but lessee may remove crops already planted. Op. Atty. Gen. (700d-18), Aug. 5, 1937.

Widow as heir to a former co-owner of a one-half interest may repurchase a one-half interest. Op. Atty. Gen. (525), Aug. 13, 1937.

Option to repurchase may be exercised by administrator of estate of former owner. Op. Atty. Gen. (425c-13), Aug. 23, 1937.

If 1936 taxes were spread against land on books of county auditor on December 8, 1936, when land was forfeited to state, the 1936 taxes were accrued against land and one-half of amount of such taxes should be included in repurchase price, otherwise land is not subject to 1936 tax. Op. Atty. Gen. (412a-8), Sept. 28, 1937.

Person repurchasing gets land free from any liens for preexisting special assessments, including ditch liens. Op. Atty. Gen. (425b-5), Mar. 23, 1938.

Right to repurchase may be assigned by deed. Op. Atty. Gen. (425b-5), Apr. 29, 1938.

Former owner repurchasing is not required to pay special assessments that were a lien against land at date of forfeiture. Op. Atty. Gen. (425b-5), June 29, 1938.

Ditch liens on forfeited lands are cancelled by laws 1935, c. 386, and are not reinstated on repurchase under laws 1933, c. 407. Op. Atty. Gen. (921B), May 9, 1939.

**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.)

No form of receipt for installment of repurchase price is prescribed by law, but such receipt may show date and amount of payment, description of property, and law under which payment is made. Op. Atty. Gen. (412a-17), Oct. 2, 1936.

Owner need to pay only one-tenth of 50% of the amount of the accrued taxes as of date of forfeiture, and need not pay any part of interest, repurchase price including interest to date of repurchase. Op. Atty. Gen. (412a-9), Mar. 25, 1937.

**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.)

If former owner repurchases before May 1, of any year, taxes for such year should be paid. Op. Atty. Gen. (425c-13), June 22, 1937.

**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.)

Forms provided by Attorney General for conveyances. Op. Atty. Gen. (700d-32), Sept. 18, 1936.

**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.)

Lands acquired for taxes for 1926 and 1927, if occupied by owner at time of forfeiture, may not be leased during year when owner has option to repurchase, but if not occupied by owner, lands may be leased subject to immediate termination in case former owner exercises right to repurchase. Op. Atty. Gen. (700d-18), Sept. 26, 1936.

State has right to collect rents and profits from tenant of owner pending option of owner to repurchase. Op. Atty. Gen. (700d-8), Feb. 16, 1937.

A former tenant of former owner is not "an actual occupant." Op. Atty. Gen. (700a-8), Mar. 29, 1937.

Section applies only to lands forfeited for the years 1926 or 1927. Id.

Former owner of land forfeited for failure to pay 1926 and 1927 taxes is immune from eviction during period of two years after forfeiture, but his position is merely that of a holder of an option to repurchase, and he has no such interest in land as will support a lease of land to a stranger, and subject to such limited rights county auditor may lease land. Op. Atty. Gen. (700a-8), Mar. 30, 1937.

Former owner is entitled to immediate possession after repurchase. Op. Atty. Gen. (412a-23), Aug. 23, 1937.

In unlawful detainer action to recover land acquired by state for taxes, county attorney may appear as sole counsel, but there can be no eviction for two years after forfeiture for taxes for 1926 or 1927. Op. Atty. Gen. (525), Sept. 12, 1937.

**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.)

Area described in §4031-10½ is not excluded from operation of §2176-8. Op. Atty. Gen. (700d-28), June 29, 1936.

**2176-11. Confession of judgment for delinquent taxes and payment in installments without penalties and interest—offer and waiver by owner—payments to be made—judgment—form of.**—Delinquent taxes upon any parcel of real estate for 1934 and prior years, which, prior to the adoption of this act have been bid in for and held by the state and not assigned

by it, together with taxes for the year 1935, and prior years upon which judgment has been entered, prior to the adoption of this act may be composed into one item or amount by confession of judgment for the entire amount of all such taxes and costs, excluding penalties and interest, as hereinafter provided: provided that no such taxes upon lands classified for assessment at an assessed value exceeding 40% of the full and true value, shall be composed into any such judgment or be payable in the manner provided by this act.

The owner of any such parcel, or any person to whom the right to pay taxes has been given by statute, mortgage or other agreement, may, on or before November 1, 1938, make and file with the clerk of the district court of the county wherein said parcel is located a written offer to pay the current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Laws 1935, Chapter 300 [§§ 2126-1 to 2126-14], and confess judgment for the amount of such delinquent taxes and costs, but excluding penalties and interest, as certified by the county auditor, and shall thereby waive all irregularities in connection with the tax proceedings affecting such parcel and any defense or objection which he may have thereto, and shall thereby waive the requirements of any notice of default in the payment of any installment or interest to become due pursuant to the composite judgment to be so entered, and shall tender therewith one-tenth of the amount of such delinquent taxes and costs, and agree therein to pay the balance in nine equal annual installments, with interest at the rate of four per cent per annum payable annually, on the installments remaining unpaid from time to time, on or before the anniversary date of such judgment, which offer shall be substantially as follows:

"To the clerk of the district court of ..... county, I, ..... owner of the following described parcel of real estate situate in ..... county, Minnesota, to-wit: ....., upon which there are delinquent taxes for the year 1935 and prior years, as follows: (here insert year of delinquency and the total amount of delinquent taxes and costs, exclusive of penalties and interest): do hereby offer to confess judgment in the sum of \$..... and hereby waive all irregularities in the tax proceedings affecting such taxes and any defense or objections which I may have thereto, and direct judgment to be entered for the amount hereby confessed, less the sum of \$..... hereby tendered, being one-tenth of the amount of said taxes and costs. I agree to pay the balance of said judgment in nine equal annual installments, with interest at the rate of four per cent per annum, payable annually, on the installments remaining unpaid from time to time, said installments and interest to be paid on or before the respective anniversary dates of said judgment and current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Laws 1935, Chapter 300.

Dated this ....., 19....

At the time of filing such offer he shall pay any 1936 taxes which, on the first Monday in January, 1937, had not attached to a judgment for prior years, and any subsequent delinquent taxes, with accrued interest, penalties, and costs.

Upon the filing of said offer and payment of the sums herein required, the said clerk is hereby directed to enter judgment in accordance with said offer.

Upon entry of said judgment the clerk shall make and file with the county auditor of said county a certified copy of said judgment and shall make and file with the county treasurer a like certified copy thereof, and deliver to the treasurer the initial payment received by him. The judgment so rendered shall not constitute a personal judgment against the party or parties therein and shall be a judgment in rem. (Jan.

24, 1936, Ex. Sess., c. 72, §1; Apr. 26, 1937, c. 486, §1.)

Confession of judgment for delinquent taxes and the payment of certain taxes in installments. Laws 1939, c. 91.

Where service of notices to terminate right of redemption were invalid, mandamus was proper remedy by landowner to secure from county auditor official certificate of amount required to be paid to redeem. *Farmers & Merchants Bank v. B.*, 203M512, 283NW138. See Dun. Dig. 9432.

Confession of judgment statute (Ex. Sess. Laws 1935-36, c. 72, as amended) and repurchase statute (Ex. Sess. Laws 1937, c. 88) did not do away with necessity on part of delinquent taxpayer to comply with notice of expiration of redemption issued and served pursuant to Laws 1935, c. 278, Mason's Supp. 1938, §§2164-5 to 2164-18, inasmuch as taxpayer made no effort to bring himself within provisions of either of mentioned acts. *State v. Aitkin County Farm Land Co.*, 204M495, 284NW63. See Dun. Dig. 9405.

Deferred installments may be paid in full at any time after composite judgment is entered, but current taxes must also be paid. Op. Atty. Gen. (421a-17), Feb. 18, 1936.

Term "delinquent taxes" covers general taxes and all special assessments included therein. Id.

Judgment may not be confessed and entered for amount which is required to be paid under order of tax commission in consideration of settlement, abatement and cancellation of taxes. Op. Atty. Gen. (412a-17), Feb. 21, 1936.

Where notices of expiration of redemption of land bid in for state for delinquent taxes for years 1926, 1927, 1928 and 1929 have been given under Laws 1935, c. 78, and time for redemption will expire on October 1, 1936, judgment cannot be confessed for delinquent taxes after October 1, 1936. Op. Atty. Gen. (412a-10), Feb. 24, 1936.

Confession of judgment cannot be made at any time after delinquent taxes have been assigned by state to an actual purchaser. Op. Atty. Gen. (412a-10), Feb. 24, 1936.

Judgment may be confessed and entered for delinquent taxes for years prior to 1933 where 1933 taxes have been paid. Op. Atty. Gen. (412a-10), Mar. 25, 1936.

Confessed judgment does not constitute lien on lands which was not subject to taxes covered thereby. Op. Atty. Gen. (520b), Apr. 20, 1936.

Confession of judgment pursuant to §2176-11 does not do away with necessity of paying taxes before deed can be recorded under §2211. Id.

The provision in the fourth paragraph of this section with reference to payment of 1934 taxes was intended to require a person confessing judgment for taxes for 1925 and prior years against a parcel of land upon which taxes for 1926 to 1933 had been paid in cash or by sale or assignment prior to first Monday in January 1936, to pay 1934 taxes in full, together with penalties, interest and costs, and subsequent delinquent taxes referred to are the 1935 taxes which will become delinquent on first Monday in January. Op. Atty. Gen. (412a-10), Apr. 25, 1936.

Confession of judgment under Mason's Stats. §2176-11 does not operate as payment of taxes within meaning of resolution of city council, prohibiting issuance of malt liquor licenses for places upon which taxes have not been paid in full. Op. Atty. Gen. (217j), May 4, 1936.

Attachment of rents under §2150 will not prevent confession and entry of judgment under §2176-11, but will suspend collection of such rents—interest accruing subsequent to attachment on delinquent taxes should be collected under attachment proceedings. Op. Atty. Gen. (412a-25), May 6, 1936.

Attachment of rents does not prevent confession and entry of composite judgment under §2176-11, but confession and entry of judgments prevents collection under attachment proceedings until default occurs under §2150. Rents collected should be applied on delinquent taxes before confession and entry of judgment. Op. Atty. Gen. (412a-25), May 8, 1936.

Delinquent taxes cover general taxes and ditch assessments included therein. Op. Atty. Gen. (412), May 23, 1936.

Judgment cannot be confessed after period of redemption has expired. Op. Atty. Gen. (425d), June 13, 1936.

"Costs" means all costs which have been charged against any parcel of land on account of delinquent taxes, including costs charged under Laws 1935, c. 278. Op. Atty. Gen. (412a-9), June 17, 1936.

Payments of installments may be made at any time before maturity. Op. Atty. Gen. (412a-17), June 23, 1936.

Confession of judgment under §2176-11 does not obviate necessity for paying taxes in order to record deed under §2211. Op. Atty. Gen. (373b-9), Jan. 15, 1937.

Lands forfeited to state for delinquent taxes according to §2164-11 cannot be included in confession of judgment pursuant to §2176-11. Op. Atty. Gen. (412a-23), June 18, 1937.

Where notice of expiration of redemption is served under Laws 1935, c. 278, and owner thereafter confesses judgment under Laws 1935, Ex. Sess., c. 72, before expiration of period of redemption, confession of judgment annuls notice of expiration of redemption, and owner who confesses judgment under c. 72 of Laws 1935, Ex. Sess., and defaults is not ineligible to confess judgment under Laws 1937, c. 486. Op. Atty. Gen. (412a-10), July 20, 1937.

Taxes included in confessed judgment must be paid before deed can be recorded. Op. Atty. Gen. (373b-9(e)), Oct. 6, 1937.

A person who has once confessed judgment and defaulted may again confess judgment provided period of redemption has not expired and state has not disposed of its interest. Op. Atty. Gen. (925b-3), July 27, 1937.

After taxpayer has confessed judgment, current taxes must be paid before deed can be recorded. Op. Atty. Gen. (412a-10), Aug. 4, 1937.

Holder of state land certificate covering school lands may confess judgment. Op. Atty. Gen. (412a-8), Sept. 21, 1937.

Holder of a nonrecorded deed may confess judgment, but deed may not be recorded until taxes included in confession of judgment are paid in full. Op. Atty. Gen. (425c-3), Oct. 15, 1937.

After 1936 taxes have gone to judgment they cannot be included in a confession of judgment taken on 1935 and prior years under Laws of 1937, c. 486, but must be paid in full at time of filing offer. Op. Atty. Gen. (412a-10), Nov. 10, 1937.

Judgment for 1935 taxes may not be confessed under Laws of 1937, c. 486, when there are no other prior delinquent taxes. Id.

Holder of a certificate of trust fund land may not confess judgment under Laws 1937, c. 486, after his interest has been forfeited pursuant to Laws 1935, c. 278. Op. Atty. Gen. (412a-10), Dec. 28, 1937.

Taxes for 1936 must be paid in full when judgment is confessed. Op. Atty. Gen. (412a-10), Feb. 14, 1938.

Taxes that become delinquent after payments are complete under composite judgment, do not affect proceedings taken pursuant to Laws 1935, ex. sess., c. 72. Op. Atty. Gen. (412a-10), Mar. 10, 1938.

Where judgment is declared invalid for failure to comply with §2109, taxpayer may not confess judgment pursuant to §2176-11, and taxes should be included in delinquent list filed pursuant to §2106. Op. Atty. Gen. (412a-13), Apr. 29, 1938.

Commission is authorized to grant applications for reduction or abatement of taxes on parcels of land covered by a confession of judgment entered pursuant to Laws 1935, ex. sess., c. 72. Op. Atty. Gen. (407), May 4, 1938.

Judgment may not be confessed after land has been forfeited to state. Op. Atty. Gen. (412a-23), May 12, 1938.

Composite judgment may not be released in part. Op. Atty. Gen. (412a-23), June 10, 1938.

Judgment may not be confessed or certificate issued after forfeiture to the state. Op. Atty. Gen. (412a-23), Sept. 8, 1938.

Sheriff attaching rents under §2150 must pay amount collected at once to county treasurer, and owes no duty to owner to confess judgment under §2176-11. Op. Atty. Gen. (390c-13), March 1, 1939.

Confession of judgment under this act is not equivalent to payment of taxes as required by §2211. Op. Atty. Gen. (425B-3), April 7, 1939.

Where landowner confessed judgment for 1934 and 1935 delinquent taxes under laws 1935-1936, ex. sess., c. 72, and paid annual tenth pursuant to such confession but failed to pay 1937 and 1938 taxes, original judgment was reinstated with penalties and interest, and forfeiture proceedings should then continue, but landowner may again confess judgment for delinquent taxes under laws 1939, c. 31, but he must pay up in full amount due under judgment reinstated by his default before forfeiture occurred. Op. Atty. Gen. (412a-10), April 29, 1939.

Where owner confessed judgment upon several parcels in one judgment, there could not be a partial release of judgment because third parties were involved under contract for deed covering part of the property. Op. Atty. Gen. (412a-10), May 24, 1939.

**2176-12. Waiver of penalties and interest—suspension of execution—satisfaction.**—Upon the entry of said judgment, all the accrued penalties and interest on the taxes embraced within said judgment shall be waived, and further proceedings shall be suspended on any judgment for taxes embraced in said confessed judgment as long as no default exists. Upon the payment in full of the amounts required to be paid under the confessed judgment the original judgment shall be satisfied. (Jan. 24, 1936, Ex. Ses., c. 72, §2.)

Taxes included in composite judgment are not assignable where no default in such judgment exists and composite judgment and delinquent taxes for 1931, 1932, 1933 and 1934 taxes, included therein, are not to be mentioned in notice of expiration of redemption upon tax certificate covering 1930 taxes. Op. Atty. Gen. (412a-23), July 14, 1936.

Parcels of land as to which there has been confession of judgment under §2176-11 need not be included in delinquent tax list after default under §2106. Op. Atty. Gen. (314b-22), June 10, 1937.

Where owner confesses judgment and pays several installments and then defaults and fails to pay current taxes, mortgagee can confess judgment. Op. Atty. Gen. (412a-10), July 20, 1937.

Owner desiring to redeem assigned tax certificates for 1930 taxes is not required to pay subsequent taxes if judgment has been confessed pursuant to §2176-12. Op. Atty. Gen. (412a-19), Sept. 15, 1937.

After default a tax deed may not be issued until property covered by confession of judgment becomes property of state, and property cannot belong to state until a notice of expiration of redemption is served, and time expires. Op. Atty. Gen. (412a-10), Nov. 10, 1937.

**2176-13. Receipt for deferred installments—duplicate—distribution of taxes collected.**—The county auditor's statement and county treasurer's receipt issued for payment of a deferred installment, as herein provided for, shall not read for any specific year's taxes, but shall read for partial or full release of judgment, as the case may be, and shall show the year that such judgment was entered. In distributing the taxes collected in this manner, the county auditor shall apply the same in the inverse order to that in which such taxes were levied. A duplicate county treasurer's receipt for payment of a deferred installment, as hereinafter provided, shall be delivered to the clerk of the district court, and the clerk of the district court shall credit the amount so paid upon the judgment entered. (Jan. 24, 1936, Ex. Ses., c. 72, §3.)

**2176-14. Fees of clerk of district court.**—The fees to be paid the clerk of the district court for certified copies of the judgment shall be 50 cents for each judgment and 15 cents each for the entry and full or partial release of judgment which shall be paid for by the party or parties making such confession of judgment. (Jan. 24, 1936, Ex. Ses., c. 72, §4.)

Fee provisions pertain to Ramsey County, notwithstanding Laws 1903, c. 333, and Laws 1935, c. 184. Op. Atty. Gen. (144b-15), Feb. 3, 1936.

Fee of 50c is for two certified copies, and not for each certified copy. Id.

**2176-15. Applicability and effect of Laws 1935, c. 278.**—Laws 1935, Chapter 278 [§§2164-5 to 2164-18], shall remain in full force and effect save and except wherein an applicant takes advantage of the provisions of this act. In the event of default occurring in the payments to be made under any confessed judgment entered pursuant hereto, the penalties and interest waived under the terms of section 2 [§2176-12], hereof shall be reinstated and the lands described in such confessed judgment shall thereupon be subject to forfeiture according to Laws 1935, Chapter 278. (Jan. 24, 1936, Ex. Ses., c. 72, §5.)

Subject-matter of this section is within title of act. Op. Atty. Gen. (412-10), Feb. 24, 1936.

Where notices of expiration of redemption of land bid in for state for delinquent taxes for years 1926, 1927, 1928 and 1929 have been given under Laws 1935, c. 78, and time for redemption will expire on October 1, 1936, judgment cannot be confessed for delinquent taxes after October 1, 1936. Op. Atty. Gen. (412a-10), Feb. 24, 1936.

Taxpayer who confesses judgment and thereafter defaults may have amount paid under composite judgment credited against amount due at time judgment was confessed. Op. Atty. Gen. (412a-10), Aug. 26, 1937.

Judgment may not be confessed after land has been forfeited to state. Op. Atty. Gen. (412a-23), May 12, 1938.

This section is a part of the act as amended by Laws 1937, c. 486. Id.

Notice of expiration of redemption is annulled by confession of judgment, but default in payment restores tax judgment, and thereafter new notice of expiration is necessary. Op. Atty. Gen. (423f), Feb. 28, 1939.

**2176-16. Separability of provisions.**—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Jan. 24, 1936, Ex. Ses., c. 72, §6.)

**2176-16a. Confession of judgment for delinquent taxes.**—Delinquent taxes upon any parcel of real estate for 1936 and prior years, which have been bid in for and are held by the state and not assigned by it, together with taxes for the year 1937, which shall have become attached to a prior judgment, or delinquent taxes upon any parcel of real estate upon which a prior judgment for taxes has heretofore been declared void by a court of competent jurisdiction and upon which a new judgment for delinquent taxes shall have been entered in 1939, and which shall have been bid in for and shall be held by the state and not assigned by it, may be composed into one item or amount by confession of judgment prior to Novem-

ber 1, 1939, for the entire amount of all such taxes and costs, excluding penalties and interest, and thereafter, until November 1, 1940, for the entire amount of all such taxes and costs, excluding the regular penalties and interest, but plus a penalty of ten (10) per cent of the amount of such taxes as originally assessed, as hereinafter provided: provided that no such taxes upon lands classified for assessment at an assessed value exceeding 40 per cent of the full and true value, shall be composed into any such judgment or be payable in the manner provided by this act.

The owner of any such parcel, or any person to whom the right to pay taxes has been given by statute, mortgage or other agreement, may make and file with the county auditor of the county wherein said parcel is located a written offer to pay the current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Laws 1935, Chapter 300, as amended by Laws 1937, Chapter 486 [483], Section 1 [§§2126-1 to 2126-14], and agree to confess judgment for the amount of such delinquent taxes, costs and penalty, if any, as hereinbefore provided, as determined by the county auditor, and shall thereby waive all irregularities in connection with the tax proceedings affecting such parcel and any defense or objection which he may have thereto, and shall thereby waive the requirements of any notice of default in the payment of any installment or interest to become due pursuant to the composite judgment to be so entered, and shall tender therewith one-tenth of the amount of such delinquent taxes, costs, and penalty, if any, and agree therein to pay the balance in nine equal annual installments, with interest at the rate of five per cent per annum, payable annually, on installments remaining unpaid from time to time, on or before the anniversary date of such judgment, which offer shall be substantially as follows:

"To the clerk of the district court of ..... county, I, ..... owner of the following described parcel of real estate situate in ..... county, Minnesota, to-wit: ..... upon which there are delinquent taxes for the year ....., and prior years, as follows: (here insert year of delinquency and the total amount of delinquent taxes, costs, and penalty, if any.): do hereby offer to confess judgment in the sum of ....., and hereby waive all irregularities in the tax proceedings affecting such taxes and any defense or objections which I may have thereto, and direct judgment to be entered for the amount hereby confessed, less the sum of \$..... hereby tendered, being one-tenth of the amount of said taxes, costs, and penalty, if any. I agree to pay the balance of said judgment in nine equal annual installments, with interest at the rate of five per cent per annum, payable annually, on the installments remaining unpaid from time to time, said installments and interest to be paid on or before the respective anniversary dates of said judgment and current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Laws 1935, Chapter 300, as amended by Laws 1937, Chapter 486, Section 1.

Dated this ....., 19....  
At the time of such offer he shall pay any delinquent taxes which have not attached to a judgment for prior years, with accrued interest, penalties and costs.

Upon the receipt of said offer and payment of the sums herein required, the said auditor shall note the same upon his records and shall forthwith file said offer and confession of judgment with the clerk of the district court of the county who is hereby directed to enter judgment in accordance with said offer.

The auditor shall immediately deliver to the treasurer the initial payment received by him. The judgment so rendered shall not constitute a personal judgment

against the party or parties therein and shall be a judgment in rem. (Act Mar. 28, 1939, c. 91, §1.)

Cost of serving notice of redemption on 1931 taxes is not to be included in judgment, but cost of service of notice of expiration on 1932 taxes is to be included. Op. Atty. Gen. (412a-10), May 8, 1939.

Certificate holder of state trust fund land has right to confess judgment for delinquent taxes, but not if certificate has been cancelled for default or equity of holder has been forfeited for delinquent taxes. Op. Atty. Gen. (700a), May 15, 1939.

Where a party is delinquent for 1935 and 1937 taxes, and tax certificate has been issued for 1935 tax, owner cannot pay 1935 certificate and confess judgment for 1937. Op. Atty. Gen. (412a-10), May 27, 1939.

Where owner confessed judgment and paid taxes in full for 1933, 1934 and 1935, and mortgage was foreclosed and there was a new owner, new owner may come in and confess judgment for 1936 and 1937 taxes. Id.

A party confessing judgment for 1933, 1934 and 1935 taxes and paying judgment in full before 1936 taxes became delinquent, may now confess judgment for taxes for years 1936 and 1937, and need not take advantage of the 10-year plan but may pay in full at time of confession of judgment. Id.

Where owner confessed judgment upon several parcels in one judgment, there could not be a partial release of judgment because third parties were involved under contract for deed covering part of the property. Id.

Where 1932, 1933, 1934 and 1938 taxes are not paid landowner may confess judgment, though 1935, 1936, and 1937 taxes have been paid. Op. Atty. Gen. (412a-10), August 3, 1939.

**2176-16b. Penalties and interest waived.**—Upon the entry of said judgment, all the accrued penalties and interest on the taxes embraced within said judgment shall be waived, except as herein provided, and further proceedings shall be suspended on any judgment for taxes embraced in said confessed judgment as long as no default exists. Upon the payment in full of the amounts required to be paid under the confessed judgment the original judgment shall be satisfied. (Act Mar. 28, 1939, c. 91, §2.)

**2176-16c. Payment not for a specific year's taxes.**—The county auditor's statement and county treasurer's receipt issued for payment of a deferred installment, as herein provided for, shall not read for any specific year's taxes, but shall read for partial or full release of judgment, as the case may be, and shall show the year that such judgment was entered. In distributing the taxes collected in this manner, the county auditor shall apply the same in the inverse order to that in which such taxes were levied. All penalties and interest collected under the provisions of this act shall be apportioned by the county auditor in accordance with Mason's Minnesota Statutes of 1927, Sections 2086 and 2087. A duplicate treasurer's receipt for payment of a deferred installment, as hereinafter provided, shall be delivered to the clerk of the district court, and the clerk of the district court shall credit the amount so paid upon the judgment entered. (Act Mar. 28, 1939, c. 91, §3.)

**2176-16d. Fees.**—The party or parties making such confession of judgment shall pay the county auditor a fee of 50 cents and a fee of 50 cents to the clerk of the court for entry of judgment and 15 cents for each full or partial release thereof, which shall be collected by the county auditor. (Act Mar. 28, 1939, c. 91, §4.)

**2176-16e. Application of act.**—This act shall not apply to any parcel of land which has become or hereafter may become the absolute property of the state in fee or in trust under the provisions of any law declaring a forfeiture of lands to the state for taxes. In the event of default occurring in the payments to be made under any confessed judgment entered pursuant hereto, the penalties and interest waived under the terms of section 2 hereof shall be reinstated and the lands described in such confessed judgment shall thereupon be subject to forfeiture according to the provisions of law applicable thereto. (Act Mar. 28, 1939, c. 91, §5.)

Clerk is not entitled to deposit under §6991 for entering confessed judgment under Laws 1939, c. 91, §4. Op. Atty. Gen. (144B-16), April 27, 1939.

**2176-16f. Only one confession to be made.**—Not more than one confession of judgment and agreement to pay in installments under this or any prior law affecting the same taxes or any portion thereof may be made by or on behalf of any owner of any particular right, title, interest in, or lien upon, any given parcel of land, his heirs, representatives or assigns. (Act Mar. 28, 1939, c. 91, §6.)

Where landowner confessed judgment for 1934 and 1935 delinquent taxes under Laws 1935, 1936, Ex. Sess., c. 72, and paid annual tenth pursuant to such confession but failed to pay 1937 and 1938 taxes, original judgment was reinstated with penalties and interest, and forfeiture proceedings should then continue, but landowner may again confess judgment for delinquent taxes under Laws 1939, c. 91, but he must pay up in full amount due under judgment reinstated by his default before forfeiture occurred. Op. Atty. Gen. (412a-10), April 29, 1939.

**2176-16g. Provisions severable.**—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Mar. 28, 1939, c. 91, §7.)

**2176-17. Additional clerical assistance for county auditor.**—The county board of each county having a delinquency at the end of the preceding calendar year in the payment of current real estate taxes due and payable during such preceding year in excess of forty per cent of the aggregate amount of such taxes is hereby authorized to appropriate a sum not in excess of \$1,500, for additional clerical assistance in the office of the county auditor and for other expense incident to the administration of an act relating to the confession of judgment for delinquent taxes and providing for the payment of certain taxes in installments passed by the extra session of the legislature in January, 1936. Such appropriation may be made notwithstanding that the effect thereof may be to exceed the expenditure limitations imposed on such county by other statutes. (Jan. 27, 1936, Ex. Sess., c. 102.)

**2176-18. Redemption from tax sales where property is homestead.**—In any case in which real property consisting of a platted lot or platted lots with a dwelling house thereon, which is a homestead and located in a village or city, has become forfeited to the state under the provisions of any existing law, declaring the forfeiture of lands to the state for delinquent taxes, when such forfeiture has resulted solely because of delinquent taxes on such property for the year 1928, the taxes thereon for prior years and all subsequent taxes including general taxes for the year 1934 on said property having been paid in full, the owner of record of such property at the time of forfeiture, may redeem such property from such sale upon payment, within 60 days from the passage of this act, of the amount of the tax thereon for the year 1928 and penalties accrued thereon as stated in the notice of expiration of redemption from such tax sale, together with interest upon that amount from the date of such notice at the rate of 10% per annum. (Feb. 9, 1937, c. 20, §1.)

**2176-19. Same—Auditor to issue certificate of redemption.**—When redemption is made by an owner pursuant to the provisions of section one of this act, the county auditor under his hand and seal of office shall deliver to such redeeming owner a certificate of such payment and consequent redemption of the property so redeemed, and such certificate when recorded in the office of the register of deeds in the county in which such redeemed property is situated shall be effectual to reinvest in such record owner the title to the lots of land so redeemed from such tax sale. (Feb. 9, 1937, c. 20, §2.)

**2176-21. Repurchase of lands to which state has acquired absolute title.**—The former owner of any land which shall have been sold for the taxes for either of the years 1928 or 1929, and to which the state shall have acquired absolute title under such tax sale, may re-purchase such land from the state, if still held by it, upon the following conditions:

(a) He shall have been the owner of said land at the time of the forfeiture thereof to the state; failure to pay taxes for said year or years shall have been due to mistake or oversight; prior to such forfeiture he shall have paid taxes against said land for at least two of the years subsequent to 1929.

(b) He shall make application for such re-purchase to the County Auditor of the county in which the land is situated on or before December 31, 1937, supported by affidavit as to the existence of the facts above set forth, and by receipt of certificate of the County Auditor or County Treasurer showing the payment of taxes for the subsequent years hereinabove referred to.

(c) At the time of filing such application he shall pay to the County Treasurer of said county the full amount of the taxes accrued against the land to the date of such forfeiture with interest, penalties and costs which have attached thereto. (Apr. 26, 1937, c. 485, §1.)

County may proceed under Laws 1935, c. 386, to sell lands, and it is not necessary to delay such sales until after December 31, 1937, though former owner has right to repurchase any time before sale is made. Op. Atty. Gen. (412a-8), July 16, 1937.

No right to repurchase by former owner of trust fund lands was authorized by Laws 1937, c. 485, or Laws 1937, Ex. Sess., c. 88, since such lands became absolute property of state on forfeiture for taxes and could only be resold at public sale. Op. Atty. Gen. (525), Aug. 11, 1937.

**2176-22. Same—Application to Minnesota Tax Commission.**—Upon such application being filed, the County Auditor shall transmit the same with the accompanying papers and with the County Treasurer's receipt showing the payment of the amount required to be paid hereunder, to the Minnesota Tax Commission. (Apr. 26, 1937, c. 485, §2.)

**2176-23. Same—Minnesota Tax Commission to make conveyance.**—Upon approval of the application as complying with the conditions hereof by the Minnesota Tax Commission, the Chairman and Secretary thereof shall execute and deliver a conveyance from the State of Minnesota to such owner in form approved by the Attorney General, which conveyance shall have the force and effect of a quitclaim deed from the state. (Apr. 26, 1937, c. 485, §3.)

Form of conveyance of forfeited lands prescribed. Op. Atty. Gen. (431e), May 13, 1937.

**2176-24. Same—Grounds for repurchase.**—Such former owner may also re-purchase such land from the state in the manner provided herein, if instead of establishing the conditions set forth in Section 1, Sub-section (a) hereof, he shall establish by affidavit accompanying his application that

(a) Through error of the assessing officers improvements on said tract were wrongfully assessed as being on an adjoining tract or tracts also owned by him, which adjoining tract or tracts have not been forfeited to the state.

(b) That his failure to pay the taxes for said years 1928 and 1929 upon such tract was due to his being misled by the error of the assessing officers, as set forth in Sub-section (a) of this section, and that had it not been for such error he would have paid the taxes for said years upon such tract.

(c) He shall accompany such affidavit with a certificate of the County Auditor to the fact that such error had been made by the assessing officers.

(d) In cases under this section it shall not be necessary that the application be accompanied by certificate or receipt showing the payment of taxes for any subsequent years against said tract prior to forfeiture. (Apr. 26, 1937, c. 485, §4.)

**2176-25. Same—Other grounds for repurchase.**—Such former owner may also re-purchase such land from the State by the payment of all taxes and assessments delinquent against said property as of the last day of the period of redemption plus the 1936 taxes and current assessments, if instead of establishing the conditions set forth in Section 1, Sub-section

(a) thereof, or Section 4 hereof, he shall establish by affidavit accompanying his application that

(a) He has constructed a new building or buildings upon such premises since the first of January, 1937.

(b) He believed he had until November 1st, 1937, to confess judgment for such delinquent taxes and to pay them.

(c) He was not in fact personally served with a notice of the expiration of the period of redemption.

(d) The sheriff's return does not show service upon him of the notice of the expiration of redemption.

(e) In cases under this section, it shall not be necessary that the application be accompanied by a certificate or receipt showing the payment of taxes for any subsequent years against said tract prior to forfeiture. (Apr. 26, 1937, c. 485, §5.)

Sec. 6 of Act Apr. 26, 1937, cited, provides that the Act shall take effect from its passage.

An owner desiring to repurchase land under this section must establish by affidavit accompanying his application facts set forth in subsections a, b, c, and d. Op. Atty. Gen. (525), May 20, 1937.

Former owner who repurchases must pay interest and penalties and taxes for year 1936 must be paid, though land was not placed on tax rolls because tract was forfeited to state in September, 1936. Op. Atty. Gen. (412a-9), June 19, 1937.

**2176-26. Repurchase after forfeiture—price—special assessments reinstated—interest.**—The owner at the time of forfeiture of any parcel of land claimed by the state to have been forfeited to the state for the nonpayment of taxes for one or more of the years 1926, 1927, 1928, 1929, and 1930, or his heirs or representatives, may repurchase the same prior to March 1, 1938, for three-fifths of the aggregate of all taxes and assessments accrued against said parcel at the time of forfeiture, less interest and penalties but including costs, unless prior to the passage of this act such parcel of land shall have been sold as provided by law. Upon such repurchase, any special assessments payable in 1937, and thereafter, on said parcel theretofore cancelled under Laws 1935, Chapter 386 [§§2139-15 to 2139-27], or other law, shall be reinstated, and the auditor shall forthwith levy and assess against said parcel any special assessment which would have been levied and assessed payable in 1937, and thereafter, except for such forfeiture, and any such special assessment so reinstated or levied shall be paid at the time and manner in which said special assessment would have been payable except for said forfeiture; provided, however, that the special assessments payable in 1937 shall be paid in full, without penalty or interest, at the time of said repurchase. An owner so repurchasing a parcel of land shall pay interest upon the sum for which the parcel is repurchased at the rate of four percent per annum from the date of forfeiture. (July 23, 1937, Sp. Sess., c. 88, §1.)

Sale of lands repurchased by heirs. Laws 1939, c. 84. Repurchase of forfeited homestead lands by owner or heirs until November 1, 1939. Laws 1939, c. 283. Act is constitutional. State v. Hubbard, 203M111, 280 NW9.

Where service of notices to terminate right of redemption was invalid, mandamus was proper remedy by landowner to secure from county auditor official certificate of amount required to be paid to redeem. Farmers & Merchants Bank v. B., 203M512, 283NW138. See Dun. Dig. 9432.

Confession of judgment statute (Ex. Sess. Laws 1935-36, c. 72, as amended) and repurchase statute (Ex. Sess. Laws 1937, c. 88) did not do away with necessity on part of delinquent taxpayer to comply with notice of expiration of redemption issued and served pursuant to Laws 1935, c. 278, Mason's Supp. 1938, §§2164-5 to 2164-18, inasmuch as taxpayer made no effort to bring himself within provisions of either of mentioned acts. State v. Atkin County Farm Land Co., 204M495, 284NW63. See Dun. Dig. 9405.

Right to repurchase under Laws 1933, c. 407, applies only to lands sold for taxes for either year 1926 or 1927. Op. Atty. Gen. (425c-13), July 29, 1937.

Former owner may repurchase land whether forfeiture took place before or after approval of act. Op. Atty. Gen. (425c-13), Aug. 5, 1937.

No right to repurchase by former owner of trust fund lands was authorized by Laws 1937, c. 485, or Laws 1937, Ex. Sess., c. 88, since such lands became absolute prop-

erty of state on forfeiture for taxes and could only be resold at public sale. Op. Atty. Gen. (525), Aug. 11, 1937.

Sale of land acquired for taxes and coming within purview of Laws 1937, Ex. Sess., c. 88, is not permissible under Laws 1935, c. 386, until Mar. 1, 1938. Op. Atty. Gen. (525), Aug. 24, 1937.

Former owner may not repurchase land upon which notice was served under Laws 1935, c. 278, §7, (§2164-11) until one year after giving of notice of expiration of redemption and filing of proof thereof in office of county auditor. Op. Atty. Gen. (425c-5), Sept. 1, 1937.

Taxes for 1936 are to be included in repurchase price with exception of special assessments, which are to be paid in full at time of repurchase. Op. Atty. Gen. (425c-13), Sept. 1, 1937.

Act is constitutional. Op. Atty. Gen. (423d), Sept. 9, 1937.

Ditch liens should be considered assessments and party offering to repurchase should be allowed to pay only three-fifths of liens accrued at date of forfeiture, but ditch liens and other assessments payable in 1937 must be paid in full at time of repurchase whether accrued against land at date of forfeiture or not, and liens reinstated must be paid at time and in manner in which they would have been paid if land had not been forfeited to state. Op. Atty. Gen. (423d), Sept. 11, 1937.

This act is not a redemption statute but a repurchase statute, and is not unconstitutional for cancellation of ditch liens, because ditch liens were cancelled by §§2139-21, and not by this act. Id.

Taxes for 1936 must be included in purchase price if accrued against land at date of forfeiture, but they are not accrued unless spread upon books of county auditor prior to date of forfeiture. Op. Atty. Gen. (425c-17), Sept. 13, 1937.

Former owner may repurchase land in a conservation area if sum for which land was forfeited did not include ditch assessments. Op. Atty. Gen. (412a-23), Sept. 14, 1937.

Holder of state tax land certificate covering school lands may not repurchase. Op. Atty. Gen. (412a-8), Sept. 21, 1937.

If 1936 taxes were spread against land on books of county auditor on December 8, 1936, when land was forfeited to state, three-fifths of 1936 taxes should be included in repurchase price, otherwise neither 1936 nor 1937 taxes should be levied on the land, but special assessments payable in 1937 must be paid in full, as respects repurchase on September 16, 1937. Op. Atty. Gen. (412a-8), Sept. 28, 1937.

Where land was forfeited to state on Aug. 14, 1936, former owner need not pay amount of ditch lien installment payable Nov. 1, 1936. Op. Atty. Gen. (921g), Oct. 22, 1937.

Where land was forfeited to state subsequent to May 1, 1937, and repurchased during 1937, general taxes for 1937 would not be levied and assessed unless land was forfeited after levy had been extended on county auditor's books, in which case general tax for 1937 would be included in repurchase price. Op. Atty. Gen. (425c-13), Oct. 25, 1937.

Where parcel of land became forfeited to state prior to May 1, 1937, and is being repurchased subsequent to May 1, 1937, taxes for 1937 will not be levied and assessed against land, but special assessment which would have been levied and assessed in 1937 except for forfeiture is to be levied and assessed in 1937. Id.

Mortgagee or holder of sheriff's certificate of sale from mortgage foreclosure may not repurchase. Op. Atty. Gen. (425c-13), Nov. 2, 1937.

Where tax judgment erroneously covers several tracts of land, former owner may repurchase separate tracts. Op. Atty. Gen. (425c-13), Nov. 16, 1937.

One former joint owner cannot repurchase land for himself. Op. Atty. Gen. (425c-13), Nov. 22, 1937.

Only owner at time of forfeiture or his heirs or representatives may repurchase, but after repurchase owner may assign his interest in land to widow. Op. Atty. Gen. (412a-23), Dec. 16, 1937.

Owner of land who defaults in confession of judgment made after service of notice of expiration of redemption is ineligible to repurchase pursuant to this act until a new notice of expiration of redemption is served and gage will remain a lien on land. Op. Atty. Gen. (412a-10), Jan. 3, 1938.

Lands are repurchased subject to personal property tax judgments. Op. Atty. Gen. (421a-8), Jan. 18, 1938.

Where original owner repurchases, foreclosed mortgage will remain a lien on land. Op. Atty. Gen. (412a-23), Jan. 26, 1938.

Owner may repurchase and give mortgagee a quit-claim deed after making first payment, and thus entitle mortgagee to quit-claim from state. Op. Atty. Gen. (412a-23), Jan. 26, 1938.

Mortgagee may not repurchase pending running of period of redemption following foreclosure. Op. Atty. Gen. (412a-23), Jan. 26, 1938.

Purchaser at execution sale is not "owner" prior to expiration of period of redemption. Op. Atty. Gen. (412a-23), Feb. 3, 1938.

Where property is repurchased from state and payment of 20% cash made, it may be transferred and deed recorded without payment of remaining installments. Op. Atty. Gen. (412a-23), Feb. 3, 1938.

Rights of former owner who repurchases are subject to those of lessee under a valid lease. Op. Atty. Gen. (412a-23), Mar. 2, 1938.

Only owner at time of forfeiture is permitted to repurchase. Op. Atty. Gen. (423d), Mar. 8, 1938.

Where there are several heirs, it is doubtful whether one heir is authorized, without consent of other heirs, to repurchase entire tract for himself. Op. Atty. Gen. (425b-5), Sept. 15, 1938.

**2176-27. Same—Installment payments—time for current taxes.**—Such owner shall pay at the time of repurchase not less than one-fifth of such repurchase price and shall pay the balance in ten equal annual installments, with the privilege of paying the unpaid balance in full at any time, with interest at the rate of four percent per annum on the balance remaining unpaid each year, both principal and interest to become due and payable on December 31st each year thereafter until fully paid. He shall pay the current taxes, each year thereafter, before the same shall become delinquent up to the time when he shall pay the repurchase price in full. (July 23, 1937, Sp. Ses., c. 88, §2.)

Where lands are forfeited to the state and owner repurchases under Laws 1937, c. 88, Ex. Sess., and county buys land for a public purpose, unpaid installments are not taxes, and must be paid to the state by the county. Op. Atty. Gen. (412a-23), March 2, 1939.

First of ten annual installments is due and payable on Dec. 31 of year next following year in which repurchase is made. Op. Atty. Gen. (412a-17), March 7, 1939.

**2176-28. Same—Lease prior to repurchase.**—All such parcels of land shall be subject to lease under the provisions of Chapter 386, Laws of 1935, as amended [§§2139-15 to 2139-27], until repurchased. (July 23, 1937, Sp. Ses., c. 88, §3.)

Where lands forfeited to state for taxes are leased pursuant to Laws 1935, c. 386, and thereafter repurchased pursuant to Laws 1937, Ex. Sess., c. 88, purchaser is entitled to rent subsequently accruing, and to unsevered crops to which state would be entitled if leased on share crop basis, but state is entitled to its share of severed crops. Op. Atty. Gen. (412a-8), Sept. 28, 1937.

**2176-29. Same—Payments to county treasurer—disposition of proceeds.**—All payments under this act shall be made to the county treasurer of the county in which the parcel of land upon which such payments are made is located. Such payments shall be distributed by the county auditor among the taxing districts interested in the taxes and assessments on said parcel in the proportions of their respective interests. (July 23, 1937, Sp. Ses., c. 88, §4.)

There is no authority for deduction of costs and disbursements by county from proceeds of sale. Op. Atty. Gen. (199a-1), Aug. 10, 1937.

There is no objection to an annual distribution of proceeds received from sale. Id.

Proceeds from sales should not be credited to forfeited tax sale fund but should be distributed to taxing districts. Op. Atty. Gen. (425c-13), Aug. 19, 1937.

**2176-30. Same—Receipt—Certificate to tax commission—Conveyance—Default.**—The purchaser shall receive from the county auditor at the time of repurchase a receipt, in such form as may be prescribed by the Attorney General. When the purchase price of a parcel of land shall be paid in full, the following facts shall be certified by the county auditor to the Minnesota Tax Commission: the descriptions of the land, the date of sale, the name of the purchaser and the date when the final installment of the purchase price is paid. Upon payment in full of the purchase price, and all taxes becoming due and payable since said repurchase, the purchaser shall receive a quitclaim deed from the state, to be executed by the Tax Commission, and said deed, whether heretofore or hereafter executed, shall, in the event the lands are not actually forfeited to the state, or in the event of the failure of the state's title for any other reason, be an assignment, conveyance and release of all claims of the state, county and other taxing districts for all taxes accrued against said parcel at the time the purchase price of said parcel shall have been paid in full. Acceptance of the purchase money and the issuance of said deed shall be conclusive evidence of such forfeiture by the state. Failure to pay any of the de-

ferred installments, with interest and current taxes, on any parcel before they become delinquent, shall constitute default and upon such default all the right, title and interest of the purchaser or his heirs or representatives in such parcel shall terminate without the doing by the state of any act or thing whatsoever. (July 23, 1937, Sp. Sess., c. 88, §5; Apr. 15, 1939, c. 264.)

Form of county auditor's receipt provided. Op. Atty. Gen. (425c-13), Aug. 4, 1937.

Term "purchaser" includes an assignee of original purchaser, and transfer by deed may be recorded before purchase price is paid in full. Op. Atty. Gen. (412a-23), Feb. 25, 1938.

Where registered land forfeits to state certificate referred to in Laws 1935, c. 278, §8 (s), should be entered by registrar of titles on memorial, but when former owner purchased land under Laws 1937, Ex. Sess., c. 88, it is not necessary that a new certificate be issued or that provisions of §§8813 or 8316 be complied with. Op. Atty. Gen. (412a-23), Aug. 8, 1938.

Tax commission can only act on facts that are before it and the only information it acquires is certification of county auditor pursuant to this section, as affecting right of heirs. Op. Atty. Gen. (425b-5), Sept. 15, 1938.

Upon default in payment of deferred installments by purchaser under laws 1937, ex. sess., c. 88, purchaser automatically loses his rights and title, and state may sell land without notice under laws 1935, c. 386. Op. Atty. Gen. (412a-17), April 29, 1939.

**2176-31. Same—Lands within game preserves and conservation areas.**—This act shall not apply to lands within the game preserve established by Laws of 1929, Chapter 258 [§§5620-1 to 5620-13], or conservation areas established by Laws of 1931, Chapter 407 [§§6452-1 to 6452-13], or by Laws of 1933, Chapter 402 [§§4031-75 to 4031-88], which included in the sum for which said lands were forfeited any ditch assessment. (July 23, 1937, Sp. Ses., c. 88, §6.)

Use of tax forfeited lands in conservation areas for construction of dam in connection with federal works progress administration, and procedure to be followed to give such land a public status. Op. Atty. Gen. (700a-8), Sept. 28, 1937.

**2176-32. Same—Timber not to be cut prior to payment of purchase price.**—When any forfeited lands are repurchased, as provided for in this act, no timber or timber products shall be cut and removed until the purchase price has been paid in full. (July 23, 1937, Sp. Ses., c. 88, §7.)

**2176-33. Same—Sales under Laws 1933, c. 407, to be made after Sept. 1, 1907.**—No sales of any lands claimed by the state to have been forfeited to the state shall be made under Laws of 1933, Chapter 407 [§§2176-3 to 2176-8], after September 1, 1937. (July 23, 1937, Sp. Ses., c. 88, §8.)

**2176-34. Same—Separability clause.**—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (July 23, 1937, Sp. Ses., c. 88, §9.)

**2176-35. Conveyance of forfeited lands to religious or charitable organizations.**—Any religious or charitable corporation which was the owner at the time of forfeiture of any land claimed to be forfeited to the state for taxes for 1929 may secure a reconveyance of such land from the state if still held by it, upon the following conditions:

(a) That such land was acquired by said corporation by deed executed and delivered in the year 1929, after May 15th in said year, and that ever since said land shall have been the property of and in possession of said corporation, subject to said claim of forfeiture, and shall have been continuously used by said corporation for religious or charitable purposes; that said land has been expressly exempted from taxation by reason of such use for 1930 and subsequent years; that failure to pay taxes for 1929, or any part thereof, or to apply for exemption therefrom, was due to mistake, inadvertence, or oversight.

(b) Such corporation shall make application for reconveyance of such land to the county auditor of the county in which the same is situated on or before December 31, 1939, supported by affidavit as to the

existence of the conditions hereinbefore set forth. (Act Apr. 15, 1939, c. 276, §1.)

**2176-36. Application to be sent to Tax Commissioner.**—Upon the filing of such application, the county auditor shall transmit the same, with the accompanying papers, and with his certificate as to the exemption of such land from taxation and any other pertinent facts, to the Minnesota Tax Commission or its successor in authority. (Act Apr. 15, 1939, c. 276, §2.)

**2176-37. Commission to execute deed.**—Upon approval of the application as complying with the conditions hereof, the commission or its successor in authority shall execute and deliver a conveyance of such land from the State of Minnesota to such corporation, in form approved by the attorney general, which conveyance shall have the force and effect of a quitclaim deed from the state, free and clear from the lien of any taxes for 1929 and other liens, if any, whereon such forfeiture was based. (Act Apr. 15, 1939, c. 276, §3.)

**2176-38. Owner may repurchase homestead lands after forfeiture.**—The owner at the time of forfeiture or his heirs or representatives, may repurchase any parcel of land claimed by the state to be forfeited to the state for taxes, which was occupied by such owner at the time of forfeiture and which continues to be occupied by him or his heirs as a homestead within the meaning of Mason's Minnesota Statutes of 1927, Chapter 66, when the application to repurchase is made, if such repurchase is made prior to November 1, 1939, unless prior to the time repurchase is made such parcel shall have been sold by the state as provided by law, for a sum equal to the aggregate of all delinquent taxes and assessments computed as provided by section 3 of this act, without penalties or cost, with interest at four per cent from the time the taxes or assessments were or would have been delinquent. (Act Apr. 15, 1939, c. 283, §1.)

Sale to highest bidder under Laws 1935, c. 386, cannot be canceled because on day of and prior to sale prior owner appeared at auditor's office and was told that there was no law permitting him to repurchase, auditor being ignorant of passage of Laws 1939, c. 283. Op. Atty. Gen. (412a-23), May 25, 1939.

This act does not prevent procedure under Laws 1935, c. 386, and right to repurchase exists only until such time as land may have been properly sold by state. Op. Atty. Gen. (412a-23), August 10, 1939.

**2176-39. Amount required to be paid—Application to county board—hearing and determination.**—The owner at the time of forfeiture or his heirs or representatives or any person to whom the right to pay taxes was given by statute, mortgage or other agreement, may repurchase any parcel of land claimed by the state to be forfeited to the state for taxes at any time prior to November 1, 1939, for a sum equal to the aggregate of all delinquent taxes and assessments computed as provided by Section 3 of this act, without penalties and costs, with interest at four per cent from the time the taxes or assessments were or would have been delinquent unless prior to the time application to repurchase is made such parcel of land shall have been sold by the state as provided by law. Such purchase may, however, be made only with the consent of the county board and subject to the following conditions:

(a) The applicant for the privilege to repurchase shall present a verified petition to the county board asking the approval of such board for such repurchase.

(b) The applicant in said petition shall allege that he was the owner at the time of forfeiture, or that he is the heir or representative of such owner, or other person to whom the right to pay taxes was given by statute, mortgage or other agreement at the time of forfeiture; that the failure to pay taxes which caused the forfeiture was due to oversight or error on his part, or the part of someone acting for him, or by his failure or the failure of someone acting for him, to

understand and comprehend the effect of the law, or by the oversight or error of some official charged with the duty of administering the tax law.

(c) Upon the filing of such petition the county board shall set a date for hearing and at such hearing may require such evidence as it deems necessary to enable it to ascertain the truth of the allegations in the petition. If after reviewing the evidence in support of the petition, and any other evidence it may receive, the board is satisfied that the allegations and the petition are true, that the failure to pay taxes was not in wilful disregard of law, and that it would be unfair and inequitable if the applicant should not be permitted to repurchase the property, it may adopt a resolution briefly reciting the relevant facts, authorizing the sale of such property to such former owner for the amount of all delinquent taxes including special assessments, without penalties and costs, with interest at four per cent, computed as provided in section 3 of this act. It shall also determine in said resolution whether such sale shall be for cash or on terms. Upon the adoption of such resolution the former owner may within 30 days thereafter and in any event not later than November 1, 1939, repurchase such land in the manner provided by this section. (Act Apr. 15, 1939, c. 283, §2.)

**2176-40. Special assessments restored—Addition to purchase price of special assessments—General taxes subsequent to forfeiture—"Delinquent taxes".**—Upon the repurchase of land pursuant to sections 1 or 2 of this act any special assessments heretofore cancelled under Laws of 1935, Chapter 386 [§§2139-15, 2139-16], or any other law, shall be reinstated by the county auditor and any such special assessments so reinstated which are payable in the future shall be paid at the time and in the manner said special assessments would have been payable except for forfeiture, except that special assessments payable in 1939 shall be paid in full at the time of repurchase. The sum of such special assessments that would except for forfeiture have been levied and assessed against such land between the date of forfeiture and January 1, 1939, and payable before such date, shall be computed by the county auditor and included in the purchase price hereunder. When an application to repurchase a parcel of land under this act is made the county auditor shall compute and determine as in the case of omitted taxes, upon the basis of the assessed valuation of such parcel in effect at the time of forfeiture, the amount of taxes that would have been assessed and levied against such parcel between the date of forfeiture and the date of repurchase, and the amount so determined without penalties and costs, with interest at four per cent, shall be included in the purchase hereunder. When the term "delinquent taxes" is used in sections 1 and 2 of this act, it shall mean the sum of taxes and assessments without penalties or costs, with interest at four per cent to the date of repurchase from the time such taxes and assessments became delinquent accrued against a parcel at the time of forfeiture, and also the sum of taxes and assessments without penalties or costs, with interest at four per cent to the date of repurchase from the time such taxes and assessments would have been delinquent that would have been levied and assessed against a parcel between the date of forfeiture and the date of repurchase, computed by the county auditor in the manner provided by this section. (Act Apr. 15, 1939, c. 283, §3.)

Interest is figured from time of delinquency of tax. Op. Atty. Gen. (412a-9), May 31, 1939.

**2176-41. Terms of purchase.**—An owner repurchasing under section 1 of this act, or a person authorized by resolution adopted by the county board pursuant to section 2 of this act to repurchase on terms, shall pay at the time of repurchase not less than one-fifth of such repurchase price and shall pay the balance in ten equal annual installments, with the privilege of paying the unpaid balance in full at any time, with

interest at the rate of four per cent on the balance remaining unpaid each year, the first installment of principal and interest to become due and payable on December 31 of the year following the year in which the repurchase was made, the remaining installments to become due and payable on December 31 each year thereafter until fully paid. He shall pay the current taxes each year thereafter before the same shall become delinquent up to the time when he shall pay the repurchase price in full. (Act Apr. 15, 1939, c. 283, §4.)

**2176-42. Lands to be subject to lease.**—All parcels of land sold under the provisions of sections 1, 2, and 3 of this act shall be subject to lease under the provisions of chapter 386, Laws of 1935, as amended [§§2139-15 to 2139-17], until repurchased, and any sale of such land shall be subject to the provisions of any such existing lease. (Act Apr. 15, 1939, c. 283, §5.)

**2176-43. Payments to be made to County Treasurer.**—All payments under this act shall be made to the county treasurer of the county in which the parcel of land upon which such payments are made is located. Such payments shall be deposited by the county treasurer in the forfeited tax sale fund and be distributed in the manner in which other moneys in said fund are distributed. (Act Apr. 15, 1939, c. 283, §6.)

**2176-44. Auditor to issue receipt.**—The purchaser shall receive from the county auditor at the time of repurchase a receipt, in such form as may be prescribed by the attorney general. When the purchase price of a parcel of land shall be paid in full, the following facts shall be certified by the county auditor to the Minnesota tax commission: the description of the land, the date of sale, the name of the purchaser or his assignee, and the date when the final installment of the purchase price was paid. Upon payment in full of the purchase price, the purchaser or his assignee shall receive a quitclaim deed from the state, to be executed by the tax commission. Failure to pay any of the deferred installments, with interest and current taxes, on any parcel before they become delinquent, shall constitute default and upon such default the right, title and interest of the purchaser or his heirs, representatives or assigns in such parcel shall terminate without the doing by the state of any act or thing whatsoever. (Act Apr. 15, 1939, c. 283, §7.)

**2176-45. Application of act.**—This act shall not apply to lands within the game preserve established by Laws of 1929, Chapter 258 [§§5620-1 to 5620-13], or conservation areas established by Laws of 1931, Chapter 407 [§§6452-1 to 6452-13], or by Laws of 1933, Chapter 402 [§§4031-75 to 4031-88], which included in the sum for which said lands were forfeited any ditch assessments, or to any lands classified as conservation lands under the authority of any existing law. (Act Apr. 15, 1939, c. 283, §8.)

**2176-46. Timber not to be removed until paid in full.**—When any forfeited lands are repurchased, as provided for in this act, no timber or timber products shall be cut and removed until the purchase price has been paid in full. (Act Apr. 15, 1939, c. 283, §9.)

**2176-47. Owner may repurchase homestead or other land at appraised value—Appraisal.**—Subdivision 1. The county auditor of any county shall permit the owner at the time of forfeiture, or his heirs or representatives, to repurchase in the manner provided by this section, any parcel of land occupied by such owner at the time of forfeiture as a homestead within the meaning of Chapter 66, of Mason's Minnesota Statutes of 1927, and still occupied by him or his heirs as such a homestead, for the appraised value of such parcel any time before it is sold by the state to a purchaser under Laws of 1935, Chapter 386, as amended [§§2139-15 to 2139-27], if such person or his heirs

or representative files a written request to purchase such property with the county auditor of the county where such land is located on or before November 1, 1939, provided that sales made hereunder must be made within 30 days after such written request is filed or within 30 days after such appraisal is completed and filed with the auditor, whichever date is later, and in any event not later than July 1, 1940.

Subdivision 2. The county auditor of any county, shall, if a resolution authorizing such a procedure has been adopted by the county board, permit the former owner of any parcel of land claimed by the state to be forfeited to the state for taxes or any person to whom the right to pay taxes on such parcel was given at the time of forfeiture by statute, mortgage or other agreement to purchase such parcel at the appraised value at any time before it is sold by the state to a purchaser under Laws of 1935, Chapter 386, as amended [§§2139-15 to 2139-27], if such owner or other person files a written request to purchase such property at the appraised value with the county auditor of the county where such land is located on or before November 1, 1939, provided that sales made hereunder must be made within 30 days after such written request is filed or within 30 days after such appraisal is completed and filed with the auditor, whichever date is later, and in any event not later than July 1, 1940.

Subdivision 3. The appraised value of land sold under this section shall be determined in the manner provided by Chapter 386, Laws of 1935, as amended [§§2139-15 to 2139-27], and sales made under this section may be made pursuant to the same terms and subject to the same conditions as sales are made under said Chapter 386, the applicable provisions of which shall apply to sales made pursuant to this section. (Act Apr. 15, 1939, c. 283, §10.)

(2). A life tenant or owner of an undivided interest in a homestead at time of forfeiture has right to repurchase entire property, but such repurchase must be made in names and for benefit of all owners in accordance with their respective interests at time of forfeiture. Op. Atty. Gen. (412a-23), Sept. 12, 1939.

**2176-48. Provisions severable.**—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Apr. 15, 1939, c. 283, §11.)

**2176-51. Sale of lands by heirs.**—That in all repurchases by an heir or heirs, or the representative of the deceased owner, of lands forfeited to the state for the nonpayment of taxes for one or more of the years 1926, 1927, 1928, 1929 and 1930, pursuant to the provisions of Chapter 88 of the Laws of Minnesota for 1937, Extra Session, approved July 23, 1937, such repurchasing heir or heirs, or the repurchasing representative, as the case may be, may cause such repurchased land to be sold under and in accordance with the provisions of law relating to the sale of the real estate of deceased owners in the probate court, at any time after the appointment and qualification of a representative of the estate of such deceased owner. (Act Mar. 25, 1939, c. 84, §1.)

**2176-52. Purchaser may complete contract with state.**—That upon receiving the deed from the representative of the estate, after such sale shall have been confirmed by the probate court, purchaser shall succeed to all of the rights of the repurchaser from the state under and by virtue of said Chapter 88, and may thereupon complete such repurchase by paying the remaining unpaid installments thereon, if any; and upon fully complying in all respects with the terms of such initial repurchase, and furnishing the County Auditor for transmission to the Tax Commission the original or a certified copy of his recorded deed from the representative, he shall be entitled to the deed, in his own right, provided for by said Chapter 88. (Act Mar. 25, 1939, c. 84, §2.)

**2176-53. Disposition of proceeds.**—That the proceeds of such sale shall be first paid to such repurchaser to the extent of the money advanced by him upon such repurchase, including all subsequent payments made by him pursuant thereto prior to such probate court sale, with legal interest, and any surplus remaining after such repayment shall belong to and be a part of the estate of the decedent. (Act Mar. 25, c. 84, §3.)

### REFUNDMENT

#### 2177. On sale or assignment, when allowed.

Act June 7, 1937, Sp. Ses., c. 1, validates payment of 1936 taxes on June 1, 1937, without penalty, and authorizes refundment of penalties paid on such date.

Refundment of taxes erroneously paid on land forfeited under Laws 1935, c. 278, Laws 1939, c. 236.

State v. Erickson, 191M636, 253NW529; note under §2139-2.

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, 219NW645.

Rule of caveat emptor applies to purchaser at tax sale. 174M431, 219NW645.

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. I., 188M90, 246NW537. See Dun. Dig. 9363.

Payment under protest of taxes attempted to be assessed and levied against Chippewa Indian allotment for purpose of protecting property from perfection of a tax title and to prevent foreclosure of a mortgage properly held involuntary. Warren v. M., 192M464, 257NW77. See Dun. Dig. 9517, 9520.

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.

County has no authority to refund taxes paid by purchasers at delinquent tax sales under erroneous belief that they were the owners in fee, but the tax commission may under its broad equitable powers order a refundment. Op. Atty. Gen. (424a-5), Apr. 20, 1934.

Purchaser of school land at delinquent tax sale is not entitled to refund upon subsequent cancellation of school land certificate. Op. Atty. Gen. (426a-5), Jan. 24, 1936.

#### 2178. In case of exemption.

State v. Erickson, 191M636, 253NW529; note under §2139-2.

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

County of Hennepin v. H., 246NW537; note under §2177. State v. Erickson, 191M636, 253NW529; note under §2139-2.

#### 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.

Taxes twice paid on same parcel of land may be refunded on proper proof to the auditor. Op. Atty. Gen. (424a-9), May 11, 1939.

**2184-1. Refundments to tax sale purchasers where land erroneously returned as improved.**—In any case where real estate has been erroneously returned as improved property, but which was not in fact then or since improved, and the amount of the assessed valuation was based wholly or largely upon the value of the supposed improvements and without which improvements the land itself would be of little or no value and would therefore justify an assessment of

only a small fractional part of the taxes actually levied and extended, and where such taxes have become delinquent and the land sold and bid in at a regular tax sale by an actual purchaser or bid in by the state for the want of such purchaser and the right of the state thereafter assigned to one in good faith and without actual notice or knowledge of such erroneous assessment, the Minnesota Tax Commission shall have power upon approved application, as in other cases, presented to it to grant a refundment of the amount paid by such purchaser or assignee. (Apr. 24, 1937, c. 443, §1.)

**2184-2. Same—Application must be made within two years.**—No such refundment shall be granted unless an application therefor shall be duly approved and presented to the Minnesota Tax Commission within two years from the date of such tax certificate or state assignment certificate. (Apr. 24, 1937, c. 443, §2.)

**2184-3. Same—Canceled tax to be reinstated.**—Whenever a refund is granted under the provisions of this act the county auditor shall reinstate such portion of the tax on the land as the value of the land without any improvements bears to the full value of the said erroneous assessment. Said reinstated tax shall be placed upon the current tax lists in the office of the county treasurer and if not paid prior to the first Monday in January of the following year, shall be subject to judgment with the delinquent taxes for the current or other years. (Apr. 24, 1937, c. 443, §3.)

Sec. 4 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

### 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., 188M90, 246NW537; note under §2177.

In a proceeding under §2188, plaintiff's tax title being found defective, a lien was adjudged against premises and judgment entered, execution levied, and sale made to plaintiff pursuant thereto, held, no confirmation of sale was necessary under §§2185, 2186, and an unlawful detainer action was proper action to recover possession during existence of defendant's life estate, which was subject to specific lien of tax judgment. Trask v. R., 193M213, 258NW164. See Dun. Dig. 9531.

#### 2186. Who may purchase.

Trask v. R., 193M213, 258NW164; note under §2185.

#### 2188. Action to quiet title.

Trask v. R., 193M213, 258NW164; note under §2185. Mason's Minn. Stat. 1927, §2188, providing that 12 per cent interest shall be given upon the lien allowed to the holder of an invalid certificate for taxes paid by him, was amended by Laws 1931, c. 315, and Laws 1933, c. 121, §3 (§2105-1). Bratrud v. S., 203M463, 281NW809. See Dun. Dig. 9279, 9531.

**2190-1. Action to try title—County auditor's certificate to be prima facie evidence.**—The county auditor's certificate of forfeiture filed as provided by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 2164-12, Subdivision (f), and acts amendatory thereof or supplementary thereto, or by any other law hereafter enacted providing for the filing and recording of such a certificate or a certified copy of such certificate or of the record thereof, shall, for all purposes, be prima facie evidence that all requirements of the law respecting the taxation and forfeiture of the lands therein described were complied with, and that at the date of the certificate absolute title to such lands had vested in the state by reason of forfeiture for delinquent taxes as set forth in the certificate. (Act Apr. 20, 1939, c. 341, §1.)

**2190-2. Same—Persons entitled to sue—Venue—Lis pendens—Service on officers.**—Any person claiming adversely to the state or its successor in interest any right, title, or interest in or lien upon any land claimed to have been forfeited to the state for taxes may maintain an action against the state or its successor in interest for the purpose of determining the title to such land and the adverse claims and the

rights of the parties, respectively, therein. Such action shall be brought in the district court of the county in which the land lies. The complaint shall be filed in the office of the clerk of court before the commencement of the action. A notice of the pendency of the action, describing the land, shall be filed for record in the office of the register of deeds of the county, or, in the case of registered land, shall be filed with the registrar of titles, and the action shall not be deemed to be commenced unless, in addition to other requirements, such notice is so filed. In the case of such lands held by the state in trust for its taxing districts and agencies, the summons, together with a copy of the complaint, shall be served upon the county auditor, also upon the county attorney, who shall defend the action. In the case of such lands otherwise held by the state, the summons, together with a copy of the complaint, shall be served upon the attorney general, who shall defend the action. (Act Apr. 20, 1939, c. 341, §2.)

**2190-3. Same—Limitations—Persons under disability—Excepted grounds of action.**—Except as otherwise herein provided, no cause of action or defense shall be asserted or maintained upon any claim adverse to the state or its successor in interest respecting any lands claimed to have been forfeited to the state for taxes unless such cause of action or defense is asserted in an action commenced within one year after the filing of the county auditor's certificate of forfeiture as provided by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 2164-12, Subdivision (f), and acts amendatory thereof or supplementary thereto, or by any other law hereafter enacted providing for the filing and recording of such a certificate; provided, that if such certificate of forfeiture was filed before the passage of this act, such cause of action or defense may be asserted in an action commenced within one year after the passage of this act. Any person under disability to sue when such certificate was filed or when this act was passed, as the case may be, may assert such cause of action or defense in any action commenced at any time within one year after the removal of the disability. The limitations hereof shall apply to all cases where land is claimed to have been forfeited to the state for taxes, except as follows:

(1) Cases where the alleged forfeiture is invalid because of jurisdictional defects in the proceedings;

(2) Cases where the land was exempt from taxation;

(3) Cases where the taxes upon which the alleged forfeiture was based were in fact paid prior to forfeiture;

(4) Cases where the land at and ever since the time of forfeiture, has been in the actual open, continuous, and exclusive possession of the owner at the time of forfeiture, or his successors in interest, claiming adversely to the state or its successor in interest, in which case the running of the period of limitations hereunder shall be suspended as to such owner or his successor in interest during the time of such possession, but no longer. (Act Apr. 20, 1939, c. 341, §3.)

**2190-4. Same—Claimant to deposit taxes in court—Disposition according to decree.**—In any action respecting lands claimed to have been forfeited to the state for taxes, no cause of action or defense asserted by any party adversely to the state or its successor in interest, based in whole or in part upon any ground other than the claim that the land was tax exempt or that the taxes have been paid, shall be entertained unless the party asserting the same shall, at the time of filing his complaint or answer, as the case may be, deposit with the clerk of the court in which the action is pending, for the use of the state and its successor in interest, if any, as their interests may appear, a sum equal to the amount of the taxes and special assessments, with interest, penalties, and costs thereon, accrued against the land at the time of forfeiture,

together with interest at the rate of four per cent per annum on said sum from the date of forfeiture to the date of filing the complaint or answer. If the forfeiture of the land to the state be invalidated by the court's decision, the court shall order said sum to be applied on the lien to be determined in such cases as hereinafter provided. If the forfeiture be not invalidated by the decision, the court shall order said sum returned to the depositor. (Act Apr. 20, 1939, c. 341, §4.)

**2190-5. Same—State may bring action to quiet title—Filing certificate of forfeiture.**—The title of the state or its successor in interest to any lands claimed to have been absolutely forfeited to the state for delinquent taxes may be quieted and all adverse claims thereto and the rights of all parties therein, respectively, may be determined, and, in the case of registered lands, the issuance of new certificates of title thereto may be obtained, by action brought by the state or its successor in interest as herein provided; provided, that before any such action shall be commenced the county auditor's certificate of forfeiture shall be filed as provided by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 2164-12, Subdivision (f), and acts amendatory thereof or supplementary thereto, or by any other law hereafter enacted providing for the filing and recording of such a certificate. (Act Apr. 20, 1939, c. 341, §5.)

**2190-6. Same—County attorney or attorney general to bring action.**—Actions respecting lands held by the state in trust for its taxing districts and other agencies shall be brought by the county attorney at the direction of the county board of the county in which the lands lie. Expenses of such actions shall be paid from the forfeited tax sale fund and charged against the shares of the taxing districts or agencies in which the lands lie, or from the general revenue fund, as the county board may direct. Actions respecting lands held otherwise by the state shall be brought by the attorney general, and the expenses thereof shall be paid from such funds as may be appropriated and available therefor. (Act Apr. 20, 1939, c. 341, §6.)

Section is not mandatory but permissive so far as it relates to commencement of actions on behalf of county, being passed to provide procedure whereby county may proceed to quiet title to tax forfeited lands in order that they may become more saleable. Op. Atty. Gen. (412a-24), July 7, 1939.

**2190-7. Same—Venue—Lands included in suit.**—Every such action shall be brought in the district court of the county in which the lands lie. The state may include in one action all of the land in any county claimed to have been absolutely forfeited to the state for taxes, or any part or parts thereof. Any person who has succeeded to the interest of the state under such claim of forfeiture may include in one action all of the land in any county wherein he has acquired such interest, or any part or parts thereof. (Act Apr. 20, 1939, c. 341, §7.)

**2190-8. Same—Contents of complaint.**—The complaint shall set forth a description of the lands, shall allege that the state, or its successor in interest, as the case may be, is the absolute owner thereof in fee simple as a result of absolute forfeiture thereof to the state for delinquent taxes, and shall pray that the plaintiff's title and all adverse claims to such lands and the rights of all parties therein, respectively, be determined, and, in the case of registered lands, the complaint shall state that the same are registered and shall pray that a new certificate or certificates of title be issued to the person or persons entitled thereto. The complaint may contain any other allegations or provisions pertinent to the issues. In describing the lands, two or more adjacent parcels may be consolidated in a single description, if deemed expedient. (Act Apr. 20, 1939, c. 341, §8.)

**2100-9. Same—Defendants—Unknown claimants.**—The owners of such lands at the time of forfeiture, all persons in actual possession of such lands, claiming adversely to the plaintiff, and all other persons claiming any interest in or lien thereon adverse to the plaintiff, so far as shown of record or known to the attorney for the plaintiff, shall be made defendants in the action; provided, that failure to join any person as a defendant shall not impair the effect of the action as to those joined. It shall not be necessary to specify in which parcels of land the defendants respectively are interested. The plaintiff may also add to the names of the defendants in the summons, complaint, and other papers in the action the following: "also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein," and all such persons and parties shall thereupon be deemed to be joined as defendants, and, upon being served as herein provided, shall be bound and concluded by the judgment. (Act Apr. 20, 1939, c. 341, §9.)

**2100-10. Same—Filing of complaint—Form and contents of summons.**—The complaint shall be filed in the office of the clerk of the district court. The summons shall be issued by the attorney for the plaintiff, and shall be in substantially the same form as in other civil actions relating to determination of titles, except that it shall require each defendant to file his answer with the clerk of the court within the time allowed for answering, instead of serving the same upon the attorney for the plaintiff, and shall contain, in addition to other provisions required by law, the following:

"And you are hereby notified that the object of said action, among other things, is to determine the title and adverse claims to the lands hereinafter described, claimed to have been absolutely forfeited to the state for delinquent taxes, and to obtain the issuance to the persons entitled thereto of new certificates of title to any of said lands which have been registered, and that said action affects the following described lands situated in the county of . . . . . State of Minnesota:

(Insert description of lands)"

(Act Apr. 20, 1939, c. 341, §10.)

**2100-11. Same—Service of summons, etc.—Publication—Service outside of state—Affidavit—Lis pendens—Return—Mailing summons to nonresidents.**—The summons shall be served in the manner provided by law for the service of summons in other civil actions in the district court, except as otherwise herein provided. The summons shall be served upon all persons who are not residents of the state and upon those designated as "all other persons or parties unknown claiming any right, title, estate, lien, or interest in the lands described in the complaint herein" by publication for three successive weeks in a qualified legal newspaper published in the county in which the action is pending; provided, that personal service without the state may be made on any nonresident defendant in the manner provided by law. No affidavit of nonresidence, notice of lis pendens, or sheriff's return need be filed before the commencement of the publication or before the making of personal service without the state. At least twenty days before the trial of action, the attorney for the plaintiff shall mail a copy of the summons to each nonresident defendant whose post-office address he has been able to ascertain by diligent search and inquiry, of which the affidavit of the attorney, filed with the clerk, shall be conclusive evidence. The return of the sheriff that after diligent search he has been unable to find any defendant within the county and that such defendant cannot be found therein, together with the affidavit of plaintiff's attorney that he believes that such defendant is not a resident of the state, filed with the clerk at any time before the trial, shall be prima facie evidence that the facts

therein stated are true and that such defendant is not a resident of the state. (Act Apr. 20, 1939, c. 341, §11.)

**2100-12. Same—Registered lands—Filing copy of summons with registrar.**—In case of any of the lands involved in the action are registered, a copy of the summons, embracing a description of the registered lands but omitting the unregistered lands, shall be filed with the registrar of titles, and such further notice shall be given as the court may direct before the issuance of any new certificate of title shall be ordered; provided, that failure to file such copy of the summons or to give such other notice shall not otherwise affect the validity of the proceedings. (Act Apr. 20, 1939, c. 341, §12.)

**2100-13. Same—Answers—Contents—Filing—Certificate of clerk.**—The defendants in the action may answer separately, or such of them as are jointly interested in any particular parcel or parcels of land may answer jointly. No answer merely alleging the defendant's title or denying the plaintiff's title generally shall be sufficient, but every answer shall describe the particular parcel or parcels of land in or upon which the defendant claims an interest or lien, together with the nature of such interest or lien, and shall state specifically the grounds upon which such claim is based and the grounds upon which the plaintiff's title is claimed to be defective or void. The answer may contain any other allegations or provisions pertinent to the issues. Every answer shall be filed with the clerk within the time allowed for answering the summons, unless the time be extended by agreement of plaintiff's attorney or by order of the court. Before the trial the clerk shall make and file his certificate as to all defendants who have not answered or otherwise appeared, and such certificate shall be prima facie evidence of the facts therein stated. (Act Apr. 20, 1939, c. 341, §13.)

**2100-14. Same—Claimants may file names with clerk of court—Summons to such claimants—Withdrawal of statements.**—Any person having or claiming an interest in any land in any county may, upon payment of a fee of 50c, file with the clerk of court of the county a statement of his name, place of residence, post-office address, and a description of the land in which he has or claims an interest. The clerk shall preserve all such statements, maintain an alphabetical index thereof, and furnish certificates thereof in like manner as certificates of judgments, upon payment of like fees. Every such statement shall be prima facie evidence and constructive notice of the name, residence, address, and claim of interest therein set forth to all persons interested in any action hereunder respecting the lands described in the statement. Service of summons, notices, or other process in any action hereunder respecting such lands may be made upon the maker of the statement at the place of residence stated, if within the state, as if the same were his house of usual abode. If the residence stated be without the state, a copy of the summons and any other paper required to be mailed in the action shall be mailed to the maker of the statement at the address therein stated. Any such statement may be withdrawn by the maker at any time by written notice to the clerk of court. (Act Apr. 20, 1939, c. 341, §14.)

**2100-15. Same—Present laws to govern.**—So far as applicable and not inconsistent herewith, all provisions of law relating to actions for the determination of titles in the district court shall apply to and govern actions hereunder. (Act Apr. 20, 1939, c. 341, §15.)

**2100-16. Same—Defects in proceedings.**—The title of the state to land forfeited for delinquent taxes shall not be held invalid in any action or proceeding by reason of any failure, omission, error, or defect in the proceedings respecting the taxation of such land or the forfeiture thereof unless the court shall de-

termine that such failure, omission, error, or defect was fatal to the jurisdiction of the authorities in the proceedings, or that the rights of the owner or other party in interest were substantially prejudiced. All provisions of law in that behalf shall be construed liberally in favor of the state and its officers and agents. The burden of proving that the title of the state or its successor in interest is invalid in any such cases shall rest upon the party so asserting. (Act Apr. 20, 1939, c. 341, §16.)

**2190-17. Same—Quitclaim deeds to state—Disclaimer—Costs.**—Any person having or claiming an interest in or lien upon land claimed to have been forfeited to the state for delinquent taxes may execute and deliver to the state a quitclaim deed of the land, conveying all his right, title, and interest therein, in form approved by the attorney general; or, if an action respecting such land has been commenced against such person by the state or its successor in interest, such person may either execute and deliver such deed, or may answer in the action, disclaiming any interest in or lien upon the land. If the state has conveyed the land, the deed shall inure to the benefit of the state's successor in interest. In either of the cases mentioned in this section, if a deed be delivered or disclaimer made at any time before the entry of judgment in an action brought by the state or its successor in interest, as herein provided, the plaintiff shall not recover costs personally against the person executing such deed or disclaimer. (Act Apr. 20, 1939, c. 341, §17.)

**2190-18. Same—Opening judgments.**—No judgment in any action brought hereunder by the state or its successor in interest shall be opened, vacated, or set aside for the purpose of permitting any defendant upon whom personal service of the summons was made either within or without the state, and who was in default, to come in and defend the action at any time. No judgment in any such action shall be opened, vacated, or set aside for the purpose of permitting any defendant upon whom service of the summons was made by publication, and who was in default, to come in and defend such action unless application therefor be made before the time to appeal from the judgment has expired. Upon the expiration of the time to appeal, the judgment shall become conclusive and shall not thereafter be opened at the instance of any defaulting defendant; provided, that this shall not impair the effect of the judgment prior to such time. (Act Apr. 20, 1939, c. 341, §18.)

**2190-19. Same—Lien for taxes in case forfeiture is invalidated — Exceptions — Enforcement — Sale.**—

(a) Whenever in any action or proceeding in court, the forfeiture to the state for taxes of any parcel of land which shall have been sold as provided by law is invalidated, except in the cases where such forfeiture is invalidated because the land was exempt from taxation or because all taxes were paid prior to forfeiture, the court shall determine, upon such hearing and evidence as it may require, the following facts:

(1) The amount of all taxes, special assessments, penalties, interest and costs, if any, which were due against the land at the time of the supposed forfeiture;

(2) The amount of all subsequent taxes and special assessments that would have been assessed and levied against the land but for the supposed forfeiture;

(3) The amount of all taxes paid by the purchaser, his heirs, representatives, or assigns, since the sale;

(4) The value of any improvements made on the land by the state before the sale;

(5) The value of any improvements made on the land by the purchaser, his heirs, representatives, or assigns after the sale;

(6) The net rental income received by the state or its agencies from the land prior to the sale thereof, after deducting all expenses of maintenance and repairs;

(7) (a) The amount of the purchase price or portion thereof actually paid by the purchaser, his heirs, representatives, or assigns.

(b) Except as otherwise herein provided, the court shall thereupon adjudge and declare a lien in favor of the purchaser, his heirs, representatives, or assigns, upon the land for the total amount of the foregoing items numbered (1) to (5), inclusive, with interest on the respective items thereof from the time the same accrued or were paid by the purchaser, as the case may be, at four per cent per annum less the amount of item number (6).

(c) In all cases where the sum of items numbered (1) to (5), inclusive, with interest as aforesaid, less item (6), exceeds the total amount of items (3), (5), and (7), with interest as aforesaid, the court shall deduct the amount of the excess from the lien in favor of the purchaser and adjudge and declare a lien for such excess in favor of the state, which shall be deemed to be a party to the proceeding for that purpose.

(d) The court shall adjudge that the land be sold by the sheriff to satisfy, first, the lien of the purchaser, his heirs, representatives, or assigns, and, second, the lien of the state, if any, together with the costs of the judgment and sale, in the same manner and with like effect as in the case of sale of land on execution.

(e) In case the amount of item (7), with interest as aforesaid, exceeds the total amount of items (1), (2), and (4), with interest as aforesaid, less item (6), the purchaser, his heirs, representatives, or assigns, shall be entitled to refundment of the excess from the forfeited tax sale fund, payable by warrant of the county auditor upon order of the court.

(f) Whenever land shall be sold in any such proceeding to satisfy a lien adjudged in favor of the state, the sheriff shall pay the proceeds of such sale, after payment of prior liens adjudged in the proceeding, and costs, to the county auditor, who shall note upon the tax records the receipts of such sum and the purpose thereof, pursuant to the judgment of the court, and shall deposit the same with the county treasurer, to the credit of the forfeited tax sale fund.

(g) At any sale of such land to satisfy a lien adjudged in favor of the state, the county auditor, with the approval of the county board, may bid in the land in the name of the state, paying the amount required out of the forfeited tax sale fund, and if the land be sold to the state and be not redeemed, it shall be held and disposed of as in case of lands forfeited for taxes. (Act Apr. 20, 1939, c. 341, §19.)

**2190-20. Same—Act to be supplementary.**—Except so far as may be necessary to give effect to the provisions hereof, the provisions of this chapter shall be deemed supplementary to and not exclusive of other laws dealing with the same subject matter, and the provisions of such other laws, so far as applicable and not inconsistent herewith, shall remain in force, subject to the provisions of this chapter. (Act Apr. 20, 1939, c. 341, §20.)

**2190-21. Same—Provisions severable.**—The provisions of this act shall be severable, and if any provision or the application thereof should be declared unconstitutional or invalid, it shall not affect any other provision or application not necessarily involved therein. (Act Apr. 20, 1939, c. 341, §21.)

**2190-22. Same—Inconsistent acts repealed.**—All acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 20, 1939, c. 341, §22.)

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.

**2. When attaches.**  
179M298, 229NW127.  
Taxes on real estate, held to become a lien against the property on May 1, of taxable year. Merchant Bank Bldg. Co. v. Helvering (USCCA8), 84F(2d)478, aff'g 32 BTA 1072.

Real estate taxes on Minnesota land for year 1933 "accrued" on May 1, 1933, though amount thereof was not ascertained at that time and they were not payable until Jan., 1934, and one taking assignment of sheriff's certificate of sale under mortgage foreclosure dated October 7, 1932, was not entitled to deduct taxes paid on a cash basis in 1934 from 1934 gross income. *Lifson, (CCA8), 98F(2d)508, aff'g 36BTA593. Cert. den., 59SCR 364, 586.*

Taxes on realty are assessed for calendar year as of May 1st, upon which date they attach as a lien or charge thereon, and various steps in assessment and levy of taxes, whenever finished, relate back to and take effect as of May 1st. *Merle-Smith v. M., 195M313, 262NW865. See Dun. Dig. 9161.*

Amount of real estate taxes accrued but unpaid at time of death constituted a claim against corpus of estate and upon payment by administrators no deduction is allowable from income of estate. *Roy J. O'Neil, 31USBoardof TaxAppeals727.*

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.*

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.*

#### 7. *Passes to purchaser, when.*

A tax title is a new and original grant from the state as sovereign of title in fee, which is paramount as against world and which supercedes and bars all other titles, claims and equities, including claims by adverse possession. *Hacklander v. P., 204M260, 283NW406. See Dun. Dig. 9370b.*

#### 11. *Personal liability.*

180M283, 230NW654.

**2191-1. Taxes may be cancelled when.**—That in all cases where common or independent school districts of the State of Minnesota have acquired title for a nominal consideration to lands within the State of Minnesota for school purposes exclusively, on which the taxes have not been paid for the past five years or more, such school district may apply to the district court of the county wherein said lands are situated for an order cancelling and annulling all taxes on said lands which may have been assessed or levied on said lands prior to the year 1935. Such application shall be by motion duly served on the county auditor of the county within which said lands are situated, on the mayor of any city within which said lands are situated, on the president of the village council of any village within which said lands are situated, on the town clerk of any township, within which said lands are situated and outside the limits of any city or town, in said township, and on the attorney general of the State of Minnesota. If it shall appear to the satisfaction of said court at the hearing on said motion that the taxes so levied or assessed against said lands amount to more than the value of said lands, and that said school district has acquired the title thereto from the owners of said lands for a nominal consideration, said court shall make findings of fact setting forth the amount of said unpaid taxes, the value of the lands acquired by said district, and the price paid the owners of said lands therefor, and that said price was nominal; and on such findings the court shall cause judgment to be entered in said proceeding cancelling and annulling said taxes. (Act Mar. 20, 1935, c. 60, §1.)

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

A municipality may not exact more from one charged with an assessment for extension of its gas and water mains than is permissible under terms of ordinance under which extension was made, and where excess payments have been exacted, municipality may be held as for money had and received. *Sloan v. C., 294M48, 259NW 393. See Dun. Dig. 7461, 9114.*

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.*

There is a lien upon personal property of person assessed, and it is good even against a bona fide purchaser. *Op. Atty. Gen. (421a-9), June 15, 1937.*

**2199-1. Lien of taxes on personal property—Nature, extent and priority; distraint; notice; payment of tax by other lien holder; foreclosure.**—The taxes assessed upon personal property, with lawful penalties, interest and costs, shall be a first and perpetual lien, superior and paramount to all other liens or encumbrances thereon, except the vendor's interest in conditional sale contracts, whether prior or subsequent in point of time, upon all of the personal property then owned by the person assessed from and including May 1 in the year in which they are levied, until they are paid; provided such lien shall not continue on items of personal property sold at wholesale or retail in the ordinary course of business.

Immediately after distraining any personal property for taxes, whether under Section 2090, Mason's Minnesota Statutes of 1927, or Section 2199-2, Mason's Minnesota Statutes of 1927, the sheriff, in addition to all other notices now required by law, and before giving any such notices, shall give written notice of such distraint by registered mail to all persons holding a lien or encumbrance upon any of the property of the person assessed, owned by him at the time of the assessment, whose lien or encumbrance is filed with the Register of Deeds as authorized by law, if such filed instrument or filed assignment thereof shall contain the post office address of the holder or assignee of such lien or encumbrance. Such notice shall state the name of the person assessed, a description of the personal property distrained, and the amount of the taxes, penalties, interest and costs claimed against such property. Any person claiming a lien or encumbrance against any property of the person assessed owned by him at the time of the assessment may pay the amount so claimed to the sheriff within fifteen days after the mailing of such notice, and no notice of the sale of such distrained property shall be given until after the expiration of said fifteen days. Upon such payment being made, the sheriff shall issue his receipt therefor to the person making such payment, and shall state therein the fact of such payment, the name of the payor, the name of the person assessed, and a description of the personal property assessed, and shall return the property distrained to the person from whom it was taken, or to the person making such payment if the latter shall so require. Within five days after the issuance of such receipt the person making such payment shall file such receipt in the office wherein a chattel mortgage upon such property would be filed, and such person shall thereupon have a first and perpetual lien for the amount so paid, together with interest thereon at the rate of 8% per annum from the date of such payment, superior and paramount to all other liens or encumbrances, except the vendor's interest in conditional sale contracts, upon all of the personal property of the person assessed owned by him at the time of the assessment, whether all of such property was distrained or not, and may foreclose such lien by action with the same right of redemption in the person assessed or those lawfully claiming under him as is provided for mortgagors and those claiming under them in the case of foreclosure of chattel mortgages. Upon the trial of such action said receipt of the sheriff, or a certified copy thereof, shall be prima facie evidence of the amount and validity of the taxes, penalties, interest and costs so paid, of the fact of such payment, and of the ownership of the property therein described by the person assessed at the time of the assessment.

The failure of any person to pay any tax assessed upon his personal property before any penalty, interest or costs shall accrue for nonpayment thereof, shall constitute a default in all liens or encumbrances upon any personal property owned by him at the time of such assessment, and shall authorize the holder of such lien or encumbrance to forthwith foreclose the same. ('27, c. 318, §1; July 15, 1937, Sp. Sess. c. 51.)

Op. Atty. Gen. (421a-9), June 15, 1937; note under §2199.

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.

Personal property tax judgment outlaws in ten years. Op. Atty. Gen. (421a-3), Dec. 31, 1937.

**2199-2. Same—Distress for taxes due on property about to be sold or removed—Etc.**

Section authorizes use of distress for purpose of preventing intended sale or removal of personal property, which authorization is in addition and distinct from distress as provided in §2090. Op. Atty. Gen. (421a-5), May 11, 1939.

**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 distribution 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.

Payment without penalty may be made on following day when May 31st falls on Sunday. Op. Atty. Gen. (412a-9), May 19, 1936.

**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.

Gravel is mineral which cannot be removed while taxes remain unpaid, but county has no authority to offset moneys due for gravel as against delinquent taxes. Op. Atty. Gen., Jan. 3, 1934.

No building can be removed on tract of land until taxes are paid, including current tax. Op. Atty. Gen. (412a-24), July 16, 1934.

Fact that there are delinquent taxes on property is not a bar to condemnation of building by fire marshal. Op. Atty. Gen. (197c), Aug. 1, 1935.

Counties have no authority to permit cutting of timber upon tax delinquent lands within boundaries of state forests or game refuges, even though contract is let for purpose of obtaining money for relief of poor. Op. Atty. Gen. (27g), Dec. 10, 1936.

**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.

County board may not sell hay on delinquent lands. Op. Atty. Gen. (412a-24), June 15, 1934.

**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.

Entry of judgment under Laws 1935-1936, Sp. Sess., c. 72, §1, and payment of first installment thereunder does not give right to remove structures, timber or minerals. Op. Atty. Gen. (412a-17), Feb. 21, 1936.

**2205-1. Standing timber on which taxes or special assessments are unpaid, etc.**

"Standing timber," includes trees, saplings, bushes, sprouts and also dead trees that are still standing. Op. Atty. Gen., Mar. 16, 1934.

**2206. Right to assess and collect.—**(1) Except as hereinafter provided the right to assess property omitted in any year, or to reassess taxes upon property prevented from being collected in any year, either as authorized and directed by this chapter or otherwise, shall not be defeated by reason of any limitation contained in any statute of this state, and, except as otherwise provided in this chapter, there shall be no limitation of time upon the right of the state to provide for and enforce the assessment and collection of taxes upon all property subject to taxation.

(2) (a) No assessment shall ever be made of the taxes for the year 1939 and thereafter, imposed by Mason's Minnesota Statutes of 1927, Sections 2337 to 2349, both inclusive, for which a return shall have been filed, more than three years after the calendar year in which such taxes could first have been assessed. The bar of limitation upon the right of assessment imposed by this subsection shall not only operate to bar the right of assessment but shall extinguish the liability.

(b) The time for the assessment of taxes imposed by Mason's Minnesota Statutes of 1927, Sections 2337 to 2349, both inclusive, for the year 1937 and prior years, shall be limited to March 1, 1940, and for the year 1938, to March 1, 1941, with respect to any year for which the taxpayer has filed a return under said Sections 2337 to 2349, both inclusive, or has made a supplemental return, or has been assessed pursuant to an order or direction of the Minnesota Tax Commission or by the county auditor under the provisions of Mason's Minnesota Statutes of 1927, Section 1985, and has paid the tax levied thereon; provided, however, that the time for the assessment of taxes imposed by said Sections 2337 to 2349, both inclusive, for all years prior to the year 1939 shall, in the case of any taxpayer who shall on or before December 30, 1939, file a return and pay the tax, if any, assessed thereon for the years 1936, 1937 and 1938 pursuant to the provisions of subsection (4) hereof, be limited as provided in said subsection (4).

(3) Actions to enforce the collection of the taxes imposed by Mason's Minnesota Statutes of 1927, Sections 2337 to 2349, both inclusive, shall be commenced within six years after said taxes become delinquent, provided, however, that such actions shall not be commenced until and unless a valid assessment of such taxes has been made.

(4) Any person may on or before December 30, 1939, file a return required by Mason's Minnesota Statutes of 1927, Sections 2337 and 2349, both inclusive, for each of the years 1936, 1937, and 1938, in which case the right to assess such taxes against such person for said years or any years prior to 1936 shall be barred. If it shall appear from any of said returns hereafter filed that a tax (credit being first given for taxes theretofore paid for the year covered by said return) is due and payable in respect of the property therein disclosed, such tax, together with the penalties provided herein, shall be assessed by the county auditor on the current money and credits assessment rolls and the tax list then in the hands of the county treasurer and said tax and penalties shall be collected by the county treasurer.—Penalties equal to the following percentages of the tax so assessed shall be assessed and collected:

(a) If the return is filed prior to July 1, 1939, no penalties or interest.

(b) If the return is filed after June 30, 1939, and prior to August 1, 1939, 2%.

(c) If the return is filed after July 31, 1939, and prior to September 1, 1939, 4%.

(d) If the return is filed after August 31, 1939, and prior to October 1, 1939, 6%.

(e) If the return is filed after September 30, 1939, and prior to November 1, 1939, 8%.

(f) If the return is filed after October 31, 1939, and prior to December 30, 1939, 10%.

The penalties provided herein shall be the sole interest and penalties which shall be assessed and collected on taxes imposed by said sections 2337 to 2349, both inclusive, for the years 1936, 1937 and 1938 which are assessed on property disclosed by returns for said years filed hereafter and prior to December 30, 1939; provided, however, that any person filing returns for said years during said period shall pay the amount of tax and penalties disclosed thereby at the time of filing said return and, in the event said taxes and penalties are not paid at said time, interest and penalties thereon shall be assessed and collected as though this act had not been passed.—Provided, further, that in the event the county auditor determines that the amount of said taxes for said years due and payable by any person is in excess of the amount disclosed by said return and said additional taxes are assessed within the period permitted by this act interest and penalties shall be assessed and collected on said additional taxes as though this act had not been passed.

(5) No assessments pursuant to Mason's Minnesota Statutes of 1927, Sections 2337 to 2349, both inclusive, shall hereafter be made for any year or years prior to the passage of this act, of shares of stock in foreign or domestic corporations the property of which is subject to taxation under the laws of this state.

(6) Any person who makes a return under the provisions of subsection (4) hereof, or who files or has filed supplemental information with respect to money and credits on demand of any taxing official with respect to the year 1938 and prior years, shall not be subject to criminal prosecution for or on account of any act in connection with any money and credits tax return heretofore made or supplemental information filed for the year 1938 or prior years.

(7) 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 the provisions and exceptions to the application of subsection (2) contained in subsection (4) herein be adjudged by any court of competent jurisdiction to be invalid or to invalidate the provisions of any other part or provision in the remainder of this act, the exceptions and conditions of said subsection (4) shall be deemed void and of no effect and the remaining parts and provisions of this act shall be construed as though subsection (4) had not been enacted.

(As amended Apr. 22, 1939, c. 423.)

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, 236NW316. See Dun. Dig. 5656, 9525.

In levy and imposition of taxes state acts in its sovereign capacity and hence, in an action for collection thereof, cannot be subjected to an equitable estoppel. *State v. Illinois Cent. R. Co.*, 200M583, 274NW828. See Dun. Dig. 9116.

Mason's Stat. 1927, §9186, has no application to proceedings for enforcement of taxes on real estate. *Hacklander v. P.*, 204M260, 283NW406. See Dun. Dig. 9525.

Duties of county auditor under §2340 and §1985 are not altered by passage of laws 1939, c. 423, amending §2206. *Op. Atty. Gen.* (614), May 2, 1939.

(5).

Though court has held that shares of stock may not be taxed in proportion that corporation holds property outside the state, court might still adopt an interpretation that stock is subject to tax unless a substantial part of its property is taxed within the state. *Op. Atty. Gen.* (614N), June 13, 1939.

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

A tax title is a new and original grant from the state as sovereign of title in fee, which is paramount as against world and which supersedes and bars all other titles, claims and equities, including claims by adverse possession. *Hacklander v. P.*, 204M260, 283NW406. See Dun. Dig. 9370b.

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

#### 2209. Taxes paid by mortgagees, etc.

A covenant in a real estate mortgage to pay taxes levied during life of mortgage does not survive foreclosure of mortgage where mortgaged premises are bid in for full amount of debt and expenses and there is no redemption, and purchaser takes subject to unpaid taxes, and remedy, if he pays same during year of redemption, is, to file an affidavit, whereby amount paid is added to amount required to redeem. *Business Women's Holding Co. v. F.*, 294M171, 259NW812. See Dun. Dig. 6368.

Evidence held conclusive that mortgagee bank had no contract under which money deposited by mortgagor in bank could be appropriated to payment of unpaid delinquent taxes after defendant bid in mortgaged premises for full amount of debt. *Id.* See Dun. Dig. 6368.

#### 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 recording of transfer.

—When a deed or other instrument conveying land or a plat of any townsite or addition thereto, is presented to the county auditor for transfer, he shall ascertain from his records if there be taxes due upon the land described therein, or if it has been sold for taxes. If there are taxes due, he shall certify to the same; and upon payment of such taxes, and of any other taxes that may be in the hands of the county treasurer for collection, or in case no taxes are due, he shall transfer the land upon the books of his office, and note upon the instrument, over his official signature, the words, "taxes paid and transfer entered," or, if the land described has been sold or assigned to an actual purchaser for taxes, the words, "paid by sale of land described within"; and, unless such statement is made upon such instrument, the register of deeds or the registrar of titles shall refuse to receive or record the same; provided, that sheriff's or referees' certificates of sale on execution or foreclosure of a lien or mortgage, decrees and judgments, receivers' receipts, patents, and copies of town or village plats, in case the original plat filed in the office of the register of

deeds has been lost or destroyed, and instruments releasing, removing and discharging reversionary and forfeiture provisions affecting title to land and instruments releasing, removing or discharging easement rights in land or building or other restrictions, may be recorded without such certificate; and, provided that instruments conveying land and, as appurtenant thereto an easement over adjacent tract or tracts of land, may be recorded without such certificate as to the land covered by such easement; and, provided, further, that any instrument granting an easement made in favor of any cooperative public utility in the nature of a right of way over, along, across or under a tract of land may be recorded without such certificate as to the land covered by such easement.

A violation of this section by the register of deeds or the registrar of titles shall be a gross misdemeanor, and, in addition to the punishment therefor, he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained. (As amended Apr. 13, 1939, c. 215.)

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.

Contract for deed is an instrument conveying land and cannot be recorded without payment of taxes. Op. Atty. Gen., Mar. 12, 1934.

Instruments conveying easements to pipe line company cannot be recorded until payment of taxes on lands over which easements pass. Op. Atty. Gen. (337b17-(c)), Apr. 11, 1934.

Instrument reconveying easements cannot be recorded until taxes on real estate over which same passes are paid. Op. Atty. Gen. (373b-17(d)), Apr. 20, 1934.

Deeds to state may be recorded without payment of taxes. Op. Atty. Gen. (373b9(e)), May 9, 1934.

Where time within which notice of expiration of time of redemption may be served has expired, county auditor should certify deeds presented to effect that taxes have been paid "by sale of land." Op. Atty. Gen. (412a-13), Jan. 23, 1935.

Outstanding taxes which are liens must be paid before vendee can record rural credit contract for deed. Op. Atty. Gen. (418b-23), Jan. 31, 1935.

Option contracts should be recorded without payment of taxes upon real estate covered thereby. Op. Atty. Gen. (373b-17(d)), Apr. 2, 1935.

Deed to the United States must be recorded without payment of taxes. Op. Atty. Gen. (373b-9(e)), May 6, 1935.

It is duty of registrar of titles to file deeds to city without endorsement of certificates showing payment of taxes, but city should first secure an order from tax commission cancelling and abating all taxes, and also present a certificate of county auditor showing all unredeemed tax sales, and new certificate of title should show all unredeemed tax sales. Op. Atty. Gen. (373b-9(e)), Aug. 21, 1935.

Deed conveying parcels of land and pipe line easement between them could be recorded without certificate showing payment of taxes on lands over which easement ran. Op. Atty. Gen. (373b-17(d)), Sept. 16, 1935.

A lease or easement to the state may be recorded when there are unpaid taxes against land. Op. Atty. Gen. (109f), Nov. 22, 1935.

Deed of a townsite from a railroad company covering an abandoned right of way which traverses certain land without having been listed separately on tax list should not be recorded without certificates of auditor and treasurer, though railroad pays a gross earnings tax. Op. Atty. Gen. (409a-11), Dec. 30, 1935.

Confession of judgment pursuant to §2176-11 does not do away with necessity of paying taxes before deed can be recorded under §2211. Op. Atty. Gen. (520b), Apr. 20, 1936.

Certificate by a village clerk as to payment of local assessments on village property is not necessary. Op. Atty. Gen. (373b-9e), May 16, 1936.

Deed of land to a city should be recorded without payment of taxes. Op. Atty. Gen. (373b-9(e)), July 7, 1936.

Where time for giving of notice of expiration of redemption has expired, and taxes are no longer liens on property, a deed of the original owner may be recorded without payment of tax covered by the lapsed tax certificate. Op. Atty. Gen. (425b-4), Sept. 10, 1936.

Deed to state taken by rural credit department is entitled to record without payment of taxes. Op. Atty. Gen. (77o), Nov. 10, 1936.

Land belonging to village used for public purposes cannot be sold for taxes even though deed thereto has not been recorded, and such deed may be recorded without endorsement thereon of certificates showing payment of taxes, but village should secure order from tax commission cancelling all taxes. Op. Atty. Gen. (469a-15), Nov. 10, 1936.

Confession of judgment under §2176-11 does not obviate necessity for paying taxes in order to record deed under §2211. Op. Atty. Gen. (373b-9), Jan. 15, 1937.

Deed to state by mortgagor indebted to department of rural credit may be recorded without payment of taxes, including a deed executed and acknowledged on a legal holiday. Op. Atty. Gen. (131c), Apr. 7, 1937.

Referee's report in partition proceedings is entitled to record without payment of taxes. Op. Atty. Gen. (373b-22), Apr. 10, 1937.

Where state acquired title to land November 26, 1936, by reason of nonpayment of 1926 and 1927 taxes, one holding unrecorded deed before date of such forfeiture was entitled to record the deed upon payment only of 1936 taxes, and was eligible to repurchase from the state, and for purpose of recording deed unpaid installments on confessed judgment are not deemed taxes. Op. Atty. Gen. (425c-13), May 21, 1937.

Taxes included in confessed judgment must be paid before deed can be recorded. Op. Atty. Gen. (373b-9(e)), Oct. 6, 1937.

After taxpayer has confessed judgment, current taxes must be paid before deed can be recorded. Op. Atty. Gen. (412a-10), Aug. 4, 1937.

Deed upon land for which judgment has been confessed under §2176-11, may not be recorded until taxes included in confession are paid in full. Op. Atty. Gen. (425c-3), Oct. 15, 1937.

Where property is repurchased from state and payment of 20% cash made, it may be transferred and deed recorded without payment of remaining installments. Op. Atty. Gen. (412a-23), Feb. 8, 1938.

When land has been forfeited to state and taxes cancelled under §2139-21, this section does not prevent recording of deed. Op. Atty. Gen. (131e), Dec. 15, 1937.

Where deed executed by a corporation was received by mail on Jan. 1, 1938, and was returned by register of deeds because corporation seal was not affixed, deed was not entitled to be recorded on Jan. 7, 1938, without payment of taxes for 1937. Op. Atty. Gen. (373b-17(d)), Feb. 18, 1938.

Term "purchaser" includes an assignee of original purchaser, and transfer by deed may be recorded before purchase price is paid in full. Op. Atty. Gen. (412a-23), Feb. 25, 1938.

Taxes must be paid on land before instrument conveying mineral rights may be recorded. Op. Atty. Gen. (408a), Dec. 7, 1938.

Patents from state may be recorded without certificates referred to in this section. Op. Atty. Gen. (373b-17(d)), Dec. 27, 1938.

Register of deeds must register instruments in his office though they lack federal documentary stamps. Op. Atty. Gen. (532a-5), Feb. 14, 1939.

Conveyances of land to Rural Credits Bureau as an incident to liquidation of farm mortgage business are exempt from federal documentary stamp tax. Id.

Deed to state conveying land against which taxes are delinquent is entitled to record by register of deeds without payment of taxes. Op. Atty. Gen. (373b-17(e)), March 30, 1939.

Confession of judgment under laws 1937, c. 486, is not equivalent to payment of taxes as required by this section. Op. Atty. Gen. (425B-3), April 7, 1939.

An assignment of an executory contract for sale of land may not be recorded without certificate showing payment of tax. Op. Atty. Gen. (373B-9), June 2, 1939.

Deed to county, reserving a life estate in grantor, may not be recorded without payment of taxes. Op. Atty. Gen. (373B-9(e)), July 5, 1939.

Certified copy of assignment for benefit of creditors does not require certificate of auditor that taxes have been paid. Op. Atty. Gen., (363B-7), Sept. 15, 1939.

**2211-1. Refundment of taxes erroneously exacted as condition of recording of instrument.**—Whenever as a condition to permitting the recording of a deed or other instrument affecting the title of real estate previously forfeited to the state under the provisions of Laws 1935, Chapter 278, county officials, after

such real estate has been purchased or repurchased, have required the payment of taxes erroneously assumed to have accrued against such real estate after forfeiture and before the date of purchase or repurchase, the sum required to be so paid shall be refunded to the persons entitled thereto out of money in the funds in which the sum so paid was placed. (Act Apr. 13, 1939, c. 236.)

#### 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.

#### 2214. Deed to correct title.

It is necessary under §933 for county attorney to include in his report and turn over to county treasurer any fees collected under section 2214. Op. Atty. Gen. (779n), Jan. 22, 1937.

#### 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. Platting of irregular tracts.**—Where any tract or lot of land is divided into parcels of irregular shape, which cannot be described except by metes and bounds, the owners thereof, upon notice thereof being given by the County Auditor which notice shall be served upon such owner personally or by registered mail, shall have such land platted into lots, a survey being made when necessary, and the plat recorded, and a duplicate filed with the county auditor. If the owner fail so to do within thirty days after such notice the county surveyor, upon the request of the county auditor shall make such plat. Provided however, that where such lands proposed to be platted are wholly within the limits of any incorporated city or village, adjacent to any city of the first class, and such city or village maintains a Registered Land Surveyor, the county auditor shall direct such registered land surveyor to make such plat. Such plat shall be made from the records of the register of deeds, if practicable, but, if not practicable, the county surveyor, or if such lands are within the limits of any incorporated city or village, adjacent to the city of the first class, the registered land surveyor, if one is maintained by such city or village shall make and certify the necessary survey and plat, which the auditor shall file for record with the register, and a duplicate thereof shall be filed in his office. The description of the property in accordance with such recorded plats shall be valid. When the owners fail to comply with this section, the costs of surveying, platting and recording shall be paid by the county upon allowance by the county board, and the amount thereof shall be added to the next tax upon such lots, and, when collected, shall be credited to the county revenue fund. (R. L. '05, §991; '11, c. 32, §1; G. S. '13, §2200; Feb. 27, 1935, c. 21.)

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.

Auditor cannot hire surveyor to make plat, but may only request county surveyor to make plat, and if there is no county surveyor, vacancy may be filled by appointment by the board. Op. Atty. Gen., Feb. 3, 1934.

If plat filed is defective in description, auditor may insist that owner or surveyor file a correct and proper plat. Op. Atty. Gen., Feb. 10, 1934.

This section does not offer proper procedure for platting of a meandered lake bed, but an action must be brought in district court to partition the lands and quiet the title. Op. Atty. Gen. (273c), June 15, 1934.

It is only necessary to make a survey where surveyor finds that he will not be able to make a proper plat from recorded description. Op. Atty. Gen. (404a), Apr. 25, 1935.

Fact that land may be platted does not require that they be placed in nonagricultural classification. Op. Atty. Gen. (474j), Feb. 24, 1936.

As to plat made from records of register of deeds, surveyor could not properly certify to more than fact that he made plat upon request of county auditor pursuant to this section that in his opinion it was practicable to make plat from records of the register of deeds and that he so made it, as he could not certify that the plat "is a correct representation of the survey". Op. Atty. Gen. (18d), July 15, 1939.

If county auditor orders platting under §2219, owner must proceed in accordance with provisions of §§236 to 246, and if owner fails, county auditor may require county surveyor to make a plat, though he cannot dedicate streets or make certificate required of an owner. Op. Atty. Gen. (373B-15), Sept. 11, 1939.

#### 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.

#### 2231. Auditor to furnish statement of tax liens, etc.

Where in 1926 taxes for 1924 were assigned to an individual and he later paid 1924 and 1925 taxes as subsequent, and notice of expiration of redemption was served and proof thereof filed in office of county auditor, and period of redemption expired Aug. 20, 1929, but certificate was not recorded to acquire title in fee simple, the certificate appears to be void under §2170, although this does not conclusively and incontestably appear from county auditor's records, and county auditor should include outstanding tax certificates in certification under §2231. Op. Atty. Gen. (21a), Apr. 12, 1937.

#### 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.

Fees of county auditor under §2144 and §2232 are controlled by Laws 1937, c. 491, §14, in counties covered by that act, and auditor must turn in 22% thereof, as well as any fees collected from such source over and above the limit of \$3600 per year, such statute placing an absolute limit of compensation, except mileage and expenses. Op. Atty. Gen. (23d) July 20, 1939.

#### 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.

**2232-2. Certain forfeited lands to be sold immediately.**—In every case where the owner of a tract of land forfeited to the state for taxes for 1926 or 1927 has transferred or shall hereafter transfer to the state or to any municipal subdivision thereof all his right, title and interest in such tract of land, the same shall be subject to sale in the usual manner provided by law for the sale of land acquired by the state for taxes and shall not be subject to any limitation as to such sale imposed by Chapter 407 of the Laws of 1933 [§§2176-3 to 2176-8]. Apr. 17, 1937, c. 272, §1.)

### COMPANIES PAYING GROSS EARNINGS TAX

#### 2233. Report of gross earnings—Computation.

Burlington formula furnishes most accurate computation of credit balances and such balances are properly gross earnings and there can be no constitutional objection to its use. State v. Illinois Cent. R. Co., 284NW360. See Dun. Dig. 9562.

#### 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.

Where a railroad has for a long period of years kept accounts of gross earnings and made reports thereon on

forms prescribed by public examiner and approved by tax commission, and has paid tax on credit balances from interchange of freight cars, it is not subject to penalties for nonpayment of such credit balances computed according to a formula first devised during trial of action brought for an excessive demand of such omitted credit balances. *State v. Illinois Cent. R. Co.*, 284NW360. See *Dun. Dig.* 9562.

### 2239. Uniform system of accounting.

Because the obligation to pay gross earnings taxes is imposed by statute and an account stated has the effect of creating a new cause of action independently of its original subject matter, taxpayer cannot have benefit of discharge as on an account stated because of payment of a sum, erroneously computed and less than amount actually due, even though it be accepted by tax commission as in full discharge of obligation. *State v. Illinois Cent. R. Co.*, 200M583, 275NW854. See *Dun. Dig.* 9252.

### 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 could tender payment of part of gross earnings demanded by state and avoid penalties on such part. *State v. Illinois Cent. R. Co.*, 284NW360. See *Dun. Dig.* 9129a.

**2245-1. Effective date of increased rates and distribution of taxes collected.**—The increased rates of tax effected by this Act [§§2268, 2272, 2274, 2278, 2289, 2290, 2290-1] shall apply to all gross earnings derived after December 31st, 1936, and the amendment by Section 4 of Mason's Minnesota Statutes for 1927, Section 2290, with respect to the distribution of the taxes therein referred to, shall be effective with respect to such taxes levied for all years subsequent to the year 1936. (June 21, 1937, Sp. Ses., c. 3, §5; July 2, 1937, Sp. Ses., c. 9, §5.)

Sec. 6 of Act June 21, 1937, and the same section of the act of July 2, 1937, cited, provides that the act shall take effect from its passage.

## RAILROAD COMPANIES

### 2240. Gross earnings.

#### 1/2. In general.

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. 278US503, 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.

In levy and imposition of taxes state acts in its sovereign capacity and hence, in an action for collection thereof, cannot be subjected to an equitable estoppel. *State v. Illinois Cent. R. Co.*, 200M583, 274NW828. See *Dun. Dig.* 9542.

#### 11. Land must be devoted to railroad purposes.

Portion of building used by railway company is not exempt from ad valorem tax where greater portion of building is used by bank, though railroad owns half of stock of holding company owning building. *Op. Atty. Gen.*, Nov. 21, 1933.

Property owned by private corporation is not exempt from taxation because it has access to railroad service. *Op. Atty. Gen.* (414d), Jan. 5, 1938.

#### 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.

Car rental debit balances are not deductible from other gross earnings. *Op. Atty. Gen.* (2161-1), June 19, 1937.

#### 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.

Railroad right of way is subject to assessments for pavement on street abutting railroad. *Op. Atty. Gen.* (396g-12), May 11, 1936.

A village owning a highway easement over a strip of railroad right-of-way subject to reversion of such strip

is not used for highway purposes may pave such easement and assess cost thereof against abutting owners, including railroads. *Op. Atty. Gen.* (396g-12), August 22, 1939.

#### 23 1/2. Exemption from income tax.

Railroads which pay a gross earnings tax to the state are not exempt from state income tax. *Op. Atty. Gen.*, Nov. 13, 1933.

### 2247. "Gross earnings" defined.

49SCR191, aff'g 174M3, 218NW167; notes under §2246.

In determining, in the absence of original records, amount of an interstate railroad's receipts from freight car rentals on which to reckon gross earnings tax, computation may be made by allocating to Minnesota a per centum of each credit balance for such use, due taxpayer from another railroad, equivalent to per centum in Minnesota of using line's entire loaded or revenue freight car mileage, and deducting a per centum of each of taxpayer's debit balances owing by it to another line equivalent to per centum in Minnesota of its entire loaded freight car mileage. *State v. Illinois Cent. R. Co.*, 200M583, 274NW828. See *Dun. Dig.* 9551.

Debit balances accruing in the adjustment of per diem charges on the exchange of freight car equipment are not deductible from gross earnings tax returns by a railroad company. *State v. Minneapolis & St. L. R. Co.*, 204M250, 283NW244. See *Dun. Dig.* 9562.

Gross earnings tax computed according to Burlington formula violates no constitutional provisions. *State v. Illinois Cent. R. Co.*, 286NW359. See *Dun. Dig.* 9140a, 9562.

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

### 2261. Definition.

Pick up and delivery service and also transfer of freight from one railroad to another constitutes express business and fees and charges received are to be included in gross earnings. *Op. Atty. Gen.* (216B), April 12, 1939.

### 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.**—Every such express company shall be assessed a tax equal to nine per cent of its gross earnings as defined in subdivision 6 of Section 1013, Revised Laws of 1905 [§2262], after deducting payments to railroads for the transportation of freight as defined in subdivision 7 of said section, and the same shall become due and payable to the State of Minnesota on March 1st thereafter; and the payment of such sum at said time shall be in full and in lieu of all ad valorem taxes upon its property. (R. L. §1019; '13, c. 454, §2; C. L. '13, §2248; June 21, 1937, Sp. Ses., c. 3, §3; July 2, 1937, Sp. Ses., c. 9, §3.)

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.

Building of telephone company paying gross earnings tax is not exempt from general property tax when not used in connection with operation of telephone system. *Op. Atty. Gen.* (98b-7), June 1, 1934.

## FREIGHT LINE COMPANIES

**2272. Seven per cent on gross earnings.**—Every freight line company, as hereinbefore defined, shall pay annually a sum in the nature of a tax at seven per centum upon the total gross earnings received from all sources by such freight line companies within the state, which shall be in lieu of all ad valorem taxes upon all property of any freight line company so paying the same. ('19, c. 506, §3; June 21, 1937, c. 3, §1; July 2, 1937, Sp. Ses., c. 9, §1.)

**2274. Statement to be filed by railroads using or leasing cars of freight line companies.**—Every railroad company using or leasing the cars of any freight line company shall, upon making payment to such freight line company for the use or lease, after December 31st, 1925, of such cars withhold so much thereof as shall represent the tax imposed on account thereof by Mason's Minnesota Statutes of 1927, Section 2272. On or before August 1 and February 1 respectively, of each year such railroad company shall make and file with the tax commission a statement and a duplicate thereof with the public examiner, showing the amount of such payment for the next preceding six-month period, ending June 30 and December 31, respectively, and of the amounts so withheld by it. If any railroad company shall fail to make such report, or shall fail to withhold the part of such payment hereby required to be withheld it shall not be entitled to deduct from its gross earnings for purposes of taxation the amounts so paid by it to freight line companies. ('19, c. 506, §5; '25, c. 329, §1; June 21, 1937, Sp. Ses., c. 3, §1; July 2, 1937, Sp. Ses., c. 9, §1.)

Debit balances accruing in the adjustment of per diem charges on the exchange of freight car equipment are not deductible from gross earnings tax returns by a railroad company. *State v. Minneapolis & St. L. R. Co.*, 204M250, 283NW244. See Dun. Dig. 9562.

#### SLEEPING CAR COMPANIES

**2278. Annual statement.**—Annually on or before February 1st of each year, every such sleeping car company shall make and furnish to the Minnesota tax commission, with a duplicate to the public examiner, an itemized statement, in such form as the public examiner, with the approval of the Minnesota tax commission, may prescribe, containing a true and just return of the gross earnings from owning, operating, renting or leasing such cars for and during the year ending December 31st preceding, verified by the person constituting such company, if a person, or by its president, secretary, treasurer, superintendent or chief officer in this state, if an association or corporation; and upon such gross earnings such sleeping car company shall pay into the state treasury of this state, in lieu of all ad valorem taxes upon all taxable property of said company within this state, a sum of money equal to six per cent of the gross earnings derived from the owning, operating, renting or leasing of such sleeping cars, tourist cars, drawing room cars or parlor cars, and such amounts shall become due and be payable to the state of Minnesota, on March 1st next thereafter. ('13, c. 480, §2; C. S. '13, §2257; June 21, 1937, Sp. Ses., c. 3, §2; July 2, 1937, Sp. Ses., c. 9, §2.)

#### 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

**2282-1. Gross earnings tax on telegraph companies.**—Every telegraph company, as defined in Mason's Minnesota Statutes for 1927, Section 2282, shall pay into the state treasury on or before March 1st of each year, beginning with March 1st, 1938, seven per cent of its gross earnings derived from business within the state during the preceding calendar year, which shall be in lieu of all ad valorem taxes upon the property of such company within the state for the year during which such gross earnings accrued. (June 21, 1937, Sp. Ses., c. 4, §1.)

**2282-2. Same—Repeal.**—Mason's Minnesota Statutes for 1927, Sections 2283, 2284 and 2285, are hereby repealed. (June 21, 1937, Sp. Ses., c. 4, §2.)

**2282-3. Same—Tax commission to enforce act; regulations.**—The Minnesota Tax Commission shall enforce this Act and shall have the power to make all necessary regulations and to require all necessary

information therefor. (June 21, 1937, Sp. Ses., c. 4, §3.)

#### 2283-2285. [Repealed.]

These sections being §§2262 to 2264 of C. L. '13, repealed June 21, 1937, Sp. Ses., c. 4, §2.

**2286. Telephone companies to pay six per cent on gross earnings.**—Every telephone company shall pay into the state treasury on or before March 1st in each year, beginning with March 1st, 1938, the following percentages of its gross earnings of the preceding calendar year derived from business within this state: (a) four per cent of its gross earnings from service to rural subscribers; (b) four per cent of its gross earnings from exchange business at all cities of the fourth class, and boroughs or villages having a population of ten thousand; (10,000); or under; and (c) seven per cent of its gross earnings derived from all other business, which shall be in lieu of all other taxes, except the taxes imposed by Laws 1933, Chapter 405, as amended by Mason's Minnesota Statutes 1927, Section 2337, and by any Act passed at this special session or any future session of the legislature of the State of Minnesota. All moneys paid by a company for connecting fees and switching charges to any other company shall be reported as earnings by the company to which they are paid, but shall not be deemed earnings of the collecting and paying company. For the purposes of this act the population of any municipality shall be considered as that stated in the latest Federal census. (R. L. '05, §1035; G. S., '13, §2265; '21, c. 348; '21, c. 421; June 25, 1937, Sp. Ses., c. 7; July 8, 1937, Sp. Ses., c. 10, §1.)

Where telephone company constructed new office building and rented old building to the state free of rent on condition that it pay taxes and maintenance costs, property is subject to ad valorem tax. *Op. Atty. Gen.* (216G), August 17, 1939.

**2286-1. Repeal.**—That Extra Session Laws 1937, Chapter 7 be and the same is hereby repealed; provided, however, that if this act shall be held invalid this section shall be void of and of no effect. (July 8, 1937, Sp. Ses., c. 10, §2.)

Sec. 3 of Act July 8, 1937, cited, provides that the Act shall take effect from its passage.

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.*, 188M520, 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.

#### TRUST COMPANIES

**2280. Gross earnings tax.**—On or before March 1 of each year every trust company organized under the laws of this state shall pay into the county treasury of the county where its principal place of business is located six (6) per cent of its gross earnings for the preceding calendar year, which amount shall be in lieu of all ad valorem taxes upon the capital stock and the personal property of such trust company; provided, however, that if any such company shall receive deposits subject to check other than trust deposits, that then such company shall be assessed in the same manner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks. ('13, c. 529, §1; C. L. '13, §2268; June 21, 1937, Sp. Ses., c. 3, §4; July 2, 1937, Sp. Ses., c. 9, §4.)

Trust companies are not banks within meaning of §2394-5 and are not exempt from income tax. *Op. Atty. Gen.* (531d), June 20, 1934.

**2290. Tax apportioned and distributed.**—One-sixth of all taxes paid to county treasuries under the provisions of this act shall be remitted to the state treasury and be credited to the general revenue fund and the balance thereof shall be apportioned and distributed in the same manner as the general property tax is apportioned and distributed. ('13, c. 529, §2; C. L. '13, §2269; June 21, 1937, Sp. Ses., c. 3, §4; July 2, 1937, Sp. Ses., c. 9, §4.)

**2290-1. Reports filed by trust companies with tax commission.**—It shall be the duty of every trust company which is required to pay a tax of six (6) per cent of its gross earnings in lieu of taxes and assessments upon its capital stock and personal property pursuant to the provisions of Section 2289, General Statutes of Minnesota, 1923, on or before the first day of February, 1926, and annually thereafter on or before the first day of February in each year, to make and file with the Minnesota tax commission a report covering the preceding calendar year, verified by the oath of an officer of such company, and setting forth correctly the full amount of the gross earnings of such company during the preceding calendar year, and such other and further information as the tax commission may require. ('25, c. 251, §1; June 21, 1937, Sp. Ses., c. 3, §4; July 2, 1937, Sp. Ses., c. 9, §4.)

#### INHERITANCES, DEVISES, BEQUESTS AND GIFTS

**2292. Imposition of tax.**—Subsection 1. **Transfers.**—A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:

(a) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(b) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death.

(c) When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Any transfer of a material part of the property of a deceased in the nature of a final disposition or distribution thereof, made within two years prior to death, without adequate and full consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this act.

**Subsection 2. Time of transfer.**—Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

**Subsection 3. What shall be deemed transfer.**—Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same

within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

**Subsection 4. (a) Tax on jointly owned property—Lien—Certificate of attorney general.**—(a) Whenever any property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or in other institutions or depositaries in the joint names of two or more persons payable to either or the survivor, upon the death of one of such persons the right of the survivor or survivors, to the immediate ownership or possession and enjoyment of such property, shall be deemed a transfer and subject to the inheritance tax imposed by this act, except such part thereof as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by them from the decedent for less than an adequate and full consideration in money or money's worth; in which case there shall be excepted only such part as is proportionate to the consideration furnished by the survivor or survivors. Where any property has been acquired prior to April 29, 1935, or has been acquired at any time by gift, bequest, devise, or inheritance by the decedent and spouse, as joint tenants, one-half of the value thereof shall be taxable. Provided, where property has been so acquired by the decedent and any other person or persons, as joint tenants, and their interests are not otherwise specified or fixed by law, the taxable portion shall be the value of a fractional part of said property to be determined by dividing the value of the property by the number of joint tenants.

(b) Every tax imposed upon any property taxable under subsection (4) of this section shall be a lien upon the interest of the deceased joint tenant until paid, and the survivor or survivors shall be personally liable for such tax to the extent of the value of such property. Such lien shall be limited to a period of ten years from the date of recording a copy of the death record of the deceased joint tenants.

(c) The attorney general shall determine the inheritance tax, if any, under this subsection (4). When the tax is paid or if there is no tax, the attorney general shall make and deliver, to the surviving joint tenant, his certificate to that effect, and the said certificate may be recorded as other instruments affecting the title to real estate.

**Subsection 5. (a) Tax on life insurance policies—As transfer—Proration of excess—Notice by insurer—Receipt affecting exemption—Duties of attorney general.**—The proceeds of all life or accident insurance policies taken out by decedent and payable on account of his death in excess of \$32,500, receivable by named beneficiaries, shall be subject to the tax herein imposed, as follows:

(1) The proceeds of all such policies hereafter issued payable to named beneficiaries.

(2) The proceeds of all such policies now in force payable to named beneficiaries in which the insured has the right to change the beneficiary or under which he has cash surrender right.

(d) Such proceeds in excess of \$32,500 shall be deemed a transfer within the meaning of that term as used in this act and a part of decedent's estate, and shall be taxable to the person or persons entitled thereto. In the computation of the tax, the proceeds upon which no tax is imposed shall be credited as follows:

(1) To the surviving spouse, the amount of such proceeds received by such spouse, not in excess, however, of \$32,500.

(2) To each minor child of the decedent the amount of such proceeds received by such child, not in excess, however, of \$32,500, less the amount, if any, allowable to the surviving spouse.

(3) To each adult child of the decedent the amount of such proceeds received by such child, not in excess, however, of \$32,500, less the amounts, if any, allowable to the surviving spouse and minor child or children of decedent.

(4) To any person, the amount of such proceeds received by such person, not in excess, however, of \$32,500, less the amount, if any, allowable to the surviving spouse and children of the decedent.

(c) If the amount otherwise allowable to any class of persons, as aforesaid, together with the amounts allowable to prior classes, shall aggregate more than \$32,500, the difference between the aggregate of the amounts allowable to prior class or classes and \$32,500 shall be prorated among the members of such class in proportion to the amount of such proceeds received by each.

(d) Every corporation, partnership, association, individual, order or society authorized to transact life, accident, fraternal, mutual benefit or death benefit insurance business which shall pay to any named beneficiary any insurance or death benefit upon the death of a resident of this state, shall give notice of such payment to the attorney general within ten days from the date of such payment. Such notice shall be given on the forms prescribed by the attorney general, and such notice shall set forth such information as the attorney general shall prescribe.

(e) The receipt of any such proceeds upon which no tax is imposed shall not affect the right to any exemption otherwise provided in this act.

(f) The attorney general shall determine the tax, if any, under subdivision (5). ('05, c. 288, §1; '11, c. 372, §1; G. S. '13, §2271; Apr. 29, 1935, c. 334; July 15, 1937, Sp. Ses. c. 50, §3; Apr. 20, 1939, c. 338, §1.)

**Editorial note.**—Powers conferred on the attorney general are transferred to the commissioner of taxation by §2362-6, ante.

For effective date of Apr. 20, 1937 Act, cited, see §2311-1, post.

**Act to obtain benefit of Federal Estate tax.** Laws 1931, c. 332.

A joint tenancy with right of survivorship was created by transfer of stock by husband to himself and his wife as joint tenants, and wife who survived her husband was not liable as a transferee for unpaid federal income tax deficiency assessed against him, as against contention that unity of time and title was wanting and that therefore the transfer created a tenancy in common rendering her a transferee or distributee of an undivided one-half interest belonging to him at the time of his death. *Irvine v. H.*, (CCA8), 99F(2d)265, rev'g 36BTA653.

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.

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. 181M262, 232NW331. See Dun. Dig. 9571.

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, 236 NW626. See Dun. Dig. 9572b(40).

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.*, 186M160, 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. Id.

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, 243NW 389.

A taxable succession takes place as from donee rather than donor of a power of appointment when a person succeeds to property subject thereto by reason of exercise of power. *Robinson*, 192M39, 255NW486. See Dun. Dig. 9572c.

Where a resident of North Dakota placed intangibles in custody of trustee in Minnesota where trust was to be administered, reserving power to supervise investments by trustee and to change or revoke trust, and died, domiciled in North Dakota, without having exercised the power of revocation, transfer of corpus of trust which took place upon his death, while a resident of North Dakota, occurred there and is subject to an inheritance tax only under laws of that state. *Frank's Estate*, 192M151, 257NW330. See Dun. Dig. 9572b.

Intangibles are subject to inheritance tax only by domiciliary state. Id.

Stock of Minnesota corporations owned by decedent at time of her death at her domicile in another state, being kept at her domicile or on deposit in Minnesota for safekeeping purposes only, and not pledged or otherwise made use of within the state, is not subject to inheritance tax. *Birch's Estate*, 193M599, 259NW556. See Dun. Dig. 9572c.

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.

Gift taxes may be levied under this section where a transfer is made in contemplation of death. Op. Atty. Gen. (242a-21), June 6, 1935.

Generally speaking, waiver for transfer of corporate stock is only required when decedent was a Minnesota resident. Op. Atty. Gen. (242a-11), Feb. 13, 1936.

Taxation of transfers intended to take effect in possession or enjoyment at grantor's death. 14MinnLaw Rev 453, 613.

Jurisdiction to tax intangibles. 14MinnLawRev799. Single situs for inheritance taxation of intangibles. 16 MinnLawRev335.

Inheritance taxability of sums paid out in compromise of will contest. 16MinnLawRev722.

Taxation of joint estates and tenancies by entireties. 20 MinnLawRev 294.

Inter vivos transfers where donor reserves power to revoke, alter or amend. 20 MinnLawRev 444.

Reciprocal and retaliatory legislation. 21 MinnLawRev 371.

Retroactive taxation—estate and inheritance taxes applied to joint tenancy created before their enactment. 23 MinnLawRev547.

(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.**—The tax so imposed shall be computed upon the true and full value in money of such property at the rates herein-after prescribed and only upon the excess of the exemptions hereinafter granted. (As amended Apr. 20, 1939, c. 338, §2.)

**Primary rates—On \$15,000 or less.**—When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value \$15,000 the tax hereby imposed shall be:

(1) Where the person entitled to any beneficial interest in such property shall be the wife, or lineal issue, or any child adopted as such in conformity with the laws of this state, or any lineal issue of such adopted child at the rate of one per cent of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's 15th birthday, and was continuous for said ten years thereafter, or any

lineal issue of such mutually acknowledged child, at the rate of one and one-half per cent of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of three per cent of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per cent of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, except as hereinafter provided, at the rate of five per cent of the clear value of such interest in such property. (As amended Apr. 20, 1939, c. 338, §2a.)

**Rates on benefits exceeding \$15,000.**—The foregoing rates in section 2a are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceeds \$15,000, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of \$15,000 and up to \$30,000, two times the primary rates.

(2) Upon all in excess of \$30,000 and up to \$50,000, three times the primary rates.

(3) Upon all in excess of \$50,000 and up to \$100,000, three and one-half times the primary rates.

(4) Upon all in excess of \$100,000 and up to \$200,000, four times the primary rates.

(5) Upon all in excess of \$200,000 and up to \$300,000, five times the primary rates.

(6) Upon all in excess of \$300,000 and up to \$400,000, six times the primary rates.

(7) Upon all in excess of \$400,000 and up to \$500,000, seven times the primary rates.

(8) Upon all in excess of \$500,000 and up to \$600,000, eight times the primary rates.

(9) Upon all in excess of \$600,000 and up to \$700,000, nine times the primary rates.

(10) Upon all in excess of \$700,000 and up to \$900,000, ten times the primary rates.

(11) Upon all in excess of \$900,000 and up to \$1,100,000, eleven times the primary rates.

(12) Upon all in excess of \$1,100,000, twelve times the primary rates.

Provided the tax imposed hereby shall in no case exceed 35 per cent of the true and full value of the property transferred in excess of the applicable specific exemptions. (As amended July 15, 1937, Sp. Sess., c. 50, §1; Apr. 20, 1939, c. 338, §2b.)

**Exemptions.**—The following exemptions from the tax are hereby allowed: (1) 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, education 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.

The homestead of a decedent, and the proceeds thereof if sold during administration, transferred to the spouse or issue of a decedent, shall be exempt to the extent of \$30,000 of the appraised value thereof.

(2) Property of the clear value of \$10,000 transferred to the widow and to each child of the decedent or any legally adopted child who is a minor or dependent at the death of the decedent, shall be exempt.

Property of the clear value of \$5,000 transferred to husband of the decedent, an adult child on other lineal descendant of the decedent, any adult adopted child, or any child to whom the decedent for not less than ten years prior to his death, stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's 15th birthday, and was continuous for ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, shall be exempt.

(3) Property of the clear value of \$3,000 transferred to each of the lineal ancestors of the decedent shall be exempt.

(4) Property of the clear value of \$1,000 transferred to each of the persons described in the third subdivision of section 2a shall be exempt.

(5) Property of the clear value of \$250.00 transferred to each of the persons described in the fourth subdivision of section 2a shall be exempt.

(6) Property of the clear value of \$100.00 transferred to each of the persons and corporations described in the fifth subdivision of section 2a shall be exempt. (As amended Apr. 18, 1931, c. 208; July 15, 1937, Sp. Sess., c. 50, §2; Apr. 20, 1939, c. 338, §2c.)

**Tax paid within five years previous to transfer.**—Where property is transferred to any person described in subdivisions (1) and (2) of section 2a which can be identified as having been transferred to the decedent from a person who died within five years prior to the death of the decedent, and such transfer to the decedent was within the class of transfers described in said subdivisions (1) and (2) of section 2a such property shall be exempt to the extent of the value thereof at the date of death of the prior decedent. Provided, however, that no such exemption shall be allowed unless an inheritance tax was determined and paid to this state on the transfer thereof from the said prior decedent; provided, further, that unless such previously transferred property is specifically devised or bequeathed, the exempt property for purposes of taxation shall be considered as belonging to the residue of the estate. (Added Apr. 20, 1939, c. 338, §2d.)

**Expenses of administration—Funeral and last sickness expenses—Family maintenance—Federal taxes.**—Reasonable expenses of administration, funeral expenses, expenses of last sickness, claims against the decedent duly allowed as such, family maintenance to the extent provided by the 1938 Supplement to Mason's Minnesota Statutes, Section 2293-1, and allowances to the surviving spouse, Federal estate taxes and taxes which have accrued or are a lien on property in the estate at the date of death, shall be allowed as deductions, in the amount allowed by the probate court having jurisdiction, before computing the tax. (Added Apr. 20, 1939, c. 338, §2e.)

**Expenses in case of nonresident.**—Where any tax is due on the transfer of any property or interest therein owned by a nonresident, the exemptions provided in subdivisions (3), (4), (5) and (6) shall be allowed in the proportion which such property bears to the total property of the decedent wherever situated. No deductions except those actually incurred within this state shall be allowed. (Added Apr. 20, 1939, c. 338, §2f.)

**Determination of tax in case of nonresident.**—Except as otherwise herein provided the tax upon any transfers by a nonresident of real property within this state or personal property having a situs within this state shall be determined by the probate court in all cases where the estate is probated in this state. In all cases where the tax is not determined by the probate court it shall be determined by the

attorney general. (Added Apr. 20, 1939, c. 338, §2g.)

For effective date of Act Apr. 20, cited, see §2311-1, post.

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. Bowlin, 189M196, 248NW741. See Dun. Dig. 9572a.

**2293-1. Maintenance of family in inheritance tax cases.**—In determining the value of any estate subject to an inheritance tax, the amount deducted for the maintenance of the family shall not be greater than the amount allowed by the probate court for one year, and which is reasonably required or actually expended for their support during the settlement of the estate, not exceeding in any event the sum of \$5,000.00. (Act Apr. 29, 1935, c. 335.)

**2293-2. Effective date.**—The increased rates provided hereby [§§2292, 2293] shall apply in the case of inheritances from all decedents dying after the approval of this act. (July 15, 1937, Sp. Sess. c. 50, §4.)

**2294. To take effect on death—When payable.**—

(1) All taxes imposed by this act shall take effect at and upon the death of the person from whom the transfer is made and shall be due and payable at the expiration of one year from such death, except as otherwise provided in this act.

(2) The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that for every future or limited estate, income, interest or annuity, the value of which is not based upon an assumed or fixed rate of interest, the rate of interest and the discount rate, for making such computation, shall be four per cent per annum.

(3) When any transfer is made in trust for any person or persons or corporation or corporations, and the right of the beneficiaries of said trust to receive the property embraced in said trust is susceptible of present valuation, then and in such case the tax thereon shall be paid at the same time and in the same manner, and in like amount, that would be the case if the beneficiaries of such trust received the same directly from the decedent or the persons from whom the property is transferred.

(4) Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

(5) When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed

upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per cent per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section 21c; (section 9 of this act [§2315]).

(6) In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgement, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by Section 21c; (section 9 of this act [§2315]).

(7) Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interest is derived.

(8) The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when the taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

(9) Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. (As amended Apr. 20, 1939, c. 338, §3.)

For effective date of Act Apr. 20, 1939, cited, see §2311-1, post.

Statute does not require court to find that annual income of legacy invested in government bonds is 5% when it is in fact 3%. Rice, 191M250, 253NW768. See Dun. Dig. 9572.

Gain in market value of property of an estate of a deceased person between time of his death and distribution of property to heirs, devisees, or legatees is not subject to succession tax. *Bigelow's Estate*, 199M239, 271 NW459. See Dun. Dig. 9572d.

#### 2295. Collection of tax—Duties of representative.

(1) Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, before paying or distributing the same. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy, or gift upon the appraised value thereof, from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this act, to any person until he shall have collected the tax thereon. All taxes so collected, together with interest thereon, if any, shall be paid to the county treasurer as herein provided, and no administrator, executor or trustee shall be entitled to a discharge of his duties and liabilities until such tax is paid.

(2) Every representative shall, at the time of filing the inventory as required by law, file with the Probate Court a return under oath, in such form as may be prescribed by the attorney general, of all property within his knowledge and the value thereof at the date of the decedent's death, (a) which the decedent has at any time transferred and which is or may be subject to an inheritance tax, (b) which the decedent held in joint tenancy, (c) which was subject to the exercise of a power of appointment by the decedent. The return shall also contain a list of all policies of insurance on the life of the decedent payable to named beneficiaries, and the amounts thereof, if the total amount thereof exceeds \$32,500. (As amended Apr. 20, 1939, c. 338, §4.)  
For effective date of Act Apr. 20, 1939, cited, see §2311-1, post.

2296. Payment to county treasurer or state treasurer.—The tax imposed by this act upon inheritances, devises, bequests, legacies, gifts and other transfers shall be paid to the treasurer of the county in which the probate court having jurisdiction is located or, where there are no probate proceedings in this state to the state treasurer upon determination thereof by the attorney general. The treasurer to whom the tax is paid shall give the executor, administrator, trustee or person paying such tax, duplicate receipts therefor, one of which shall be immediately transmitted to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof; the state auditor shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, or other person paying such tax, whereupon it shall be a proper voucher in the settlement of his accounts. No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in the settlement of which a tax may become due under the provisions of this act, until he shall produce a receipt, so sealed and countersigned by the state auditor, or a certified copy of the same. All taxes paid into the county treasury under the provisions of this act shall immediately be paid into the state treasury upon the warrant of the state auditor and shall belong to and be a part of the revenue fund of the state. (As amended Apr. 20, 1939, c. 338, §5.)

For effective date of Act Apr. 20, 1939, cited, see §2311-1, post.

#### 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.)

#### 2298. Interest.

Provision for interest is effective regardless of cause of delay in determination and payment of tax, and is not a penalty, and state is not estopped by failure of probate court to require defaulting executor to account or have tax determined. *Matteson's Estate*, 196M417, 265NW38. See Dun. Dig. 9573.

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

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

There is nothing unconstitutional about a legislative appropriation wherewith to refund inheritance taxes improperly collected by the state, Laws 1933, c. 335 is but a recognition by legislature of a just demand against state, and making of provision for its payment. *Monfort's Estate*, 193M594, 259NW554. See Dun. Dig. 9489.

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.—Personal property of nonresident decedent.—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this State, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Any personal representative, trustee, heir or legatee of a non-resident decedent desiring to transfer property having its situs in this state may make application to the attorney general for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the attorney general therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the state of Minnesota, the value of such property at the time of said decedent's death; also when required by the attorney general, a description of and statement of the true value of all the property owned by the decedent at the time of his death and having its situs outside the state of Minnesota, and also a schedule or statement of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate. Such person shall also, on request of the attorney general, furnish to the latter a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, with each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the

personal representative of the decedent or some other person having knowledge of the facts therein set forth.

The statements in any such affidavits as to value or otherwise shall not be binding on the attorney general in case he believes the same to be untrue. From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the attorney general shall issue a consent to the transfer of the property so owned by the decedent.

Any person aggrieved by the determination of the attorney general in any matter hereinbefore provided for, may within twenty days thereafter appeal to the district court of Hennepin county, or Ramsey county, Minnesota, by filing with the attorney general a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the attorney general shall transmit the original papers and records which have been filed with him in relation to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such application and proceeding. Upon eight days' notice given to the attorney general by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification or (of) any determination made by the attorney general.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions. ('05, c. 288, §11; '11, c. 209, §2; '13, c. 565, §1; G. S. '13, §2281; Apr. 5, 1935, c. 128.)

Subd. 2 of this section was repealed by Act Apr. 26, 1913, c. 565, §1.

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.

**Editorial note.**—Powers conferred on attorney general are transferred to the commissioner of taxation by §2362-6, ante.

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, 236 NW826. See Dun. Dig. 9572b(40).

There is nothing unconstitutional about a legislative appropriation wherewith to refund inheritance taxes improperly collected by the state, and Laws 1933, c. 335, is but a recognition by legislature of a just demand against state, and making of provision for its payment. *Monfort's Estate*, 193M594, 259NW554. See Dun. Dig. 9489.

Under the amendment by Laws 1935, c. 128, local corporation is concerned with residence of decedent and not with situs of his stock. *Op. Atty. Gen.* (3491), June 4, 1935.

Generally speaking, waiver for transfer of corporate stock is only required when decedent was a Minnesota resident. *Op. Atty. Gen.* (242a-11), Feb. 13, 1936.

Reciprocal and retaliatory legislation. 21 MinnLawRev 371.

**2303. Transfer of assets to representative.**—(1) No safe deposit company, bank or other institution, person, or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the county treasurer, personally or by representative, to examine said securities at the time of such delivery or transfer. If upon such examination the county treasurer or his said representative shall for any cause deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify in writing such company, bank, institution or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery or transfer until the time stated in such notice or until the revocation thereof within such ten days. Failure to serve the notice first above mentioned, or to allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said security or assets, pursuant to the provisions of this act.

(2) The county treasurer shall within ten days deliver a written report of the property examined by him to the probate court and the attorney general.

(3) No corporation organized under the laws of this state shall transfer on its books or on its records kept as transfer agent for any corporation any shares of stock standing in the name of a decedent who is known to have been a resident of this state or of a foreign country at the time of his death without the written consent of the attorney general. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due on the transfer of such transfer of such shares of stock. (As amended Apr. 20, 1939, c. 338, §6.)

For effective date of Act Apr. 20, 1939, cited, see §2311-1, post.

**2304. County treasurer and attorney general may apply for letters as creditors—Copy of inventory to attorney general—Appraisal objections—Determination service on state auditor—Attorney general to receive list of property.**—(1) The county treasurers of the several counties, and the attorney general, shall have the same rights to apply for letters of administration as are conferred upon creditors by law.

(2) In all estates where it appears from the inventory, appraisal and return that an inheritance tax may be imposed, the representative shall, upon the filing thereof, under direction of the court, deliver a copy of each, and of the petition, and will, if any, to the attorney general.

(3) The values shown by such inventory, appraisal, and return shall be deemed conclusive and final in the computation of inheritance taxes unless within ninety days after the filing thereof with the probate court the representative of the estate, or the attorney general, or any party in interest, shall file objections thereto with the probate court as to any specific item or items therein. If such objections are filed the probate court shall fix a time and place for the determination of the tax and shall give thirty days' written notice thereof to the attorney general and to the representative of the estate and to any party who has filed objections, and upon such hearing shall determine the values of the items objected to and determine the tax. If no objections are filed the court shall make its order determining the tax on the values

set forth in the appraisal and the return as herein provided.

(4) Upon making and filing the order determining the tax a copy thereof shall be served on the state auditor, the county treasurer, the attorney general and the representatives of the estate. Within 30 days thereafter the attorney general or any other interested party may file written objections thereto with the probate court, and apply for a reassessment and redetermination of the tax. The court shall thereupon set a time for hearing thereof, and give at least ten days' notice to the attorney general, the county treasurer and other interested parties. Upon such hearing the court may set aside or amend its order, or any part thereof. Notice of the order made after such hearing shall be served in the same manner as the original order. (As amended Apr. 20, 1939, c. 338, §7.)

For effective date of Act Apr. 20, 1939, cited, see §2311-1, post.

**Editorial note.**—Powers conferred on attorney general are transferred to the commissioner of taxation, by §2362-6, ante.

**2307. Notice of appraisal—Powers and duties of appraisers.**

**Editorial note.**—Powers conferred on attorney general are transferred to the commissioner of taxation by §2362-6, ante.

**2309. Probate court to report to attorney general and state auditor—Clerical assistance.**—The probate court upon serving a copy of the order determining the tax, as herein provided shall deliver to the attorney general and the state auditor, a full report showing such other matters in connection therewith as may be required by the attorney general upon such forms as may be furnished by him to said court or as may be particularly requested. The county board may allow the county treasurer and the judge of probate to employ such additional clerical assistance for all or part of the time as may be necessary to properly perform the additional duties imposed upon such officers by the inheritance tax law. (As amended Apr. 20, 1939, c. 338, §9.)

**Editorial note.**—Powers of attorney general transferred to commissioner of taxation by §2362-6, ante.

**2310. Objections—Notice and hearing. [Repealed.]**

Repealed Apr. 20, 1939, c. 338, §8.

**Editorial note.**—Powers of attorney general transferred to commissioner of taxation by §2362-6, ante.

**2311. Nonpayment of tax—Omitted property.**—(1) If any tax is due and unpaid under the provisions of this act, the representative of the estate, the county attorney of the county in which an estate is probated or the attorney general may apply to the probate court for a citation, citing the persons liable to pay such tax to appear before the court on a day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the probate court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate code of this state, and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said probate court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax.

(2) Any tax due and unpaid under the provisions of this act may be enforced and collected by action in a court of general jurisdiction by the representative of any estate, or by action in the name of the state brought by the attorney general or the county attorney.

(3) Any property which for any cause is omitted from an appraisement or inventory, so that its value is not taken into consideration in the determination of the inheritance taxes, may be subsequently taxed

against the persons receiving the same, or any part thereof, to the same effect as if included in the original appraisal and determination, except that any representative of an estate discharged from his trust in the meantime shall not be liable for the payment of such tax. When any property has been thus omitted in the determination of an inheritance tax, such taxes thereon may be determined and recovered in a civil action brought by the attorney general in the name of the state in any court of general jurisdiction, or may be prosecuted to collection by citation and subsequent proceedings in the probate court wherein the estate was administered. (As amended Apr. 20, 1939, c. 338, §10.)

The district court has jurisdiction of a suit to enforce the lien of the inheritance tax upon property omitted from the appraisement 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. 9526.

An instrument purporting to "assign, set over and transfer" all rights in realty coming to assignor as heir of a certain estate held a mortgage with a defeasance clause which should not be recorded without payment of taxes and mortgage registration tax. *Op. Atty. Gen.* (373B-9), June 13, 1939.

**2311-1. Application and effective date of act.**—This act shall take effect from and after its passage, and shall apply to all transfers, estates, and proceedings, except as follows:

(a) Section 1 shall apply to transfer after its passage.

(b) Section 5 shall apply to transfers, the tax on which has not been determined prior to its passage.

(c) Sections 2, 3, 4, 5, 6, and 7 shall apply to transfers from decedents whose death occurs after its passage, and to the determination of the tax on such transfers.

(d) The provisions of all prior laws shall remain in full force and effect so far as necessary to preserve any liability for taxes incurred prior to its passage, and to enforce the collection thereof. (Act Apr. 20, 1939, c. 338, §11.)

**2311-2. Provisions severable.**—If any part of this act shall be declared unconstitutional no other part shall be affected thereby. (Act Apr. 20, 1939, c. 338, §12.)

**2313. Where estate of nonresident not probated.**

**Editorial note.**—Powers of attorney general transferred to commissioner of taxation by §2362-6, ante.

**2314. Powers of attorney general.**

**Editorial note.**—Powers conferred on attorney general are transferred to the commissioner of taxation by §2363-6, ante.

**2315. Refundment of tax.**

**Editorial note.**—Powers conferred on attorney general are transferred to the commissioner of taxation by §2363-6, ante.

**2317, 2318. [Repealed.]**

Repealed Apr. 22, 1939, c. 431, Art. 6, §7, post, §2362-7.

**Editorial note.**—By Act Apr. 22, 1939, c. 431, Art. 6, §6, post §2362-6, the powers and duties of the attorney general under these sections are transferred to the commissioner of taxation.

**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 determined 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.)

**Editorial note.**—Powers conferred on the attorney general are transferred to the commissioner of taxation by §2362-6, ante.

**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 referred 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, 214NW315.

Purchaser under a contract for a lease claiming title to the property, contending such contract should have been registered under this section, was merely making a collateral attack upon Torrens registration of vendor. *Nitkey v. S.* (USCCA8), 87F(2d)916. Cert. den. 301US697, 57SCR925. Reh. den. 58SCR5.

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. *Mooty 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. *Spielman v. A.*, 183M282, 236NW319. See Dun. Dig. 6145.

Tax provided by this act and other acts impliedly repealed corporate excess taxation under §2021. *Bemis Bro. Bag Co. v. W.*, 197M216, 266NW690. See Dun. Dig. 8927, 9128.

Whether a state tax on shares of stock of a national bank violates Mason's USCA, title 12, §548, is a question of fact in each case to be determined from varying rates of taxation in a given year. *Cherokee State Bank v. W.*, 202M582, 279NW410. See Dun. Dig. 9120.

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.

Mortgage registry tax must be paid on mortgages to federal savings and loan associations before they can be recorded. Op. Atty. Gen. (373b-(d)), Apr. 20, 1934.

New mortgage given only to secure same indebtedness as old mortgage upon which registration tax is paid is not exempt from tax. Op. Atty. Gen. (418a-14), June 4, 1934.

Under an executory land contract which does not contain any provision under which the vendee is entitled to take possession of the premises, vendee is not obligated to pay the registration tax on the contract before it can be recorded in the office of the register of deeds, unless he took possession of the premises under the contract or being in possession of the premises prior to the contract, thereafter remained in possession. Op. Atty. Gen. (418a-12), July 11, 1934.

New mortgage given only to secure part of same indebtedness secured by old mortgage upon which registration tax is paid is not exempt from registration tax. Op. Atty. Gen. (418a-11), Sept. 20, 1934.

Mortgages to federal reserve bank are exempt from registration tax. Op. Atty. Gen. (418a-14), Dec. 4, 1934.

No registration tax may be charged for registration of a railroad mortgage which is a lien on entire system given to secure payment of money borrowed from reconstruction finance corporation. Op. Atty. Gen. (418b-24), Jan. 29, 1935.

Contract for deed by department of rural credit is not subject to mortgage registry tax. Op. Atty. Gen. (418b-23), Jan. 31, 1935.

Option contract is not a mortgage and should be recorded without payment of registration tax. Op. Atty. Gen. (373b-17(d)), Apr. 2, 1935.

A mortgage given to a county by persons on relief is of no effect where the amount of the mortgage is not stated. Op. Atty. Gen. (418a-14), June 3, 1935.

Registry tax must be paid on new mortgage substituted for existing mortgage. Op. Atty. Gen. (373b-31e), July 25, 1935.

A closed insolvent bank is required to pay registration tax. Op. Atty. Gen. (29b-17), Sept. 23, 1935.

Purchase money mortgage to Joint Stock Land Bank is exempt from tax. Op. Atty. Gen. (418a-13), Jan. 3, 1936.

A deed reciting a consideration of one dollar and other valuable consideration, subject to care and support of a certain person during his natural life, property to be chargeable with one-half of net profits produced if grantee should predecease third person, was not subject to registration tax. Op. Atty. Gen. (418b-5), Mar. 24, 1936.

Tax need not be paid on new bonds evidencing old indebtedness but must be paid on new bonds constituting additional indebtedness. Op. Atty. Gen. (418a-14), May 28, 1936.

Where mortgage registration tax was paid and later amount of mortgage was increased and new mortgage executed, tax must be paid on full amount of new mortgage if a new note was executed. Op. Atty. Gen. (418a-12), July 23, 1937.

Mortgage registration tax must be paid before contract for deed may be recorded. Op. Atty. Gen. (418b-5), Nov. 23, 1937.

Mortgages running to a joint stock land bank are exempt from tax. Op. Atty. Gen. (418a-14), May 26, 1938.

Mortgages running to Reconstruction Finance Corporation are exempt from tax. Op. Atty. Gen. (418a-14), Sept. 14, 1938.

Mortgage running to Reconstruction Finance Corporation may be recorded without payment of tax. Op. Atty. Gen. (418c-1), Dec. 7, 1938.

An instrument purporting to "assign, set over and transfer" all rights in realty coming to assignor as heir of a certain estate held a mortgage with a defeasance clause which should not be recorded without payment of taxes and mortgage registration tax. Op. Atty. Gen. (373b-9), June 13, 1939.

### 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).

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., 188M568, 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.

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.

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

An instrument which constitutes both a chattel mortgage and a contract for deed presented to register of deeds to be filed as a chattel mortgage should be so filed without payment of registration tax. Op. Atty. Gen. (418b-3), July 13, 1935.

Mortgage executed to national bank or receiver thereof is not entitled to record without payment of tax. Op. Atty. Gen. (418a-12), July 19, 1935.

Mortgage registry tax must be paid on a contract for deed executed by an insolvent bank while in process of liquidation. Op. Atty. Gen. (418a-12), July 23, 1935.

Mortgage given to secure interest only is not subject to registration tax. Op. Atty. Gen. (418a-14), Dec. 29, 1935.

Mortgages executed by cooperative association are not exempt from tax. Op. Atty. Gen. (418a-12), Mar. 23, 1936.

Where it is impossible to determine what part of principal debt will mature within 5 years and 60 days after date of contract for deed, entire principal debt should be taxed at twenty-five cents for \$100. Op. Atty. Gen. (418a-11), Nov. 12, 1936.

Registration tax on church mortgage should be paid to treasurer of county in which real estate is situated. Op. Atty. Gen. (418c-3), Jan. 20, 1937.

Where consideration is services to be rendered grantor by furnishing of home and portion of crop to be raised, amount of tax is determined by estimate of value

of such services based on mortality cases. Op. Atty. Gen. (418b-5), Sept. 27, 1937.

Mortgage assumed by vendee in land contract is to be deducted from total indebtedness in ascertaining amount of tax. Op. Atty. Gen. (418a-11), Aug. 17, 1938.

Where contract for deed specifies no principal amount, but only certain monthly payments to grantor during his lifetime, value of consideration is arrived at by multiplying years of expectancy by yearly value of payments, and portion payable in less than five years should bear the 15c and that in excess of five years should bear the 25c rate. Id.

Where mortgage and debt both run to United States, mortgage may be recorded without tax. Op. Atty. Gen. (418a-13), Aug. 30, 1938.

Mortgage given by telephone company covering interest in land should be recorded without payment of registration tax where telephone company owned no real estate in county but telephone extended into the state and such county. Op. Atty. Gen. (418B-21), May 25, 1939.

A trust deed given to a bank by a cooperative power company to secure a note payable to the United States government in connection with rural electrification may be registered without payment of tax, though note is transferable. Op. Atty. Gen. (418B-19), May 29, 1939.

### 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.

Mortgages of bank for cooperatives, which is branch of farm credit administration and an instrumentality of the United States, are exempt from mortgage registration tax. Op. Atty. Gen. (418a-14), Nov. 15, 1934.

Funds of Norwegian Lutheran Church of America that are exempt from personal property tax are exempt from mortgage registration tax. Op. Atty. Gen. (418a-14), Jan. 18, 1938.

Mortgages or contracts for deed running to the state or to federal land banks may be recorded without payment of mortgage registration fee. Op. Atty. Gen. (418a-14), July 7, 1938.

Mortgage upon church property held by trust company in trust for religious and charitable organizations whose personal property would be exempt from taxation, may be recorded without payment of tax. Op. Atty. Gen. (418a-14), Sept. 30, 1938.

Pillsbury Academy lending endowment money and taking mortgage on land need not pay registration tax. Op. Atty. Gen. (418c-4), May 16, 1939.

Mortgage given by a religious corporation upon exempt property to a bank is subject to tax. Op. Atty. Gen. (418B-22), August 9, 1939.

### 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 §1933. Op. Atty. Gen., April 28, 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.)

Registration tax on church mortgage should be paid to treasurer of county in which real estate is situated. Op. Atty. Gen. (418c-3), Jan. 20, 1937.

**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.

Mortgage registry tax must be paid on a contract for deed executed by an insolvent bank while in process of liquidation. Op. Atty. Gen. (418a-12), July 23, 1935.

Register of deeds must register instruments in his office though they lack federal documentary stamps. Op. Atty. Gen. (532a-5), Feb. 14, 1939.

#### MONEY AND CREDITS

**2337. Definitions.**—As used in this section the word "money" means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word "credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at state periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations (75 per cent or more of the real and tangible personal property of which is not taxable in this state.

As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills and on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks located within this state, or to any indebtedness on which taxes have been properly and fully paid under the provisions of Sections 2301-2309, General Statutes of Minnesota 1913, nor to moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks; provided, that bonds, notes or other evidence of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the

meaning of this section. (As amended Apr. 1, 1939, c. 126.)

**Editorial note.**—Limitations with respect to assessment and collection of tax imposed by §§2337 to 2349, and as to penalties, are set forth in amended §2206, ante.

Tax provided by this act and other acts impliedly repealed corporate excess taxation under §2021. Bemis Bro. Bag Co. v. W., 197M216, 266NW690. See Dun. Dig. 8927, 9128.

Where bank stock holding company in the state holds majority of stock in numerous states and national banks in other states and has control and manages them, and its property and business, as a unit, are located in state, the bank stocks have a business-situs in the state and their taxation locally as for money and credits is not a denial of due process, even as to stocks of state banks which are also taxed by domiciliary states. State v. First Bank Stock Corp., 197M544, 267NW519. See Dun. Dig. 9129. Aff'd 57SCR677.

Shares in foreign corporations, owned by inhabitant of this state, certificates being in its possession here, are taxable in Minnesota as credits. Id.

Decisions regarding taxation of memberships in unincorporated boards of trade or chambers of commerce prior to enactment of §§2337-2349, do not control taxation of corporate shares held by a resident in a domestic corporation, major part of whose property is assessed and taxed in this state. Holmes v. E., 200M97, 273NW623. See Dun. Dig. 9203a.

Shares of corporate stock held by a resident in a domestic corporation, property of which is assessed and taxed in this state, is not taxable as credits, even though a portion of property of corporation is located outside state. Id.

Whether a state tax on shares of stock of a national bank violates Mason's USCA, title 12, §548, is a question of fact in each case to be determined from varying rates of taxation in a given year. Cherokee State Bank, v. W., 202M582, 279NW410. See Dun. Dig. 9120.

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.

Stock in a corporation, foreign or domestic, is taxable when corporation pays a general property tax on only a portion of its property in the state, balance being outside state. Op. Atty. Gen., Nov. 15, 1933.

Value for assessment purposes of corporate stock, either foreign or domestic, should be determined by deducting from total value of all of corporate stock, value of property which is assessed or taxed in state. Id.

Unaccrued rents on leases covering property outside state are not taxable as moneys and credits but accrued rents are taxable, as are bonds secured by such leases. Op. Atty. Gen. (614m), May 9, 1934.

Funds of Duluth Teachers' Retirement Fund Association realized from contributions by members are not subject to moneys and credits tax. Op. Atty. Gen. (414-15(1)), May 12, 1934.

Tax which §3347 imposes on premiums received by foreign insurance companies is not a tax on property but is a privilege tax, and such section does not limit or affect power of state to tax stock in such insurance companies as moneys and credits under §2337. Op. Atty. Gen. (249a-18), Sept. 28, 1934.

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not

paid for years covered by administration. Op. Atty. Gen. (614f), Jan. 7, 1935.

County warrants not paid for want of funds after presentation are taxable as credits. Op. Atty. Gen. (614g), July 11, 1935.

Before maturity, group annuity policy is not subject to money and credits tax, but is subject to tax after maturity, to be computed on basis of life expectancy of annuitant. Op. Atty. Gen. (614h), Mar. 28, 1938.

U. S. savings bonds are exempt from money and credits tax. Op. Atty. Gen. (614g), May 26, 1938.

All money and credits owned by a federal savings and loan association doing business in the state are taxable under §2337, but not under §2026-5. Op. Atty. Gen. (614i), March 7, 1939.

Debts secured by mortgages on land in another state and owned by federal savings and loan associations are subject to tax. *Id.*

Exemption of \$2,000 of moneys and credits would not violate either state or federal constitution. Op. Atty. Gen. (614G), March 31, 1939.

Shares of stock in corporation paying gross earnings tax whose real and tangible personal property taxable in state is equal to 25% or less of its total real and tangible property are taxable as credits. Op. Atty. Gen. (614n), May 12, 1939.

Word "corporation" includes both domestic and foreign corporations. Op. Atty. Gen. (614N), June 12, 1939.

Though court has held that shares of stock may not be taxed in proportion that corporation holds property outside the state, court might still adopt an interpretation that stock is subject to tax unless a substantial part of its property is taxed within the state. Op. Atty. Gen. (614N), June 13, 1939.

Residence is in that place in which habitation of person is fixed without any present intention of removing therefrom, and to which whenever he is absent he intends to return, and is not lost by leaving home to go into another state or county for temporary purposes. Op. Atty. Gen. (614t), July 7, 1939.

Taxation of intangibles having business situs in a foreign state discussed. Op. Atty. Gen. (614), August 4, 1939.

#### 2340. Tax commission to prepare instructions.

Duties of county auditor under §2340 and §1985 are not altered by passage of laws 1939, c. 423, amending §2206. Op. Atty. Gen. (614), May 2, 1939.

#### 2342. When to be received as true.

Assessor has right to examine each person making return under oath and may examine books and records of persons to ascertain truth of their returns. Op. Atty. Gen. (614r), July 17, 1935.

#### 2349. Apportionment of receipts.

One-third of penalties and interest collected on account of taxes paid on money and credits assessed in Minneapolis should be apportioned to the city. Op. Atty. Gen. (505), Aug. 14, 1936.

### GRAIN IN ELEVATORS

#### 2350. Person operating elevator to list.

A truck driver who buys grain from producers for resale is not subject to bushel tax. Op. Atty. Gen. (215c-10), June 29, 1939.

### 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.

### DEPARTMENT OF TAXATION

#### 2354 to 2362. [Superseded.]

Superseded by §§2362-1 to 2362-31, post.

**2362-1. Department of taxation created.**—The Department of Taxation shall be under the supervision and control of a commissioner of taxation, except as to the functions herein or by other provisions of law committed to the board of tax appeals. (Act Apr. 22, 1939, c. 431, Art. 6, §1.)

**2362-2. Department and commissioner of taxation—Appointment, qualifications, removal—Salary—Bond.**—(a) The commissioner of taxation shall be appointed by the governor, by and with the advice and consent of the senate. The term of the first commissioner appointed hereunder shall expire March 1, 1945, and succeeding terms shall be six years thereafter. The commissioner shall be selected on the basis of ability and experience in the field of taxation and tax administration, and without regard to political affiliations. The governor may remove the commissioner at any time for cause, after notice and

hearing. The commissioner shall receive a salary of \$6,000 per year, and shall give bond to the state in the sum of \$200,000.

(b) **Powers—Deputies and assistants—Divisions.**—Subject to the provisions of this chapter and other applicable laws, the commissioner shall have power to organize the department with such divisions and other agencies as he deems necessary, and to appoint a deputy commissioner, a department secretary, directors of divisions, and such other officers, employes, and agents as he may deem necessary to discharge the functions of the department, define the duties of such officers, employes, and agents, and to delegate to them any of his powers or duties, subject to his control and under such conditions as he may prescribe. Appointments to exercise delegated power shall be by written order filed with the secretary of state.

(c) **Department—Seal.**—The department of taxation shall have a seal, engraved with the words, "State of Minnesota, Department of Taxation." Such seal may be used to authenticate the official acts of the commissioner or any other members of the department except the board of tax appeals, but failure to use the seal shall not invalidate any such acts. Duplicate seals may be provided for the use of directors of divisions or other members of the department. (Act Apr. 22, 1939, c. 431, Art. 6, §2.)

**2362-3. Powers and duties of former department and tax commission transferred.**—All the powers and duties now vested in or imposed upon the department of taxation and the Minnesota Tax Commission, except those herein or by other provisions of law transferred to the board of tax appeals, are hereby transferred to, vested in, and imposed upon the commissioner of taxation. The Minnesota Tax Commission as heretofore constituted is hereby abolished. (Act Apr. 22, 1939, c. 431, Art. 6, §3.)

**2362-4. Certain powers and duties.**—All the powers and duties now vested in or imposed upon the commissioner of agriculture and dairy and food under the provisions of Mason's Minnesota Statutes of 1927, Chapter 20, the 1938 Supplement to Mason's Minnesota Statutes of 1927, Chapter 20, and other laws relating to the inspection of oil and gasoline and the imposition and collection of taxes thereon are hereby transferred to, vested in, and imposed upon the commissioner of taxation, who shall have supervision and control of the administration of said laws. The office of chief oil inspector is hereby abolished and all the powers and duties vested in or imposed upon said office at the time of the passage of this act are hereby transferred to, vested in, and imposed upon the commissioner of taxation. (Act Apr. 22, 1939, c. 431, Art. 6, §4.)

**2362-5. Same—To license cigarette dealers, etc.**—All the powers and duties now vested in or imposed upon the commissioner of agriculture and dairy and food under the provisions of Mason's Minnesota Statutes of 1927, Chapter 16A, and the 1938 Supplement to Mason's Minnesota Statutes of 1927, Chapter 16A, and other laws relating to the licensing of the sale of cigarettes and other matters governed by said provisions are hereby transferred to, vested in, and imposed upon the commissioner of taxation, who shall have charge of the administration of said laws, and shall have power to appoint such inspectors, assistants, and other employes as may be necessary therefor. (Act Apr. 22, 1939, c. 431, Art. 6, §5.)

**2362-6. Powers of attorney general to supervise inheritance tax transferred.**—All the powers and duties now vested in or imposed upon the attorney general under the provisions of any laws relating to inheritance taxes or gift taxes, except those prescribed by Mason's Minnesota Statutes of 1927, Sections 2317 and 2318, are hereby transferred to, vested in, and imposed upon the commissioner of taxation, who shall have charge of the administration of said laws. (Act Apr. 22, 1939, c. 431, Art. 6, §6.)

Appropriations to attorney general for gift tax administration should be transferred to department of taxation. Op. Atty. Gen. (640a), July 18, 1939.

**2362-7. Law repealed.**—Mason's Minnesota Statutes of 1927, Sections 2317 and 2318, are hereby repealed. (Act Apr. 22, 1939, c. 431, Art. 6, §7.)

**2362-8. May request opinion of Attorney General.**—The commissioner of taxation may in writing request the opinion of the attorney general upon any matter within the scope of the functions of the department of taxation as now or hereafter prescribed by law. Any written opinion of the attorney general upon any such matter rendered in response to such request shall have the force and effect of law unless and until overruled by a decision of the board of tax appeals or a court of competent jurisdiction. (Act Apr. 22, 1939, c. 431, Art. 6, §8.)

**2362-9. Orders and reports—(a) Necessity of writing—Change of assessments—Notice—Approval by attorney general.**—All orders and decisions of the commissioner of taxation or any of his subordinates respecting any tax, assessment, or other obligation shall be in writing, filed in the offices of the department. No order or decision increasing or decreasing any tax, assessment, or other obligation by a sum exceeding \$100 shall be made without the written approval of the commissioner or his deputy in each case. Written notice of every order granting a reduction, abatement, or refundment exceeding \$100 shall be given within five days to the attorney general. The attorney general shall forthwith examine such order, and if he deems the same proper and legal he shall approve the same in writing, and may waive the right of appeal therefrom in behalf of the state; otherwise he shall take an appeal from the order in behalf of the state as herein provided.

(b) **Orders based on recommendation or approval of public body.**—No action requiring the recommendation or approval of any county board or other public agency shall be taken by the commissioner of taxation or any other member of the department unless such recommendation or approval shall have been made upon official action by such county board or other agency, entered upon the minutes or record of its proceedings as a public record, showing the names of the taxpayers and other persons concerned and the amounts involved, and so certified by the recording officer of such board or agency.

(c) **Contents of biennial report.**—The commissioner shall include in the printed biennial report of the department a statement of all abatements, reductions, and refundments of assessments, taxes, or other obligations granted by the department during the biennium exceeding \$100 in amount, or, in case of real estate taxes, exceeding twenty per cent of the assessed value of the property. Provided, however, that all reductions of assessed valuation of more than \$50,000.00 and all reductions, refundments, or abatements of real estate tax of more than \$1,000.00 shall be separately shown in such report. Such statement shall show the names of all taxpayers or other persons concerned, the original amount of each assessment, tax, or other obligation, the amount of abatement, reduction, or refundment allowed in each case, and the totals of the respective items, notwithstanding any provisions of law requiring secrecy to the contrary. The commissioner shall also include in such reports a statement of all increases of taxes or assessments made by the department, classified in such manner as he may deem proper, but not showing the names of taxpayers or other persons concerned or the amounts in individual cases. (Act Apr. 22, 1939, c. 431, Art. 6, §9.)

(a). It is only where amount of tax is increased or decreased in a sum in excess of \$100 that order or decision must be approved by commissioner or his deputy in writing, and a change in assessed valuation, which has effect of increasing or decreasing tax liability by more than \$100, must be so approved. Op. Atty. Gen. (130B), August 10, 1939.

Notice need not be given attorney general of orders granting a reduction or abatement in assessed valuations unless effect thereof is to reduce, abate or refund a tax by a sum exceeding \$100. Id.

**2362-10. Board of tax appeals—(a) Creation—Membership—Qualifications.**—There is hereby created a board of tax appeals, herein called the board, as an independent agency of the executive branch of the government, in the Department of Taxation, but not in any way subject to the supervision or control of the Commissioner of Taxation. The board shall consist of three members, each of whom shall be a citizen of the state appointed by the governor by and with the advice and consent of the senate. They shall be selected on the basis of their experience with and knowledge of taxation and tax laws. So far as practicable they shall be nonpartisan in their political affiliations, and not more than two of them shall be members of or affiliated with the same political party or organization. No member of the board shall hold any other office under this state or any of its political subdivisions, nor any other office or position the salary for which is paid in whole or in part from appropriations from the tax revenues of the State of Minnesota, nor any office under the government of the United States or any other state, nor be a candidate for an elective office under the laws of this state or of the United States or of any other state. No member of the board shall hold any position of trust or profit or engage in any occupation or business which would conflict with or be inconsistent with his duties as a member of the board, nor serve on or under any political committee or other organization interested in any election, nor take part either directly or indirectly in any election campaign in the interest of any political party or other organization or any candidate or measure to be voted upon by the people. No member of the board shall act as attorney, counselor, or accountant in the matter of any tax, fee, or assessment imposed or levied under authority of this state or any political subdivision thereof.

(b) **Tenure—Vacancies—Rules.**—Upon the taking effect of this act, one member of the board shall be appointed to serve until March 1, 1941, one member to serve until March 1, 1943, and one member to serve until March 1, 1945, who shall act as chairman until another shall qualify as hereinafter provided. Succeeding members shall be appointed for terms of six years, respectively, commencing at the expiration of the preceding terms. Any vacancy shall be filled by the governor for the unexpired term, subject to confirmation by the senate. The first board shall meet, organize, and adopt rules of procedure.

(c) **Removal.**—A member of the board may be removed by the governor only for cause, after written notice of the charges against him and an opportunity to be heard publicly thereon.

(d) **Compensation—Expenses.**—Each member of the board shall receive \$25 per day for time spent in the performance of his duties, but not exceeding \$2500 for any calendar year, or a proportionate amount for a fraction of a year. He shall also receive his actual and necessary expenses paid or incurred in the performance of his duties. (Act Apr. 22, 1939, c. 431, Art. 6, §10.)

**2362-11. Chairman—Clerk, deputies, employees.**—The member of the board having for the time being the longest record of then continuous service as such shall be chairman of the board, and the member having the next longest record shall be vice-chairman. In case the periods of service of two members be equal, the board shall choose between them. The board shall appoint a clerk, who shall be custodian of its files and records, and may also appoint a deputy clerk and other necessary employes. (Act Apr. 22, 1939, c. 431, Art. 6, §11.)

**2362-12. Seal.**—The board shall have a seal, engraved with the words, "State of Minnesota, Board of Tax Appeals." Such seal may be used to authenticate the official acts of the board or any member thereof, but failure to use the seal shall not invalidate any such act. (Act Apr. 22, 1939, c. 431, Art. 6, §12.)

**2362-13. Hearings—Office—Quorum.**—The board shall hold hearings and meetings at the call of the chairman or any two members, and otherwise as may be prescribed by rules of the board. The principal office of the board shall be at the State Capitol, but it may sit or hold hearings at any other place within the state. A majority of the board shall constitute a quorum for making orders or decisions or transacting other official business, and may act though one membership be vacant. One or more members may hold hearings and take testimony, to be reported for action by the board, when authorized by rule or order of the board. (Act Apr. 22, 1939, c. 431, Art. 6, §13.)

**2362-14. Review of orders of Commissioner of Taxation.**—The board of tax appeals shall have power to review and redetermine orders or decisions of the Commissioner of Taxation upon appeal therefrom in the cases authorized by law. (Act Apr. 22, 1939, c. 431, Art. 6, §14.)

**2362-15. Appeals from orders.**—(a) **Who entitled to appeal.**—Except as otherwise provided by law, an appeal to the board may be taken in the manner herein provided from any official order of the Commissioner of Taxation respecting any tax, fee, or assessment, or any matter pertaining thereto, by any person directly interested therein or affected thereby, or by any political subdivision of the state directly or indirectly interested therein or affected thereby, or by the attorney general in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the attorney general, upon request, shall refuse to appeal.

(b) **Time for appeal—Notice—Duties of attorney general—Intervention.**—Except as otherwise provided by law, within twenty days after notice of the making and filing of such order of the commissioner, and in any case within sixty days after the making and filing of such order, the appellant or his attorney shall serve a notice of appeal upon the commissioner, and shall file the original, with proof of such service, with the board; provided, that any member of the board, for cause shown, may, by written order, extend the time for appealing for an additional period, not exceeding 30 days. The notice of appeal shall refer to the order appealed from, shall state specifically the points of both law and fact which are questioned by the appellant, and shall state an address within the state at which service of notice and other papers in the matter may be made upon the appellant; provided, that the board may, upon a showing of proper cause, permit an amendment of the notice of appeal. Every appellant shall be deemed to have waived all defenses and objections not specified in the notice of appeal. Within five days after receipt, the commissioner shall transmit a copy of the notice of appeal to the attorney general in all cases where the amount at issue exceeds \$100. The attorney general shall represent the commissioner, if requested, upon all such appeals except in cases where the attorney general has appealed in behalf of the state, or in other cases where he deems it against the interests of the state to represent the commissioner, in which event the attorney general may intervene or be substituted as an appellant in behalf of the state at any stage of the proceedings.

(c) **Return—Contents—Copy of record to attorney general—New matter deemed denied.**—Within twenty days after the service and filing of the notice of appeal, unless the appeal be theretofore dismissed, the commissioner shall make, certify, and file with the board a return comprising a copy of any application or petition by which the proceeding was instituted

and of any other material paper preceding the order of the commissioner, a copy of the order appealed from, a statement of each finding of fact and ruling of law made by the commissioner in the matter, and a denial, admission, or explanation with respect to each allegation of fact in the notice so far as not covered by the order or findings; provided, that in all cases wherein the commissioner is required to transmit a copy of the notice of appeal to the attorney general, he shall, within 10 days after service of the notice of appeal upon the commissioner, transmit to the attorney general a complete copy of all papers required for the return. Allegations of new matter in the return shall be deemed to be denied by the appellant.

(d) **Appeal fee.**—At the time of filing the notice of appeal the appellant shall pay to the clerk of the board an appeal fee equal to ten cents for each one hundred dollars or fraction thereof of the amount at issue in the proceedings; provided, that the minimum fee shall be \$5 and the maximum fee \$15; provided further, that no appeal fee shall be required of the state or any of its political subdivisions. In any case where the foregoing provisions for determination of the appeal fee are inapplicable the amount of the fee shall be \$10.

(e) **Offer of modification or rescission—Dismissal—Costs.**—At any time before final determination of an appeal by the board, the commissioner may, upon notice to the appellant and with the approval of the attorney general, offer to modify or rescind the order appealed from, and if such action be satisfactory to the appellant and to all other parties appearing in the proceeding, if any, and they shall stipulate thereto in writing, the proposed modification or rescission shall be made by the commissioner, and the appeal shall thereupon be dismissed, with such adjustment of costs as may be agreed upon between the commissioner and the appellant and specified in the stipulation.

(f) **De novo hearing—Notice—Default—Dismissal.**—The board shall hear, consider, and determine every appeal de novo upon the issues made by the notice and the return. The board shall hold a public hearing in every case, of which 10 days notice shall be given by mail to all parties to the proceeding. All such parties shall have an opportunity to offer evidence and argument at the hearing; provided, that the order of the commissioner of taxation in every case shall be prima facie valid. In case no appellant shall appear, the appeal shall be dismissed, and the order appealed from shall stand as if no appeal had been taken. (Act Apr. 22, 1939, c. 431, Art. 6, §15.)

**2362-16. Shall make record of hearings.—Transcripts—Cost.**—The board shall provide for a verbatim stenographic report of all proceedings had before it upon appeals in like manner as required by the laws relating to proceedings in district court, so far as applicable. In case of a review by the supreme court of an order of the board, transcripts of the proceedings before the board shall be furnished to the board, the commissioner and the attorney general upon request, and the cost thereof shall be paid out of funds appropriated therefor upon such terms as the board may prescribe. Transcripts shall be furnished to other parties by the reporter at the same legal rates applicable at the time to the district court reporters of Ramsey County, but no transcript shall be made for or delivered to such other party unless he shall deposit the estimated cost thereof in advance with the clerk, subject to payment of the actual cost therefrom as soon as determined. (Act Apr. 22, 1939, c. 431, Art. 6, §16.)

**2362-17. Shall make written order on appeal.—Contents—Filing—Notice.**—The board shall determine every appeal by written order containing findings of facts and the decision of the board. A memorandum of the grounds of the decision shall be appended. A certified copy of the order shall be transmitted to the

commissioner of taxation and filed in his office. Notice of the entry of the order and of the substance of the decision shall be given by mail to all other parties who have appeared, and also, in all cases where the amount at issue exceeds \$100, to the attorney general. (Act Apr. 22, 1939, c. 431, Art. 6, §17.)

**2362-18. Inheritance taxes.—(a) Cases determinable by probate court—Stipulation as to jurisdiction.**—The right of appeal to the board herein provided shall not apply in the determination of inheritance taxes in cases wherein such taxes are now determinable by the probate courts, in which cases proceedings shall be had as otherwise provided by law, subject to the substitution of the commissioner of taxation for the attorney general as herein provided. In all other cases, except as otherwise provided herein, the right of appeal herein provided shall be the exclusive remedy for reviewing the action of the commissioner of taxation respecting any tax, assessment, or other obligation. Upon any appeal taken by a taxpayer, and upon any other appeal when the taxpayer shall so agree in writing, filed with the clerk of the board, the decision of the board of tax appeals, or the decision of the supreme court upon review thereof, as the case may be, shall be final and conclusive upon all parties to the proceedings as to all matters at issue determined by such decision. In all cases the decision of the board upon appeal or of the supreme court upon review, as the case may be, shall stand in lieu of the order of the commissioner from which the appeal was taken, and shall have like force and effect, subject to the provisions hereof.

(b) **Other remedies preserved—Suspension of limitations.**—Except as otherwise hereinafter provided, in all cases other than those wherein the taxpayer has appealed to the board or has agreed in writing, as herein provided, that the decision upon appeal or review shall be conclusive, all rights of action or defenses in the courts of the state respecting any tax, fee, or assessment now afforded the taxpayer by law shall be preserved; provided, that no action by a tax payer for a refund shall be instituted, proceeded with, or determined pending the determination of any appeal or review by the supreme court hereunder, except as hereinafter expressly authorized. Except as otherwise hereinafter provided, in any case wherein an appeal has been taken by a person other than the taxpayer and the taxpayer has not agreed that the decision upon appeal or review shall be conclusive, the running of the time limited by law for the bringing of an action by the taxpayer shall be suspended from the filing of the notice of appeal to the board until the final determination of the matter by the board or the supreme court, as the case may be, and for sixty days thereafter.

(c) **Decision of board conclusive in absence of resort to other remedy within ten days with notice thereof—Suspension of limitations and proceedings before board.**—In any case where, at the time of the taking of an appeal to the board by any person or agency other than the taxpayer, the taxpayer has an existing right of action in the district court for the determination of any issue or issues determinable upon the appeal, such right or action shall be barred, and the determination of such issue or issues upon the appeal, or upon review by the supreme court, shall be conclusive upon the taxpayer, unless within ten days after the service of the notice of appeal upon him the taxpayer shall commence an action for the determination of such issue or issues in the proper district court, upon a verified complaint, shall pay at least the amount of the tax or other obligation conceded by the complaint to be due, if any, shall file with the clerk of such court of bond, approved by the court, in at least such additional amount as might be adjudged against him, including interest, penalty, and costs, conditioned to prosecute the action with diligence and effect and to pay any amount required by or pursuant to any judgment that may be awarded

against him therein, and shall serve upon the appellant and file with the clerk of the board a notice of the commencement of such action, with a copy of the summons and complaint therein and of the bond required as hereinbefore provided; provided, that this shall not relieve the taxpayer from complying with any other requirements of law. Thereupon further proceedings upon the appeal shall be stayed with respect to the issue or issues involved in the action until final determination of the action; provided, that this shall not stay the appeal as to any other issues. Upon final determination of the action the appeal shall be dismissed as to any issue or issues thereby determined. If the action be dismissed or finally disposed of in any way without final determination of any issue or issues involved in the appeal, the appeal shall be reinstated and may be proceeded with as to such issue or issues with like effect as if the action had not been commenced, and the determination upon the appeal or upon review by the supreme court shall be final and conclusive upon the taxpayer. The running of any period of time limited by law for enforcement of any obligation against the taxpayer shall be suspended for such time as the appeal is stayed under the provisions of this subdivision and for sixty days thereafter. (Act Apr. 22, 1939, c. 431, Art. 6, §18.)

**2362-19. Certiorari from Supreme Court—Procedure—Costs.**—(a) A review of any final order of the board of tax appeals may be had upon certiorari by the supreme court upon petition of any party to the proceedings before the board. Such review may be had on the ground that the board was without jurisdiction, that the order of the board was not justified by the evidence or was not in conformity with law, or that the board committed any other error or law.

(b) Within twenty days after notice of the making and filing of the order of the board, and in any case within sixty days after the making and filing of such order, the petitioner for review shall obtain from the supreme court a writ of certiorari, and shall serve the same upon the commissioner of taxation and upon all other parties appearing in the proceeding before the board, also upon the attorney general, unless he is the petitioner, and shall file the original, with proof of such service, with the clerk of the board. Every petitioner except the attorney general shall also pay to the clerk a fee of \$15 and file a bond or make a deposit in like manner and amount as in case of an appeal from the district court. The fee shall be disposed of as in such case. Return upon the writ shall be made to the supreme court and the matter shall be heard and determined by the court as in other certiorari cases, subject to the provisions hereof and to such rules as the court may prescribe for cases arising hereunder. (Act Apr. 22, 1939, c. 431, Art. 6, §19.)

**2362-20. Orders to be prima facie evidence of facts.**—(a) In all cases determinable by order of the commissioner of taxation the order of the commissioner, or in case of appeal therefrom, the order of the board of tax appeals or the decision of the supreme court, as the case may be, shall be prima facie evidence of all facts therein stated and shall be prima facie evidence that all precedent requirements of the law were complied with, and shall be prima facie valid, and such order or decision shall be conclusive as to all matters therein determined upon every appellant or petitioner for review and upon all parties to the proceedings who shall have so agreed in writing as herein provided. (Act Apr. 22, 1939, c. 431, Art. 6, §20.)

**2362-21. Orders not effective until time for appeal has expired—Adjustment on reversal or modification.**—No order for refundment by the commissioner of taxation or the board of tax appeals shall take effect until the time for appeal therefrom or review thereof by all parties entitled thereto has expired. Otherwise every order of the commissioner or the board shall take

effect immediately upon the filing thereof, and no appeal therefrom or review thereof shall stay the execution thereof or extend the time for payment of any tax or other obligation unless otherwise expressly provided by law; provided, that in case an order which has been acted upon in whole or in part shall thereafter be set aside or modified upon appeal, the determination upon appeal or review shall supersede the order appealed from and be binding upon all parties affected thereby, and such adjustments as may be necessary to give effect thereto shall be made accordingly, subject to any rights or action or defense of the taxpayer, as herein provided. If it be finally determined upon such appeal or review that any person is entitled to refundment of any amount which has been paid for a tax or other obligation, such amount, unless otherwise provided by law, shall be paid to him by the state treasurer or other proper officer out of funds derived from taxes of the same kind, if available for the purpose, or out of other available funds, if any, with interest at six per cent, upon certification by the commissioner of taxation. If any tax, assessment, or other obligation be increased upon such appeal or review, the increase shall be added to the original amount, and may be enforced and collected therewith or in separate proceedings in like manner as the original amount. (Act Apr. 22, 1939, c. 431, Art. 6, §21.)

**2362-22. May compel attendance of witnesses.**—The commissioner of taxation, the board or tax appeals, and the several members of the board shall respectively have power to subpoena and compel the attendance of witnesses and the production of books, records, papers, and documents at any hearing or investigation at any place within the state in any matter within the scope of their authority, and shall also have power to administer oaths to witnesses and to take testimony under oath. Disobedience of any such subpoena or refusal by any witness to be sworn or to testify upon any material matter at any such hearing or investigation shall be punishable in like manner as a contempt of the district court, in proceedings instituted upon complaint of the authority issuing the subpoena in the district court of the county where the subpoena was made returnable. Subpoenas for witnesses or the production of documentary evidence shall be issued at the request of any party to the proceeding. Subpoenas may be signed by the commissioner or by any member of the board or by the secretary of the department in behalf of the commissioner or by the clerk of the board in behalf of the board, as the case may be. (Act Apr. 22, 1939, c. 431, Art. 6, §22.)

**2362-23. Depositions.**—Depositions may be taken for use before the commissioner or the board upon notice, commission, or stipulation, as in civil actions, and the commissioner and the board shall respectively have power to issue commissions to take depositions. (Act Apr. 22, 1939, c. 431, Art. 6, §23.)

**2362-24. May administer oaths.**—The commissioner of taxation, the members of the board of tax appeals, the secretary of the department, the clerk of the board, and all other officers and employes of the department shall respectively have power to administer oaths and to take and certify acknowledgments so far as they may deem necessary to the proper discharge of their respective duties, and may authenticate the same with the seal of the department or the board, as the case may be. (Act Apr. 22, 1939, c. 431, Art. 6, §24.)

**2362-25. May make rules and regulations.**—The commissioner of taxation and the board of tax appeals shall respectively have power to make and amend rules and regulations, not inconsistent with law, governing the procedure in cases arising before them and other matters within the scope of their respective functions, and such rules and regulations shall have the force and effect of law; provided, that all rules and regulations affecting persons other than members

of the department of taxation shall be filed with the secretary of state, and shall not be binding upon any other persons until so filed; provided, further, that the provisions of this section shall not prejudice or abridge any power to make rules or regulations otherwise conferred upon the commissioner or the board by law, or the effect of any rules or regulations made thereunder. (Act Apr. 22, 1939, c. 431, Art. 6, §25.)

**2362-26. Secretary of department and clerk of board shall be filing and certifying officers.**—Certified copies.—The secretary of the department of taxation and the clerk of the board of tax appeals shall be the filing officers and custodians of the books, files, and records of their respective agencies. The secretary and clerk and their deputies shall respectively have power to certify and authenticate copies of the books, files, and records in their custody for all purposes in like manner and with like effect as other custodians of public records. The commissioner of taxation, his deputy, and any other officer or employe of the department thereto authorized by the commissioner by written order filed with the secretary of state shall have like power to certify and authenticate copies of any books, files, and records of the department specified in the order other than those of the board. The chairman and vice-chairman of the board and any other officer or employe of the board thereto authorized by the board by written order filed with the secretary of state shall also have like power to certify and authenticate copies of any books, files, and records of the board specified in the order. (Act Apr. 22, 1939, c. 431, Art. 6, §26.)

**2362-27. Employees not to represent clients within one year after discontinuing employment.**—Penalty.—Except those holding office or employment prior to the passage of this act, no officer, member, or employe of the department of taxation, including the board of tax appeals, shall, within one year after his office or employment has terminated, act as counsel, attorney, or agent for a taxpayer or be associated with any other person so acting in connection with any claim or proceeding pending in the department, and no officer or employe, whether appointed or employed before or after the passage of this act, shall at any time after the termination of his office or employment act as counsel, attorney, or agent, or be associated with any person so acting, in connection with any claim or proceeding of which he has knowledge which was acquired in the course of his term of office or employment in the department. Any violation of the provisions of this section shall be a gross misdemeanor. (Act Apr. 22, 1939, c. 431, Art. 6, §27.)

Members of tax commission holding over until qualification of newly appointed commissioner of taxation are to be classified as "those holding office or employment prior to the passage of the act", but like all other officers or employes of the department of taxation may not act as counsel, attorney, or agent in connection with any claim or proceeding of which they acquire knowledge in course of their terms of office. Op. Atty. Gen. (130a), June 30, 1939.

Phrase "be associated with" includes employment, partnership, or any other form of relationship involving participation in matters referred to. Op. Atty. Gen. (130a), July 3, 1939.

Fact that employer of former auditor of the tax commission may have on hand some cases of which auditor acquired knowledge in course of his service in department, would not make it unlawful to employ him in connection with other cases, provided he did not disclose information pertaining to any such cases obtained while in service of department, or otherwise aid or advise with reference thereto. Id.

It is proper for Commissioner of Taxation or director of a division thereof to certify to status of a particular case at date of termination of employment by or in Minnesota Tax Commission or Department of Taxation, of individual in question, as affecting representation of taxpayers by former members or employees. Op. Atty. Gen. (130a), August 7, 1939.

**2362-28. Costs and disbursements.**—Appeals for delay—Addition to tax—Against state or public agency—Witness fees.—Upon the determination of any appeal under this article before the board of tax ap-

peals or of any review hereunder by the supreme court costs and disbursements may be taxed and allowed in favor of the prevailing party and against the losing party as in civil actions. In any case where a person liable for a tax or other obligation has lost an appeal or review instituted by him, and the board or court shall determine that he instituted the same merely for purposes of delay, additional costs, commensurate with the expense incurred and services performed by the agencies of the state in connection with the appeal, but not exceeding \$500 in any case, may be allowed against him, in the discretion of the board or court. Costs and disbursements allowed against any such person shall be added to the tax or other obligation determined to be due, and shall be payable therewith. Costs and disbursements allowed against the state or other public agencies shall be paid out of funds received from taxes or other obligations of the kind involved in the proceeding, or other funds of the agency concerned appropriated and available therefor. Witnesses in proceedings under this article shall receive like fees as in the district court, to be paid in the first instance by the parties by whom the witnesses were called, and to be taxed and allowed as herein provided. (Act Apr. 22, 1939, c. 431, Art. 6, §28.)

**2362-29. Not to apply to pending actions.**—The provisions of this article [§§2362-1 to 2362-31] shall not apply to any proceeding pending in any court at the time of the passage of this act, but such proceedings shall be governed by the laws then in force until finally determined; provided, that proceedings pending in any probate court in an inheritance tax case shall be governed by the provisions of this act, so far as applicable. (Act Apr. 22, 1939, c. 431, Art. 6, §29.)

**2362-30. Questions must be disposed of within three months—Salary withheld.**—All questions of fact and law, and all matters submitted to the members of the board of tax appeals, shall be disposed of and their decision filed with the clerk of said board within three months after such submission, unless sickness or casualty shall prevent, or the time be extended by written consent of the parties. And no part of the salary of any member of the board of tax appeals shall be paid unless the voucher therefor be accompanied by certificate of the member that he has fully complied with the requirements of this section. (Act Apr. 22, 1939, c. 431, Art. 6, §30.)

**2362-31. Effective July 1, 1939.**—Notwithstanding any other provisions of this act to the contrary, the provisions of Article VI hereof [§§2362-1 to 2362-31] shall take effect July 1, 1939; provided, that appointments and employments under said article may be made at any time after the passage hereof, to take effect July 1, 1939. (Act Apr. 22, 1939, c. 431, Art. 6, §31.)

Appropriations to attorney general for gift tax administration should be transferred to department of taxation. Op. Atty. Gen. (640a), July 18, 1939.

#### **2364. Powers and duties.**

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. Op. Atty. Gen. (614f), Jan. 7, 1935.

Tax commission is not authorized to execute easement for county highway purposes on tax forfeited lands, but county should resort to eminent domain. Op. Atty. Gen. (700a-3), Apr. 13, 1938.

#### **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.**

Minnesota tax commission may be called upon to pass upon questions of classification under §1993, as amended. Op. Atty. Gen., Feb. 10, 1934

(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. 23, 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.)

Where application granted by commission was not one for reduction of assessed valuation of property jurisdiction of commission was not affected by its failure to give notice to officials of municipality in which property is located. Calhoun Beach Holding Co., 287NW317. See Dun. Dig. 9577a.

#### **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 property. 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 pro-

ceedings 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 on business of producing ores.**—Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the State of Minnesota an occupation tax equal to nine per cent for the years 1939 and 1940, and eight per cent thereafter of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar year covered by the report thereupon to be filed as hereinafter provided. (As amended July 23, 1937, Sp. Sess., c. 85, §1; Apr. 21, 1939, c. 356, §1.)

**Editorial note.**—The title of Act Apr. 21, 1939, c. 356, reads: "An act amending Mason's Minnesota Statutes of 1927, section 2373, as amended by Laws 1937, Special Session, Chapter 85, relating to the occupation tax upon the business of mining or producing iron ore or other ores."

Whether this title is sufficient to carry the provisions in sections 2 and 3 of the act (set forth below as §§2373-1, 2373-2) may present a serious judicial question. 172M263, 271, 273, 215NW71, 180, 181; note under §2392-1; 221NV13.

181M221, 232NW35; note under §2374. State v. Bjornson, 294M649, 259NW392; note under §2374. Reformation of covenant in lease to pay tax. 43P(2d) 17. Cert. den. 282US905, 51SCR333. See Dun. Dig. §328.

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

**2373-1. Application of act.**—All ores mined or produced subsequent to December 31, 1938, and prior to January 1, 1941, shall be subject to the increased rate provided by this act. (Act Apr. 21, 1939, c. 356, §2.)

See note under §2373.

**2373-2. Low grade ore.**—For the purpose of increasing employment and the utilization of low grade ores, the occupation tax rate computed without the benefits of this section shall be reduced as follows: whenever more than thirty-three and one-third per cent of the ores mined or produced in any year from any property treated as a unit in calculating the tax on the business of mining or producing ore therefrom shall consist of low grade ores, as hereinafter defined, the rate of tax applicable to such mining or production for such year from such property shall be eight and one-half per cent in lieu of the nine per cent otherwise provided. Whenever more than sixty-six and two-thirds per cent of the ores mined or produced from any such property in any year shall consist of low grade ores, as hereinafter defined, the rate of tax applicable to such mining or production for such year shall be eight per cent in lieu of the nine per cent otherwise provided. As used in this section, low grade ores shall mean iron, manganiferous or silicious ores which, in accordance with good engineering and metallurgical practice, require treatment by roasting, sintering, agglomerating, or drying through the use of fuel or by jigging or by heavy medium separation to make them suitable for blast furnace use. This section shall be severable from Section 1 hereof, and if this section is held unconstitutional, the rate of tax applicable to the occupation of producing the ores defined herein shall be as prescribed by Section 1. In no event shall the rate of tax imposed upon the mining or producing of low grade ores be higher than that imposed upon the mining or producing of high grade or standard ores. (Act Apr. 21, 1939, c. 356, §3.)

See note under §2373.

**2374. Value of ore—how ascertained.**—The valuation of iron or other ores for the purposes of determining the amount of tax to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the value of such ore at the place where the same is brought to the surface of the earth, such value to be determined by the Minnesota Tax Commission:

The reasonable cost of supplies used and labor performed at the mine in separating the ore from the ore body, including hoisting, elevating, or conveying the same to the surface of the earth.

2. If the ore is taken from an open pit mine, an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden, divided by the number of tons of ore uncovered, the number of tons of ore uncovered in each case to be determined by the Minnesota Tax Commission.

3. If the ore is taken from an underground mine, an amount for each ton of ore mined or produced during the year equal to the cost of sinking and constructing shafts and running drifts, divided by the number of tons of ore that can be advantageously taken out through such shafts and drifts, the number of tons of ore that can be advantageously taken out in each such case to be determined by the Minnesota Tax Commission.

4. The amount of royalties paid on the ore mined or produced during the year.

5. A percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

6. The amount or amounts of all the foregoing subtractions shall be ascertained and determined by the Minnesota Tax Commission. ('21, c. 223, §2; '25, c. 307, §1; July 23, 1937, Sp. Ses., c. 85, §2.)

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. §576c.

Obligation assumed by an assignee of a mining lease as consideration for assignment is "royalty" for privilege of mining ore and, as such, deductible in ascertaining occupation tax. State v. Bjornson, 294M649, 259NW392. See Dun. Dig. §576c.

Consideration received for assignment of a mining lease is a royalty, though relation of landlord and tenant does not continue to exist between assignor and assignee, and royalty need not be in nature of rent from a sublessee, and obligation assumed by assignee to pay tax constitutes a consideration for right to remove ore, though taxes are not paid to the assignor. State v. Bjornson, 194M649, 262NW574. See Dun. Dig. §576c.

Advance royalty paid by a lessee of a mining lease or by an assignee of lessee or a sublessee cannot be deducted from occupation tax on ore mined after lease has expired. State v. Wallace, 196M212, 264NW773. See Dun. Dig. §576c.

Where lessee of unexpired mining leases, upon which a large sum as advance royalty had been paid, took a conveyance of fee, it was to interest of lessee that leases should not merge so that a proper reduction on occupation tax for advance royalty paid could be made for ore mined and produced each year for unexpired term of leases. Id.

**2374-1. Ores subject to act.**—All ores mined or produced subsequent to December 31, 1936, shall be subject to the provisions of this act. (July 23, 1937, Sp. Ses., c. 85, §3.)

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

State v. Bjornson, 294M649, 259NW392; note under §2374. 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.**—There shall be levied and collected upon all royalty received during the year ending December 31, 1923, and upon all royalty received during each calendar year thereafter, for permission to explore, mine, take out and remove ore from land in this state, a tax of nine per cent for the years 1939 and 1940, and eight per cent thereafter. (As amended July 23, 1937, Sp. Ses., c. 84, §1; Apr. 21, 1939, c. 355, §1.)

**Editorial note.**—Sec. 2 of Act Apr. 21, 1939, provides: "The increased rate provided here shall be applicable to all royalties received subsequent to December 31, 1938, and prior to January 1, 1941." This section 2 is ambigu-

ous, and perhaps does not affect the words "and eight per cent thereafter," especially in view of §2392-1a of Mason's 1938 Supplement, which is not amended by the terms of the amendatory act of Apr. 21, 1939.

181M221, 232NW35; note under §2392-2.  
State v. Bjornson, 294M649, 259NW392; note under §2374.  
Reformation of covenant in lease to pay tax. 43F (2d)17. Cert. den. 282US905, 51SCR333.

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, 215 NW71, 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., 185M 53, 239NW776. See Dun. Dig. 9236.

Advance royalty paid by a lessee of a mining lease or by an assignee of the lessee or a sublessee cannot be deducted from occupation tax on ore mined after lease has expired. State v. Wallace, 196M212, 264NW773. -See Dun. Dig. 9576c.

Where lessee of unexpired mining leases, upon which a large sum as advance royalty had been paid, took a conveyance of fee, it was to interest of lessee that leases should not merge so that a proper reduction on occupation tax for advance royalty paid could be made for ore mined and produced each year for unexpired term of leases. Id.

**2392-1a. Same—date of accrual.**—The increased rate provided hereby shall be applicable to all royalties accruing subsequent to December 31, 1936. (July 23, 1937, Sp. Ses., c. 84, §2.)

**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, 218NW 553.

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.)

State v. Bjornson, 294M649, 259NW392; note under §2374.

**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; grantees having no actual notice or knowledge of existence of tax. State v. Rea, 189M456, 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**

**2304. 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 \$8,000,000 to \$12,000,000 because of destruction of crops.

Laws 1931, c. 111, §2, is constitutional. Op. Atty. Gen. (82), May 1, 1935.

## INCOME TAX

Act is constitutional. *Reed v. Bjornson*, 191M254, 253 NW102.

## ARTICLE I.—GENERAL DEFINITIONS

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

(a) The term "person" shall include individuals, fiduciaries, estates and trusts, and partnerships not included in the definition of corporations, and may, where the context requires, include corporations as hereinafter defined. (As Amended July 15, 1937, Sp. Ses., c. 49, §1.)

(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.

(dd) The existence of any domestic corporation, as defined in subdivisions (c) and (d) hereof, shall be deemed the exercise by it of the privilege of existing as a corporation; the grant to any foreign corporation, as thus defined, of the right to engage in transacting local business within this state shall be deemed the grant to it of the privilege of transacting such business within this state in corporate or organized form; and the transaction of the local business within this state by any foreign corporation, as thus defined, shall be deemed the transaction of such business within this state in corporate or organized form. (Added July 15, 1937, Sp. Ses., c. 49, §1.)

(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.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §3797.

This act is constitutional. *Reed v. B.*, 191M254, 253NW 102. See Dun. Dig. 9143, 9146.

Double taxation is not forbidden by the state or national constitution unless it results in lack of uniformity or offends the due process or equal protection clauses. *Id.*

The state income tax law (L. 1933, c. 405) was enacted for the benefit of the school districts of the state. The districts acquire an interest as soon as the obligation to pay the tax becomes due and owing to the state. *Board of Education v. A.*, 285NW30.

The Minnesota State Income Tax. 18 MinnLawRev93.

## ARTICLE II.—IMPOSITION OF TAXES

**2394-2. Imposition on corporations; privilege tax; how measured.**—(a) An annual tax is hereby imposed upon every domestic corporation, except those included within Section 3, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within Section 3, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

(b) The tax imposed by subsection (a) shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and shall be computed in the manner and at the rates hereinafter provided. (Apr. 21, 1933, c. 405, §2; July 15, 1937, Sp. Ses., c. 49, §2)

Tax provided by this act and other acts impliedly repealed corporate excess taxation under §2021. *Bemis Bro. Bag Co. v. W.*, 197M216, 266NW690. See Dun. Dig. 8927, 9128.

**2394-3. Classes of taxpayers.**—An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(a) Domestic and foreign corporations whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both.

(b) Resident and non-resident individuals, except that no nonresident individual shall be taxed on his income from compensation for labor or personal services 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;

(c) Estates of decedents dying domiciled within or without this state and

(d) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations. (Apr. 21, 1933, c. 405, §3; July 15, 1937, Sp. Ses., c. 49, §3.)

State of Minnesota may tax residents of Wisconsin upon income derived from business or property located in Minnesota or personal services performed there, though it results in double taxation of income. *Hughes v. W.*, 227Wis274, 278NW403. App. dism'd, 304US548, 58SCR1047. *Reh. den.*, 59SCR58.

A state income tax upon salary of governor of a federal reserve bank is invalid as a direct and palpable

burden on exertion of governmental sovereign powers. *Geery v. M.*, 202M366, 278NW594. See *Dun. Dig.* 9120. Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**2394-4. Accrual of liability; existence of fiduciary relationship.**—(a) The liability for the tax imposed by Section 2 shall arise upon the first day of the taxable year upon which a domestic corporation exercises any of the privileges specified in Section 2 or exists as a corporation, or on which a foreign corporation is possessed of the privilege for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form. The liability for the tax imposed by Section 3 shall arise concurrently with the receipt or accrual of income during the taxable year. The 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. (As Amended July 15, 1937, Sp. Ses., c. 49, §4.)

(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, except as such banks are subject to the excise tax imposed by sections 32-4 and 32-5. (Act Apr. 21, 1933, c. 405, §5; July 15, 1937, Sp. Sess., c. 49, §5; Apr. 22, 1939, c. 446, §1.)

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

(c) Farmers' mutual insurance companies organized and existing under the laws of the state and credit unions organized under Chapter 206, Laws 1925, and building and loan and savings and loan associations organized under the laws of the State of Minnesota or of the United States. (Act Apr. 21, 1933, c. 405, §5; July 15, 1937, Sp. Sess., c. 49, §5; Apr. 22, 1939, c. 446, §2.)

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

(g) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of processing or marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock,

if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who process or market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of non-members in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph.

(h) 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.

(i) 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.

(j) 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.

(k) 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;

(l) 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;

(m) 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; July 15, 1937, Sp. Sess., c. 49, §5.)

**Editorial note.**—The act creating §§32-4, 32-5 (H. F. 1378), referred to in this section, was vetoed by the governor and never became a law.

In pari materia with Mason's Internal Revenue Code, §101.

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

Act July 15, 1937, Sp. Sess., c. 49, §33, repeals Laws 1933, c. 382.

Exemptions provided for are a legitimate exercise of legislature's power to classify and of its inherent power to exempt when exercised equally and uniformly. *Reed v. B.*, 191M254, 253NW102. See *Dun. Dig.* 9149.

Railroads which pay a gross earnings tax to the state are not exempt from state income tax. *Op. Atty. Gen.*, Nov. 13, 1933.

Salaries of officers and employees of following agencies and instrumentalities of the United States are exempt: Civilian Conservation Corp., Emergency Crop and Feed Loan Office, Farm Credit Administration, Federal Emergency Relief Administration, Internal Revenue Bureau, National Emergency Council, National Re-employment Service, National Resources Committee, National Youth Administration, Public Works Administration, Resettlement Administration, Social Security Board, United States Forestry Service, United States Postoffices, Veterans Administration, and Works Progress Administration. *Op. Atty. Gen.* (531e), Dec. 22, 1938.

Salaries of officers and employees of Building and Loan Associations and National Banks are not exempt from taxation. Id.

Power of United States to tax officers and employees of the states. 23MinnLawRev378.

(a) Banks are not required to pay any tax on account of income received from acting as insurance agents. Op. Atty. Gen. (531d), June 20, 1934.

(b) Trust companies are not exempt as banks. Id.

(c) Status of royalties from iron ore is same as land from which iron ore was removed. Op. Atty. Gen., Mar. 26, 1934.

(d) Teachers' Retirement Fund association is in nature of agency of state and is not subject to income tax law. Op. Atty. Gen., Mar. 17, 1934.

#### 2394-6. Rates of tax; credits, apportionment.—

(a) The privilege and income taxes imposed by this act upon corporations shall be computed by applying to their taxable net income in excess of the applicable credits allowed under Section 27, the rate of seven per centum for the calendar years 1937 and 1938 and six per centum thereafter.

(b) The income taxes imposed by this Act upon individuals, estates and trusts, other than those taxable as corporations, shall be computed by applying to their taxable net income in excess of the applicable credits allowed by Section 27, the following schedule of rates:

- (1) On the first \$1,000, one per centum.
- (2) On the second \$1,000, two per centum.
- (3) On the third \$1,000, three per centum.
- (4) On the fourth \$1,000, four per centum.
- (5) On the fifth \$1,000, five per centum.
- (6) On the sixth and seventh \$1,000, six per centum.
- (7) On the eighth and ninth \$1,000, seven per centum.
- (8) On all over \$9,000 and not over \$12,500, eight per centum.
- (9) On all over \$12,500 and not over \$20,000, nine per centum.
- (10) On the remainder, 10 per centum.

(c) The taxes due under the foregoing computation shall be credited with the following amounts:

1. In the case of an unmarried individual, the estate of a decedent and a trust, \$10.
2. In the case of a married individual, living with husband or wife, and in the case of a head of a household, \$30.00. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them. (Apr. 21, 1933, c. 405, §6; July 15, 1937, Sp. Sess., c. 49, §6; Apr. 22, 1939, c. 446, §3.)
3. In the case of an individual, \$5.00 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.

4. In the case of a corporation, an amount computed by applying to the tax a fraction equal to one-tenth of the average of the following ratios:

(a) The ratio of the fair value of tangible property, real, personal and mixed, owned and used by the taxpayer in this state in connection with his trade or business during the income year to the total fair value of such property of the taxpayer owned and used by him in connection with the trade or business everywhere. Cash on hand or in bank, shares of stock, notes, bonds, accounts receivable or other evidences of indebtedness, special privileges, franchises, goodwill or property the income of which is not taxable or is separately allocable, shall not be considered tangible property nor included in the apportionment.

(b) The ratio of the total wages and salaries paid or incurred during the income year in this state to the total wages and salaries paid or incurred during the income year everywhere.

5. In the case of an insurance company, it shall receive a credit on the tax computed as above equal in

amount to any taxes based on premiums paid by it during the period for which the tax under this Act is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by Extra Session Laws of 1933, Chapter 53, as amended [ §§3750-21 to 3570-24 ].

6. If the status of a taxpayer, in so far as it affects the credits allowed under (1), (2) and (3), shall change during the taxable year, or if the taxpayer shall either become or cease to be a resident of the state during such taxable year, such credit shall be apportioned, in accordance with the number of months before and after such change. For the purpose of such apportionment, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month. (Apr. 21, 1933, c. 405, §6; July 15, 1937, Sp. Sess., c. 49, §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.)

(d) The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 9 (a), and such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includable in respect of such period or a prior period. (Added Apr. 22, 1939, c. 446, §4.)

(e) The deductions and credits provided for in this act shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period. (Added Apr. 22, 1939, c. 446, §4.)

**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.)

*Editorial note.*—In pari materia with Mason's Internal Revenue Code, §21.

**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.)

*Editorial note.*—In pari materia with Mason's Internal Revenue Code, §22(a).

Improvements made by lessee on leased premises as income to lessor. 20MinnLawRev320.

**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 subsection (b) and other than amounts received as annuities, under a life insurance, or endowment con-

tract; 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 proportions 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. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to three per centum of the aggregate premiums or consideration paid for such annuity, whether or not paid during the taxable year, until the aggregate amount excluded from gross income under the income tax laws of this state plus the amounts received prior to January 1, 1933 (after deducting such proportion of such aggregate amount and amounts received as is represented by interest accrued prior to January 1, 1933), in respect to such annuity equal the aggregate premiums or consideration paid for such annuity. 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 hereunder. (As amended July 15, 1937, Sp. Ses., c. 49, §7.)

(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) Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; provided that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies or its instrumentalities shall be excluded from gross income for all taxable years ending prior to January 1, 1939; provided further that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies or its instrumentalities for taxable years ending prior to January 1, 1939 shall be excluded only to the extent that salaries, wages, commissions, fees and other compensation received from the State of Minnesota, its political or governmental subdivisions, its municipalities or its governmental agencies or instrumentalities for said year are excluded from gross income under the Federal Revenue Acts. (Act Apr. 21, 1933, c. 405, §12; Apr. 22, 1939, c. 446, §5.)

(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 subdivisions (f) and (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; Apr. 22, 1939, c. 446, §6.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §22(b).

Salary of governor of federal reserve bank is exempt from state income tax. *Geery v. M.*, 204M107, 282NW673. See Dun. Dig. 9570d.

Supreme court, state district court and probate court judges are liable to pay income tax on salaries, such payment not amounting to a diminution of their salaries. *Op. Atty. Gen.* (531h), Apr. 7, 1934.

Determination of what constitutes a gift under federal income tax law. 22MinnLawRev533.

(f). Federal income tax on profits of lessee of state land. 20MinnLawRev442.

(g). *Minnesota Tax Com. v. G.*, 204M107, 282NW673. Cert. dism'd. 59SCR794.

Section confers immunity only so far as immunity extends by implication under Constitution of U. S. *Geery v. M.*, 202M366, 278NW594. See Dun. Dig. 9120.

Salary of governor of federal reserve bank is not immune from state income taxes. *Geery v. M.*, 204M622, 235 NW614. See Dun. Dig. 9153.

**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 excludable 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. Losses from

wagering transactions shall be allowed only to the extent of the gain from such transactions. 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 or 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. (As amended July 15, 1937, Sp. Ses., c. 49, §8.)

(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 for expenses for hospital, nursing, medical, surgical, dental and other healing services and for drugs and medical supplies incurred by the taxpayer on account of sickness of or personal injury to himself or his dependents. (Apr. 21, 1933, c. 405, §13; July 15, 1937, Sp. Ses., c. 49, §9.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §23.

Section 9 of Act July 15, 1937, cited, amends only subdivision k.

In pari materia with U. S. Revenue Act, 1934, §23.

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

Provision that "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," is free from doubt, and company keeping books on accrual plan is entitled to deduction on that basis. *Hall Hardware Co. v. G.*, 197M619, 268NW202.

(a).

Contributions by corporation to community chest as ordinary and necessary expense. 20MinnLawRev441.

(c).

Contributions under unemployment compensation act are taxes which are deductible. *Op. Atty. Gen.* (82s), Dec. 21, 1936.

#### 2394-13a. Net loss. [Repealed.]

Act Apr. 21, 1933, c. 405, §13-1. Repealed July 15, 1937, Sp. Ses., c. 49, §10.

**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.)

(f) Losses from sales or exchanges of property, directly or indirectly, (1) between members of a family, or (2) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per cent in value of the outstanding stock; or (3) between any person or corporation and a trust created by him or it or of which he or it is a beneficiary, directly or indirectly; for the purpose of this paragraph—(4) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (5) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; but such losses shall be allowed as deductions if the taxpayer shows to the satisfaction of the Commission that the sale or exchange was bona fide and for a fair and adequate consideration. (Added July 15, 1937, Sp. Ses., c. 49, §11.)

(g) In computing net income, no deduction shall be allowed under Section 13(a), relating to expenses incurred, or under Section 13(b), relating to interest accrued; and

(1) If such expenses or interest are not paid within the taxable year or within two and one-half months after the close thereof; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under Section 14(f). (Added Apr. 22, 1939, c. 446, §7.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §24.

#### 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.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §22(c).

**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 (g), 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.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §111.

**2394-17. Transactions in which gain or loss is not recognized.**—(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 property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) If common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) If stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) If a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) If property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, 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 paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(6) No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

(A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) no distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and either

(C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year, in such case the adoption by the stockholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of a transfer of the property is specified in such resolution; or

(D) such distribution is one of the series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be com-

pleted within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the Commission may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subparagraph (a) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (ii) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

(b) (1) If an exchange would be within the provisions of subsection (a) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after December 31, 1932. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

(c) If an exchange would be within the provisions of subsection (a) (4) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

(1) If the corporation receiving such other property or money distributed it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(d) If an exchange would be within the provisions of subsection (a) (1) to (5), inclusive, of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(e) If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(f) As used in this section and section 18—

(1) The term "reorganization" means (a) a statutory merger or consolidation, or (b) the acquisition by one corporation in exchange solely for all or a part of its voting stock; of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation; or of substantially all the properties of another corporation, or (c) a transfer by a corporation 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 (d) a recapitalization, or (e) a mere change in identity, form, or place of organization, however, effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

(g) As used in this section the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation. (Apr. 21, 1933, c. 405, §17; July 15, 1937, Sp. Ses., c. 49, §12.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §112.

**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 pur-

pose 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 after December 31, 1932, upon an exchange described in Section 17 (a) to (d) inclusive, the basis (except as provided in subsection (f) of this Section 18) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by Section 17 (a) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it. (As amended July 15, 1937, c. 49, §13.)

(f) If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of Section 17 (a) (6), then the basis shall be the same as it would be in the hands of the transferor. (As amended July 15, 1937, c. 49, §13.)

(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.)

(i) If the property was acquired after December 31, 1932, by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer. (Added July 15, 1937, c. 49, §13.)

(j) If the property was acquired after December 31, 1932, by a corporation—

(1) by the issuance of its stock or securities in connection with a transaction described in Section 17 (a) (5), (including, also cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(2) as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. (Added July 15, 1937, c. 49, §13.)

(k) If the property was acquired after December 31, 1932, as the result of a compulsory or involuntary conversion described in Section 17 (e), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. (Added July 15, 1937, Sp. Ses., c. 49, §13.)

**2394-19. Basis for determining gain or loss from sale or other disposition of property acquired before Jan. 1, 1933.**—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 cost to the taxpayer, adjusted as provided in section 16 (b) for the period prior to January 1, 1933, (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value); provided that the basis prescribed by section 18 for determining gain or loss with respect to property acquired by gift, by gift through an inter vivos transfer in trust, by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purposes of this section. (Apr. 21, 1933, c. 405, §19; July 15, 1937, Sp. Ses., c. 49, §14.)

**2394-20. Deductions.**—(a) The basis upon which exhaustion, wear, tear, obsolescence, or depletion are to be allowed in respect to 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.

(b) Losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000, plus the gains from such sales or exchanges. For this purpose the term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(c) For the purposes of this Act amounts received by the holder upon retirement of bonds, debentures, notes, or certificates or other evidence of indebtedness issued by any corporation (including those issued by the government or political subdivision thereof) with interest coupons or in regular form shall be considered as amounts received in exchange therefor. (Apr. 21, 1933, c. 405, §20; July 15, 1937, Sp. Ses., c. 49, §15.)

**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, 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. A dividend shall be deemed a stock dividend only if made in stock of the same kind or class as that with respect to which it was distributed. (As amended July 15, 1937, Sp. Ses., c. 49, §16.)

(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. Amounts distributed in complete liquidation of a corporation shall be taken into account in computing net income only to the extent provided by subsection (B) of section 20 and for that purpose "complete liquidation" shall include any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of property under the liquidation is to be complete within the time specified in the plan, not exceeding two years from the close of the taxable year during which is made the first of the series of distributions under the plan. 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. (Apr. 21, 1933, c. 405, §21; July 15, 1937, Sp. Ses., c. 49, §16.)

Section 16 of Act July 15, 1937, cited, amends only subdivisions c and d.

**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 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, 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) Whenever a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business, including income from intangible property employed in such business and 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, except as otherwise provided in sections 32-2 and 32-3, by the provisions of Section 25, notwithstanding any provisions of this Section 23 to the contrary. This shall not apply to business income subject to the provisions of subsection (a). (As amended July 15, 1937, Sp. Ses., c. 49, §17.)

(e) All other items of gross income shall be assigned to the taxpayer's domicile. (Act Apr. 21, 1933, c. 405, §23.)

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

(b). Rent from land is income or gain from tangible property. Op. Atty. Gen., Mar. 26, 1934.

**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. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the manufacture in Minnesota or within and without Minnesota of personal property and the sale of said property within and without the state, said remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages;

(a) The percentage which the sales made within this state and through, from or by offices, agencies, branches or stores within this state is of the total sales wherever made;

(b) The percentage which the total tangible property, real, personal, and mixed, owned or used by the taxpayer in this state in connection with said trade or business is of the total tangible property real, personal, or mixed, wherever located, owned, or used by the taxpayer in connection with said trade or business; and

(c) The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with said trade or business is of the taxpayer's total payrolls paid or incurred in connection with said entire trade or business.

(d) Provided, however, that the percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70% of the percentage determined under subdivision (A) (1) (a) above, 15% of the percentage determined under subdivision (A) (1) (b) above, and 15% of the percentage determined under subdivision (a) (1) (c) above.

(2) If the business consists of the manufacture wholly without the State of Minnesota of personal property and the sale of said property within and without the State, said remainder shall be apportioned to Minnesota on the basis 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.

(3) (a) In all other cases the proportion of such remainder to be assigned to this State shall be that which the sales, gross earnings or receipts from business operations in whole or in part within this State bear to the total sales, gross earnings or receipts from business operations wherever conducted.

(b) If the methods prescribed under subsection (3) (a) will not properly reflect taxable net income assignable to this State, there shall be used if practicable and if such use will properly and fairly reflect

such income (1) the arithmetical average of the three percentages set forth in subdivisions (a) (b) (c) of subsection (1) of this section, or (2) the separate or segregated accounting method.

(4) The sales payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used by the taxpayer at the beginning and close of the taxable year in respect of which the tax is being computed.

(5) For the purposes of this Section, in determining the amount of sales made within Minnesota, there shall be excluded therefrom sales negotiated or effect [sic] in behalf of the taxpayer by agents or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the taxpayer or by his agents or agencies outside the state and sales otherwise determined by the commission to be attributable to the business conducted on such premises. If the commission finds that the taxpayer maintains an office, warehouse or other places of business outside the state for the purpose of reducing its tax under this section it shall in determining the amount of taxable net income include therein the proceeds of sales attributed by the taxpayer to the business conducted at such place outside the state.

(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 this state. (Act Apr. 21, 1933, c. 405, §25; Apr. 22, 1939, c. 446, §22.)

**2394-26. Commission to prescribe methods of accounting.**—The methods prescribed by Section 25 shall be presumed to determine fairly and correctly the taxpayer's net income allocable to this state; provided, however, that any taxpayer feeling aggrieved by the application to his case of the methods so prescribed, may petition the Commission for determination of such taxable net income on some other basis, including separate accounting. Thereupon, if the commission upon the petition of the taxpayer finds that the application of the methods prescribed by Section 25 will be unjust to the taxpayer, it may allow the use of the methods proposed by the taxpayer, or may determine the taxable net income by other methods if satisfied that such methods will fairly reflect the taxable net income properly assignable to this state. (Act Apr. 21, 1933, c. 405, §26; July 15, 1937, Sp. Sess., c. 49, §29; Apr. 22, 1939, c. 446, §23.)

**2394-27. Credits against tax.**—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 credit of \$1000 in the case of each corporation.

(b) 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 ex-

clusively 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 organizations, 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.

(c) Dividends received by a corporation during the taxable year from another corporation if the recipient owns 80 per centum or more of all the voting stock of such other corporation, 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.

(d) To each mutual savings bank organized and existing as such under the laws of this state, an amount equal to the interest and dividends paid or credited during the taxable year of its depositors. (Apr. 21, 1933, c. 405, §27; July 15, 1937, Sp. Sess., c. 49, §18; Apr. 22, 1939, c. 446, §8.)

**Editorial note.**—Section 8 of Act Apr. 22, 1939, cited, in its enacting part, purports to amend "sub-sections (c) and (d)" of this section, but the amendment as set out seems to relate to subdivision (d) only.

Intention of legislature in passing Laws 1939, c. 446, was to add a new subsection (d). Bull v. K., 286NW311.

Section is constitutional, though it contains clerical errors and bill as approved by governor differed somewhat from bill passed by legislature. Id. See Dun. Dig. 8901, 8985.

(b). Unmarried taxpayer not living with dependent father and mother is not entitled to \$2,000 personal exemption. Op. Atty. Gen. (531d), Apr. 17, 1934.

#### ARTICLE IV.—PROVISIONS RELATING TO SPECIAL CASES

**2394-28. Application of Act.**—(a) The taxes imposed by this act upon individuals shall apply to the income of estates or of any kind of property held in trust, including

(1) income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 28-5 (relating to revocable trusts) and section 28-6 (relating to income for benefit of the grantor). For return made by fiduciary, see Section 33. (Act Apr. 21, 1933, c. 405, §28; Apr. 22, 1939, c. 446, §9.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §161.

**2394-28a. Estates or trusts—Computation—Credits and deductions.**—The net income of the estate or trust shall be computed in the same manner and on

the same basis as in the case of an individual, except that:

(a) There shall be allowed as a credit (in lieu of the credit for charitable, etc., contributions authorized by section (27) (b)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in Section 27 (b), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the next [sic] income of the beneficiaries domiciled within this state whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under sub-section (c) of this section in the same or any succeeding taxable year.

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary domiciled within this state. ('33, c. 405, §28-1, added Apr. 22, 1939, c. 446, §10.)

*Editorial note.*—In pari materia with Mason's Internal Revenue Code, §162.

**2394-28b. Same—Personal credit.**—An estate or trust shall be allowed the same personal credit against the tax as is allowed to a single person under Section 6(c) (1). ('33, c. 405, §28-2, added Apr. 22, 1939, c. 446, §10.)

**2394-28c. Taxable year of trust and beneficiary different.**—If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under Section 28(1) (b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1939) ending within or with his taxable year. ('33, c. 405, §28-3, added Apr. 22, 1939, c. 446, §10.)

**2394-28d. Stock bonus, pension or profit sharing trust.**—(a) A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees.

(1) if contributions are made to the trust by such employer or employees, 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:

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to purposes other than for the exclusive benefit of his employees, shall not be taxable under Section 28, but the amount actually distributed or made available to any distributee shall be taxable to him in the year

in which so distributed or made available to the extent that it exceeds the amounts paid in by him.

(b) **Taxable Year Beginning Before January 1, 1939.**—The provisions of clause (2) of subsection (a) shall not apply to a taxable year beginning before January 1, 1939. ('33, c. 405, §28-4, added Apr. 22, 1939, c. 446, §10.)

*Editorial note.*—In pari materia with Mason's Internal Revenue Code, §165.

**2394-28e. Revocable trusts.**—Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested

(1) in the grantor, 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, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor. ('33, c. 405, §28-5, added Apr. 22, 1939, c. 446, §10.)

*Editorial note.*—In pari materia with Mason's Internal Revenue Code, §166.

**2394-28f. Reservation by grantor of right to income.**—(a) where any part of the income of a trust

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in Section 27 (b) relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section, the term "in the discretion of the grantor" means "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". ('33, c. 405, §28-6, added Apr. 22, 1939, c. 446, §10.)

*Editorial note.*—In pari materia with Mason's Internal Revenue Code, §167.

**2394-29. Transferees and fiduciaries.**—(a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this act, (including all provisions of the act for the collection of taxes.)

(1) The liability, at law or in equity, of a transferee of property of a taxpayer in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this act.

(2) The liability of a fiduciary under Chapter 405, Laws 1933, Section 48-a of the income tax act of 1933 as amended in respect of the payment of any such tax from the estate of the taxpayer. Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of the transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three and one half years after the expiration of the period of limitation for assessment against the taxpayers; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary, not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later:

(c) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

(d) In the absence of notice to the commission under Section 29-1 (b), of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this act, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purpose of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(e) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. ('33, c. 405, §29; Apr. 22, 1939, c. 446, §11.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §311.

#### **2394-29a. Fiduciary to assume status of taxpayer.**

(a) Upon notice to the commission that any person is acting in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this act (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) Upon notice to the commission that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 29, the fiduciary shall assume, on behalf of such person, the powers, right, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the commission. ('33, c. 405, §29-1, added Apr. 22, 1939, c. 446, §12.)

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §312.

**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 bears 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 contributions or gifts that are within Section 27 (b) 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 (b) shall not exceed the limit therein specified. (As amended July 15, 1937, Sp. Ses., c. 49, §20; Apr. 22, 1939, c. 446, §13.)

(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.)

Changes in interest rate allowable by this section apply to all claims which have been filed with commission subsequent to April 22, 1939. Op. Atty. Gen. (531p), June 14, 1939.

Comparative tax burden of corporations and partnerships. 23MinnLawRev506.

**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.)

(d, e).

Laws 1939, c. 446, §24, applies to excise tax on banks.

**2394-32a. Taxable year extending into calendar years affected by different laws.**—The tax imposed on a taxpayer for a period beginning in one calendar year (hereinafter called "first calendar year") and ending in the following calendar year (hereinafter called "second calendar year"), whenever the law applicable to the first calendar year is different from the law applicable to the second calendar year, shall be the sum of (1) that proportion of a tax for the entire period, computed under the law applicable to the first calendar year, which the portion of such period falling within the first calendar year is of the entire period, and (2) that proportion of a tax for the entire period, computed under the law applicable to the second calendar year, which the portion of such period falling within the second calendar year is of the entire period. (Apr. 21, 1933, c. 405, §32-1; Added July 15, 1937, Sp. Ses., c. 49, §21.)

**2394-32b. Insurance companies; report of net income; computation of amount of income allocable to state.**—The taxable net income of insurance companies taxable under this Act shall be computed as follows: Each such company shall report to the Commission the net income returned by it for the taxable year to the United States under the provisions of the Act of Congress, known as the "Revenue Act of 1936," or that it would be required to return as net income thereunder if it were in effect. The Commission shall compute therefrom the taxable net income of such companies by assigning to this state that proportion thereof which the gross premiums collected by them during the taxable year from old and new business within this state bears to the total gross premiums collected by them during that year from their entire old and new business; provided, the Commission shall add to said taxable net income so apportioned to this state, the amount of any taxes on premiums paid by the company by virtue of any law of this state (other than the surcharge or premiums imposed by Extra Session Laws 1933, Chapter 53, as amended [§§3750-31 to 3750-34]), which shall have been deducted from gross income by the company in arriving at its total net income under the provisions of said Act of Congress. (Apr. 21, 1933, c. 405, §32-2; Added July 15, 1937, Sp. Ses., c. 49, §21.)

**2394-32c. Investment companies; report of net income; computation of amount of income allocable to state.**—The taxable net income of investment companies shall be computed and be exclusively as fol-

lows: Each investment company transacting business as such in this state shall report to the Commission the net income returned by the company for the taxable year to the United States under the provisions of the Act of Congress known as "The Revenue Act of 1936" less the credits provided therein, or the net income that such company would be required to return under said act less such credits, if said act were in effect. The Commission shall compute therefrom the taxable net income of the investment company by assigning to this state that proportion of such net income less such credits which the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of this state bears to the total amount of the gross payments collected during such year by the company from such business upon investment contracts issued by the company and held by persons residing within the state and elsewhere. As used in this section, the term "investment company" shall mean any person, copartnership, association or corporation, whether local or foreign, coming within the purview of Section 7771 of Mason's Minnesota Statutes for 1927, who or which solicits payments to be made to himself or itself and issues therefor so-called bonds, shares, coupons, certificates of membership or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof, money or anything of value at some future date; and the term "investment contract" shall mean any such so-called bonds, shares, coupons, certificates of membership or other evidences of obligation or agreement or pretended agreement issued by an investment company. (Apr. 21, 1933, c. 405, §32-3, added July 15, 1937, Sp. Ses., c. 49, §21.)

#### 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):

(a) Individuals with respect to their own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credit allowed, or if their gross income exceeds \$5000.

(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, if such taxable net income exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such decedent's gross income for the aforesaid period exceeds \$1000.

(c) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such estate's gross income exceeds \$1000.

(d) The trustee or other fiduciary of property held in trust with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if the gross income of such trust exceeds \$1000, if, in either case such trust belongs to the class of taxable persons.

(e) The guardian of an infant or other incompetent person with respect to such infant's or other person's taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if their gross income exceeds \$1000.

(f) Every corporation with respect to its taxable net income if in excess of \$1000, or if its gross income exceeds \$5000. The return in this case 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 with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed (or, if the taxpayer is a corporation, if the taxable net income exceeds \$1000), or if such taxpayer's gross income exceeds \$5000. (Apr. 21, 1933, c. 405, §33; July 15, 1937, Sp. Ses., c. 49, §32.)

**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) Every person or corporation making payments during the taxable year to any person or corporation in excess of \$500 on account of either rents, interest or dividends, or in excess of \$1000.00 on account of either wages, salaries or commissions, shall make a return in respect to such payments in excess of the amounts specified, giving the names and addresses of the persons to whom such payments were made, the amounts paid to each. The state treasurer and the treasurer, or other corresponding officer by whatever name known, of every political subdivision of the state, of every city, village or borough and of every school district, shall, on or before the 1st day of March of each year, beginning with March, 1938, make and file with the Commission a report, giving the name of each employee or official to whom the state or such political subdivision, city,

village, borough or school district, during the preceding calendar year, paid any salary or wages in excess of \$750, together with the last known address of such employee or official.

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.

The Commission may require any person acting as agent for another to make a return giving such information as may be reasonably necessary to properly assess and collect the tax imposed by this Act upon the person for whom he acts. (Apr. 21, 1933, c. 405, §38; July 15, 1937, Sp. Ses., c. 49, §22.)

Section 22 of Act July 15, 1937, cited, amends only subsection b.

**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. It may, however, require every taxpayer in any of such cases to file a tentative return at the time fixed for filing the regularly required return from him, and to pay a tax on the basis of such tentative return at the times required for the payment of taxes on the basis of the regularly required return from such taxpayer. The Commission may exercise its power under this subdivision (e) by general regulation only. (Apr. 21, 1933, c. 405, §39; July 15, 1937, Sp. Ses., c. 49, §23.)

Section 23 of Act July 15, 1937, cited, amends only subsection e.

**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 and 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, provided that no refundment shall be made except as provided in Section 47, after the expiration of three and one-half years after the filing of the return. (Act Apr. 21, 1933, c. 405, §43; Apr. 22, 1939, c. 446, §21.)

(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 10 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. Any such return or assessment made by the Commission on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. (Apr. 21, 1933, c. 405, §44; July 15, 1937, Sp. Ses., c. 49, §30.)

**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 pro-

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

(b) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within eighteen months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three and one-half years after the return was filed. This subsection (b) shall not apply in the case of a corporation unless

(1) Such written request notifies the commission that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

(c) If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

(d) If the taxpayer omits from gross income an amount properly includable therein under Section 21 (d) as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 4 years after the return was filed.

(e) For the purposes of subsections (a), (b), (c), and (d) a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(f) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(g) Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun

(1) within four years after the return was filed, or

(2) within six months after the expiration of the period agreed upon by the commission and the taxpayer, pursuant to the provisions of subsection (h) hereof.

(h) In the case of a corporation, if before the expiration of the time prescribed by subsection (a) hereof for the assessment of the tax, and if the commission has effected an examination of the taxpayer's return and supporting books and records, and

has prepared a proposed redetermination of the tax liability and mailed a copy of its proposed redetermination to the taxpayer and has afforded the taxpayer an opportunity to appear before it and duly protest such redetermination, and if the commission and the taxpayer are unable to agree upon the correct tax liability because of a disagreement as to a material fact or point of law, then before the expiration of the time prescribed by subsection (a) hereof for the assessment of the tax, the commission and the taxpayer may consent in writing to the assessment of the tax, and the tax, not exceeding the amount of the proposed redetermination herein provided for, may be assessed at any time prior to the expiration of the time agreed upon. (Apr. 21, 1933, c. 405, §46; Jan. 24, 1936, Ex. Ses., c. 87, §1; July 15, 1937, Sp. Ses., c. 49, §24; Mar. 10, 1939, c. 59, §2; Apr. 22, 1939, c. 446, §14.)

Repealed Mar. 10, 1939, c. 59, §1, but amended by §2 of the act to read as above, effective June 1, 1939.

**Editorial note.**—In pari materia with Mason's Internal Revenue Code, §275.

Three year statute of limitations inserted by amendment in 1937 applies to taxes for fiscal years ending in 1937. Op. Atty. Gen. (531G), Feb. 10, 1939.

If an assessment is made within three years, state has at least six years after return is filed to institute proceedings for collection. Op. Atty. Gen. (531f), March 6, 1939.

**2394-46a. Taxes affected. [Repealed.]**

Amended Jan. 24, 1936, Ex. Ses., c. 87, §2.

Repealed Mar. 10, 1939, c. 59, §1, 3, effective June 1, 1939.

**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. Upon the filing of a claim the commission shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the commission shall issue its certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of three per cent 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) If the claim is denied in whole or in part, the taxpayer may commence an action against the commission to recover any overpayments of taxes claimed to be refundable but for which the commission has issued no certificate of refundment. Such action 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 action may be commenced after the expiration of six months after the claim is filed if the commission has not then taken final action thereon, and shall be commenced within six months after notice of the order denying the claim and in any event within 18 months after the claim is filed. No claim for refund shall be allowed by the commission after the expiration of 18 months after the claim is filed.

(c) Either party to said action may appeal to the supreme court as in other cases.

c-1. In any case where the commission shall have determined the tax liability of any corporation, and any taxpayer stockholder of such corporation, upon

such determination of said corporation's tax liability, became entitled to a credit against his taxable net income on account of dividends received during the taxable year under the provision of subdivision (g) of Section 27 of Chapter 405, Laws 1933, for any of the years during which said subdivision (g) was in effect, the said commission shall, provided that the taxpayer has filed a claim for refund on or before December 31, 1939, issue its certificate for refundment of the excess, if any, which such taxpayer has paid over and above the amount which the taxpayer would have been liable to pay after the allowance of such dividend credit, with interest at the rate of three per cent 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 in the manner prescribed in subdivision (a) hereof; and if said commission shall fail within 90 days after the filing of such claim by the taxpayer to issue such certificate, the taxpayer may sue the commission for such overpayment at any time thereafter but not more than two years after the passage of this act.

(d) This section shall not apply to claims filed prior to the passage of this act, or pending actions for refunds, but shall apply to all other proceedings. (Act Apr. 21, 1933, c. 405, §47; Apr. 22, 1939, c. 446, §15, 19.)

Act Apr. 21, 1933, cited, adds subdivision c-1.

There can be no refundment of taxes erroneously or illegally paid or collected though tax liability is not finally determined until more than two years after return was filed. Op. Atty. Gen. (531p), Oct. 28, 1938.

**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 nonpayment; nonpayment; failure to make return and false return; application of payments.**—(a) If any tax imposed by this Act, or any portion thereof, is not paid within the time herein specified for the payment thereof, there shall be added thereto a specific penalty equal to ten per centum of the amount so remaining unpaid, which shall be collected as a part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate of six per cent per annum from the time such tax should have been paid until paid. Interest accruing prior to assessment upon the amount determined as a deficiency shall be assessed at the same time as the deficiency from the date prescribed for the payment of the tax (if the tax is paid in installments, from the date prescribed for the payments of the first installment) to the date the deficiency is assessed. Interest shall be added to the tax and be collected as a part thereof.

(b) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a re-

turn or wilfully makes a false return, with an intent to evade the tax, or a part thereof, imposed by this Act, shall be guilty of a felony. The term "person" as used in this sub-section includes any officer or employe of a corporation or a member or employe of a partnership who as such officer, member or employe is under a duty to perform the act in respect to which the violation occurs.

(c) All payments received shall be credited first to penalties, next to interest, and then to the tax due. (Apr. 21, 1933, c. 405, §49; July 15, 1937, Sp. Ses., c. 49, §25.)

(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.)

(h) [Repealed].

**Editorial note:** The Act of July 15, 1937, Ex. Ses., c. 49, §25, amends "Laws 1933, chapter 405, section 49" to read as shown above in subsections (a) to (c), no mention being made of subsections (d) to (g) constituting part of §49 of Act Apr. 21, 1933, c. 405. The next section (§26) of the Act of July 15, 1937, c. 49, amends "Laws 1933, chapter 405, section 49 \* \* \*" by adding a new subsection thereto, to be known as subsection (h) and to immediately follow subsection (g) reading as shown above. Strictly speaking subsections (d) to (g) may be regarded as impliedly repealed. We pass the question to a higher authority than our editor.

Subdivision (h), repealed Apr. 22, 1939, c. 446, §16. Such subdivision was enacted July 15, 1937, c. 49, §26, and reads as follows: "(h) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false or fraudulent return, with an intent to evade the tax, or a part thereof, imposed by this act, shall be guilty of a felony. The term 'person' as used in this subsection includes any officer or employe of a corporation or a member or employe of a partnership who as such officer, member or employe is under a duty to perform the act in respect to which the violation occurs."

#### ARTICLE VIII.—ADMINISTRATIVE PROVISIONS

**2394-50. Tax commission to administer act; rules; forms; agents or attorneys; disbarment.**—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, in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this act, which shall include a simplified form for individual taxpayers having a gross income less than \$5,000, which statement shall be verified or sworn to by the taxpayer, listing gross income, deductions, net income, gross tax, personal credits and tax payable, provided, however, that detailed returns may subsequently be required of said persons by the commission. The commission 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. The commission may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commission, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such commission may, after due notice and opportunity for hearing, suspend and disbar from further practice before it, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations. (Apr. 21, 1933, c. 405, §50; July 15, 1937, Sp. Ses., c. 49, §27; Apr. 22, 1939, c. 446, §17.)

Adjutant general may make arrangements with federal government for furnishing light and power for use by regular army and National Guard at Camp Ripley. Op. Atty. Gen. (2c), Apr. 3, 1937.

Commission may not by regulation or rule present an individual or a corporation by one of its officers, to appear pro se. Op. Atty. Gen. (130a), April 25, 1939.

Commission may legally prescribe that no person may appear before commission or income tax department on any matter pertaining to taxes due under income tax act without being accompanied and represented by an attorney at law. Id.

**2394-50a. May make agreements.**—(a) The Minnesota tax commission, or any officer or employe of the state income tax department, authorized in writing by the Minnesota tax commission, is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any state income and franchise tax for any taxable period ending prior to the date of the agreement.

(b) If such agreement is approved by the Minnesota tax commission within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employe, or agent of the state of Minnesota;

(2) in any suit, action, or proceeding such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded. ('33, c. 405, §50-1; added Apr. 22, 1939, c. 446, §18.)

**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.

Laws 1935, c. 38, \$20,000 appropriation.

**2394-56. Publicity of returns.**—(a) 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 from his or its records, officers or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this act from the taxpayer making such return. The Commission may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by

the laws of the United States or of such state to make a return therein and if the laws of the United States or of such state provide substantially for the same secrecy in respect to the information revealed thereby as is provided by our laws. The Commission and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this act. Nothing herein contained, however, shall be construed to prohibit the Commission from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof. (As amended July 15, 1937, Sp. Ses., c. 49, §31.)

(b) Any person violating the provisions of subdivision (a) hereof shall be guilty of a gross misdemeanor. (Act Apr. 21, 1933, c. 405, §56.)

Member of tax commission or employee may produce income tax return upon trial of lawsuit not involving taxes imposed, if court so orders. Op. Atty. Gen. (428f), Jan. 11, 1936.

Tax commission and its employees may use information for any purpose within scope of commission's duties, if in connection with such use such information is not divulged to persons other than members of commission and employees acting under direction of commission. Op. Atty. Gen. (130b), Mar. 9, 1938.

Commission may use income tax returns or information gained therefrom for any purpose within scope of its powers or duties, including determination of alleged evasions of moneys and credits taxes. Op. Atty. Gen. (130b), Feb. 19, 1939.

State of Wisconsin is not entitled to any information with respect to Minnesota income tax returns. Op. Atty. Gen. (531), August 28, 1939.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

#### ARTICLE IX.—DISTRIBUTION OF PROCEEDS OF TAXES

**2394-57. Distribution of taxes; fund.**—The revenues derived from the taxes, interest and penalties under this Act shall be paid into the state treasury; and be credited to a special fund to be known as "Income Tax School Fund," and be distributed as follows:

(a) There shall be paid from said Income Tax School Fund all refunds of taxes erroneously collected from taxpayers under this Act, as provided herein.

(b) There shall be transferred each year from said fund to the General Revenue Fund the amount expended from the latter fund for expenses of administering this Act.

(c) Out of the balance in said Income Tax School Fund after meeting the requirements of subsections

(a) and (b), there shall be distributed to each school district of the state, including municipalities operating their own school, an amount equal to \$10.00 per child between the ages of six years and sixteen years, both years inclusive, residing in such district, provided that a child in his sixteenth year shall be included only if in actual attendance in school. The school census taken during the fiscal year shall be used as the basis for computing the amount due each school district. Except as otherwise provided by any law heretofore or hereafter passed with respect to particular school districts, the money so distributed shall be used for the following purposes only:

(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 pay current operating expenses and to reduce and replace levies on real and personal property.

(4) Where the county auditor is required by any law to levy a tax to pay any interest or principal of any bonded indebtedness of a school district, such

district may on or before October 1 of any year pay any of such money available therefor to the county treasurer to pay any interest or principal maturing or becoming due during the next ensuing year, in which case the auditor shall reduce the amount of the levy so required to be made by him by the amount so paid to the treasurer.

(d) If any money remains in said Income Tax School Fund after making the distributions specified in subsection (a), (b) and (c), such balance, not in excess, however, of the amount appropriated for such purpose, shall be used to pay special school aid provided by law, and the amount so used shall be deducted from the appropriation therefor.

(e) The moneys available for distribution under subsections (c) and (d), shall be distributed by the State Board of Education semi-annually, in the same manner, as nearly as practicable, as now provided by law governing the distribution of state funds by said board, except that each school district shall be entitled to receive the money distributable under subsection (c) without being subject to any conditions.

(f) All moneys collected up to and including December 31, 1937, irrespective of the year for which such taxes were assessed and from which have been deducted the sums required for the payment of all costs of administration incurred and paid prior to said December 31, 1937, and for the payment of all refunds granted prior to said December 31, 1937, and not heretofore distributed, shall be distributed on the basis of school population within such district of compulsory school age and shall be based on the 1936 school census; this distribution shall be additional to the amounts provided in subsection (c) hereof and used only for the purposes therein stated.

(g) All moneys collected on and after January 1, 1938, irrespective of the year for which such taxes were assessed shall be distributed as provided in subsection (c) hereof. (Apr. 21, 1933, c. 405, §57; Apr. 24, 1935, c. 252; Mar. 31, 1937, c. 122; Apr. 24, 1937, c. 397; July 5, 1937, Sp. Ses., c. 49, §28; Apr. 22, 1939, c. 438, §1.)

**Explanatory note.**—The title of Act Apr. 24, 1937, c. 397, purports to amend this section "by adding a new subsection," while the enacting part recites that the section "is hereby amended to read as follows," and the entire section is then set forth containing not only a new subdivision (5), but the other subdivisions with changes in subdivision (4). This defect, however, may be regarded as immaterial, in view of the subsequent amendment at the special session of the entire section in which subd. (c)(5) is omitted.

Sec. 2 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

Sec. 2 of Act Apr. 22, 1939, cited, provides that the act shall take effect from its passage.

Act Mar. 17, 1939, c. 63, provides that first class cities maintaining their own schools, or such cities constituting a school district, may use income tax revenues for current maintenance and operating expenses of schools for 1939 and 1940. It is omitted as temporary.

All of the income tax receipts whenever collected for the taxable year 1936 and prior years must be distributed according to the provisions of L. 1933, c. 405, §57, and not under the amendment of 1937 to this statute. Board of Education v. A., 285NW80.

Funds derived from income tax must be applied to payment of interest and principal on bonded indebtedness of school districts throughout the state. Op. Atty. Gen., Mar. 27, 1934.

Unorganized district in St. Louis County may not pay any part of bonds used to erect school house out of its share of income tax. Op. Atty. Gen. (5311), May 9, 1934.

Income tax allotted to school district must be set aside to pay indebtedness not yet due when no other provision has been made for such payment. Op. Atty. Gen. (5311), June 1, 1934.

Unorganized territory in each county is a school district within meaning of this section. Op. Atty. Gen. (5311), June 6, 1934.

Board of education may make both distributions of revenues in any one calendar year on the basis of the school census of the preceding calendar year. Op. Atty. Gen. (5311), July 19, 1934.

Provision must be made for payment of outstanding bonds not yet due before income tax may be used by school district to pay current expenses. Op. Atty. Gen. (5311), July 24, 1934.

Proceeds of income tax paid to school district, if insufficient to pay bond, may be applied toward such

payment and balance paid out of other funds. Op. Atty. Gen. (5311), Aug. 6, 1934.

County auditor is not to deduct amount due state on state loans before making distribution to school district. Op. Atty. Gen. (5311), Nov. 13, 1934.

Proceeds previously collected are to be distributed on basis of present law based on 1936 school census. Op. Atty. Gen. (159a-22), Aug. 11, 1937.

Laws 1937, c. 122, amending subdivision 4 of this section, is still in effect, notwithstanding Laws 1937, Ex. Sess., c. 49, and school districts in cities of first class may use receipts from income tax in manner provided by Laws 1937, c. 122. Op. Atty. Gen. (159a-22), Aug. 19, 1937.

Where an organized school district annexes a part of unorganized territory, income tax money should not be used to pay indebtedness of annexed territory if it was not assumed by organized district, but old organized district assumed indebtedness, income taxes should be first used to pay off standing indebtedness of organized district, and then old indebtedness of annexed territory is paid before subsequent indebtedness. Op. Atty. Gen. (5311), Nov. 3, 1937.

School board must first apply income tax receipts toward payment of outstanding bonds and then surplus may be used to pay outstanding warrants issued in emergency for construction of new heating plant. Op. Atty. Gen. (159a-5), Dec. 3, 1937.

Income tax funds may be used by unorganized school district to pay outstanding orders. Op. Atty. Gen. (5311), May 13, 1938.

Term "other indebtedness" refers to all outstanding debts owing on date that school district receives money from state. Id.

County auditor may not retain income tax funds for payment of outstanding debts, but such funds must be paid to school district. Id.

Bonded or other indebtedness outstanding as of Jan. 1, 1933, has first preference, then debts contracted after Jan. 1, 1933, to be paid in order in which payment thereof falls due, and before income tax can be used to pay current operating expenses or reduce and replace levies on real and personal property all outstanding debts must have been paid or a sufficient sum of money set aside to pay such debts. Id.

Where a school district has been dissolved and land become part of an unorganized school district, unorganized district cannot pay from proceeds of income tax distributed to it any part of bonds issued by dissolved district prior to its dissolution, unless county board of education has voted so to do. Id.

Income tax money received by a school district must be placed in a sinking fund and used to meet unmaturing bonds until bonded indebtedness has been extinguished, and after providing for payment of such outstanding indebtedness any revenue remaining may be used to pay current operating expenses. Op. Atty. Gen. (5311), June 13, 1939.

Income tax distribution is subject to Laws 1939, c. 431, Art. II, §16(f), authorizing commissioner of administration to withhold funds where collections are not sufficient. Op. Atty. Gen. (640a), August 9, 1939.

(d). No action is necessary on part of board of education to transfer income tax funds. Op. Atty. Gen. (159a-22), Dec. 23, 1938.

#### 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.)

**2394-59. Effective date.**—(a) This law shall take effect from and after its passage, but shall apply in computing taxes as follows:

(1) To the taxable year 1937 and all subsequent years of taxpayers reporting on a calendar year basis.

(2) To the taxable year ending during the calendar year 1937 of taxpayers reporting on a fiscal year basis, in which case the tax shall be computed as provided in Section 32-1 hereof [§2394-32a]; and to all subsequent taxable years of such taxpayers.

(3) To every taxable year commencing on or after January 1, 1937, of every other taxpayer.

(b) All provisions of Laws 1933, Chapter 405 [§§2394-1 to 2394-58], as they existed prior to the passage of this Act, shall remain in full force and effect so far as necessary to preserve any liability for taxes, interest and penalties incurred prior to the passage of this Act. (Act July 15, 1937, Sp. Ses., c. 49, §34.)

Act 1937, Sp. Ses., c. 49, filed without approval July 15, 1937.

**2394-60. Laws to remain in force.**—All provisions of Laws 1933, Chapter 405 and Extra Session Laws of 1935, Chapter 87, and Extra Session Laws of 1937, Chapter 49, as they existed prior to the passage of this act, shall remain in full force and effect, so far as necessary to preserve any liability for taxes, interest and penalties incurred prior to the passage of this act, and to enforce the collection of such taxes, interest and penalties, and to enforce civil and criminal penalties. (Act Apr. 22, 1939, c. 446, §20.)

**2394-61. Application of amendatory act.**—This law shall take effect from and after its passage, but shall apply in computing taxes as follows:

Except as herein provided, the provisions of this act shall apply only to taxable years beginning after December 31, 1938.

The amendments made by this act to Chapter 405, Laws 1933, as heretofore amended, shall apply to the excise tax imposed upon banks by sections 32-4 and 32-5 for the taxable year beginning with January 1, 1939, and subsequent years. (Act Apr. 22, 1939, c. 446, §24.)

**Editorial note.**—The closing paragraph of this section, as amended, was rendered ineffective by the veto of the act (H. P. 1378) creating §§32-4, 32-5.

#### GIFT TAX

**2394-71. Gift tax.**—(a) **Imposition.** A tax is hereby imposed for the calendar year 1937 and each calendar year thereafter upon the transfer during such calendar year by any person, resident or non-resident, of property by gift.

(b) **"Person" defined.** Wherever the word "person" is used in this act, it shall include individuals, associations, joint stock companies, partnerships and corporations wherever the context permits or requires it.

(c) **Situs of property.** The tax in the case of a person who is a resident of this state at the date of the transfer shall be on all such transfers if the property transferred has its situs within this state, and for this purpose intangible property shall be conclusively deemed to have its situs therein. The tax in the case of a person who is a nonresident of this state at the date of such transfer shall be on all such transfers if the property transferred has its situs within this state.

(d) **Nature of transfer and property.** The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real, personal or mixed, or tangible or intangible.

(e) **Transfer for benefit of donor; reserved power; death of donor.** The tax shall not apply to a transfer of property in trust for the use and benefit of the donor nor to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such property or the income therefrom but the relinquishment or ter-

mination of such power (other than by the donor's death) shall be considered to be a transfer by the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift.

(f) **Retroactive effect.** The tax shall not apply to such transfers made before the effective date of this Act.

(g) **Computation.** The tax shall be computed in the manner and at the rates hereinafter provided. (July 16, 1937, Sp. Ses., c. 70, §1.)

**2394-72. Valuation of gift.**—(a) The true and full value of property at the date of its transfer by gift shall be its value for the purpose of computing the tax imposed by this Act. Where property is transferred with donative intent for less than an adequate and full consideration in money or money's worth, then the amount by which its true and full value at the date of its transfer exceeds the value of the consideration shall be deemed a gift, and such excess shall be deemed the value of such gift for the purpose of computing the tax imposed by this Act. (July 16, 1937, Sp. Ses., c. 70, §2.)

**2394-73. Exemptions.**—The following transfers by gift shall be exempt from, and excluded in computing, the tax imposed by this Act:

(a) **Gifts to state or political division.** Gifts to or for the use of the State of Minnesota or any political subdivision thereof for exclusively public purposes.

(b) **Religious, charitable, etc., purposes.** Gifts to or for the use of any fund, foundation, trust, association, organization or corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, the promotion of the arts, or the conduct of a public cemetery if (1) such gift other than for religious or charitable purposes is to be used for such purposes exclusively within this state, and (2) no part thereof inures to the profit of any private shareholder or individual.

(c) **Fraternal societies.** Gifts to a fraternal society, order or association, operating under the lodge system, but only if such gifts are to be used exclusively for the purposes designated in subdivision (b) of this section.

(d) **Veterans' organizations.** Gifts to or for the use of posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized within the State of Minnesota and if such gifts are to be used exclusively for the purposes designated in subdivision (b) of this section.

(e) **Benefits to employees.** All property transferred, money, service or other thing of value, paid, furnished, or delivered by any person, corporation, organization or association to its employes, or to any organization of its employes, directly or indirectly, or to any person, firm or corporation for them or it, including payments to cover insurance, sickness and death benefits, pensions, relief activities, or to any other employes' benefit fund of any kind, and medical service to such employes and their families.

(f) **Value exempt.** The first \$2500.00 in value of gifts (other than of future interests in property) made to any person by the donor during any calendar year. (July 16, 1937, Sp. Ses., c. 70, §3.)

**2394-74. Specific exemptions.**—(a) **Particular donees.** The following specific exemptions shall be deducted in computing the amount of the gifts made to any single donee:

(1) \$10,000.00 if the donee is the wife or minor child, either by blood or by adoption, of the donor.

(2) \$5,000.00 if the donee is the husband, an adult child by blood or by adoption, other lineal descendant, or any mutually acknowledged child of the

donor, or lineal descendants of such adopted or mutually acknowledged children.

(3) \$3,000.00 if the donee is a lineal ancestor of the donor.

(4) \$1,000.00 if the donee is a Class C donee, as specified in Section 6 hereof.

(5) \$250.00 if the donee is a Class D donee, as specified in Section 6 hereof.

(b) **Single exemption.** The exemptions allowed by this section shall be allowed once only with respect to gifts made by a donor to the same donee.

(c) **Definitions.** The term "mutually acknowledged child" as used herein means any child to whom the donor, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter. (July 16, 1937, Sp. Ses., c. 70, §4.)

**2394-75. Computation of tax.**—(a) The tax shall be based on the aggregate sum of the gifts in excess of the applicable specific exemption made by a given donor to the same donee, and for each calendar year shall be an amount equal to the excess of (1) a tax, computed in accordance with the rates hereinafter set forth, on the excess over the applicable specific exemption of the aggregate sum of such gifts for such calendar year and for each of the preceding calendar years, over (2) a tax, computed in accordance with the rates hereinafter set forth, on the excess over the applicable specific exemption of the aggregate sum of such gifts for each of the preceding calendar years. (July 16, 1937, Sp. Ses., c. 70, §5.)

**2394-76. Rates of tax.**—(a) **Schedule.** The tax imposed by this Act shall be computed by applying to the gifts in excess of the applicable specific exemption made by a given donor to the same donee the schedule of rates specified in subdivisions (b) and (c) of this Section.

(b) **Classification of donees.** The rates on the excess up to \$15,000.00 shall be (1) three-fourths per centum if the donee is a member of Class A donees; (2) one and one-eighth per centum if the donee is a member of Class B donees; (3) two and one-fourth per centum if the donee is a member of Class C donees; (4) three per centum if the donee is a member of Class D donees; and (5) three and three-fourths per centum if the donee is a member of Class E donees. The rates herein specified shall be known as the primary rates.

(c) **Rate based on amount of gift.** The rates on such part of said gift as exceeds \$15,000.00 and is not in excess of \$30,000.00 shall be two times the primary rates; on such part thereof as exceeds \$30,000.00 and is not in excess of \$50,000.00, three times the primary rate; on such part thereof as exceeds \$50,000.00 and is not in excess of \$100,000.00, three and one-half times the primary rate; on such part thereof as exceeds \$100,000.00 and is not in excess of \$200,000.00, four times the primary rate; on such part thereof as exceeds \$200,000.00 and is not in excess of \$300,000.00, five times the primary rate; on such part thereof as exceeds \$300,000.00 and is not in excess of \$400,000.00, six times the primary rate; on such part thereof as exceeds \$400,000.00 and is not in excess of \$500,000.00, seven times the primary rate; on such part thereof as exceeds \$500,000.00 and is not in excess of \$600,000.00, eight times the primary rate; on such part thereof as exceeds \$600,000.00 and is not in excess of \$700,000.00, nine times the primary rate; on such part thereof as exceeds \$700,000.00 and is not in excess of \$900,000.00, ten times the primary rate, on such part thereof as exceeds \$900,000.00 and is not in excess of \$1,100,000.00, eleven times the primary rate; and upon such part thereof as exceeds \$1,100,000.00, twelve times the primary rate.

(d) **Maximum rates.** The tax shall, however, in no case exceed thirty-five per centum of the full and true value of the gifts in excess of the applicable specific exemption made by the given donor to the same donee. If the tax imposed herein is assessed against and attempted to be collected from the donee, the tax shall in no case exceed thirty-five per centum of the full and true value of the gift in excess of the applicable specific exemption after deducting therefrom any gift tax imposed by the United States government if such federal tax was assessed against and collected from the donee.

(e) **Classification based on relationship.** Class A donees shall include only the wife and lineal issue of the donor, an adopted child of the donor, and the lineal issue of any such adopted child. Class B donees shall include only the husband of the donor, lineal ancestors of the donor, any child of the donor to whom he or she has stood in the mutually acknowledged relation of parent for not less than 10 years prior to the making of the gift if such relationship began at or before such child's fifteenth birthday and was continuous for 10 years thereafter, and the lineal issue of such child. Class C donees shall include only a brother or sister of the donor, a descendant of such brother or sister, a wife or widow of a son of the donor, and the husband of a daughter of the donor. Class D donees shall include only the brother or sister of the father or mother of the donor, and a descendant of a brother or sister of the father or mother of the donor. Class E donees shall include all donees other than those includible in the foregoing classes. (July 16, 1937, Sp. Ses., c. 70, §6.)

**2394-77. Returns.**—(a) **Requisites of return by donor.** Every person making any gifts other than those exempted by Section 6 of this Act [§2394-73], during that part of the calendar year 1937 subsequent to the effective date of this Act, or during any subsequent calendar year, shall make a return thereof in duplicate to the Attorney General of the State of Minnesota. Every return shall specifically set forth the property transferred by gift, the date of the gift, the value at the date of the gift of every item, of property transferred by gift, the name and residence of each donee and the relationship of the donee to the donor, and, in the case of property transferred for less than an adequate consideration in money or money's worth, the character and value of the consideration received by the donor. The Attorney General may also require such other information to be given on such return as may be necessary for the effective enforcement of this Act. The return shall be in such form as he may prescribe as necessary to compute the tax imposed by this Act, and shall be under oath of the person making the return. The return in the case of a donor dying prior to the date when he is required to make a return shall be made on his behalf by his executor or administrator; that of a person for whom or whose property a guardian has been appointed shall be made by the guardian of his person or his property or both; and that of a person employing any device to make gifts indirectly shall be made by him and by those in charge or in control of the agency or instrumentality through which such person is making gifts indirectly.

(b) **Filing; time for.** The returns required to be made under subdivision (a) of this Section shall be filed with the Attorney General on or before the first day of March of the Calendar year immediately succeeding that for which the return is made.

(c) **Extension of time.** The Attorney General may, whenever in his opinion good cause exists therefor, extend the time for filing any return required hereunder for not to exceed three months.

(d) **Returns by donees.** The Attorney General may, whenever necessary in his opinion to the effective enforcement of this Act, require donees to file a return of gifts received by them, and such return may require such donees to report such information

as is necessary to the effective enforcement of this Act. Returns required hereunder shall be filed with the Attorney General within 30 days after he has mailed notice and demand therefor to the last known address of the donee required to make such return. (July 16, 1937, Sp. Ses., c. 70, §7.)

**2394-78. Assessment.—(a) To whom assessed; notice.** The Attorney General shall determine and assess all taxes imposed by this Act. The tax shall be assessed upon the donor, and shall be paid by him to the Treasurer of the State of Minnesota within sixty days after notice of such assessment shall have been served upon him. The tax in the case of a donor who has died prior to its assessment shall be assessed upon his executor or administrator, and be paid by such executor or administrator within 60 days after notice of such assessment shall have been served upon him. The tax in the case of indirect gifts may, in the discretion of the Attorney General, be assessed upon the donor, or the person or persons in charge or in control of the agency or instrumentality through which such donor is making indirect gifts, or upon both, and shall be paid by the person upon whom it is assessed within 60 days after notice of such assessment shall have been served upon him (but one tax only shall be collected in such case). Notice of assessment shall be deemed to have been made within the meaning of this subdivision (a) when a letter containing such notice has been mailed to the last known address of the person upon whom the assessment is made.

**(b) Liability under assessment; collection; suit against residents or nonresident.** The tax shall become a personal liability of the person upon whom it is assessed, if such person is a resident of this state, from the date of its assessment, shall remain such until such tax is paid, and may be collected by an action at law in the name of this state which may be brought in the district court of the judicial district in which such person resides or has his principal place of business or in the district court for Ramsey County. The foregoing provisions shall also apply where such person is a non-resident of this state, so far as that is permissible under the provisions of the Constitutions of the United States and this state.

**(c) Personal liability; filing lien; certificate of release.** If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. At any time after any transfer taxable hereunder is made which includes any real property, the Attorney General may file with the Register of Deeds of the county in which such real property is located, a claim of lien for the estimated amount of the tax due hereunder describing the real property against which such lien is claimed, and may supplement or amend such claim after the amount of tax has been determined. From the time of the filing of such lien until it is satisfied by the Attorney General, the tax imposed hereunder shall be a lien upon such real property. If the Attorney General is satisfied that the tax liability has been fully discharged or provided for, he may under regulations prescribed by him, issue a certificate releasing any or all of such real property from the lien herein imposed.

**(d) Collection from donee.** If the donor shall fail to pay the tax within the time provided in Subdivision (a) of this section, the Attorney General may serve a notice upon the donee stating the amount of the tax and the date when it became due. If the tax is not paid within 30 days after the mailing of said notice to the donee at the address given in the return or the last known address of said donee, the tax may be collected from such donee in the same manner as provided with respect to donors in Subdivision (b) of this section, and said donee shall thereafter be liable to the penalties provided in Section 10 of this act. (July 16, 1937, Sp. Ses., c. 70, §8.)

**2394-79. Assessment on failure to make return or on filing of incorrect or false return.—(a)** If any person shall fail to make any return required under this Act at the time required thereby, the Attorney General may, twenty days after having sent a notice by registered mail to the last known address to such person and an opportunity for a hearing, make for him a return from his own knowledge and from such information as he can obtain through testimony or otherwise, and assess a tax on the basis thereof which shall be paid within 30 days after the Attorney General shall have mailed to such person a written notice of the assessment and demand for the payment of the tax thus assessed. Such assessment shall be prima facie valid and the burden of proving the invalidity thereof or any error in the calculation of such tax or any penalty included therein shall be upon the person against whom it is assessed.

The Attorney General shall have the same powers as are conferred upon him by subdivision (a) for the assessment of additional taxes in case the returns filed by any person required to file a return are incorrect, or false or fraudulent with intent to evade the tax or postpone its payment; and, if the return was false or fraudulent with intent to evade the tax or postpone its payment, the assessment made by the Attorney General shall be immune to attack to the same powers as are conferred made under subdivision (a) of this section. (July 16, 1937, Sp. Ses., c. 70, §9.)

**2394-80. Penalties; interest; criminal liability.—**

If any person shall, without intent to evade the tax or to postpone its payment, fail to make any return required to be made by him under this Act at the time required therein, there shall be imposed on him a specific penalty of five per centum of the tax as finally assessed. If any person shall, with intent to evade the tax or to postpone its payment either fail to make a return when required by this Act or make a false or fraudulent return, there shall be imposed upon him a specific penalty of twenty per centum of the taxes finally assessed, and such person shall also be guilty of a gross misdemeanor.

**(b) Failure to pay.** If any person shall fail to pay any tax due under this Act at the time required thereby for such payment, there shall be imposed upon him a specific penalty of five per centum of the tax as finally assessed.

**(c) Extension of time of payment.** The Attorney General may, upon the filing of an affidavit by or on behalf of any person referred to in subdivision (b) of this section, if in his opinion good cause exists therefor, extend the time for payment of the tax and penalty for not to exceed three months.

**(d) Interest.** 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.

**(e) Collection.** The penalties and interest imposed by this Section may be collected as part of the tax or by separate actions brought by the Attorney General in the name of the state for their recovery in any court in which actions for the collection of taxes imposed by this Act may be brought under its provisions.

**(f) Application of payments.** All payments received shall be credited first to penalties, next to interest, and then to the tax due. (July 16, 1937, Sp. Ses., c. 70, §10.)

**2394-81. Refundment.—**The Attorney General may issue certificates for the refundment of any taxes paid by, or collected from, any person who has paid a tax in excess of the amount of tax legally due from him under the provisions of this Act if claim therefor is filed with the Attorney General within two years after such tax was paid or collected. The refundment certificates shall be for the amount of the tax

illegally paid or collected, plus interest thereon at the rate of six per centum per annum from the date of the payment or collection of the tax until the date the refund is paid, and the state auditor shall cause such refund to be paid out of any funds in the state treasury not otherwise appropriated. No refund shall be denied merely because the tax was voluntarily paid or no protest made to its payment. (July 16, 1937, Sp. Ses., c. 70, §11.)

**2394-82. Appeal; procedure.**—Any person aggrieved by the determination and assessment of a tax by the Attorney General, or his denial of a claim for refund, may appeal therefrom to the District Court of the county in which said person resides, or if said person is a non-resident of the State, to the District Court of Ramsey County, by filing, within thirty days after said determination, with the Attorney General a notice in writing setting forth his objections to such determination and that he appeals therefrom, and thereupon within thirty days thereafter the Attorney General shall transmit the original papers and records which have been filed with him in relation to such matter to the clerk of the District Court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such proceeding. Upon 15 days' notice given to the Attorney General by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at the general or special term of said court, or at the chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and by order direct the correction, amendment or modification of any determination made by the Attorney General.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The Attorney General and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions.

After the filing of the notice of appeal, and during the pendency of the appeal and for thirty days after final disposition thereof, no penalty shall be imposed under Section 10 hereof. (July 16, 1937, Sp. Ses., c. 70, §12.)

**2394-83. Credit against inheritance tax.**—If a tax has been imposed on any gift under this Act and thereafter upon the death of the donor an inheritance tax is imposed upon the same gift by this state, there shall be credited against the inheritance tax resulting from the inclusion of such gift in the computation of such inheritance tax an amount equal to the gift tax resulting from the inclusion of such gift in the computation of the gift tax on gifts from such donor to the donee who received such gift. (July 16, 1937, Sp. Ses., c. 70, §13.)

**2394-84. Separability of provisions.**—If any part or provisions of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or affect the operative effect of any other part or provision of the remainder of this 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 affect the operative effect of such part or provision as applied to any other type of case within their terms. (July 16, 1937, Sp. Ses., c. 70, §14.)

#### TAX ON INCOME FROM EXEMPT PROPERTY

**2394-91. Tax on income reserved to grantor in conveyance to educational institution.**—Whenever real property shall be conveyed to any educational institution in the state which has or claims to possess the right or privilege of exemption from taxation under or by virtue of the provisions contained in a territorial charter where such property is not devoted to, and reasonably necessary for the accomplishment of, the educational purposes of such institution, if in connection with such conveyance, or in consideration thereof in whole or in part.

- (a) such real property is charged with the payment of; or
- (b) there is reserved to the grantor or to his or its nominees; or
- (c) the grantee shall be or become under obligations to pay;

any sum by way of an annuity or income to such grantor or to his or its nominees, whether for life or for a term of years, there shall be levied and collected upon such payments a tax of 50 per cent. (July 24, 1937, Sp. Ses., c. 91, §1.)

**2394-92. Same—"person" defined.**—For all purposes of this act, the word "person" shall be construed to include individuals, co-partnerships, associations, companies, and corporations. (July 24, 1937, Sp. Ses., c. 91, §2.)

**2394-93. Same—place of taxation—Lien.**—Such annuity or income shall have a taxable status in the assessment district wherein is located the real property conveyed under the terms and conditions set forth in Section 1 hereof [§2394-91]; and the tax herein provided shall be a specific lien upon all and singular the amounts as they accrue, which are payable to any person entitled to receive income or annuity thereunder, and upon the right, title, estate, and interest of such person in and to the real property conveyed as aforesaid. (July 24, 1937, Sp. Ses., c. 91, §3.)

**2394-94. Same—annual report by taxpayer.**—Every person to whom any such annuity or income payments are made or reserved, shall on or before the first day of February 1938, and annually thereafter, on or before the first day of February of each year, make and file with the Minnesota Tax Commission, a report verified by the person making the same, setting forth the amount of income or annuity received by such person during the preceding calendar year and such other information as said commission may require. (July 24, 1937, Sp. Ses., c. 91, §4.)

**2394-95. Same—report by educational institution.**—It shall be the duty of every such educational institution making any such annuity or income payment on or before the first day of February 1938, and annually thereafter on the first day of February of each year, to make and file with the Minnesota Tax Commission a report covering the preceding calendar year verified by the oath of the officer making the same and setting forth,

1. the name and postoffice address of each person to whom such annuity or income is paid,
2. a legal description of every parcel of real estate conveyed to such institution in connection with the conveyance of which, or in consideration whereof, the grantee became obligated to pay any such annuity or income;
3. the amount of income or annuity paid on account of each tract of land separately; and
4. such other information as said commission may require. (July 24, 1937, Sp. Ses., c. 91, §5.)

**2394-96. Same—consideration and determination of report by tax commission.**—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 5 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 income or annuity recipient, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, 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. (July 24, 1937, Sp. Ses., c. 91, §6.)

**2394-97. Same—penalty for failure to make report—assessment by tax commission.**—If any person subject to the tax provided by this act shall fail to make the report provided for in Section 5 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten percent of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the amount of the annuity or income paid or payable to such person, and shall fix the tax due thereon from such person together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such payment. (July 24, 1937, Sp. Ses., c. 91, §7.)

**2394-98. Same—date of payment—penalty for nonpayment.**—Such tax shall be due and payable to the state treasurer on the first day of June 1938, and annually thereafter on the first day of June, and if not paid on or before that date, a penalty of ten percent shall immediately accrue thereon. (July 24, 1937, Sp. Ses., c. 91, §8.)

**2394-99. Same—withholding of tax by educational institution—liability on failure to withhold.**—Every educational institution making such income or annuity payments which are subject to tax hereunder and upon which the tax has not been paid, shall at the time the payments are made, withhold and deduct therefrom the amount of the tax due thereon, and shall pay the same to the state treasurer. Failure to withhold the tax and to make payment at the time and in the manner hereinbefore required shall render the educational institution liable for the amount of the tax with interest at the rate of 12% per annum from the time the tax should have been paid, to be recovered in an action by the attorney general for and in behalf of the state. (July 24, 1937, Sp. Ses., c. 91, §9.)

**2394-100. Same—draft on delinquent—evidence.**—On or before the tenth day of June in each year the state auditor shall make his draft upon the person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection. The draft of the state auditor for the

tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due from the person against whom the same is drawn. (July 24, 1937, Sp. Ses., c. 91, §10.)

**2394-101. Same—Notice to taxpayer—action by attorney general—interest—lien of judgment—sale of property.**—The state treasurer within ten days after the receipt of the draft mentioned in Section 10 of this act shall notify by mail the persons designated therein of the amount thereof, and if not paid within thirty days after presentation shall deliver the same to the attorney general, whose duty it shall be to bring an action thereon in the district court of the county wherein is the taxable status of the annuity or income, for the amount of such draft, together with interest and costs of the proceeding. Such tax shall draw interest at the rate of 12% per annum, commencing 30 days after the same falls due; and the judgment of the court when so obtained and properly docketed shall be a lien upon all right, title, and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one percent per month and the said property may be sold in satisfaction of such judgment in the manner provided by law. (July 24, 1937, Sp. Ses., c. 91, §11.)

**2394-102. Same—false report—perjury.**—Any person who for the purpose of evading the payment of the tax herein provided or any part thereof, makes any false return or report, shall in addition to the tax provided by this act, pay a penalty of 50 percent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act, shall be guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law. (July 24, 1937, Sp. Ses., c. 91, §12.)

**2394-103. Same—examination of books and papers—refusal as misdemeanor.**—All books, contracts, deeds, instruments, correspondence and memoranda relating to or used in connection with the conveyance of any real property as set forth in section 1 of this act, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any person shall neglect or refuse on request of the Minnesota Tax Commission access to the papers and books aforesaid, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law. (July 24, 1937, Sp. Ses., c. 91, §13.)

**2394-104. Same—refund of tax erroneously collected—disposition of proceeds.**—Out of the proceeds of the taxes imposed hereby, including penalties and interest, the Commission shall refund any tax erroneously paid or collected, and shall reimburse the revenue fund or any other fund of the state its proper proportion of the expense of administering this act. The balance of the proceeds of any such taxes shall be paid to the county treasurer of the county wherein the annuity or income taxed has a taxable status, and shall by him be placed to the credit of the proper funds and distributed as in the case of general taxes collected. (July 24, 1937, Sp. Ses., c. 91, §14.)

Sec. 15 of Act July 24, 1937, cited, provides that the act shall take effect from its passage.

## CHAPTER 12

### Military Code

#### MILITIA

**2399. Militia—Constitution—Officers and personnel—Exemptions.**—The militia shall consist of all able-bodied male citizens of the state and all other able-

bodied males, resident therein, who have or shall have declared their intention to become citizens of the United States, when so authorized by federal law, who shall be 18 or more years of age, and, except