1941 Supplement

To

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1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

Edited by
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CHAPTER 11

Taxes

GENERAL PROVISIONS

1974. Property subject to taxation.

1. General rules.

Exercise by the United States of sovereignty over lands within the Dominion of Canada furnished no valid basis for taxation by state of Minnesota. Pettibone v. C., (DC-Minn), 31FSupp881.

Land taxed is sole source to which state and its subdivisions may look for revenue, and there is no personal obligation on part of owner. State v. Washington County, 292NW204. See Dun. Dig. 9281(29, 30).

6. Federal property and agencies.

An elevator owned by the Reconstruction Finance Corporation is exempt from state taxation, if personal property. Op. Atty. Gen., (421a-11), June 4, 1940.

7. Interstate commerce.

Oklahoma use tax on materials and equipment brought into state and used in repair of interstate pipe lines held not invalid as exacting money without due process of law. Oklahoma Tax Com'n v. S., (CCA10), 113F(2d)853, rev'g (DC-Okl), 30FSupp131. Cert. den., 61SCR75.

Interstate character of a sale, made on a contract for purchase of goods which are to be shipped from another state, is not affected by fact that goods are consigned to shipper or his agent to whom order is given and are to be delivered by such agent, nor by employment of another agent or agency for delivery of goods purchased or by fact that goods ordered by several purchasers are shipped in bulk to agent and are delivered by agent to respective purchasers after breaking bulk. City of Waseca v. B., 288NW229. See Dun. Dig. 4894.

Negotiation of sales of goods which are in another state, for purpose of introducing them into state in which negotiation is made, is interstate commerce. Id.

City ordinance requiring hawkers and peddlers taking orders for future delivery to have a license and pay a tax imposed an unlawful burden upon interstate commerce, as applied to local agent with local business receiving goods from employer in another state. Id.

State may not tax interstate commerce either by laying tax upon business which constitutes such commerce, or privilege of engaging in it, or upon receipts, as such, deprived from it. Id. See Dun. Dig. 4895.

1975. Property exempt from taxation.

Exemption of property of United States, see 5, 6-3, 6-9 to 6-15.

½. In general.

Exemption of property from taxation does not comprehend exemption from the payment of excise and impost taxes by the owner of the exempted property, especially those which are not imposed in lieu of property taxes. Christgau v. W., 293NW619. See Dun. Dig. 9149.

Land acquired by Hamline University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-4), May 3, 1940.

Where a village acquires deed to land which has been sold to the state for delinquent taxes, village need not pay the delinquent taxes and state cannot proceed to forfeiture and deed to the village should be recorded without payment of taxes. Op. Atty. Gen., (414a-11), May 7, 1940.

Mere fact that private hospital records articles of incorporation setting forth that it is of a charitable nature does not necessarily make its property exempt. Op. Atty. Gen. (414-d-10), July 29, 1940.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. Op. Atty. Gen. (614G), Nov. 28, 1940.

1. None except authorized by constitution.

In order to be exempt a hospital must be devoted to a public use and operated for charitable purposes, and it is not enough that it is a corporation organized under charitable statutes. Op. Atty. Gen. (414d-10), Feb. 8, 1940.

No land owned by the trustees of Hamline University is subject to taxation, i. e. general taxes. Op. Atty. Gen., (414B-4), May 3, 1940.

Land leased to United States government creates and establishes a recreational area for an indefinite period, in consideration of $1 and other valuable consideration, may be considered "public lands," and its taxability would depend upon exclusive use by the government without any substantial use reserved by lessor. Op. Atty. Gen. (414a-2), Oct. 18, 1940.

Personal property exemption provided in §1975(8) is applicable to any personal property which taxpayer may own and is not limited to household goods described in §1993(2). Op. Atty. Gen. (421B-5), Dec. 6, 1940.

3. Special assessments.

While legislature may authorize assessment of school property for local improvements, such authorization must be explicit, otherwise, it is deemed to be withheld. Ind. School Dist. v. C., 292NW777. See Dun. Dig. 9151a.

A purchaser of lands takes them free of assessments for improvements made by city while state was owner of land if assessment was made before purchase, but subject to assessment for improvements made while land was owned by state if such assessment was not finally confirmed and established until after purchase. Op. Atty. Gen. (412a-26), Dec. 2, 1939.

On forfeiture of land to state for nonpayment of taxes all special assessments should be cancelled, and all special assessments made while state owned lands are void, and under no circumstances may county board pay for a special assessment for improvements made to property owned by state, though an obligation to pay a special assessment upon property owned by a school district or a county is created by statute independent of a lien. Op. Atty. Gen. (408c), Dec. 26, 1939.

Tax forfeited land cannot be charged with a lien for local improvements, though enhanced value of property by virtue of improvements should be considered by county board in appraising land for sale. Op. Atty. Gen. (396c-6), Jan. 10, 1940.

On forfeiture of land to the state all existing special assessments are cancelled, including those payable after purchase from the state, and any assessments levied while title was in the state are void. Op. Atty. Gen. (408c), Jan. 23, 1940.

Land forfeited to state for nonpayment of taxes is not subject to assessment for local improvements, but must be included in determining rate of assessment of other property, and one purchasing from the state is not liable for assessment made while land was owned by state. Op. Atty. Gen. (412a-26), Feb. 15, 1940.

Land acquired by Hamline University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-6), May 6, 1940.

Where ditch liens against agricultural lands were cancelled on forfeiture of land to state for nonpayment of taxes, and while property was owned by state repairs were made to ditches and assessments were not spread against lands, no assessment could later be spread against lands after sale of lands by state to private party. Op. Atty. Gen., (425c-3), May 27, 1940.

4. Held exempt.

Where fee is conveyed to county, property is exempt from future taxation, and payment of taxes which are a lien at time of conveyance cannot be enforced, but where an easement only is conveyed fee remaining in grantor, payment of taxes which are remaining at time of conveyance may be enforced, as against interest remaining in grantor, and interest in county is exempt from future taxation during existence of easement. Op. Atty. Gen. (373B-17(e)), Oct. 7, 1939.

Land conveyed to a cemetery association for burial purposes is exempt from taxation, even though part of it is leased annually for farm purposes on a cash rental basis, and association has never filed articles of incorporation. Op. Atty. Gen., (414d-4), May 1, 1940.

No land owned by the trustees of Hamline University is subject to taxation, i. e. general taxes. Op. Atty. Gen., (414B-4). May 3, 1940.

5. Held not exempt.

Property turned over to church and used for religious purposes for many years without payment of rent or interest was not exempt from taxation while owned by individual, but commissioner of taxation could grant reduction or abatement of tax after owner conveyed it to church. Op. Atty. Gen. (414d-6), Dec. 12, 1939.

The state's title to lands acquired by foreclosure of "rural credits" mortgages is subject to tax liens accruing while the mortgages were in effect, and same rule necessarily follows where state has sold land acquired through foreclosure to a purchaser who covenants to pay taxes assessed against land during continuance of his contractual ownership and whose rights thereto are subsequently canceled by statutory notice of default. State v. Washington County, 292NW204. See Dun. Dig. 9151a.

Cases cited on point whether beauty and hairdressing school personal property is exempt from taxation. Op. Atty. Gen., (414B-3), May 7, 1940.

6. Effect of assessing exempt property.

Lien for taxes existing prior to acquisition by state or subdivision thereof may remain on auditor's books, but any proceeding to forfeit for delinquent taxes is void. Op. Atty. Gen. (414c-3), Sept. 29, 1939.

1977. Real property.

Expansion of operation was not test upon which to base right to allowance under War Mineral Relief Act of Mar. 2, 1919, as amended (40 Stat. 1272, 42 Stat. 322, 45 Stat. 1166) of payments to state of Minnesota for

taxes under this section during period of world war in which mining operations were carried on under government stimulation, and denial by Secretary of Interior of such allowance upon applying such test was error. Crowley v. I., (AppDC), 107F(2d)256. Cert. den., 60SCR582.

Where express company has leased portion of large building for a period of years, real estate tax should be assessed against the entire building, since real estate cannot be divided for purposes of assessment. Op. Atty. Gen. (474-d-1), July 24, 1940.

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

Taxation of taconite. Laws 1941, c. 375.

Register of deeds can properly refuse to record a conveyance of mineral rights, which has not heretofore been separated from fee title, without certificate from county auditor and treasurer that all taxes have been paid. Op. Atty. Gen. (373B-9 (B)), May 18, 1940.

Where record title to surface is in one person and record title to minerals is in another person or set of persons, it is duty of taxing officers to assess and tax separately interests of surface and mineral owners. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

1979. Personal property.

Gasoline held in storage on May 1 is subject to a personal property tax even though gasoline tax has been paid. Op. Atty. Gen., (325), Mar. 1, 1941.

(3).

Where taxpayer owns a contiguous tract of land less than one-third of an acre in extent on part of which she maintains her home, and the remainder of land has been leased for 10 years to a tenant who has erected buildings thereon subject to removal upon termination of lease, tenant's buildings should be assessed with the land. Op. Atty. Gen. (232d), Sept. 9, 1940.

1980. Other definitions.

(5).

Liquor stock of retailer should be valued without deducting taxes previously paid and evidenced by revenue stamps. Op. Atty. Gen. (421a), July 5, 1940.

1983. Powers of tax commission.—The Commissioner of Taxation shall prescribe the form of all blanks and books required under this charter. He shall hear and determine all matters of grievance relating to taxation. He shall have power to grant such reduction or abatement of assessed valuations or taxes and of any costs, penalties or interest thereon as he may deem just and equitable, and to order the refundment in whole or in part of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. Application therefor shall be submitted with a statement of facts in the case and the favorable recommendation of the county board or of the board of abatement of any city where any such board exists, and the county auditor of the county wherein such tax was levied or paid. In the case of gross earnings taxes the application may be made directly to the Commissioner without the favorable action of the county board and county auditor, and the Commissioner shall direct that any gross earnings taxes which may have been erroneously or unjustly paid shall be applied against unpaid taxes due from the applicant for said refundment. But no reduction, abatement or refundment of any special assessments made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality. The Commissioner may refer any question that may arise in reference to the true construction of this chapter to the attorney general, and his decision thereon shall be in force and effect until annulled by the judgment of a court of competent jurisdiction. The Commissioner shall forward to the county auditor a copy of the order by him made in all cases in which the approval of the county board is required. The Commissioner may by written order abate, reduce or refund any penalty imposed by any law relating to taxation, if, in his opinion, the enforcement of such a penalty would be unjust and inequitable. Such order shall, in the case of real and personal property taxes, be made only on application and approval as provided in this section; in the case of all other taxes, such order shall be made on application of the taxpayer to the Commissioner and shall be valid only if approved in writing by the attorney general. (As amended Act Apr. 25, 1941, c. 454, §1.)

Taxes levied by state of Minnesota on lands beyond the northern boundary of the United States were void, and taxpayer, as prerequisite to action for recovery of money paid as taxes on such lands, was not required to resort to the administrative proceedings authorized in cases where application for refund or abatement of taxes is contemplated. Pettibone v. C., (DC-Minn), 31FSupp 881.

Taxes paid under a mistake of law cannot be recovered. Id.

Voluntary payments cannot be recovered, but payments made under a mistake of fact are not voluntary payments. Id.

Form provided for application for reduction in assessed valuation of personal property. Op. Atty. Gen. (421a-15), Nov. 23, 1939.

Property turned over to church and used for religious purposes for many years without payment of rent or interest was not exempt from taxation while owned by individual, but commissioner of taxation could grant reduction or abatement of tax after owner conveyed it to church. Op. Atty. Gen. (414d-6), Dec. 12, 1939.

Mortgage registry tax may be refunded in the discretion of the commissioner where mortgagors decided not to complete transaction, and mortgage was satisfied of record. Op. Atty. Gen., (418a-6), Jan. 8, 1940.

County board has power to recommend granting application for reduction of assessed valuation of township but does not have power to make reduction. Op. Atty. Gen. (424a-15), Jan. 8, 1940.

Commissioner of taxation may allow taxes represented by a confessed judgment to be settled for less than full amount, on recommendation by county board and county auditor. Op. Atty. Gen. (412a-10), Feb. 5, 1940.

In absence of an order of tax commissioner specifically granting an abatement of penalty and interest, they must be imposed. Op. Atty. Gen. (505J), March 9, 1940.

Default in confession of judgment does not prevent application for abatement of delinquent taxes under this section. Op. Atty. Gen., (412a-10), May 20, 1940.

This section is applicable to taxes on land owned by Department of Rural Credits following cancellation of contracts for deeds. Op. Atty. Gen. (770g), June 20, 1940.

There is no statutory provision for reinstatement of taxes which have been abated by the commissioner of taxation. Id.

County board has no power to abate penalty and interest on delinquent taxes, but may recommend such abatement to state commissioner of taxation. Op. Atty. Gen. (505a), Sept. 17, 1940.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

Notice should be given attorney general of an order granting reduction abatement or refundment in excess of $100. Op. Atty. Gen. (130a), Dec. 23, 1940.

LISTING AND ASSESSMENT

1984. Time.

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

1985. Omitted property.

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

1986. Assessment—Mode.

In absence of any charter provisions prohibiting it, city council may enter into contract with a person to reassess property in city for agreed compensation. Op. Atty. Gen., (12a), Feb. 4, 1941.

1986-1. Compensation of assessors in certain counties.—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 money and credits, of more than $450,000,000, 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 $5.00, 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; provided, when the county auditor shall direct an assessor to perform work additional to the work performed within the 120 day period, the assessor shall be paid for such addi-

tional work at the rate of 75 cents per hour, but not to exceed $50.00 in addition to the compensation hereinbefore provided. (As amended Act Apr. 16, 1941, c. 248, §1.)

Assessor is not entitled to any compensation for checking division sheet sent to him by county auditor, at least for services performed after the last Monday in July. Op. Atty. Gen. (12-B-1), Sept. 5, 1940.

1986-2. Time for performance of duties; etc.

Assessor has until last Monday in July to perform his duties and return his books to the county auditor. Op. Atty. Gen. (12B), July 5, 1940.

Assessor is not entitled to compensation for services rendered after last Monday in July. Op. Atty. Gen. (12-B-1), Sept. 5, 1940.

1988. Deputy assessors.

Payment of a salary to a deputy assessor is discretionary with city council. Op. Atty. Gen. (12E), June 26, 1940.

1990. Assessor's duties.

1. Assessments, when and how made.

Where lands were annexed to city of Austin by resolution adopted by city council on July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen. (59a-1), Sept. 27, 1939.

Where taxpayer owns a contiguous tract of land less than one-third of an acre in extent on part of which she maintains her home, and the remainder of land has been leased for 10 years to a tenant who has erected buildings thereon subject to removal upon termination of lease, tenant's buildings should be assessed with the land. Op. Atty. Gen. (232d), Sept. 9, 1940.

1992. Valuation of property.

Liquor stock of retailer should be valued without deducting taxes previously paid and evidenced by revenue stamps. Op. Atty. Gen. (421a), July 5, 1940.

1993. Classification of property.—

Subdivision 1. 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 provided by this section.

Subdivision 2. Class 1. Iron ore whether mined or unmined shall constitute Class one and shall be valued and assessed at 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, three "b" and four 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.

Subdivision 3. 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 and shall be valued and assessed at 25 per cent of the full and true value thereof.

Subdivision 4. Class 3. All agricultural products; except as provided by class three "a" and class three "d", 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 "d" and all unplatted real estate, except as provided by classes one and three "b" hereof, shall constitute class three and shall be valued and assessed at 33⅓ per cent of the true and full value thereof.

Subdivision 5. Class 3a. All agricultural products in the hands of the producer shall constitute class three "a" and shall be valued and assessed at ten per cent of the full and true value thereof.

Subdivision 6. Class 3b. All unplatted real estate, except as provided by class one hereof and which is used for the purposes of a homestead, shall constitute class three "b" and shall be valued and assessed at 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 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.

Subdivision 7. Class 3c. All platted real estate, except as provided by class one hereof and which is used for the purposes of a homestead, shall constitute class 3c and shall be valued and assessed at 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 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.

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 33⅓ per cent and 40 per cent of the true and full value thereof respectively.

Subdivision 8. Class 3d. Livestock, poultry, all horses, mules and asses used exclusively for agricultural purposes, all agricultural tools, implements, and machinery used by the owner in any agricultural pursuit, shall constitute class 3d and shall be valued and assessed at 20 per cent of the full and true value thereof.

Subdivision 9. Class 4. All property not included in the preceding classes shall constitute class four and shall be valued and assessed at 40 per cent of the full and true value thereof. (As amended Act Apr. 24, 1941, c. 436, §1.)

Act Apr. 24, 1941, c. 436, §2, makes act take effect Jan. 1, 1941.

Editorial note. This act was amended three times on the same day. We are setting out the complete text of such amending acts. See post.

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 which either (a) is mined by underground methods and placed in stockpiles subsequent to August 1 of a calendar year and prior to the next succeeding May 1, and which contains phosphorus in excess of .180 per cent, dried analysis, or which is classified by the iron ore trade as silicious, manganigerous, Mesabi Bessemer, or Mesabi non-Bessemer ore, or (b) is mined by open pit methods, and in accordance with good engineering and metallurgical practice, requires concentration other than crushing or screening or both to make it suitable for commercial blast furnace use, and which is so concentrated and placed in stockpile subsequent to August 1 of a calendar year and prior to the next succeeding May 1, for two taxable years after being mined 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 stockpiles 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.

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. Livestock, 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 (33⅓) 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.

Class 3b. All unplatted real estate, except as provided by class one (1) hereof and which is used for the purpose 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 the excess of the sum of $4,000, 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 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 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.

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 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 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 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.

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 33⅓ 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. (As amended Act Apr. 24, 1941, c. 437, §1.)

Editorial note. This act was amended three times on the same day. We are setting out the complete text of such amending acts. See ante and post.

1993. Classification of property.—

Subdivision 1. 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 stockpiles 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.

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. Livestock, 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 (33⅓) 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.

Class 3b. All unplatted real estate, except as provided by class one (1) hereof and which is used for the purpose 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, 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 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 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.

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 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 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 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.

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 33⅓ 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.

Subdivision 2. Real estate actually occupied and used for the purpose of a homestead by any person entering the service of the armed forces of the United States, if such entry took place on or after July 1, 1940, or takes place at any time after the passage of this act, shall, notwithstanding the removal therefrom of such person and his family, be classified in Class 3b or 3c, as the case may be, if such person shall file with the assessor of the district where such real estate is located, within one month from his entry into the service of the armed forces of the United States, and in any event prior to May 1 next following such entry, an affidavit, describing the real estate and stating that he so occupied said real estate in good faith as a homestead, the dates of actual occupancy, that he is absent therefrom solely because he is serving in the armed forces of the United States (stating his grade, branch of service, and organization, and the place where he is stationed or to which he has been ordered), that he intends to return thereto as soon as he shall be discharged or relieved from said service, and that he claims said real estate as his homestead. In the event such person shall be in such service at the time of passage of this act, such affidavit may be filed on or before May 1, 1941. Such affidavit may be renewed from year to year by a certificate executed by such person and certified to by his company commander or other immediate superior commissioned officer, certifying that the facts stated in such affidavit are still true and giving any changes in rank or station; and such certificate shall be filed on or before May 1st of each year. The assessor shall deliver all such affidavits and renewal certificates to the county auditor at the time of returning his assessment books, and the county auditor shall file and preserve such affidavits and renewal certificates and shall index them by name and by description of real estate; and they shall be open to reasonable inspection. Every person who, for the purpose of obtaining or aiding another in obtaining any benefit under this subdivision, shall knowingly make or submit to any assessor any affidavit or other statement which is false in any material matter shall be guilty of a felony. (As amended Act Apr. 24, 1941, c. 438, §1.)

Editorial note. This act was amended three times on the same day. We are setting out the complete text of such amending acts. See ante.

Act Apr. 24, 1941, c. 438, §2 provides that nothing herein contained or omissions shall be construed as repealing any prior amendments to the foregoing sections by the 1941 Session of the Legislature.

Forms for application for reclassification as homestead, certificate of recommendation by county board and county auditor, and order of commissioner of taxation. Op. Atty. Gen. (414a-13), Sept. 26, 1939.

Elements entering into classification of land as platted, unplatted, and industrial. Op. Atty. Gen., (554c), March 7, 1940.

Class 1.

Where mineral is listed and assessed separately from surface, mineral should be assessed at 50 per cent of its true value if it is iron ore, and at 33⅓ per cent if it is some other mineral. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

Class 2.

Personal property exemption provided in §1975(8) is applicable to any personal property which taxpayer may own and is not limited to household goods described in §1993(2). Op. Atty. Gen. (421B-5), Dec. 6, 1940.

Class 3b.

Where taxpayer owns a contiguous tract of land less than one-third of an acre in extent on part of which she maintains her home, and remainder of land has been leased for 10 years to a tenant who has erected buildings upon it subject to removal upon termination of lease, homestead exemption may be applied only to that portion of premises upon which owner resides and which is not leased to tenant, and part leased should be placed in Class 4. Op. Atty. Gen. (232d), Sept. 9, 1940.

Homesteads up to $4,000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

Class 3c.

State board of investment may not invest in bonds of a school district if total indebtedness of district will exceed 15% of actual assessed valuation, and legislature is powerless to provide otherwise. Op. Atty. Gen. (928a-11), March 21, 1940.

Provision as to valuation for purpose of salaries and tax limitations applies to township levies of taxes. Op. Atty. Gen., (519o), April 5, 1940.

Mere temporary absence of owner will not terminate his homestead rights, providing he maintains his living quarters upon premises in condition for continued occupancy by himself or his family, showing his intention to return presently, but if owner moves and actually establishes his regular home elsewhere, he thereby terminates his homestead right for taxation purposes, even though he may intend to return there at some future time. Op. Atty. Gen., (232d), May 13, 1940.

Filing notice of homestead claim under §8342 has no effect upon homestead rights for taxation purposes. Op. Atty. Gen., (232d), May 23, 1940.

Exemption goes only to an individual taxpayer occupying premises as his homestead, not to a corporation. Op. Atty. Gen., (232d), May 29, 1940.

Homesteads up to $4,000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

Class 3d.
Proper valuations to use in determining amount of county and state school taxes are respectively for unplatted real estate used as a homestead 20 per cent of true value and for platted real estate used as a homestead 25 per cent of true and full value. Op. Atty. Gen. (519), Dec. 12, 1940.

LISTING PERSONAL PROPERTY

2003. Personalty—Where listed.
Listing and assessment of deeds located in county other than that of owner's residence should be in county of residence. Op. Atty. Gen. (421a-17), Nov. 14, 1940.

2004. Capital stock and franchises.
Section covers all types of personal property owned by corporation, and pipe lines owned by a natural gas corporation must be assessed at its principal place of business. Op. Atty. Gen., (421c-28), Mar. 3, 1941.

2009. Express companies, etc.
An airline company which is not a Minnesota corporation and which is engaged as a common carrier in carrying passengers and freight for hire is a "transportation company" within meaning of this section, and its airplanes and other personal properties should be assessed in taxing district where they are usually kept, regardless of principal place of business of corporation. Op. Atty. Gen. (421a-17), Dec. 14, 1940.
Section covers all types of personal property owned by corporation, and pipe lines owned by a natural gas corporation must be assessed at its principal place of business. Op. Atty. Gen., (421c-28), Mar. 3, 1941.

2012. Electric light and power companies; etc.
Notwithstanding Laws 1939, c. 321, Mason's Minn. Stats. 1927, §§2012-1 to 2012-3, remain applicable to transmission lines outside corporate limits operated by cooperative association, and personal property of such association within corporate limits remain subject to assessment as provided by §2012. Op. Atty. Gen. (421c-30), Oct. 25, 1940.

2012-2. Same—Percentage of assessments; etc.
Notwithstanding Laws 1939, c. 321, Mason's Minn. Stats. 1927, §§2012-1 to 2012-3, remain applicable to transmission lines outside corporate limits operated by cooperative association, and personal property of such association within corporate limits remain subject to assessment as provided by §2012. Op. Atty. Gen. (421c-30), Oct. 25, 1940.

2012-6. Same—Amount of tax.
Act is applicable to all members of association, even though they are not consumer members and are waiting for such time as they may be served. Op. Atty. Gen. (93a-42), Sept. 25, 1939.
Notwithstanding Laws 1939, c. 321, Mason's Minn. Stats. 1927, §§2012-1 to 2012-3, remain applicable to transmission lines outside corporate limits operated by cooperative association, and personal property of such association within corporate limits remain subject to assessment as provided by §2012. Op. Atty. Gen. (421c-30), Oct. 25, 1940.

2017. Property moved between May and July.
Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

REVIEW AND CORRECTION OF ASSESSMENTS

2034. Board of review.—The town board of each town, the council or other governing body of each village and city, except in cities whose charters provide for a board of equalization, and except as provided in Mason's Minnesota Statutes of 1927, Section 2035, shall be a board of review. Such board shall meet on the fourth Monday of June at the office of the clerk to review the assessment of property in such town or district, and they shall immediately proceed to examine and see that all taxable property in their town or district has been properly placed upon the list, and duly valued by the assessor. In case any property, real or personal, shall have been omitted, said board shall place it upon the list with its true value, and they shall correct the assessment so that each tract or lot of real property, and each article, parcel, or class of personal property, shall be entered on the assessment list at its true and full value; but no assessment of the property of any person shall be raised until he has been duly notified of the intent of the board so to do. On the application of any person feeling aggrieved, they shall review the assessment, and correct it as shall appear to them just. A majority of the members may act at such meeting, and may adjourn from day to day until they shall finish the hearing of all cases presented. The assessor shall attend, with his assessment books and papers, and take part in the proceedings, but shall not vote, and shall note all changes and additions made by the board, and correct his work accordingly. All complaints of individuals, residents of the town or district, in reference to the assessment of personal property, shall be heard and decided by the town board; but the complaints of nonresidents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of such board, shall be heard and determined by the county board of equalization. (As amended, Act Apr. 24, 1941, c. 402, §1.)
Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

2035. Board of review in cities.
City charter governs time that city board of equalization shall receive compensation. Op. Atty. Gen. (206c), Aug. 22, 1940.

2036. Notice of meeting.—The clerk shall give at least ten days' nosted notice of the time and place of the meeting of the board of review; but the failure to give such notice or hold such meeting shall not vitiate any assessment, except as to the excess over the true and full value of the property. (As amended Act Apr. 24, 1941, c. 402, §2.)

2042. Correction of books.
This section does not entitle assessor to any compensation for checking division sheet sent out by county auditor, at least after last Monday in July. Op. Atty. Gen. (12-B-1), Sept. 5, 1940.

EQUALIZATION OF ASSESSMENTS

2049. County board of equalization.
County board meeting as a board of equalization and passing upon assessed valuation of a township in 1938, exhausted its authority and has no authority in Jan., 1940, to pass upon application for reduction in valuation of a township so as to affect taxes for 1939 payable in 1940. Op. Atty. Gen. (424a-15), Jan. 8, 1940.

LEVY AND EXTENSION

2057. County taxes.
Counties having population of not less than 22,000, or more than 30,000, containing 36 congressional or 30 organized townships, with an area of not less than 665,000 acres nor more than 670,000 acres, may levy taxes for general revenue purposes to defray county expenses, not to exceed $75,000. Act Feb. 13, 1941, c. 9.

Laws 1941, c. 93, authorizes tax levies in excess of present limitations in certain counties having a population of not less than 30,000.

Certain counties having population of between 14,000 and 15,000. Act Mar. 28, 1941, c. 101, §1.

Counties containing between 22 and 24 congressional townships, having populations between 18,000 and 19,000, and having assessed valuations of between $7,000,000 and $9,000,000, may levy taxes for general revenue purposes, in excess of legal limitations, in certain amount for period of year after passage of act. Act Apr. 9, 1941, c. 144.

2057-3. County board to fix levy.
Levy for general revenue purposes in certain counties having population of between 30,000 and 33,000. Act Mar. 28, 1941, c. 93, §1.

2058. City, village, town, and school taxes.
Reenacted as 3156-8(3) in part.
Where lands were annexed to city of Austin by resolution adopted by city council on July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen. (59a-1), Sept. 27, 1939.

County auditor is not authorized to levy a tax where neither electors nor board of school district makes a levy as required by law. Op. Atty. Gen. (519M), Oct 24, 1940.

2058-1. Salaries of members of board; etc.
Alderman who, as chairman of ways and means committee of city council, served as an ex-officio member of board of estimate and taxation of city of Minneapolis, is entitled to compensation or his services on board at full rate prescribed by 1931 Act up to maximum of $500 per year, notwithstanding that compensation of aldermen has been increased to $2400. Op. Atty. Gen. (63a-2), Nov. 6, 1940.

2059. Auditor to fix rate.
A village cannot levy a tax which will exceed 2% of assessed valuation, and if village levy exceeds 20 mills, auditor should reduce levy to that amount, unless an excess is necessary to retire outstanding bonds or pay interest thereof, or is for some special purpose authorized by statute in addition to 20 mill limit. Op. Atty. Gen. (519i), Nov. 28, 1939.

2060. County board to levy additional tax in certain cases.
Act Feb. 21, 1941, c. 14, §1, amends Act Feb. 3, 1939, c. 6, allowing certain counties having an area of not less than 43 nor more than 45 congressional townships, and population of not less than 20,000 nor more than 31,000, to levy taxes for general revenue purposes not exceeding $85,000.
County commissioners may levy taxes in excess of legal limitations for revenue purposes in counties containing not less than 22, nor more than 24 full or fractional congressional townships, having not less than 18,000 nor more than 19,000 inhabitants, and having an assessed valuation of not less than $7,000,000, nor more than $9,000,000. Laws 1941, c. 144.
Act Apr. 28, 1941, c. 484, authorizes the levy of a tax for state purposes for the fiscal years ending June 30, 1942, and June 30, 1943, at such a number of mills that the total rate shall not exceed nine mills.

Notes of Decisions

Limit that a county auditor can levy in computing tax rate for township revenue purposes varies in townships of different valuations, but limitation is fully covered by Laws 1939, c. 170, amending this section, which supersedes any former acts which are inconsistent therewith. Op. Atty. Gen. (519i), Nov. 28, 1939.
Electors of a town can vote a levy up to 15 mills for road and bridge purposes, and in an emergency may levy an additional five mills for road and bridge purposes. Op. Atty. Gen., (519o), April 5, 1940.
(3).
Limitation on township levy for road and bridge fund is governed by §2573, and not §2060, and Laws 1939, c. 170, did not supersede all former provisions. Op. Atty. Gen., (519i), March 5, 1940, reversing Op. Atty. Gen., Nov. 23, 1939, and Op. Atty. Gen., Nov. 28, 1939.
Absolute duty to adequately provide for the poor and needy prevents a limitation on levy for poor purposes, and townships, especially under township system, should levy sufficient for their needs, and county auditor should permit such assessment to stand. Op. Atty. Gen., (519i), March 5, 1940.

2060-1. Rate of tax levy in counties, etc.
Annual state, county, township, and school levy in certain counties having populations of between 25,000 and 32,000. Act Apr. 25, 1941, c. 451, §1.

2060-2. Rate of tax levy in towns—Exceptions.
Section 3286-6 authorizes county auditor to make levy to pay for state's claim of public examination as an additional levy without regard to 17 mill limitation imposed by §2060-2. Op. Atty. Gen. (519O), Dec. 18, 1940.

2061. Tax levy for general purposes limited.—The total amount of taxes levied by or for any city or village, having a population of more than 3,000, 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 in any year the amount hereinafter indicated per capita of the population of such city or village: 1941, $67.50 per capita; 1942, $65.00 per capita; 1943, $62.50 per capita; 1944, $60.00 per capita; 1945, $57.50 per capita; 1946, $55.00 per capita; 1947, $52.50 per capita; 1948 and thereafter, $50.00 per capita. In the case of cities or villages having a population of 3,000 or less, such levies shall not exceed in any year the amount hereinafter indicated per capita of the population of such city or village: 1941 and 1942—$70.00 per capita; 1943—$67.50 per capita; 1944—$65.00 per capita; 1945—$62.50 per capita; 1946—$60.00 per capita; 1947—$57.50 per capita; 1948—$55.00 per capita; 1949—$52.50 per capita; 1950 and thereafter $50.00 per capita. (As amended Act Apr. 28, 1941, c. 543, §1.)

Levies made under Laws 1933, ch. 280 and Mason's Minn. Stat. 1927, §1933, are included within limitations. Op. Atty. Gen., (519q), Feb. 25, 1941.

2061-2. Tax levy in certain villages.—Any village now or hereafter having a population of not less than 2,800 or more than 3,200 according to the 1940 federal census, and an assessed valuation of not more than $900,000, exclusive of money and credits, located in a county having an area of not less than 43 nor more than 45 full or fractional townships and a population of not less than 25,000 nor more than 32,000, according to the last federal census, may levy annually for general corporation purposes, an amount not exceeding 25 mills on its assessed valuation. (As amended Apr. 9, 1941, c. 133, §1.)

2062. Tax levy for schools limited.—The total amount of taxes levied by or for any school district in the state of Minnesota having a population of more than 5,000 for all general and special school purposes whatsoever including the county school tax of one mill, required to be levied by the statute, but exclusive of any state levy, shall not exceed in any year the amount hereinafter indicated per capita of the population of such school district: 1941, $57.50 per capita; 1942, $55.00 per capita; 1943, $52.50 per capita; 1944, $50.00 per capita; 1945, $47.50 per capita; 1946, $45.00 per capita; 1947, $42.50 per capita; 1948 and thereafter $40.00 per capita; in school districts having a population of 5,000 or less, such levy shall not exceed in any year the amount hereinafter indicated per capita of the population of such school district; 1941 and 1942—$60.00 per capita; 1943—$57.50 per capita; 1944—$55.00 per capita; 1945—$52.50 per capita; 1946—$50.00 per capita; 1947—$47.50 per capita; 1948—$45.00 per capita; 1949—$42.50 per capita; 1950 and thereafter—$40.00 per capita. Provided, if in any year the maximum levy specified herein will not amount to $110,000 in any district, such district in said year may levy in excess of the amounts herein provided but not in excess of $60.00 per capita and not in excess of $110,000. (As amended Act Apr. 28, 1941, c. 543, §2.)

2063. Not to apply to outstanding indebtedness.—If, prior to the calendar year 1941, any such city, village or school district has incurred by proper authority a valid indebtedness, including bonds, in excess of its cash on hand, plus any amount in any sinking fund for the payment of indebtedness, such city, village or school district, 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 that nothing in this section, as amended, shall be construed to affect or limit levies heretofore or hereafter made pursuant to Laws 1921, Chapter 417, Section 3, for the retirement of indebtedness incurred prior to April 21, 1921, within the limits then permitted by law, or pursuant to Laws 1929, Chapter 206, for the retirement of indebtedness incurred prior to the calendar year 1929, within the limits then permitted by law. The term indebtedness shall include any indebtedness which any such school district is obligated to pay pursuant to Laws 1935-1936, Extra Session, Chapter 2. (As amended Act Apr. 28, 1941, c. 543, §3.)

2064. Special census may be taken.
Either last state or federal census must be used as a basis for determining amount of taxes which may be levied, or a special census of population of entire school district must be taken at expense of district and result of that census must be used, but a special census of only a city within a school district indicating an increase in population could not be used. Op. Atty. Gen. (519M), Dec. 18, 1940.

2066. County auditor to fix amount of levy.—If any such municipality 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; provided if such levy shall include any levy for the payment of bonded indebtedness or judgments, such levies for bonded indebtedness or judgments shall be extended in full, and the remainder of said levies shall be re-

duced so that the total thereof, including levies for bonds and judgments, shall not exceed such amount as the limitations herein prescribed will permit. (As amended Act Apr. 28, 1941, c. 543, §4.)

Act Apr. 28, 1941, c. 543, §5, provides that this act shall be considered an additional limitation and shall not 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.

Section 6 of said act provides this act shall take effect and be in force from and after its passage.

2066-4. May sell certificates of indebtedness.
Opinion of August 11, 1934 has been superseded. Op. Atty. Gen., (519i), May 17, 1940.

2070. Contracts in excess void—Liability of officers.
Authority of a county board is limited so that no contracts made may extend beyond term of office in exercising governmental powers, but in exercising business or proprietary powers, that body may ordinarily bind successors in office, as in purchasing insurance, and insurance may be purchased in a mutual company if maximum liability is within tax limits. Op. Atty. Gen. (707a-7), March 14, 1940.

2073-1. Publication of personal property tax lists, etc.
County treasurer is not required to call for bids for publication of personal property tax list. Op. Atty. Gen. (421a-10), Dec. 29, 1939.

COLLECTION BY TREASURER

2080. Undivided interest—Payment and receipt.
Where persons owning undivided interest paid proportionate share of taxes covering year 1931 but failed to pay any taxes for 1932 and subsequent years, and other undivided interests were subject to forfeiture by the state, persons owning undivided interest upon which they paid taxes for 1931 could redeem their respective interests by paying their proprotionate shares of 1932 and subsequent taxes with interest and penalties, and might also redeem the other interest, but not in their own name. Op. Atty. Gen., (423h), May 10, 1940.

2081. Orders received for taxes.
Commissioner of banks liquidating a bank can compel village to pay warrants held by bank notwithstanding that there are delinquent taxes on buildings owned by the bank far in excess of the amount of the warrants. Op. Atty. Gen. (476c-6), Oct. 30, 1939.

ACCOUNTING AND DISTRIBUTION OF FUNDS

2085. Auditor to keep accounts.
Where on death of city treasurer city council could not agree on appointment of any person as city treasurer, but under its charter appointed a person as assistant city treasurer with all powers of a city treasurer, city clerk could file a certificate to the effect that the assistant city treasurer was duly authorized to receive all money payable to the city treasurer, and that assistant treasurer had given bond according to law. Op. Atty. Gen. (63a-1), Jan. 19, 1940.

DELINQUENT PERSONAL PROPERTY TAXES

2091. Payment under protest.
Mere fact that taxes were illegal does not make the payment thereof involuntary. Pettibone v. C., (DC-Minn), 31FSupp881.

2097. Clerk's fee—Execution.
A personal tax judgment is not a lien against the homestead, but no personal property, including household goods, is exempt from execution. Op. Atty. Gen. (421a-16), Sept. 25, 1939.

If clerk receives a definite salary in lieu of all fees collected by him, he is not entitled to fees provided for herein, but if he receives fee in lieu of a definite salary, he is entitled to these fees. Op. Atty. Gen. (144B-21), Sept. 30, 1939.

2098. Sheriff's fees.
Where a default personal property tax judgment is entered and sheriff returns execution unsatisfied, he is entitled to usual fee, including mileage and percentage, in case taxpayer thereafter voluntarily pays amount of tax judgment to county treasurer. Op. Atty. Gen. (390c-13), Nov. 28, 1939.

2102. Interest.
Personal property tax reduced to judgment bears interest at 6%. Op. Atty. Gen. (520i), Dec. 8, 1939.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

DELINQUENT REAL ESTATE TAXES

2104. Penalty and interest on real estate taxes.
If an owner pays no part of his land taxes before June 1st, he may pay one-half thereof at any time before November 1st together with penalties accrued on that one-half, and remaining one-half may be paid without penalty at any time prior to November 1st. Op. Atty. Gen. (474h), Oct. 6, 1939.

2105-3. Delinquent real estate taxes—Payment.—In any case where taxes for two or more years are delinquent against a parcel of land, such taxes for one or more entire years, if held by the state, may be paid in the inverse order to that in which the taxes were levied, with accrued penalties, interest, and costs upon the taxes so paid, without payment of the taxes for the first of such years; provided, that such payment shall not affect the lien of any unpaid taxes or tax judgment. (Act Mar. 28, 1941, c. 97, §1.)

2105-4. Same—Credits—Interest.—Whenever the sheriff shall pay into the county treasury rents collected as provided in Mason's Supplement 1940. Section 2150, and acts amendatory thereof or supplementary thereto, the same shall be applied in the inverse order to that in which such taxes were levied, crediting the same as follows: (1) against penalties, interest, and costs upon the last delinquent taxes, (2) against such taxes as levied; and the same procedure shall be followed for each year's delinquent taxes until such payments have been exhausted. Whenever, under Mason's Supplement 1940, Section 2150, a year's taxes are partially paid, interest shall be charged thereafter only upon the unpaid balance; provided, that in case of part payment of the taxes for any year, the land affected shall remain, as to the unpaid balance, subject to sale, redemption, forfeiture, and all other proceedings, respecting delinquent taxes in like manner as for a full year's taxes. (Act Mar. 28, 1941, c. 97, §2.)

2109. Designation of newspaper.—At their annual meeting in January, and prior to the designation, the county board shall open, examine and consider all offers for publication filed or presented as provided in Section 2096, and shall thereupon award the publication of the notice and list to the publisher or proprietor of the newspaper whose offer is found to be the lowest, and does not exceed forty-five cents for each description. The board may reject any offer, if, in its judgment the public interest so require, and may thereupon designate a paper without regard to any rejected offer. In counties now or hereafter having a population of 75,000 or more, the board shall designate a daily paper of general circulation throughout such county; provided that if no such daily paper submits a bid at the rate herein provided, the board may designate a weekly paper of general circulation throughout said county. In any county in which there is no legal newspaper the board shall designate any such newspaper printed in the judicial district in which the county is situated, and circulating in the county. Every such designation shall be by resolution, which shall be substantially in the following form:

Resolved, that ..... (here state the name of the newspaper) be, and the same is hereby, designated by the county board of the county of .....as the newspaper in which the notice and list of the real estate remaining delinquent on the first Monday of January, 19.., shall be published.

A copy of the resolution certified by the auditor, shall be filed with the clerk of the district court. If, for any reason, the board fail to designate a newspaper, or the proprietor of the newspaper fail to give the required bond, the auditor shall thereupon designate the same in writing, and immediately file such writing in his office, and a certified copy thereof with such clerk. (As amended Act Apr. 24, 1941, c. 400, §1.)

2116. Who may answer—Form.

½. In general.

Procedure provided by §2126-1 to §2126-14 is exclusive method by which there may be raised a claim that property has been partially, unfairly or illegally assessed, or has been assessed at a valuation greater than its real or actual value, or that tax levied against it is illegal in whole or in part, and as to these defenses such sections supersede remedy provided in §2116, though defense that a tax has been paid or that property is exempt from tax so levied may be raised under either procedure, but if it is raised under procedure provided in §2126-1, et seq., judgment is conclusive and question may not again be raised by answer in delinquent tax proceedings. Op. Atty. Gen., (412a), April 25, 1940.

2117. Judgment when no answer—Form—Entry.

1. Statutory form must be followed.

Proposed changes in real estate tax judgment book should not be made until validity is upheld by supreme court or law amended to permit them. Op. Atty. Gen., (21f), Jan. 17, 1941.

9. Premature entry.

Entry of tax judgment six days before time of answering expired, is an irregularity not fatal in a collateral attack on the judgment. Miner v. B., 288NW582. See Dun. Dig. 9348.

DEFENSES OR OBJECTIONS TO TAXES ON REAL ESTATE

2126-1. Defense or objection to tax on land—Service and filing.

Procedure provided by §2126-1 to §2126-14 is exclusive method by which there may be raised a claim that property has been partially, unfairly or illegally assessed, or has been assessed at a valuation greater than its real or actual value, or that tax levied against it is illegal in whole or in part, and as to these defenses such sections supersede remedy provided in §2116, though defense that a tax has been paid or that property is exempt from tax so levied may be raised under either procedure, but if it is raised under procedure provided in §2126-1, et seq., judgment is conclusive and question may not again be raised by answer in delinquent tax proceedings. Op. Atty. Gen., (412a), April 25, 1940.

2126-4. Treasurer must stamp tax lists.

Where judgment is entered before time for filing of delinquent list it is not necessary to add premises upon which judgment has already been taken to delinquent list for purpose of taking a new judgment. Op. Atty. Gen. (412a-10), March 11, 1940.

2126-8. Penalties and interest.

Where a petition for review has been filed and judgment is entered prior to first of November, one-half or one-quarter of tax remaining unpaid after tax has been sustained in whole or in part, sections 2126-8 and 2126-10 require auditor to add to judgment an 8% penalty for failure to pay taxes for November 1st. Op. Atty. Gen. (412a-10), March 11, 1940.

2126-10. To be entered in judgment book.

Where judgment has been entered prior to publication of notice of regular annual sale, land shall be sold at such sale, but if judgment is entered subsequent to publication of notice for regular annual sale, then a special sale upon judgment shall be immediately advertised and land sold. Op. Atty. Gen. (412a-10), March 11, 1940.

TAX SALES

2127. Mode of sale.

2. Contents.

Notice following repealed law by specifying that at expiration of 5 years, each parcel of land sold at sale, and not redeemed, will become and be absolute property of the purchaser or of the state, was not sufficient to invalidate notice. Op. Atty. Gen., (419), Mar. 14, 1941.

2128. Public vendue.

4. Bidding in for state.

Where a village acquires deed to land which has been sold to the state for delinquent taxes, village need not pay the delinquent taxes and state cannot proceed to forfeiture and deed to the village should be recorded without payment of taxes. Op. Atty. Gen., (414a-11), May 7, 1940.

2129. Certificate of sale.

RIGHTS OF CERTIFICATE HOLDER

8½. In general.

Validity of a tax certificate and rights of holder thereunder are to be determined by law in force at time certificate issues. Absetz v. M., 290NW298. See Dun. Dig. 9406.

10. After expiration of redemption period.

One who enters into a collusive agreement with a life tenant for purpose of defeating interests of remaindermen cannot enforce a lien on property for amount paid to acquire title thereto at a tax sale. Turner v. E., 292 NW257. See Dun. Dig. 3167.

As between life tenant and remaindermen, it is duty of former to pay taxes, and acquisition of a tax title by a life tenant is treated as a payment or a redemption thereof for benefit of both life tenant and remaindermen. Id. See Dun. Dig. 3170.

Where land standing in name of married woman was sold for taxes to her daughter who paid subsequent taxes, and old age assistance was thereafter furnished surviving husband of owner and lien filed, on expiration of period of redemption taxpayer acquires title free from any claim on part of state, and further old age recipient has only a life estate which will terminate upon his death and render lien of state unenforcible. Op. Atty. Gen., (521p-4), May 10, 1940.

2137. Lands bid in for state.

CERTIFICATE OF ASSIGNMENT

9. Time of assignment.

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

2138. Unredeemed lands.

1. In general.

Lien of judgment creditor is extinguished by forfeiture to state for delinquent taxes. Op. Atty. Gen. (412a-10), Feb. 13, 1940.

State may execute conveyances to two persons as joint tenants. Op. Atty. Gen. (410-B), July 19, 1940.

2139. Same—Conduct of sale.

County board member may not rent or purchase. Op. Atty. Gen. (425c-10), Feb. 19, 1940.

2139-1. Same—Delinquent taxes for 1926.

Rights of purchaser at a delinquent tax sale under Laws 1927, c. 119, were not extinguished by failure to record his certificate of tax sale within statutory limit of time fixed and provided by §§2169 and 2170. Absetz v. M., 290NW298. See Dun. Dig. 9386.

2139-2. Same—Attacking validity of sales. [Repealed.]

Repealed. Act Apr. 24, 1941, c. 428. Pending actions not affected by such repeal.

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 established 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 utilizations 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, except as to conservation lands held by the state free from any trust in favor of any taxing district. Provided (1) that if any such lands are located within the boundaries of any organized town, or in-

corporated municipality, the classification or reclassification and sale 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 or may be released from the trust in favor of the taxing districts upon application of any state agency for any authorized use at not less than their value as determined by the county board. The commissioner of taxation shall have power to convey by deed in the name of the state any tract of tax-forfeited land held in trust in favor of the taxing districts, to any governmental subdivision for any authorized public use, provided that an application therefor shall be submitted to the commissioner with a statement of facts as to the use to be made of such tract and the need therefor and the recommendation of the county board. The deed of conveyance shall be upon a form approved by the attorney general and shall be conditioned upon continued use for the purpose stated in the application.

(b) Lands classified as conservation lands, unless reclassified as non-conservation lands, sold to a governmental subdivision of the state, or released from the trust in favor of the taxing districts as herein provided, will be held under the supervision of the county board of the county with which such parcels lie.

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. If upon investigation the commissioner of conservation determines that the lands covered by such resolution or any part thereof can be managed and developed for conservation purposes, he shall make a certificate describing the lands and reciting the acceptance thereof on behalf of the state for such purposes. The commissioner shall transmit the certificate to the county auditor, who shall note the same upon his records and record the same with the register of deeds. The title to all lands so accepted shall be held by the state free from any trust in favor of any and all taxing districts and such lands shall be devoted thereafter to the purposes of forestry, water conservation, flood control, parks, game refuges, controlled game management areas, public shooting grounds, or other public recreational or conservation uses, and shall be managed, controlled, and regulated for such purposes under the jurisdiction of the commissioner of conservation and the divisions of his department. In case the commissioner of conservation shall determine that any tract of land so held by the state and situated within or adjacent to the boundaries of any governmental subdivision of the state is suitable for use by such subdivision for any authorized public purpose, he may convey such tract by deed in the name of the state to such subdivision upon the filing with him of a resolution adopted by a majority vote of all the members of the governing body thereof, stating the purpose for which the land is desired. The deed of conveyance shall be upon a form approved by the attorney general and shall be conditioned upon continued use for the purpose stated in the resolution. All proceeds derived from the sale of timber, lease of hay stumpage, or other revenue from such lands under the jurisdiction of the conservation commissioner shall be paid into the general revenue fund of the state. The county auditor, with the approval of the county board, may lease conservation lands, remaining under the jurisdiction of the county board and may sell timber and hay stumpage thereon in the manner hereinafter provided, and all proceeds derived therefrom shall be distributed in the same manner as provided in Section 2139-18.

(c) 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. If any public improvement is made by a municipality after any parcel of land has been forfeited to the state for the non-payment of taxes and such improvement is assessed in whole or in part against the property benefited thereby, the clerk of such municipality shall certify to the county auditor immediately upon the determination of the assessments for such improvement the total amount that would have been assessed against such parcel of land if it had been subject to assessment. The county board shall determine the amount, if any, by which the value of such parcel was enhanced by such improvement and shall include such amount as a separate item in fixing the appraised value for the purposes of sale. 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. (As amended Act Apr. 23, 1941, c. 394, §1.)

(d) 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 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) 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) 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 records 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 certificate 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) 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. (As amended Act Apr. 28, 1941, c. 511, §1.)

In view of laws 1939, c. 328, wherein method of classification was changed to "conservation or non-conservation", county officials instead of making a complete new classification, may simply adopt a resolution reclassifying as non-conservation lands, lands previously classified as agricultural, and vice versa, provided such reclassification was warranted by actual condition of lands, and such reclassification should be done without delay, and if any lands have been sold since April 20, 1939, without reclassification as non-conservation, resolution should recite that they shall be deemed to have been so classified prior to sale thereof, and that sale is ratified and confirmed. Op. Atty. Gen. (525), Oct. 10, 1939.

As to land already offered for sale, county board may do one of three things: Continue to offer such land for sale at not less than their appraised value; order a reappraisal of any or all parcels of land remaining unsold; withdraw any or all parcels of land from sale; and if reappraisal is ordered, such parcel or parcels may again be offered for sale, but only by proceeding in same manner as provided for publication of notice and sale of such lands in the first instance, irrespective of whether or not there are new lands subsequently forfeited to the state. Id.

Where board by mistake appraised wrong land and purchaser paid full appraised value, purchase money may be refunded. Op. Atty. Gen., (424a-2), April 17, 1940.

County board may authorize application for zoning under city zoning ordinance or state law. Op. Atty. Gen. (700a-6), May 10, 1940.

Where improved homestead consisting of 5 platted lots was listed and appraised as vacant and unoccupied lots, sale was voidable for lack of a proper appraisal. Op. Atty. Gen., (425c), Feb. 1, 1941.

(a).

A governmental subdivision may purchase at private sale, and county board should by resolution make sale, and fix price to be paid and direct county auditor to issue certificate of purchase to governmental subdivision concerned, and duplicate of certificate should be forwarded to commissioner of taxation, who should issue a state deed to purchaser. Op. Atty. Gen. (425c-11), Oct. 16, 1939.

Without approval of board or governing body of town or municipality in which lands may be located, classification by county board is ineffective. Op. Atty. Gen. (983m), Sept. 24, 1940.

(c).

Appraisal of land need not be approved by town board or governing body of municipality. Op. Atty. Gen. (983m), Sept. 24, 1940.

(e).

Form of certificate to be given to a purchaser. Op. Atty. Gen. (409B-3), Sept. 19, 1939.

(f).

Form of deed for making a conveyance to joint tenant is prescribed by attorney general. Op. Atty. Gen. (410-B), Nov. 14, 1940.

Primary duty of cancelling defaulted certificates is upon county board and upon its failure to act it is mandatory that commissioner of taxation instruct board to proceed with cancellation unless time for payment has been extended. Op. Atty. Gen., (409-2-1), Jan. 15, 1941.

(g).

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

Sale of parcels of land out of regular order would not necessarily be void. Op. Atty. Gen. (425c), Oct. 22, 1940.

2139-15a. Sales without compliance with preceding section—Ratification.—Where a sale of tax-forfeited land under Mason's Supplement 1940, Section 2139-15, was made prior to June 20, 1940, without first having the appraised value of the timber thereon approved by the commissioner of conservation as therein provided, such sale may be ratified by the commissioner of taxation in the manner herein provided, if prior to the making of application therefor the entire purchase price of said tax-forfeited land has been paid. (Act Apr. 24, 1941, c. 433, §1.)

2139-15b. Same—Application for ratification.—The purchaser at such sale or the county auditor of the county in which said land is located shall file an application for the ratification of the sale with the board of county commissioners of said county, submitting therewith a statement of the facts of the case and satisfactory proof that the purchase price of such land at the sale has been paid in full. Such application shall be considered by the county board and shall thereafter be submitted by it to the commissioner of taxation with the recommendation of the county board and of the county auditor in all

cases wherein he is not the applicant. The commissioner of taxation shall consider said application and if he determines that the conditions above referred to exist he shall make his order ratifying the sale of said tax-forfeited land and transmit a copy thereof to the county auditor of the county in which said tax-forfeited land is located, if any such sale be ratified by the commissioner of taxation, it shall not thereafter be subject to attack for failure to have the timber appraisal approved before the sale. If no conveyance by the state has theretofore been made, the county auditor, upon receipt of said order, shall request the issuance of an appropriate conveyance as provided for in said Section 2139-15. If a conveyance has been made by the state of said land pursuant to said Section 2139-15, said conveyance shall not thereafter be subject to attack on account of the failure to have the timber appraisal approved before the sale. (Act Apr. 24, 1941, c. 433, §2.)

2139-15c. Same—Application of act.—The provisions of this act shall not apply so as to prejudice the rights of any person in any action or proceeding heretofore commenced to the sale in any court of this state. (Act Apr. 24, 1941, c. 433, §3.)

2139-16. List of lands to be offered for sale.

Fact that notice of sale purports to have been given by auditor on second day of February, 1940, while as matter of fact date should have been second day of January, 1940, did not invalidate sale. Op. Atty. Gen. (419B), Feb. 5, 1940.

County board has no authority to delay placing lands on sale because it has been rented by owner before it was forfeited to state. Op. Atty. Gen. (425c-4), June 13, 1940.

2139-18. County auditor may sell hay stumpage and lease lands—Sale of leased 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, provided that dead and down timber for fuel purposes only, not exceeding $50.00 in appraised value, may be sold without first publishing notice of sale, but not more than one such sale shall be made to a single purchaser directly or indirectly in any calendar year. Non-conservation lands may be leased for not to exceed three years. Lands so leased may be sold at any time as provided for other tax-forfeited lands. Upon the sale of any such leased land, it shall remain subject to the lease for not to exceed one year from the beginning of the term of the lease, but if the sale be made one year or more after the beginning of such term, it shall operate to cancel the remainder of the term, if any. Any rent paid by the lessee for the portion of the term cut off by such cancellation shall be refunded from the forfeited tax sale fund upon the claim of the lessee, to be audited and allowed by the county board as in case of other claims against the county.

(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 material 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. (As amended Act Apr. 21, 1941, c. 355, §1.)

County board member may not rent or purchase. Op. Atty. Gen. (425c-10), Feb. 19, 1940.

(a).

A tenant in possession of land at time of forfeiture holds thereafter only through sufferance, and unlawful detainer may be brought in name of state, and lease may be made only in accordance with statutes, but tenant is liable as an occupant for rent at reasonable rate. Op. Atty. Gen. (412a-25), Dec. 3, 1940.

2139-21. Auditor to cancel taxes.

Ditch liens upon state trust fund lands are to be cancelled as on other forfeitable lands where they have been sold under state contract and purchaser's interest has been forfeited under state tax forfeiture statute. Op. Atty. Gen. (921g), Sept. 28, 1939.

Ditch liens upon forfeited lands within a conservation area are to be cancelled. Id.

A purchaser of land takes it free of assessment for improvements made by city while state was owner of land if assessment was made before purchase, but subject to assessment for improvements made while land was owned by state if such assessment was not finally confirmed and established until after purchase. Op. Atty. Gen. (412a-26), Dec. 2, 1939.

Special assessments for paving levied prior to forfeiture to state should be cancelled, and assessments made while title was in the state, are void. Op. Atty. Gen. (408c), Dec. 21, 1939.

On forfeiture of land to state for nonpayment of taxes all special assessments should be cancelled, and all special assessments made while state owned lands are void, and under no circumstances may county board pay for a special assessment for improvements made to property owned by state, though an obligation to pay a special assessment upon property owned by a school district or a county is created by statute independent of a lien. Op. Atty. Gen. (408c), Dec. 26, 1939.

On forfeiture of land to the state all existing special assessments are cancelled, including those payable after purchase from the state, and any assessments levied while title was in the state are void. Op. Atty. Gen. (408c), Jan. 23, 1940.

Where assessment is made for extension of sanitary sewers and water mains and land is forfeited to state and assessments are cancelled by county auditor and property is then repurchased, city council cannot impose "tapping fee" as condition precedent to water main and sewer connections to compel owner to make good cancelled assessment. Op. Atty. Gen. (412a-26), March 11, 1940.

In arriving at amount to be assessed per front foot for an improvement frontage of tax forfeited lands is to be included, though not subject to assessment. Op. Atty. Gen. (412a-26), March 12, 1940.

Where ditch liens against agricultural lands were cancelled on forfeiture of land to state for nonpayment of taxes, and while property was owned by state repairs were made to ditches and assessments were not spread against lands, no assessment could later be spread against lands after sale of lands by state to private party. Op. Atty. Gen., (425c-3), May 27, 1940.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

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 the county auditor, to the taxing districts interested therein, as follows:

(a) Such portion as may be required to pay any amounts included in the appraised value under Mason's Supplement 1940, Section 2139-15(c), as representing increased value due to any public improvement made after forfeiture of such parcel to the state, but not exceeding the amount certified by the clerk of the municipality, shall be apportioned to the municipal subdivision entitled thereto.

(b) Such portion of the remainder 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.

(c) 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.

(d) 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. (As amended Act Apr. 23, 1941, c. 394, §2.)

No provision is made for preferential reimbursement to municipality for special improvements made after forfeiture of land, though an indirect benefit may be acquired by having county board increase appraisement. Op. Atty. Gen. (412a-26), Feb. 15, 1940.

Land forfeited to state for nonpayment of taxes is not subject to assessment for local improvements, but must be included in determining rate of assessment of other property, and one purchasing from the state is not liable for assessment made while land was owned by state. Id.

2139-27d. Same—Public Sale—Notice.—

Subdivision 1. 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 at the time determined by the county board in a resolution fixing the date of said sale. The auditor shall publish a notice of the intended sale by publication once a week for two weeks in an official newspaper of the county, the last publication to be not less than ten days previous to the commencement of said sale. Notice of such sale shall be given 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 non-payment 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.....

Description Subdivision Sec. Twp. Range or Lot Block	Appraised Value of Land $	Appraised Value of Timber $

Given under my hand and seal this ..... day of ....., 19.....

.....
County Auditor,
..... County, Minnesota.

Subdivision 2. Any lands not sold at such sale may at any time within four months following the opening of said sale be sold by the county auditor at a price not less than the appraised value thereof. All lands remaining unsold shall be included in the notice of sale and offered for sale by the county auditor in each following year until the same shall be sold. (As amended Act Mar. 12, 1941, c. 59, §1.)

2139-27i. Same—Conveyance.

Form of conveyance prescribed by attorney general. Op. Atty. Gen. (410B), Nov. 2, 1939.

2140. Purchaser to receive deed.

State may execute conveyances to two persons as joint tenants. Op. Atty. Gen. (410-B), July 19, 1940.

2150. Lands bid in for the State—Attachment of rents, crops, etc.

Delinquent taxes on real estate held by state may be paid in inverse order to that in which levied. Laws 1941, c. 97. Taxes paid into county treasury by sheriff shall be applied in inverse order in which levied. Laws 1941, c. 97.

In order to subject a tenant to liability for payment of rent to sheriff, he must be brought personally within jurisdiction, and a new tenant should be given some sort of notice. Op. Atty. Gen. (412a-25), Nov. 8, 1939.

A tenant in possession of land at time of forfeiture holds thereafter only through sufferance, and unlawful detainer may be brought in name of state, and lease may be made only in accordance with statutes, but tenant is liable as an occupant for rent at reasonable rate. Op. Atty. Gen. (412a-25), Dec. 3, 1940.

Section has no application where land has forfeited to state, and tenant remains after forfeiture only through sufferance and may be evicted by unlawful detainer. Id.

REDEMPTION FROM TAX SALES

2154. Redemption by minors.

Section contemplates a suit after minor becomes of age to enforce redemption, but this relief may be obtained by answer in a suit by tax purchaser to determine adverse claim. Miner v. B., 288NW582. See Dun. Dig. 9411.

2156. Undivided part.

Where persons owning undivided interest paid proportionate share of taxes covering year 1931 but failed to pay any taxes for 1932 and subsequent years, and other undivided interests were subject to forfeiture by the state, persons owning undivided interest upon which they paid taxes for 1931 could redeem their respective interests by paying their proportionate shares of 1932 and subsequent taxes with interest and penalties, and might also redeem the other interest, but not in their own name. Op. Atty. Gen., (423h), May 10, 1940.

Where record title to minerals is in one set of persons and record title of surface in another and they are so listed and assessed, owner of minerals has right to redeem irrespective of any action taken by owner of surface, and if there are several owners of minerals, any owner may redeem his interest separately. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

2159. Specific part of undivided part.

A minor, owner of an undivided one-half of a mortgage on the premises involved in tax judgment and sale, is entitled to redeem therefrom though owners right of redemption has been terminated by notice. Miner v. B., 288NW582. See Dun. Dig. 9412.

2160. Auditor to determine proposition.

Where record title to minerals is in one set of persons and record title of surface in another and they are so listed and assessed, owner of minerals has right to redeem irrespective of any action taken by owner of surface, and if there are several owners of minerals, any owner may redeem his interest separately. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

2161. Taxpayer may pay taxes on part.

Where part of land upon which judgment was confessed was subject to a mortgage which was foreclosed, there can be no partial relief from confession of the judgment on application of the confessor, but mortgagee may, if individual lots have been separately assessed, pay full amount due for taxes, penalties, interest, and costs, without regard to the confession of judgment, upon each parcel so assessed which is subject to his mortgage, or to which he may have acquired title through foreclosure, and if individual lots have not been separately assessed, mortgagee may apply to county auditor for determination of proportionate amount due upon property which is subject to his mortgage or to which he may have acquired title through foreclosure, and after these payments confession of judgment for proportionate amount appertaining to remainder of property remained standing subject to all original conditions. Op. Atty. Gen. (412a-10), Dec. 12, 1940.

2163. Notice of expiration of redemption—To whom given—Form of notice

2. What law governs.

Rights of purchaser at a delinquent tax sale under Laws 1927, c. 119, were not extinguished by failure to record his certificate of tax sale within statutory limit of time fixed and provided by §§2169 and 2170. Absetz v. M., 290NW298. See Dun. Dig. 9386.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice

should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

5. Statute mandatory—Must be followed strictly.

In tax title proceedings to divest owner of his title to real estate there must be strict compliance with statutory requirements. Absetz v. M., 290NW298. See Dun. Dig. 9409.

8. Sufficiency of generally.

Two or more descriptions may not be combined in one notice. Op. Atty. Gen. (423c), Oct. 6, 1939.

Form of notice of expiration of redemption for taxes of 1931 to be used in those instances where an answer was interposed questioning 1931 taxes, so that postponement by Laws 1933, c. 337, did not apply, and sale was held before passage of Laws 1935, c. 278. Op. Atty. Gen. (419f), Nov. 27, 1939.

Notice of expiration of time for redemption may be by printed form or an actual clipping from newspaper of publication. Op. Atty. Gen., (419f-3), May 4, 1940.

9. Statement of amount required to redeem.

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

10. Statement of time to redeem—Notices held sufficient.

Time to be allowed in notice of expiration of time for redemption of 1931 taxes is 60 days. Op. Atty. Gen. (423c), March 6, 1940.

12. To whom directed, upon whom served, and return of service.

Where four tenants were in possession of involved real property, one occupying a store building or shop, and other three occupying a dwelling house, and only occupant of shop was duly served with notice of expiration of redemption, failure to make service upon occupants of dwelling house vitiated service of notice of redemption. Absetz v. M., 290NW298. See Dun. Dig. 9435.

Where land is purchased by the state for taxes, and state has lien on land for old age assistance, notice of expiration of redemption should be served upon the state through the attorney general. Op. Atty. Gen., (419f), May 4, 1940.

Notice of expiration of redemption should be filed with clerk of federal district court where owner is a bankrupt. Op. Atty. Gen. (520B), July 11, 1940.

2164-1. Redemption from tax sales.

Laws 1933, chapter 366 (§§2164-1 and 2164-2) was passed for obvious purpose of giving landowner more time in which to save his property, and notice of expiration was deemed to be of aid to him, not only to afford him additional time but also that he would be reminded of what was impending. Absetz v. M., 290NW 298. See Dun. Dig. 9433.

2164-6. Period of redemption extended to July 1, 1936.

(c).

Exact time of expiration of "stated period of redemption", for a particular parcel of land sold for taxes for either 1931 or 1932, is end of last day of a five year period which commences to run on date following day on which land was sold for taxes and bid in for state. Op. Atty. Gen. (412a-23), Aug. 12, 1940.

2164-11. County auditor to give notice.

Lien for taxes existing prior to acquisition by state or subdivision thereof may remain on auditor's books, but any proceeding to forfeit for delinquent taxes is void. Op. Atty. Gen. (414c-3), Sept. 29, 1939.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

(a).

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

2164-12. Form of notice.

Notice of expiration of redemption should be filed with clerk of federal district court where owner is a bankrupt. Op. Atty. Gen. (520B), July 11, 1940.

(e).

If sheriff finds a tract vacant and unoccupied, and so certifies in his return filed with county auditor, service of notice as to such parcel is completed, and no further search for owner or additional publication is necessary. Op. Atty. Gen., (423c), March 26, 1940.

Notice of expiration of time for redemption may be by printed form or an actual clipping from newspaper of publication. Op. Atty. Gen., (419f-3), May 4, 1940.

Notice need not be served upon any lien claimant, which includes state and its political subdivisions and agencies under its claim of lien for payment of old age assistance. Op. Atty. Gen., (521p-4), May 10, 1940.

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 forfeiture may be set aside and such certificate may be cancelled in the manner herein provided. (As amended Act Apr. 25, 1941, c. 441, §1.)

Certificates of forfeiture may be cancelled where forfeiture was erroneously entered. Laws 1941, c. 253.

This act does not authorize setting aside a tax deed or other deeds by the state. Op. Atty. Gen. (410B), Oct. 16, 1940.

Certificate of forfeiture could not be cancelled because of mistake of county auditor in describing wrong land in a confession of judgment. Op. Atty. Gen. (409a-3), Nov. 25, 1940.

Act is broad enough to permit commissioner to cancel a certificate of forfeiture where taxes upon which forfeiture was based had actually been paid. Op. Atty. Gen., (408a-3), Jan. 21, 1941.

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 the supposed forfeiture was erroneous upon one or more of the grounds hereinbefore stated. Such application may be made by the county auditor when he has knowledge of the facts. 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 commissioner of taxation with the recommendation of the county board and the county auditor. The commissioner of taxation shall consider said application and if he determines that the supposed forfeiture was erroneous upon such grounds he 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 upon the grounds so determined. Upon compliance with such order by the county auditor, the supposed forfeiture and original certificate thereof shall be void. Unless exempt the lands affected by such cancellation shall be deemed to have been subject to taxation as if the supposed forfeiture had not occurred, and all taxes and assess-

ments which have been cancelled or omitted be reinstated or levied and assessed as in the case of omitted taxes, as the case may require. (As amended Act Apr. 25, 1941, c. 441, §2.)

Certificates of forfeiture may be cancelled where forfeiture was erroneously entered. Laws 1941, c. 253.

Payment of taxes is not a condition precedent to cancellation of certificate. Op. Atty. Gen., (409a-1), Jan. 15, 1941.

2164-12c. Cancellation of certificates of forfeiture —Reinstatement of cancelled taxes.—Whenever, heretofore, due in whole or in part to an error of the county auditor or any deputy, an owner has entered into a confession of judgment on lands of another, and as a result thereof such owner has been misled into permitting his own lands to forfeit to the state of Minnesota, but which have not been sold by the state, upon the recommendation of the board of county commissioners and the county auditor, the certificate of forfeiture of such lands and the notice upon which it is based shall be cancelled by the department of taxation and the county auditor. Such certificate of forfeiture may be cancelled by proceedings as provided in Mason's Supplement 1940, Sections 2164-12a and 2164-12b. When such certificate is cancelled as herein provided, the county auditor shall reinstate all cancelled taxes, penalties and interest; and taxes for all years subsequent to the supposed forfeiture shall be levied and assessed as in the case of omitted taxes. The authority of the board of county commissioners under the provisions of this act shall not extend to any petition filed after August 1, 1941. (Act Apr. 16, 1941, c. 253, §1.)

2164-14. Titles to be held in trust by the state.

A tenant in possession of land at time of forfeiture holds thereafter only through sufferance, and unlawful detainer may be brought in name of state, and lease may be made only in accordance with statutes, but tenant is liable as an occupant for rent at reasonable rate. Op. Atty. Gen. (412a-25), Dec. 3, 1940.

2169. Failure to serve notice to extinguish lien.

Rights of purchaser at a delinquent tax sale under Laws 1927, c. 119, were not extinguished by failure to record his certificate of tax sale within statutory limit of time fixed and provided by §§2169 and 2170. Absetz v. M., 290NW298. See Dun. Dig. 9386.

2170. Limitation of time for filing certificate.

Absetz v. M., 290NW298; note under §2169.

2170-1. Notice of expiration of time of redemption —Tax judgment sale certificate—Limitation of time. —No notice of the expiration of the time of redemption upon any real estate tax judgment sale certificate, forfeited tax sale certificate or state assignment certificate heretofore issued pursuant to any law of this state at or pursuant to any such sale held in the year 1935 or prior thereto, which has not become void under Mason's Minnesota Statutes of 1927, section 2169 or section 2170, or any other law, shall issue or be served after the expiration of six months from the date this act becomes effective; nor shall such certificate be recorded in the office of the register of deeds or filed in the office of the registrar of titles of the proper county after December 31, 1942. (Act Apr. 24, 1941, c. 399, §1.)

2170-2. Same—Limitation of time.—No notice of expiration of the time of redemption upon any real estate tax judgment sale certificate, forfeited tax sale certificate or state assignment certificate issued pursuant to any law of this state at or pursuant to any such sale held between January 1, 1936, and the date this act takes effect, or held thereafter, shall be issued or served after the expiration of six years from the date of the certificate, nor shall such certificate be recorded in the office of the register of deeds or filed in the office of the registrar of titles of the proper county after the expiration of seven years from the date of the certificate. (Act Apr. 24, 1941, c. 399, §2.)

2170-3. Same—Tax judgment sale certificates— Limitation of time.—Any such certificate upon which notice of expiration of redemption shall not be issued, served, and recorded or filed within the time limited by this act, shall be void and of no force and effect for any purpose whatever, and failure to serve such notice or record or file such certificate within the time herein prescribed shall operate to extinguish the lien of the holder of said certificate for the taxes for the year or years in such certificate described and the lien of all subsequent taxes paid under such certificate. (Act Apr. 24, 1941, c. 399, §3.)

2170-4. Same—Cancellation of record of sale certificates.—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, forfeited tax sale certificates, and state assignment certificates, upon which notice of expiration of the time of redemption has not been served, and recorded or filed of record within the time herein fixed, by making an entry, "Cancelled by Limitation", in the proper real estate tax judgment book opposite the description of land covered by such certificate. (Act Apr. 24, 1941, c. 399, §4.)

2176-5. Termination of option.

Option to repurchase is automatically terminated by failure to pay installments or taxes, and no notice of cancellation is necessary. Op. Atty. Gen. (425c-6), July 5, 1940.

2176-7. Occupants not to be evicted, when.

Section applies only to lands forfeited for taxes of years 1926 and 1927. Op. Atty. Gen. (412a-25), Dec. 3, 1940.

2176-11. Confession of judgment for delinquent taxes and payment in installments without penalties and interest—Etc.

Owner of real estate may confess judgment for delinquent taxes and pay same in installments. Laws 1941, c. 17.

Owner confessing judgment on several forties cannot make payment in full of taxes assessed against one forty and obtain a satisfaction of judgment as to it. Op. Atty. Gen. (412a-10), Nov. 23, 1939.

Owner who confessed judgment and thereafter defaulted was entitled to have sum paid credited against amount due at time judgment was confessed. Op. Atty. Gen. (412a-10), Feb. 5, 1940.

Commissioner of taxation may allow taxes represented by a confessed judgment to be settled for less than full amount, on recommendation by county board and county auditor. Id.

2176-13. Receipt for deferred installments—Duplicate—Distribution of taxes collected.

Taxes paid under confession of judgment before default must be credited. Op. Atty. Gen., (412a-10), April 25, 1940.

2176-14. Fees of clerk of district court.

Fees earned by clerk in confession of judgment matters under §2176-14 should be included by clerk in his report of fees under Laws 1919, chapter 229. Op. Atty. Gen. (144B-3), Feb. 6, 1940.

2176-15. Applicability and effect of Laws 1935, c. 278.

Reinstatement after default, see post, §§2176-16p to 2176-16r.

Owner who confessed judgment and thereafter defaulted was entitled to have sum paid credited against amount due at time judgment was confessed. Op. Atty. Gen. (412a-10), Feb. 5, 1940.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

Where default occurs after several installments are paid, auditor should first proceed to distribute taxes in manner described in §2176-13 and then proceed to take appropriate steps to forfeit lands for non-payment of 1931 and subsequent taxes which may be in default. Op. Atty. Gen., (412a-10), Jan. 18, 1941.

2176-16a. Confession of judgment for delinquent taxes.

Two or more parcels may not be joined in one confession of judgment. Op. Atty. Gen., (412a-10), Sept. 25, 1939.

Taxes for 1938 may not be included in confession of judgment and must be paid before such judgment can be entered. Op. Atty. Gen. (412a-10), Nov. 4, 1940.

Delinquent taxes for year 1938 must be paid and cannot be included in confession of judgment. Id.

Where part of land upon which judgment was confessed was subject to a mortgage which was foreclosed, there can be no partial relief from confession of the judgment on application of the confessor, but mortgagee may, if individual lots have been separately assessed, pay full amount due for taxes, penalties, interest, and costs, without regard to the confession of judgment, upon each parcel so assessed which is subject to his mortgage, or to which he may have acquired title through foreclosure, and if individual lots have not been separately assessed, mortgagee may apply to county auditor for determination of proportionate amount due upon property which is subject to his mortgage or to which he may have acquired title through foreclosure, and after these payments confession of judgment for proportionate amount appertaining to remainder of property remained standing subject to all original conditions. Op. Atty. Gen. (412a-10), Dec. 12, 1940.

2176-16d. Fees.

Fees received for confessions of judgments are to be disposed of as are other fees received by officers, under Laws 1933, c. 143. Op. Atty. Gen., (144B-3), May 28, 1940.

2176-16e. Application of act.

Reinstatement after default, see post, §§2176-16p to 2176-16r.

Notice of expiration of redemption is annulled by confession of judgment, but default in payment restores tax judgment, and thereafter due notice of expiration is necessary. Op. Atty. Gen. (412a-10), Sept. 7, 1939.

Payments may not be accepted after default occurs. Op. Atty. Gen., (412a-10), Jan. 18, 1941.

2176-16f. Only one confession to be made.

A mortgagee may confess judgment, notwithstanding the fact that previously owner has confessed judgment and defaulted. Op. Atty. Gen. (412a-10), June 18, 1940.

2176-16h. Confession of judgment for delinquent taxes.—Delinquent taxes upon any parcel of real estate for 1938 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 1939, 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 1941, 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 December 1, 1941, for the entire amount of all such taxes and costs, excluding penalties and interest, and thereafter, until December 1, 1942, 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 483, [2126-3, 2126-5] 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 5 per cent per annum, payable annually, on installments remaining unpaid from time to time, on or before October 31 of each year following the year in which judgment was confessed, 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 5 per cent per annum, payable annually, on the instalments remaining unpaid from time to time, said installments and interest to be paid on or before October 31 of each year following the year in which this judgment is confessed 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 483.

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, penalty 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 Feb. 21, 1941, c. 17, §1.)

2176-16i. 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 Feb. 21, 1941, c. 17, §2.)

2176-16j. Notice to person confessing judgment.—The county auditor shall give notice by mail not later than September 30 of each year to the person or persons making such confession of judgment at the address given therein of the payment due under the confession on the following October 31. Failure to send or receive the notice shall not operate to postpone any payment or excuse any default under the confession of judgment. (Act Feb. 21, 1941, c. 17, §3.)

2176-16k. Payment not for specific year's taxes.—The county auditor's statement and county treasurer's receipt isssued 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 Feb. 21, 1941, c. 17, §4.)

2176-16l. Fees—Purchase of supplies.—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; provided, however, that in counties where said fees would revert to the County Revenue Fund under existing laws, the County Auditor may use said fees for the purchase of supplies necesssary to carrying out the provisions of this act or for additional clerk hire in his office. (Act Feb. 21, 1941, c. 17, §5.)

2176-16m. Application of law.—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. Failure to make any payment required by the confessed judgment within sixty days from the date on which payment was due shall constitute a default. 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 Feb. 21, 1941, c. 17, §6.)

2176-16n. 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 Feb. 21, 1941, c. 17, §7.)

2176-16o. 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 Feb. 21, 1941, c. 17, §8.)

2176-16p. Confession of judgment for delinquent taxes—Reinstatement after default.—Any person or persons who have confessed judgment for delinquent taxes pursuant to Extra Session Laws 1935, Chapter 72, [2176-11 to 2176-16], Extra Session Laws 1935, Chapter 72 as amended by Laws 1937, Chapter 486, [2176-11] or Laws 1939, Chapter 91, [2176-16a to 2176-16g] and who have defaulted in the payments to be made thereunder may remove the default and reinstate the confessed judgment by making and filing with the county auditor prior to December 31, 1941, a written request that the confessed judgment be reinstated and tendering therewith an amount sufficient to pay all delinquent installments with interest, together with proper reecipts showing payment of the taxes, including current taxes, required to be paid by the confessed judgment. Upon receipt of the request and payment of all sums herein required, the county auditor shall note the reinstatement upon his records and shall immediately deliver the payment received by him to the county treasurer. (Act Feb. 26, 1941, c. 26, §1.)

2176-16q. Same—Fees—Collection and disposition.—The person or persons reinstating such confession of judgment shall pay the county auditor a fee of fifty cents and a fee of fifty cents to the clerk of the court for the partial satisfaction of the judgment, which shall be collected by the county auditor; provided, however, that in counties where said fees would revert to the county revenue fund under existing laws, the county auditor may use said fees for the purchase of supplies necessary to carry out the provisions of this act or for additional clerk hire in his office. (Act Feb. 26, 1941, c. 26, §2.)

2176-16r. Same—Application of law.—This act shall not apply to any parcel of land unless the delinquent taxes thereon, whether composed into the confessed judgment or subsequently delinquent, have been bid in for and are held by the state and not assigned by it when the request for reinstatement is filed with the county auditor, nor shall it apply to any parcel of land which has 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. (Act Feb. 26, 1941, c. 26, §3.)

2176-26. Repurchase after forfeiture — Price — Special assessments reinstated—Interest.

Repurchase of land after forfeiture to state for taxes. Laws 1941, c. 43.

Where owner repurchases land under this act and city desires to acquire the land by purchase, city must perform all of conditions of former owner's contract of repurchase. Op. Atty. Gen. (425c-11), Oct. 4, 1939.

2176-30. Same—Receipt—Certificate to tax commission; etc.

Agreements for repurchase of tax-forfeited land under extra session laws 1937, c. 88, which have terminated for default due to oversight or error may be reinstated. Laws 1941, c. 108.

Option to repurchase is automatically terminated by failure to pay installments or taxes, and no notice of cancellation is necessary. Op. Atty. Gen. (425c-6), July 5, 1940.

Where owner repurchases tax-forfeited property and assigns his interest to a third person and deed is issued directly to assignee, judgment docketed against assignor attached to interest of assignee. Op. Atty. Gen. (412a-23), Sept. 13, 1940.

Owner repurchasing property may assign his interest to a third person and have deed issued directly to assignee. Id.

2176-30a. Repurchase of tax-forfeited lands—Reinstatement of agreements.—Any agreement for repurchase of tax-forfeited land under Extra Session Laws 1937, Chapter 88 [2176-26 to 2176-34], which has been terminated for default may be reinstated as herein provided upon petition of the purchaser under the agreement, his heirs or representatives, provided the default was due to oversight or error on the part of the purchaser or someone acting for him or of some official charged with the duty of administering the tax laws, and provided the land has not been resold. The petition shall state the grounds upon which reinstatement is prayed for, shall be verified, and shall be filed with the county auditor not later than December 31, 1941. The petitioner shall deposit therewith an amount sufficient to pay all delinquent installments due under the agreement, with interest, and all delinquent taxes, penalties, interest, and costs required to be paid under the agreement together with an amount equal to the taxes and assessments that would have been levied and payable but for the termination of such repurchase agreement; such taxes shall be computed by the county auditor as in the case of omitted taxes that would have been assessed between the date of the termination of such agreement and the petition for reinstatement thereof. No proceedings for the resale of the land involved shall be suspended or otherwise affected by the filing or pendency of any such petition. (Act Apr. 1, 1941, c. 108, §1.)

2176-30b. Same—Duties of county auditor.—The county auditor shall present the petition to the county board at its next meeting; provided, that no petition shall be presented or acted upon after January 31, 1942. The board shall consider the petition and shall require such evidence as it deems necessary to enable it to ascertain the truth of the matters alleged. If the board finds upon the evidence that the petitioner is entitled to reinstatement hereunder, it shall adopt a

resolution stating the facts and authorizing such reinstatement. Thereupon the county auditor shall note the reinstatement upon his records and shall pay over to the county treasurer the amount deposited by the petitioner, but if the petition be denied the deposit shall be refunded. If such reinstatement is made after May 1st, 1941, the county auditor shall levy taxes for the year 1941 on said land as in the case of omitted taxes. (Act Apr. 1, 1941, c. 108, §2.)

2176-34a. Repurchase of land after forfeiture—Who may—Time of repurchase.—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, if such repurchase is made prior to November 1, 1941, 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 2 of this act, *without penalties or costs, with interest at 4 per cent* from the time the taxes or assessments were or would have been delinquent. (Act Mar. 5, 1941, c. 43, §1.)

2176-34b. Same—Special assessments reinstated—Interest—Delinquent taxes defined.—Upon the repurchase of land pursuant to Section 1 of this act any special assessments heretofore canceled under Laws of 1935, Chapter 386 [2139-15 to 2139-27], 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 1941 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, 1941, 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 4 per cent, shall be included in the purchase price hereunder. When the term "delinquent taxes" is used in Section 1 of this act, it shall mean the sum of taxes and assessments without penalties or costs, with interest at 4 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 4 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. If the repurchase is made after May 1, the county auditor shall levy taxes for 1941 on the parcel as in the case of omitted taxes. (Act Mar. 5, 1941, c. 43, §2.)

2176-34c. Same—Installment payments—Time for—Current taxes.—A person repurchasing under Section 1 of this act 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 4 per cent on the balance remaining unpaid each year, the first installment of principal and interest to become due and payable on October 31 of the year following the year in which the repurchase was made, the remaining installments to become due and payable on October 31 of 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 Mar. 5, 1941, c. 43, §3.)

2176-34d. Same—Notice of payments.—The county auditor shall give notice by mail not later than September 30 of each year to the person or persons making such repurchase at the address given therein of the payment due under the repurchase on the following October 31. Failure to send or receive the notice shall not operate to postpone any payment or excuse any default under the repurchase. (Act Mar. 5, 1941, c. 43, §4.)

2176-34e. Same—Lease prior to repurchase.—Until repurchased all parcels of land subject to the provisions of this act shall be subject to lease under the provisions of Laws 1935, Chapter 386 [2139-15 to 2139-27] as amended, and any repurchase of such land under this act shall be subject to the provisions of any such existing lease. (Act Mar. 5, 1941, c. 43, §5.)

2176-34f. 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 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 Mar. 5, 1941, c. 43, §6.)

2176-34g. Same—Receipt—Certificate to commissioner of taxation—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 commissioner of taxation of the state of Minnesota; the description of 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 commissioner of taxation. Failure to make any payment herein required within 60 days from the date on which payment was due 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 Mar. 5, 1941, c. 43, §7.)

2176-34h. Lands within game preserves and conservation areas, and conservation lands.—This act shall not apply to lands within the game preserve established by Laws 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 other than lands classified as conservation lands under Laws 1939, Chapter 328, [2139-15 to 2139-23, 2139-27*l* to 2139-o, 5620-13½b, 5620-13½ d]. (Act Mar. 5, 1941, c. 43, §8.)

2176-34i. Same—Removal of minerals and timber-enhancing value.—When any forfeited lands are repurchased, as provided for in this act, no structure, minerals, sand, gravel, top-soil, subsoil or peat shall be removed, nor shall any timber or timber products be cut and removed until the purchase price has been paid in full. Nothing in this section, however, shall be construed as prohibiting the removal of such sand,

gravel, top-soil, subsoil or peat as may be incidental to the erection of structures on such repurchased lands or to the grading of such lands whenever such removal or grading shall result in enhancing the value thereof. (Act Mar. 5, 1941, c. 43, §9.)

2176-34j. 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. (Act Mar. 5, 1941, c. 43, §10.)

2176-38. Owner may repurchase homestead lands after forfeiture.

An heir entitled to an undivided interest may repurchase his particular interest and certificate may be issued in his name, or he may purchase whole estate, in which case certificate must run to all owners, according to their shares at time of forfeiture, and should state by whom purchase price was paid. Op. Atty. Gen. (412a-23), Sept. 19, 1939.

Where repurchase is made by a mortgagee, certificate of purchase must be in name of owner at time of forfeiture, subject to rights of person who pays the purchase price. Id.

Holder of an unrecorded deed at time of forfeiture may repurchase, and certificates of purchase should be made to him as grantee. Id.

If record owner is living and has been receiving old age assistance, a son or an adopted son claiming to be owner of half of the property may, upon proving to satisfaction of auditor that he is owner of a half interest, repurchase such half interest or the whole estate, but if he repurchases whole estate, certificates should be made to him and to his father in equal undivided shares, subject to rights connected with payment of purchase price by him. Id.

One with an undivided interest in land would not have right to repurchase any particular acreage, but only an undivided interest. Id.

2176-45. Application of act.

Former owner may repurchase lands within conservation area which have never been subject to a ditch lien. Op. Atty. Gen. (921g), Sept. 28, 1939.

REFUNDMENT

2178. In case of exemption.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

2184-4. Resale of state land previously sold, for delinquent taxes—Refundments.—

Subdiviion 1. Refundment may be made as provided in this subdivision in any case where state school land or other trust fund land previously sold by the state upon a certificate of sale providing for deferred payments has again been sold for delinquent taxes to an actual purchaser under the following conditions:

(a) That at the time of the tax sale there was an unpaid amount owing under the prior trust fund land certificate less than the purchase price paid at the tax sale;

(b) That the rights of the purchaser under the trust fund land certificate were not finally terminated by reason of default therein, but passed to the purchaser at the tax sale, subject to payment of the amount owing under the prior certificate;

(c) That the purchaser at the tax sale acted in good faith and without actual knowledge of the fact that the land was state trust fund land or that it was subject to payment of the amount owing under the trust fund land certificate;

(d) That the purchase price at the tax sale was based upon an appraisal or valuation of the land, but that no allowance for the amount owing under the trust fund land certificate was made in determining such price.

Upon application of the purchaser at the tax sale or his successor in interest and upon satisfactory proof of the existence of the specified conditions, the county board of the county in which the land is situated shall ascertain the amount owing under the certificate of trust fund land sale at the time of the tax sale, including principal and interest then accrued, but without further interest, and shall order such amount refunded to the applicant, to be paid as provided in Subdivision 5. Such refundment shall not affect the validity of the tax deed or certificate of sale, which shall remain in effect as if the purchase price thereunder had been reduced by the amount of the refundment.

Subdivision 2. Refundment may be made in like manner as provided in Subdivision 1, subject to the further provisions hereof, in any case where land has been sold for delinquent taxes under the same conditions as specified in Subdivision 1 except that the total amount owing under the trust fund land certificate at the time of the tax sale equaled or exceeded the amount of the purchase price paid at such sale. In such case any subsequent taxes, penalties, interest, and costs paid by the purchaser or his successors in interest shall also be refunded, but the total amount refunded shall not exceed the total amount actually paid by the purchaser or his successors. As a condition of refundment under this subdivision, the tax deed or certificate of sale shall be surrendered and cancelled and the tax obligations against the land shall be reinstated as provided in Subdivision 4.

Subdivision 3. Refundment may be made in like manner as provided in Subdivision 1, subject to the further provisions hereof, in any case where state school land or other trust fund land previously sold by the state upon a certificate of sale providing for deferred payments has again been sold or assigned for delinquent taxes to an actual purchaser or assignee under the following conditions:

(a) That at the time of the tax sale or assignment there was an unpaid amount owing under the prior trust fund land certificate, it being immaterial whether such amount was greater or less than the purchase price paid at the tax sale or assignment;

(b) That the state had either cancelled the trust fund land certificate for non-payment of the amount due thereon and had reoffered the land for sale, or that the land still remained subject thereto;

(c) That the purchaser or assignee at the tax sale or assignment acted in good faith and without knowledge of the fact that the land was state trust fund land or that it was subject to the aforesaid conditions attaching thereto;

(d) That the purchase price paid at the tax sale or assignment was fixed by law and was not subject to appraisal or adjustment according to the value of the land.

In such case any subsequent taxes, penalties, interest, and costs paid by the purchaser or assignee or his successors in interest shall also be refunded, but the total amount refunded shall not exceed the total amount actually paid by the purchaser or assignee or his successors. As a condition of refundment under this subdivision, the tax deed or certificate of sale or assignment shall be surrendered and cancelled and the tax obligations against the land shall be reinstated as provided in Subdivision 4.

Subdivision 4. In any case where refundment is allowed under Subdivision 2 or Subdivision 3, the applicant shall, as a condition of the refundment, surrender the tax deed or certificate of sale or assignment for cancellation, and shall deliver to the county auditor an instrument in such form as may be prescribed by the attorney general, executed by the applicant and by any other necessary parties in interest, withnessed and acknowledged as a conveyance, releasing and conveying to the state all right, title, and interest in the land acquired by virtue of the tax deed or certificate of sale or assignment or by virtue of any subsequent taxes, penalties, interest, and costs paid by the purchaser or assignee or his successors in interest and included in the refundment, and consenting to the cancellation of the tax deed or certificate of

sale or assignment and of such subsequent payments. The execution and sufficiency of the instrument shall be approved by the county attorney. Thereupon the county auditor shall cancel upon his records the tax sale or assignment and any such subsequent payments, reinstating against the land all tax judgments, taxes, assessments, penalties, interest and costs covered thereby in like manner as if the sale or assignment or subsequent payments had not been made. If the land was sold directly to an actual purchaser at tax judgment sale and the certificate of such sale is cancelled hereunder, the land shall be deemed to have been bid in for the state at such sale as provided by law. If the tax deed or certificate of sale or assignment or any other instrument pertaining to the proceedings has been recorded with the register of deeds, the auditor shall execute a certificate of such cancellation, in such form as the attorney general may prescribe, and shall record the same, together with the instrument obtained from the applicant, with the register of deeds.

Subdivision 5. Every refundment authorized under this section shall be paid by warrant of the county auditor upon the county treasurer and shall be charged against the funds which benefited by the proceeds of the tax sale or assignment in proportion to the benefit, so far as practicable, or, if no special fund be available or properly chargeable therewith, against the general revenue fund of the county, as the county board may determine. (Act Apr. 16, 1941, c. 273, §1.)

ACTIONS INVOLVING TAX TITLES

2188. Action to quiet title.

Where plaintiff's allegation of ownership did not disclose to defendants that she was relying on a tax deed, defendants could not be required to have alleged fraud in order to introduce evidence thereof under general denial. Turner v. E., 292NW257. See Dun. Dig. 3826, 7585.

One who enters into a collusive agreement with a life tenant for purpose of defeating interests of remaindermen cannot enforce a lien on property for amount paid to acquire title thereto at a tax sale. Id. See Dun. Dig. 3167.

County attorney cannot represent a purchaser of tax title in action to quiet title where land involved prior to expiration of redemption was owned by old age assistance recipient and state is made a party defendant. Op. Atty. Gen. (121B), Sept. 12, 1940.

As affecting purchase by school district of tax title lands, a tax title is not a good marketable title until title has been quieted by action, since a tax title is subject to many errors and mistakes, which might be raised at any time within 15 years by original owner. Op. Atty. Gen. (425c-12), Sept. 12, 1940.

2190-2. Same—Persons entitled to sue; etc.

County attorney cannot represent a purchaser of tax title in action to quiet title where land involved prior to expiration of redemption was owned by old age assistance recipient and state is made a party defendant. Op. Atty. Gen. ((121B), Sept. 12, 1940.

2190-5. Same—State may bring action to quiet title; etc.

Op. Atty. Gen. (374g), Dec. 4, 1940; note under §2190-11.

2190-6. Same—County attorney or attorney general to bring action.

County attorney is not entitled to additional compensation. Op. Atty. Gen. (121B-21), June 10, 1940.

2190-7. Same—Venue—Lands included in suit.

County attorney may join in one action as many parcels of land as he deems advisable, within authority given him by county board, whether forfeiture occurred before or after passage of this act, and may quiet title to parcels of tax forfeited lands which have been sold under installment contracts to prevent default by a purchaser because of doubtful title. Op. Atty. Gen., (374G), April 9, 1940.

2190-11. Same—Service of summons; etc.

Notice of lis pendens need not be filed or published in an action under this act. Op. Atty. Gen. (374g), Dec. 4, 1940.

2190-15. Same—Present laws to govern.

Op. Atty. Gen. (374g), Dec. 4, 1940; note under §2190-11.

2190-20. Same—Act to be supplementary.

Op. Atty. Gen. (374g), Dec. 4, 1940; note under §2190-11.

MISCELLANEOUS PROVISIONS

2191. Lien of real estate taxes.

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

2. When attaches.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

Where taxpayer purchased land in September, 1936, and paid the 1936 taxes in 1937, making his return on cash receipts and disbursements basis, such payment of taxes in 1937 constituted a deduction from income taxes for 1937, and not merely a payment of part of capital costs of acquiring property. Hallam, MBTA(33), Nov. 28, 1940.

2199. Lien of personal property taxes.

This section was amended by §2199-1 so that lien attaches from and after May 1 in year in which levied. Op. Atty. Gen. (421a-9), May 25, 1940.

2199-1. Lien of taxes on personal property—Nature, extent and priority; etc.

A personal tax judgment is not a lien against the homestead, but no personal property, including household goods, is exempt from execution. Op. Atty. Gen. (421a-16), Sept. 25, 1939.

Section is constitutional. Op. Atty. Gen. (520l), Oct. 20, 1939.

Lien applies to all personal property taxes whether judgment has been entered or not, and is effective from time tax books are received by county treasurer. Id.

Law as amended is not retroactive. Id.

A lien for personal property taxes is superior to a lien of a chattel mortgage on file. Op. Atty. Gen. (520l), Dec. 8, 1939.

This amended §2199 so that lien attaches to all personal property of person assessed from and after May 1 of the year in which levied. Op. Atty. Gen. (421a-9), May 25, 1940.

Where money and credit assessment are paid prior to entry of judgment, taxpayer is required to pay interest on tax as well as cost in connection with issuance of citation and of sheriff for return of not found. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

2200. Interest on unpaid taxes.

Where money and credit assessment are paid prior to entry of judgment, taxpayer is required to pay interest on tax as well as cost in connection with issuance of citation and of sheriff for return of not found. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

2202. Not to apply to certain taxes.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

2203. Structures, etc., not to be removed.—

Subdivision 1. No structures, standing timber, minerals, sand, gravel, peat, subsoil or top-soil 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, minerals, sand, gravel, peat, subsoil or top-soil 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, minerals, sand, gravel, peat, subsoil or top-soil therefrom until such taxes are paid. No bond shall be required of plaintiff in such suit.

Subdivision 2. The county auditor may enter into an agreement with the taxpayer for the removal of any structures, standing timber, minerals, sand, gravel, peat, subsoil or top-soil from the property of the taxpayer upon which taxes are due and payable, which agreement shall provide that the entire sale price thereof, or the reasonable market value thereof, whichever is the greater, or if the property is not sold, then the fair market value thereof is to be paid to the county treasurer to be applied upon the taxes on said property, penalties, costs and interests, in the

inverse order to that in which such taxes were levied, to be applied as follows: (1) upon the penalties, costs and interest, (2) upon the taxes levied; and the same procedure shall be followed for each year's taxes until the entire sum so paid shall have been applied; provided that if the judgment for any such delinquent taxes shall have been partially paid, it shall not affect the right of the State to forfeit the title to such lands in the event of the failure to redeem the same; provided, further, that the contract between the county auditor and the taxpayer shall provide that said contract shall be fully completed prior to the time that the title to said property would otherwise forfeit to the State; and provided, further, that the county auditor may, if in his opinion it is necessary to protect the State, demand that the taxpayer make, execute and deliver a bond to the State in such an amount as may be necessary in the opinion of the county auditor to protect the State, to insure the payment to the county treasurer of the purchase price or the reasonable market value of the property removed from said land under said agreements; and provided, further, that nothing herein, however, shall be construed as prohibiting the removal of such sand, gravel, peat, subsoil or topsoil as may be incidental to the erection of structures on said land, or to the grading of said land, whenever such removal or grading shall result in enhancing the value thereof; nor shall anything herein be construed as prohibiting the removal of the overburden on mine properties; provided, further, that the removal of any structures, standing timber, minerals, sand, gravel, peat, subsoil or top-soil under such agreements with the county auditor shall not be construed to be in violation of this act. (As amended Act Apr. 24, 1941, c. 397, §1.)

2204. Structures, etc., may be seized.—Any structure, timber, minerals, sand, gravel, peat, subsoil, or top-soil removed from any tract of land upon which taxes are due and payable 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, minerals, sand, gravel, peat, subsoil or top-soil if known, and, if unknown, shall be deposited in the county treasury subject to the right of the owner. (As amended Act Apr. 24, 1941, c. 397, §2.)

2205. Penalty for removal.—Any person who shall remove or attempt to remove any structure, timber, minerals, sand, gravel, peat, subsoil or top-soil from any tract of land contrary to the provisions of this chapter, after such taxes become due and payable, and before the same have been fully paid and discharged, shall be guilty of a gross misdemeanor. (As amended Act Apr. 24, 1941, c. 397, §3.)

This section does not apply after land has been forfeited to state. Op. Atty. Gen. (412a-24), June 6, 1940.

2206. Right to assess and collect.

If all assessments have been timely and properly made, there is a 6 year period of limitations with respect to action to enforce collection of moneys and credits taxes and no limitation with respect to personal property taxes. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Two year statute of limitations against actions for penalties or forfeitures is not applicable to a tax penalty, and especially a tax penalty upon a privilege tax such as gross premium taxes. Op. Atty. Gen. (254d), Nov. 7, 1940.

2209. Taxes paid by mortgagees, etc.

A weed lien is good as against mortgagee who subsequently obtained possession of the land. Op. Atty. Gen. (322a-2), Nov. 7, 1939.

Where part of land upon which judgment was confessed was subject to a mortgage which was foreclosed, there can be no partial relief from confession of the judgment on application of the confessor, but mortgagee may, if individual lots have been separately assessed, pay full amount due for taxes, penalties, interest, and costs, without regard to the confession of judgment, upon each parcel so assessed which is subject to his mortgage, or to which he may have acquired title through foreclosure, and if individual lots have not been separately assessed, mortgagee may apply to county auditor for determination of proportionate amount due upon property which is subject to his mortgage or to which he may have acquired title through foreclosure, and after these payments confession of judgment for proportionate amount appertaining to remainder of property remained standing subject to all original conditions. Op. Atty. Gen. (412a-10), Dec. 12, 1940.

2211. Payment of taxes before recording of transfer.

Conveyances of highway easements and leases of gravel pit to a county need not bear auditor's certificate as to payment of taxes as a prerequisite to their record. Op. Atty. Gen. (373B-17(e)), Oct. 7, 1939.

A register of deeds should not accept a contract for deed for record unless usual certificate as to payment of taxes is attached thereto. Op. Atty. Gen., (373B-9(e)), April 25, 1940.

Where a village acquires deed to land which has been sold to the state for delinquent taxes, village need not pay the delinquent taxes and state cannot proceed to forfeiture and deed to the village should be recorded without payment of taxes. Op. Atty. Gen., (414a-11), May 7, 1940.

Register of deeds can properly refuse to record a conveyance of mineral rights, which has not heretofore been separated from fee title, without certificate from county auditor and treasurer that all taxes have been paid. Op. Atty. Gen. (373B-9 (B)), May 18, 1940.

Leases may be recorded without certification as to taxes. Op. Atty. Gen., (373B-17(e)), Feb. 25, 1941.

Register of Deeds must record a deed issued by a railroad pursuant to decree of federal court in bankruptcy and reorganization proceedings, whether or not he is able to obtain certificate from County Auditor and County Treasurer, court order so requiring. Op. Atty. Gen., (373B-9(d)), Mar. 5, 1941.

Since taxes are cancelled by forfeiture of land to state, a deed may be filed without payment, and county auditor should make an appropriate certificate. Op. Atty. Gen., (373B-9(e)), Mar. 12, 1941.

2212. Treasurer's certificate.

Register of Deeds must record a deed issued by a railroad pursuant to decree of federal court in bankruptcy and reorganization proceedings, whether or not he is able to obtain certificate from County Auditor and County Treasurer, court order so requiring. Op. Atty. Gen., (373B-9(d)), Mar. 5, 1941.

COMPANIES PAYING GROSS EARNINGS TAX

RAILROAD COMPANIES

2246. Gross earnings.

½. In general.

Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 305Minn1, 284NW360, 205Minn621, 286NW359. Reh. den., 60SCR585.

Gross earnings tax imposed under authority of Const. Art. 4, §32a, is a property tax upon all railroad property owned or operated for railroad purposes, including its franchise to exist as a corporation and to transact railroad business in this state State v. Duluth, M. & N. Ry. Co., 292NW401. See Dun. Dig. 9541. See also 292NW411. Cert. den. 61SCR439.

Land privately owned and purchased by a railroad company only because of gravel value and having no spur tracks is not exempt from regular tax. Op. Atty. Gen. (414d-13), Oct. 23, 1939.

21. What included in gross earnings.

Earnings from any source other than ownership or operation for a railroad purpose are not included in gross earnings tax measures, and any property owned by railroad, but used for a non-railroad purpose, is subject to ordinary ad valorem property taxation. State v. Duluth, M. & N. Ry. Co., 292NW401. See Dun. Dig. 9551. See also 292NW411. Cert. den. 61SCR439.

So-called "recapture funds" taken from earnings of railroads under Transportation Act of 1920, 41 Stat. 456, 489, 49 Mason's U. S. C. A., §15a(6), and returned to the railroads under the provisions of the emergency Railroad Transportation Act of 1933, 48 Stat. 211, 220, 49 Mason's U. S. C. A., §15b, and upon which a gross earnings tax was paid to the state, are not non-railroad income nor subject to the tax imposed by Mason's Minn. St., §2394-2. Id.

2247. "Gross earnings" defined.

Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 205Minn1, 284NW360, 205Minn621, 286NW359.

Earnings from any source other than ownership or operation for a railroad purpose are not included in gross earnings tax measures, and any property owned by railroad, but used for a non-railroad purpose, is subject to ordinary ad valorem property taxation. State v. Duluth, M. & N. Ry. Co., 292NW401. See Dun. Dig. 9552. See also 292NW411. Cert. den. 61SCR439.

EXPRESS COMPANIES

2268. Gross earnings tax.

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v. Holm, 295NW297. See Dun. Dig. 9140a.

Where express company has leased portion of large building for a period of years, real estate tax should be assessed against the entire building, since real estate cannot be divided for purposes of assessment. Op. Atty. Gen. (474-d-1), July 24, 1940.

VESSELS NAVIGATING INTERNATIONAL WATERS

2291. Tonnage tax—Distribution.

Act Apr. 28, 1941, c. 521, §8, provides that the state treasurer is hereby authorized to set aside in a separate account the counties' share of the vessel tonnage tax, and to distribute the same to the counties entitled thereto at the end of each fiscal year as provided by section 2291.

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 non-resident of the state at the time of his death.

(c) When the transfer is of property made by a resident or by a non-resident when such non-resident'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 the 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.

(d) Nothing in this act shall be construed as imposing a tax upon any transfer as defined in this act, of intangibles, however used or held, whether in trust or otherwise, by a person, or by reason of the death of a person, who was not a resident of this state at the time of his death. (As amended Act Apr. 26, 1941, c. 470, §1.)

Subsection 2. * * * * *

Under statute imposing tax on transfers in contemplation of death and authorizing deductions in case transfer is made for a valuable consideration, a consideration monetary value of which was not received by transferor was not deductible. Mossberg v. M., 14Atl(2d)(Conn)733.

A symposium on state inheritance and estate taxation. 26 Ia Law Rev 449 to 673.

(4)(a).

Survivor who furnished entire consideration for joint tenancy created prior to April 29, 1935, is not liable for tax. McCormack, MBTA(48), Feb. 21, 1941.

2293. Tax, how computed—Exemptions.

Expenditures by executors in locating assets of large estates held deductible as administration expenses, and disallowance of deductions on ground that such expenses were incurred in prolonging administration to provide funds for testamentary trusts and in carrying on a business by the executors for profit was improper, nor was such disallowance justified on ground that the deductions claimed were also claimed in connection with income taxes of the estate. Adams, (CCA8), 110F(2d)578, rev'g 39BTA1239.

Burden of proof as to amount executors were entitled to deduct for expenses of administration and as to allowable character of deductions claimed in determining federal estate tax was upon them, and hence upon reversal of determination of Board of Appeals disallowing claimed deduction, case would be remanded to afford opportunity to prove that the administration expenses claimed as deductions were allowable as such. Id.

Losses arising from sales necessarily and properly made in course of administration, whether necessity arises from lack of cash to pay debts and specific legacies or from a mandatory requirement in a will may be deducted as administrative expenses. Op. Atty. Gen. (242-a-17), July 2, 1940.

Inclusion of proceeds of life insurance policies in gross estate. 24 MinnLawRev 963.

MORTGAGES ON REAL PROPERTY

2322. Mortgage defined.

A contract for a deed is a "mortgage", but a quit-claim deed granting title to grantee, satisfying terms of mortgage, and releasing grantee from further obligations under the instruction is not a mortgage. Op. Atty. Gen. (418B-5), Jan. 23, 1940.

Tax must be paid on new mortgage substituted for existing mortgage for purpose of reducing interest. Op. Atty. Gen., (418a-11), April 16, 1940.

A conveyance with a purported consideration of $1 and other valuable considerations, consisting of reservation of life estate with payment to grantor of a certain monthly sum during his life time or until sum of $25,000 has been paid is not a mortgage. Op. Atty. Gen., (418B-5), May 8, 1940.

Warranty deed given to son, providing that son pay all taxes and legal assessments when due, and in addition to pay to grantors annually so long as either shall live, $100, stipulated payments being of essence of deed with reverter back if not made, is subject to mortgage registration tax. Op. Atty. Gen., (418B-8), Jan. 21, 1941.

2323. Tax on record or registration.

Minnesota mortgage registry tax is a revenue measure and mortgages issued to a federal land bank under Federal Farm Loan Act is immune from that tax. McGovern v. F., 296NW473. See Dun. Dig. 9576.

Where grantee (or mortgagee) is to pay $400 per year for so long as both grantors shall live, $400 should be multiplied by number of years of life expectancy of grantor who has longest life expectancy, plus extra amount to be paid to surviving grantor. Op. Atty. Gen. (418B-5), Jan. 23, 1940.

Where part of mortgage matures before five years and sixty days, tax on that portion should be fifteen cents per hundred, and tax on remainder should be twenty-five cents per hundred. Op. Atty. Gen., (418a-11), April 29, 1940.

Where mortgage is given to secure payment of monthly sum during lifetime, usual method of computing tax is to determine years of expectancy from an approved mortality table and then to multiply yearly value of payments by expectancy in years at time contract is made, and portion of contract price payable in over five years and sixty days carries a 25 cent rate. Op. Atty. Gen., (418B-5), May 8, 1940.

Registration tax need not be paid on mortgages running to Minnesota Rural Rehabilitation Corporation, incorporated for purely benevolent purposes, and non-profit, in order to accept and use federal relief grant under Federal Emergency Relief Act. Op. Atty. Gen. (418a-13), Nov. 26, 1940.

MONEY AND CREDITS

2337. Definitions.

"Resident", in statute laying credits and moneys tax upon any person resident or engaged in business within district means domicile. Sweeney v. D., (AppDC), 113F (2d)25.

If all assessments have been timely and properly made, there is a 6 year period of limitations with respect to action to enforce collection of moneys and credits taxes and no limitation with respect to personal property taxes. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Where money and credit assessment are paid prior to entry of judgment, taxpayer is required to pay interest on tax as well as cost in connection with issuance of citation and of sheriff for return of not found. Id.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. Op. Atty. Gen. (614G), Nov. 28, 1940.

GRAIN IN ELEVATORS

2350 to 2353. [Repealed.]

Repealed. Act Apr. 28, 1941, c. 542, §12.

GRAIN HANDLING

2353-½. Definitions.—As used in this act:

"Person" means individuals, corporations, firms and associations of whatever form.

"Handling" or "Handled" means the receiving of grain at or in each elevator warehouse, mill or other facility in this state in which it is received for storage, accumulation, sale or processing for any purpose whatsoever, except as otherwise provided in this act.

"Grain" means all commercial field seeds in their natural state, or when hulled, cleaned, dried, graded, or polished; but such term excludes such seeds when otherwise processed and the products of such processing, or when packaged or sacked. (Act Apr. 28, 1941. c. 542, §1.)

2353-½a. Nature of tax—Rate.—In lieu of all taxes on grain as property of any person handling grain, an annual excise tax is hereby levied on the handling of grain for all the purposes for which taxes would otherwise be levied on such grain as property in this state measured as follows:

A sum equal to one-half mill per bushel upon all wheat, soybeans, and flax handled in this state in the year hereinafter specified, ascertained as hereinafter provided, plus a sum equal to one-fourth mill per bushel upon all other grain so handled. (Act Apr. 28, 1941, c. 542, §2.)

2353-½b. Statement—Filing—Form.—

Section 3. Every person engaged in handling grain shall on May first of each year make and file a statement with the assessor of the taxing district in which the grain was handled setting forth the number of bushels of each kind of grain handled by him in that district during the year immediately preceding or the part thereof during which he was engaged in handling grain.

A form for making such statement shall be included in the blanks prescribed by the commissioner of taxation. (Act Apr. 28, 1941, c. 542, §3.)

2353-½c. Assessment.—The assessor of each such district, from the statement required by Section 3 of this act, or from such other facts and information as he may acquire, shall ascertain the number of bushels of each class of grain mentioned in Section 2 of this act handled by each person in his district during the preceding year, or part thereof and shall assess the same to such person under the provisions of this act.

The rate or rates imposed by Section 2 of this act shall be applied to the number of bushels of each class of grain and the amount resulting therefrom shall constitute the tax to be assessed. (Act Apr. 28, 1941, c. 542, §4.)

2353-½d. Time of payment—Duties of officers—Appeal.—The tax imposed by this act shall be payable at the time or times specified by law for the payment of taxes in respect of taxable personal property, and in the district in which the assessment is made. All the powers and duties vested in or imposed upon the county auditor or the commissioner of taxation, or any other officer or board with respect to the assessment of taxable personal property shall apply to said commissioner and other officers with respect to the assessment of the tax imposed by this act. All rights and privileges of a taxpayer or of any other person in behalf of or in succession to a taxpayer, or with respect to the assessment and payment of taxes levied on personal property, including specifically but without prejudice, all rights of appeal from such personal property and penalty assessments, are hereby conferred upon each such person and made applicable to the assessment and payment of the tax imposed by this act. (Act Apr. 28, 1941, c. 542, §5.)

2353-½e. General personal property list—Entry—Personal property tax law to govern collection.—All taxes assessed pursuant to this act shall be entered on the proper general personal property list in the taxing district in which the same are required by this act to be assessed, and shall be considered the same as taxes imposed upon personal property, and all provisions of law relating to the collection of personal property taxes and the powers and duties of the county treasurer, the county auditor, and all other officers with respect to the collection and enforcement of personal property taxes shall apply to the collection and enforcement of the tax imposed by this act. (Act Apr. 28, 1941, c. 542, §6.)

2353-½f. Distribution of tax.—All taxes levied by and assessed under this act shall, when collected, be distributed by the county auditor and county treasurer to and among the several taxing districts in the same proportion in which such taxing districts are entitled to share in the revenue accruing from the collection of personal property taxes. (Act Apr. 28, 1941, c. 542, §7.)

2353-½g. Exemption from personal property tax.—All grain included in the statements required to be made by this act and upon the handling of which a tax is hereby imposed, shall be exempt from taxation as personal property. (Act Apr. 28, 1941, c. 542, §8.)

2353-½h. Not applicable to farmers.—Nothing in this act shall apply to a farmer in respect to grain raised and stored, kept or found on a farm owned or operated by himself, nor to such grain as shall be handled, held or kept for sale for seed purposes by any person engaged in the business of buying and selling grain for such purposes. (Act Apr. 28, 1941, c. 542, §9.)

2353-½i. Penalties.—When a person fails to file a statement, or fails to list in the statement any item or items of grain which he is required by Section 3 of this act to list therein, the proper assessor shall ascertain as nearly as possible the number of bushels of grain of the various kinds subject to taxation in his taxing district under this act, and thereupon shall add to the assessment of each class or item of taxable property which the taxpayer failed to return or list a penalty of 50 per cent thereof. (Act Apr. 28, 1941, c. 542, §10.)

2353-½j. Severability clause.—The provisions of this act shall be severable. The invalidity of any one provision, section or part shall not affect the validity of the remainder. (Act Apr. 28, 1941, c. 542, §11.)

2353-½k. Repealed.—That Mason's Minnesota Statutes of 1927, Sections 2350, 2351, 2352, and 2353 are hereby repealed. (Act Apr. 28, 1941, c. 542, §12.)

2353-½l. Time of taking effect.—This act shall take effect from the date of passage of this act. The first assessment of taxes hereunder shall be based upon and measured by grain received during the period from March 1, 1940, to May 1, 1941, and thereafter annually on May 1 of each year. (Act Apr. 28, 1941, c. 542, §13.)

DEPARTMENT OF TAXATION

2362-9. Orders and reports.

Section does not require tax commissioner to give attorney general written notice of equalization orders authorized by §2366, or orders made under authority of §2365, or Laws 1931, c. 304, and does not require approval of attorney general of such orders. Op. Atty. Gen. (130a), Dec. 23, 1940.

(a) Necessity of writing—Etc.

Section 2362-15(c) cannot be construed as making it mandatory upon commissioner to make formal findings of fact and rulings of law in every order increasing tax shown by return of taxpayer. Commander Larabee Corp. MBTA (9) February 24, 1940.

2362-15. Appeals from orders.

Appeal may be taken from any official order of commissioner under §§1983, 2365, 2366, or Laws 1931, c. 304. Op. Atty. Gen. (130a), Dec. 23, 1940.

(c) Return—Contents—Etc.

Statute requires only filing of return with board and not service of same upon taxpayer. Commander Larabee Corp. MBTA (9) February 24, 1940.

Taxpayer was not entitled to have return stricken from files because not filed within 20 days from notice of appeal, especially where taxpayer thereafter filed petition for leave to file an amended notice of appeal. Id.

Section cannot be construed as making it mandatory upon commissioner to make findings of fact and rulings of law in every order which he may make. Id.

A plea for better tax pleading. 18 Cornell Law Quarterly 507.

2362-25. May make rules and regulations.

AMENDED RULES AND REGULATIONS OF THE MINNESOTA BOARD OF TAX APPEALS

(Filed December 29, 1939)

The following rules and regulations are hereby promulgated by the Board of Tax Appeals of the State of Minnesota pursuant to Article VI, Chapter 431, Sections 10 to 31 inclusive, Session Laws of Minnesota for the year 1939, and are hereby substituted in full for the rules and regulations heretofore promulgated by said Board and filed with the Secretary of State of the State of Minnesota on October 4, 1939.

Rule 1. Appearance and practice before the board.

Any person may appear and act for himself or for a partnership of which he is a member or for a corporation of which he is an officer.

Others who may practice before the Board as hereinafter provided shall be:

(a) Attorneys at law duly licensed to practice law in the State of Minnesota.

(b) Certified Public Accountants duly qualified under the Laws of Minnesota, provided, however, that practice by Certified Public Accountants shall be limited to the following:

(1) Presentation of matters in which the facts are submitted by stipulation and in which the taking of evidence before the Board is not required.

(2) Arguments on questions of fact and problems in accountancy in all hearings before the Board.

The Board may for cause deny or suspend the right of any person to practice before it.

Rule 2. Meetings.

The Board shall meet on the first Tuesday of each month, or if the same shall fall on a holiday then on the Wednesday following, at ten o'clock A.M. at its office in the State Capitol. The Board shall meet at such other times and at such other places as shall be designated by the chairman or any two members of the Board.

Rule 3. Hearings.

(a) One or more members of the Board designated by the chairman, or in his absence by the vice-chairman, may hold hearings and take testimony at any place within the state, and such testimony so taken shall be reported for action by the Board.

(b) Hearings before the Board shall be open to the public. All findings and decisions of the Board after they have been filed with the clerk of said Board shall be a matter of public record.

Rule 4. Title of cause.

(a) Each notice of appeal and all other papers filed with the Board shall contain a caption in the following form:

State of Minnesota Board of Tax Appeals

_____ Appellant, vs. The Commissioner of Taxation, Appellee.	In the Matter of the Appeal from the Commissioner's Order dated _____ relating to _____ tax of _____ (Name of Taxpayer)

(b) In all cases the appellee shall be "The Commissioner of Taxation," who shall be designated by his official title without naming the individual holding the office, and if a change occurs in the individual holding the office while an appeal is pending the appeals shall not abate and no substitution of parties shall be necessary.

(c) The appellant shall be the taxpayer or the person authorized by Laws 1939, Chapter 431, Article VI, Section 15, to appeal from the order of the Commissioner.

Rule 5. Notice of appeal.

A notice of appeal shall be signed by the appellant personally or by an attorney at law duly licensed to practice law in the State of Minnesota.

Rule 6. Proof of service.

Proof of service shall be evidenced by an affidavit of service attached to, or by admission of service endorsed on the original of the instrument served.

Rule 7. Agreed statements of facts.

The parties may by stipulation in writing, filed with the Board, or presented at the hearing, agree upon any or all questions of fact involved in the appeal. An original and three copies of such stipulation shall be furnished to the Board.

Rule 8. Documentary Evidence.

(a) When books, documents, records, or other papers have been received in evidence, a copy thereof or of so much thereof as may be material or relevant, may, in the discretion of the Board, be substituted therefor.

(b) Originals of books, documents, records, diagrams or other exhibits introduced in evidence before the Board may be withdrawn from the custody of the Board in such manner and upon such terms as the Board in its discretion may prescribe. Exhibits shall not be open to the inspection of the public.

(c) Evidence as to the contents of books, documents, records and other papers may, in the discretion of the Board, be given by oral testimony.

Rule 9. Briefs.

(a) Briefs may be filed with the Board either before or at the time of hearing. An original and three copies of the same shall be furnished to the Board.

(b) Upon request made by any party at the time of hearing, the Board, may, in its discretion, grant said party additional time within which to file a brief. If such leave is granted, the Board shall designate the period of time within which said party shall serve and file said brief and the time within which the other party shall serve and file a reply brief. In the event leave to file such brief is granted the matter shall be deemed to have been submitted to the Board on the date set for the filing of the last brief or upon the actual filing thereof.

(c) Any taxpayer interested in or affected by any matter pending before the Board may petition the Board for leave to file a brief amicus curae and the Board in its discretion may grant or deny such petition.

Rule 10. Submission without hearing.

If all parties to an appeal shall by written stipulation waive their right to a public hearing, the parties may submit such matter to the Board on written stipulation of facts and briefs, but after such submission the Board may, in its discretion, require appearances for the taking of further testimony or for oral argument. In the event such appearance is required, ten (10) days notice shall be given by mail to all parties to the proceeding.

Rule 11. Intervention.

In the event an appeal is taken by the Attorney General in behalf of the State, or by any resident taxpayer in behalf of the State in case the Attorney General shall refuse to appeal, any taxpayer named in the order appealed from may by petition to the Board ask leave to intervene in said matter.

Rule 12. Practice and Procedure.

Unless otherwise herein provided, the practice and procedure before the Board shall be substantially such as obtains in the District Courts of this state. The Board, however, reserves the right to vary such practice and procedure by the incidental suspension of the more rigid forms of pleadings, practice and evidence when in its opinion the best interests of the parties involved may be thereby conserved or the determination of the cause expedited.

When at any time by proper motion board is asked to grant any party in a proceeding relief which will tend to simplify, clarify and expedite hearing on merits, board will consider such application in light of this rule. Commander Larabee Corp. MBTA (9) February 24, 1940.

Rule 13. Continuances.

Continuances and postponements may be ordered by the Board on its own motion or may, at the discretion of the Board, be granted on motion of either party.

Rule 14. Extension of time for appealing.

If any party shall request an extension of time for appealing under Section 15 (b), Chapter 431, Session Laws of Minnesota for 1939, said party shall submit a verified petition setting out the rounds upon which said extension is requested and shall attach to said petition an order providing for the extension.

Rule 15. Additional hearings.

If after the holding of any hearing in any matter the Board shall deem that the rights of the parties will be better served by the holding of a further hearing or hearings in said matter, the Board may order such further hearing or hearings, and ten (10) days' notice of such further hearing or hearings shall be given by mail to all parties to the proceeding.

Rule 16. Reservation.

The Board reserves the right to amend, relax and dispense with these rules and regulations from time to time as circumstances may require, or render necessary or expedient.

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 10½ per cent for the years 1941 and 1942, and nine 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 thereon to be filed as hereinafter provided. (As amended Act Apr. 28, 1941, c. 544, §1.)

2373-1. Application of act.—All ores mined or produced subsequent to December 31, 1940, shall be subject to the increased rates provided by this act. (As amended Act Apr. 28, 1941, c. 544, §2.)

2373-2. Low grade ore.—For the purpose of increasing employment and the utilization of low-grade, underground, and high labor cost ores, any taxpayer on whom a tax is imposed by reason of the provisions of Mason's Supplement 1940, Section 2373, shall be allowed a credit against the occupation tax as computed

in said section because of the mining or production of ore from any mine in an amount equal to 10 per cent of that part of the cost of labor, excepting administrative labor, employed at said mine or in the beneficiation of such ore at or near said mine, in any calendar year, in excess of 20 cents per ton of the ore produced during that year; provided, however, that in no event shall the credit allowed hereunder be in excess of two-thirds of the total of the tax computed under the provisions of Mason's Supplement 1940, Section 2373. (As amended Act Apr. 28, 1941, c. 544, §3.)

2373-3. Appropriation.—For the period beginning May 1, 1941, and ending April 30, 1942, there is hereby appropriated from the general revenue fund, for the purposes hereinafter set forth, five per cent of amounts paid and credited into said fund from the proceeds of taxes paid under the provisions of the law relating to occupation taxes on the business of mining or producing iron ore, and on and after May 1, 1942, there is hereby appropriated from the general revenue fund, for the purposes hereinafter set forth, ten per cent of all amounts paid and credited into said fund from the proceeds of said taxes. The office of Commissioner of Iron Range Resources and Rehabilitation is hereby created. The Commissioner shall be appointed by the Governor, with the advice and consent of the Senate, for a term of 2 years, the first term to begin July 1, 1941. The salary of the Commissioner shall be $5,000 per annum which shall be paid from the amounts appropriated by this section, provided, however, that such salary shall be reduced by such amount as he may receive from other funds, and the said Commissioner may hold such other positions or appointments as are not incompatible with his duties as Commissioner of Iron Range Resources and Rehabilitation. All expenses of the Commissioner, including the payment of such assistance as may be necessary, shall be paid out of the amounts appropriated by this section.

When the Commissioner above named shall determine that distress and unemployment exists in any county by reason of the removal of natural resources and the decrease in employment resulting therefrom, he may use such amounts of the appropriation made to him in this section as he may determine to be necessary and proper in the development of the remaining resources of said county and in the vocational training and rehabilitation of its residents. (Act Apr. 28, 1941, c. 544, §4.)

2373-4. Severability clause.—The provisions of this act shall be severable with respect to the effect of invalidity of any provision or the application hereof. (Act Apr. 28, 1941, c. 544, §5.)

2374. Value of ore—How ascertained.

(4).

When there are 2 mining leases in force upon separate mines, in each of which lessee and lessor are same parties, they may by agreement transfer or apply advance royalty payments credited upon one lease to other having no such credit if done in good faith and without intention to evade tax. State v. Commissioner of Taxation, 295NW652. See Dun. Dig. 9576c.

Advance royalties paid on inactive lease and transferred in good faith to active lease were properly deducted. The Mesaba-Cliffs Mining Co., MBTA, No. 12, June 25, 1940.

2392. Taxes to go to revenue fund if act is declared invalid.

State v. Commissioner of Taxation, 295NW652; note under §2374(4).

The Mesaba-Cliffs Mining Co., MBTA, No. 12, June 25, 1940; note under §2374(4).

Where lessee placed certain ore in stock piles as valueless, and after termination of lease owner of land agreed to let taxpayer, a third party, remove the ore at a price of 25 cents per ton, such payments were not a royalty subject to tax. Argonne Ore Co., MBTA (No. 41), Apr. 17, 1941.

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 10½ per cent for the year 1941 and 1942, and 9 per cent thereafter. (As amended Act Apr. 28, 1941, c. 545, §1.)

2392-1a. Same—Date of accrual.—The increased rates provided hereby shall be applicable to all royalties accruing subsequent to December 31, 1940. (As amended Act Apr. 28, 1941, c. 545, §2.)

2392-8. Lien of tax.

State v. Commissioner of Taxation, 295NW652; note under §2374(4).

2392-14. "Taconite," definition.—For the purpose of this law, "taconite" is defined as ferruginous chert or ferruginous slate in the form of compact, siliceous rock, in which the iron oxide is so finely disseminated that substantially all of the iron-bearing particles of merchantable grade are smaller than 20 mesh. Taconite may be further defined as ore-bearing rock which is not merchantable as iron ore in its natural state, and which cannot be made merchantable by simple methods of beneficiation involving only crushing, screening, washing, jigging, drying or any combination thereof. (Act Apr. 22, 1941, c. 375, §1.)

2392-15. Tax upon taconite and iron ore concentrate.—There is hereby imposed upon taconite, and upon the mining and quarrying thereof, and upon the production of iron ore concentrate therefrom, and upon the concentrate so produced, a tax of five cents per ton of merchantable iron ore concentrate as shipped therefrom, plus one-tenth of one cent per ton for each one per cent that the iron content of such shipping product exceeds 55 per cent, when dried at 212 degrees Fahrenheit. (Act Apr. 22, 1941, c. 375, §2.)

2392-16. Exclusive tax on property—Exceptions— Such tax shall be in addition to the occupation tax imposed upon the business of mining and producing iron ore and in addition to the royalty tax imposed upon royalties received for permission to mine and produce iron ore. Except as herein otherwise provided, it shall be in lieu of all other taxes upon such taconite, or the lands in which it is contained, or upon the mining or quarrying thereof, or the production of concentrate therefrom, or upon the concentrate produced, or upon the machinery, equipment, tools, supplies and buildings used in such mining, quarrying or production. Provided that nothing herein shall prevent the assessment and taxation of the surface of such lands at their value thereof without regard to the taconite therein, nor the assessment and taxation of merchantable iron ore or other minerals, or iron-bearing materials other than taconite in such lands in the manner provided by law. (Act Apr. 22, 1941, c. 375, §3.)

2392-17. Assessment under certain conditions.—In any year in which at least 1,000 tons of iron ore concentrate is not produced from any 40 acre tract or governmental lot containing taconite, a tax may be assessed upon the taconite therein at the mill rate prevailing in the taxing district and spread against the assessed value of the taconite, such assessed value to be determined in accordance with existing laws. Provided the amount of the tax spread under authority of this section by reason of the taconite in any tract of land shall not exceed $1.00 per acre. (Act Apr. 22, 1941, c. 375, §4.)

2392-18. Method of collection and payment.—The tax provided by Section 2 hereof shall be collected and paid in the same manner and at the same time as provided by law for the payment of the occupation tax. Reports shall be made and hearings held upon the determination of the tax at the same times and in the same manner as provided by law for the occupation tax. The commissioner of taxation shall have authority to make reasonable regulations as to the form and manner of filing reports necessary for the determina-

tion of the tax hereunder, and by such regulations may require the production of such information as may be reasonably necessary or convenient for the determination of the tax. All the provisions of the occupation tax law with reference to the assessment, determination and collection of the occupation tax, including all provisions for penalties and for appeals from or review of the orders of the commissioner of taxation relative thereto, are hereby made applicable to the tax imposed by Section 2 hereof, except insofar as inconsistent herewith. (Act Apr. 22, 1941, c. 375, §5.)

2392-19. Distribution of proceeds.—The proceeds of the tax collected under Section 2 hereof shall be distributed by the state treasurer, upon certificate of the commissioner of taxation, to the general fund of the state and to the various taxing districts in which the lands from which the taconite was mined or quarried were located in the following proportions: one-fourth thereof to the city, village or town; one-fourth thereof to the school district; one-fourth thereof to the county; one-fourth thereof to the state. The amount so distributed shall be divided among the various funds of the state, or of the taxing districts in the same proportion as the general ad valorem tax thereof. Provided if in any year the state shall not spread any general ad valorem tax levy against real property, the state's proportion of the tax shall be paid into the general revenue fund. (Act Apr. 22, 1941, c. 375, §6.)

INCOME TAX

ARTICLE II.—IMPOSITION OF TAXES

2394-2. Imposition on corporations; etc.

State was not entitled to collect state income tax upon gross receipts derived by corporation from services in enameling metal parts of stoves and refrigerators for customers outside of the state, the services performed being within protection of commerce clause. Ingram-Richardson Mfg. Co. v. D., (CCA7), 114F(2d)889. Cert. gr. 61SCR613, 614.

Tax imposed upon corporations by Laws 1933, c. 405, §2, (§2394-2), is a property tax upon right or franchise of corporations to exist and to transact business in this state, measured by corporations' net taxable income as defined in that chapter, and in so far as c. 405 assumes to impose a franchise tax, measured by income, upon a railroad based upon its ownership or operation for railroad purposes provisions of c. 405 are contrary to Const. Art. 4, §32a, and invalid since c. 405 has never been approved by a vote of people as required by that section. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW 401. See Dun. Dig. 9570d. See also 292NW411. Cert. den. 61SCR439.

So-called "recapture funds" taken from earnings of railroads under Transportation Act of 1920, 41 Stat. 456, 489, 49 Mason's U. S. C. A., §15a(6), and returned to the railroads under the provisions of the emergency Railroad Transportation Act of 1933, 48 Stat. 211, 220, 49 Mason's U. S. C. A., §15b, and upon which a gross earnings tax was paid to the state, are not nonrailroad income nor subject to the tax imposed by Mason's Minn. St., §2394-2. Id.

Income received from federal securities may not be used in computing net income of a corporation as a measure of franchise tax. Id.

Attempt of tax commission to increase rate of interest on demand deposits made by defendants with parent corporation from 2½% to 5% was unreasonable and arbitrary and properly set aside by trial court. Id.

Rent paid to a lessor railroad by its operating lessee may not properly be considered fruits of a nonrailroad exercise of lessor's franchise. Id.

That part of its corporate franchise which a railroad corporation exercises outside scope of railroad ownership or operations becomes subject to tax imposed by this section measured by net taxable income from such non-operating activity as defined by this act. Id.

Accretions and interest on funds recaptured by railroads from payments made under federal transportation act arise from exercise of corporate franchise within scope of railroad ownership or operation and are therefore not subject to taxation under Mason's Minn. St. §2394-2. State v. Duluth, M. & N. Ry. Co., 292NW411. See Dun. Dig. 9570d.

Interest on deposits with United States Steel Corporation and on bank balances was railroad income and had not become characterized as an investment. Id.

Houses rented and sold to employees appear to be such as would not otherwise have been available and were built in order to provide habitations for employees at a place convenient to work. The rent and interest on purchase price, therefore, were funds arising out of exercise of franchise for railroad purposes. Id.

Delaware corporation was transacting business in Minnesota in 1934 and 1935, though it was in securities business and placed its property in hands of a custodian in New York. The Canisteo Corp., MBTA(17), Mar. 7, 1941.

Income from intangibles in New York could not be assigned to Minnesota. Id.

2394-3. Classes of tax-payers.—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 not taxable under Section 2 who own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both.

(b) Resident and nonresident individuals, except that no nonresident individual shall be taxed on the 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 nonresidents or by domestic or foreign corporations. (As amended Act Apr. 28, 1941, c. 550, §1.)

2394-4. Accrual of liability; etc.

(a).

The Canisteo Corp., MBTA(17), Mar. 4, 1941; notes under §2394-2.

2394-5. Exemptions from act.—The following corporations, individuals, estates, trusts and organizations shall be exempted from taxation under this act, provided that every such person or corporation claiming exemption under this act, in whole or in part, must file with the commissioner upon request such financial statements as are necessary to enable him to determine the taxable status of any income or activity:

(a) National and state banks, except as such banks are subject to the excise tax imposed by Sections 32-4 and 32-5.

(b) Corporations, individuals, estates and trusts engaged in the business of mining or producing iron ore; but if any such corporation, individual, estate or trust 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 of 1925.

(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, and co-operative associations organized under the provision of Laws 1923, Chapter 326, as amended, which are engaged in the transmission and distribution of electrical heat, light or power upon a mutual, and co-operative plan in areas outside the corporate limits of any city or village. As amended Apr. 1, 1941, c. 109, §1.)

(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 co-operative 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 ex-

penses, 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 nonprofitible 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.

(n) Corporations organized by an association exempt under the provisions of paragraph (g), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation 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 corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

(o) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this act.

(p) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents if no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual. (As amended Act Apr. 28, 1941, c. 550, §2.)

(j).
Credit association organized for benefit of retail merchants in city, and to educate public in advantages of credit buying, which made no profits, paid no salaries for services, its funds coming from membership dues, held exempt as a "business league" under federal revenue act. Retail Credit Ass'n of Minneapolis v. U. S., (DC-Minn), 30FSupp855.

2394-6. Rates of tax—Credits—Apportionment.—(a) * * * * *

(c) The taxes due under the foregoing computation shall be credited with the following amounts:

1. In the case of an unmarried individual, and the estate of a decedent $10.00.

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.

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 stocks, notes, bonds, accounts receivable or other evidence of indebtedness, special privileges, franchises, good-will 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.

6. If the status of a taxpayer, insofar 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. (As amended, Act Apr. 28, 1941, c. 550, §3.)

Byard v. C., 296NW10; note under §2394-32a.

ARTICLE III.—COMPUTATION OF NET INCOME

2394-9. Taxable net income.

Exemption as inheritance of receipts under agreement not to contest will. 24MinnLawRev134.

(a).

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27(g).

2394-10. What is net income.

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27(g).

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 mine, 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 or entered into the computation of taxable net 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. (As amended, Act Apr. 28, 1941, c. 550, §4.)

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27(g).

Where liability of government for loss by forest fire was judicially determined and full amount of property loss was fixed, and taxpayer accepted the settlement on basis of 50% in 1922 and Congress authorized payment of the additional 50% in 1936, amount received in 1936 was only a return of capital and was not includable in taxable income, fire claim having no established value as of January 1, 1933. Dodge, MBTA (8) February 20, 1940.

Renewal insurance commissions received by a resident are taxable income though they grow out of services and activities taking place in another state in a prior year. McMahon, MBTA, No. 38, Sept. 10, 1940.

Salaries of district court judges are subject to income tax. Op. Atty. Gen. (531-h), June 21, 1940.

2394-12. Exemptions from gross income.—

(a-d) * * *

(e). Amounts received by any person from the United States or the state of Minnesota by way of a pension, public employee retirement benefit, social security benefit or railroad retirement benefit, family allotment, or other similar allowance. (As amended, Act Apr. 28, 1941, c. 550, §5.)

(f) * * * * *

(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; provided further that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies, or its instrumentalities, by federal employees residing in "federal areas" shall be excluded from gross income for all taxable years ending prior to January 1, 1941. (As amended Act Apr. 28, 1941, c. 550, §6.)

(h-k) * * * * *

(1) 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 or under section 32-4, except so far as taxable under Section 8. (As amended Act Feb. 21, 1941, c. 18, §4.)

Money received by candidate for campaign expenses need not be reported as income, but an individual who is a paid worker for some candidate and receives compensation for services rendered must report such compensation as income. Op. Atty. Gen. (531), Oct. 10, 1940.

(g).

Income received from federal securities may not be used in computing net income of a corporation as a measure of franchise tax. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW401. See Dun. Dig. 9570d. See also 292NW411. Cert. den. 61SCR439.

2394-12a. Same—Non-residents employed in state.—The compensation received for services performed within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein. (Added Act Apr. 24, 1941, c. 429, §1.)

Act Apr. 24, 1941, c. 429, §2, provides that this act shall apply to taxes for the calendar year 1940 and all subsequent taxable years.

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, profession, gainful occupation 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 employes, and any welfare work for the benefit of such employees.

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

(c) Taxes paid or accrued within the taxable year, except (a) income or franchase 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 30 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 rising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. The amount of the deductible loss shall be computed on the same basis as is provided by Section 16 for determining the gain or loss on the sale or other disposition of property.

(e) Debts ascertained to be worthless and charged off during the taxable year, but this last shall be required only if the taxpayer keeps regular books of account; provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided further, that the commissioner 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 leasesd 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 commissioner. 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 deduction under subdivision (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 Commissioner 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 or of personal injury to himself or his dependents.

(l) An allowance for amortization of war facilities to the extent that such deduction is finally allowed under Section 124 of the internal revenue code provided no deduction has been claimed with respect thereto under subsection 13 (f) or any other section or subsection of this act. (As amended Act Apr. 28, 1941, c. 550, §7.)

(a).

Expenditures for churches in unincorporated town population of which consists almost wholly of taxpayer's employees and families, and land and buildings of which are owned by taxpayer are ordinary and necessary business expense deductible under this section and not contributions or gifts under §2394-27(b). McClond River Lbr. Co., M. B. T. A., (1), Dec. 15, 1939.

Where expediture made by taxpayer has reasonable and direct relationship to welfare work for the benefit of taxpayer's employees, the same constitutes an ordinary and necessary business expense and is deductible under this section. Id.

Attorney fees expended in action against trustee of trust estate of which taxpayer was sole beneficiary were deductible as incurred in "conducting an activity." Queal, MBTA, No. 18, Sept. 9, 1940.

(c).

Income tax regulations that amounts from salaries of railroad employees, as contributions under railroad retirement act are not deductible by employee, is valid. Op. Atty. Gen. (531-L), July 17, 1940.

Where taxpayer purchased land in September, 1936, and paid the 1936 taxes in 1937, making his return on cash receipts and disbursements basis, such payment of taxes in 1937 constituted a deduction from income taxes for 1937, and not merely a payment of part of capital costs of acquiring property. Hallam, MBTA(33), Nov. 28, 1940.

(d).

Where taxpayer owned stock of a corporation which began liquidating in 1932 and last liquidating dividend was paid in 1935, and there was pending in 1935 a lawsuit in behalf of corporation which was lost by corporation in lower court decision in 1936, and appeal was taken and lower court decision affirmed in 1937, stock did not become worthless until year 1937, and was deductible as a loss in that year and not in year 1935 or 1936. Green, MBTA(26, 40), Nov. 28, 1940.

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;

(b) 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) The 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.

(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 beneficary, 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, ancestor, 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 ex-

change was bona fide and for a fair and adequate consideration.

(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 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).

(h) Contributions by employees under the federal railroad retirement act, the federal social security act, or to Minnesota public employee retirement funds. (As amended Act Apr. 28, 1941, c. 550, §8.)

2394-16. Gain and loss on sales.
Thorpe, MBTA(19), Jan. 10, 1941; note under §2394-19.

2394-18. Basis for determining gain or loss.
(b).
Thorpe, MBTA(19), Jan. 10, 1941; note under §2394-19.

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 from the sale or other disposition of property acquired before 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). The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933, shall be the cost to the taxpayer adjusted as provided in Section 16(b) for the period prior to January 1, 1933. 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 purpose of this section. (As amended Act Apr. 24, 1941, c. 550, §9.)
On disposition of property acquired by gift prior to January 1, 1933, sole basis is fair market value on January 1, 1933. Thorpe, MBTA(19), Jan. 10, 1941.

2394-20. Deductions.—(a) * * *
(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, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in Section 13(f) or amortization allowance provided in Section 13(*l*). (As amended Act Apr. 28, 1941, c. 550, §10.)
(c) * * * * *

2394-21. What are dividends.—(a) * * *
(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. No amount received in liquidation shall be treated as the distribution of an ordinary dividend. (As amended Act Apr. 28, 1941, c. 550, §11.)
(d).
Where taxpayer owned stock of a corporation which began liquidating in 1932 and last liquidating dividend was paid in 1935, and there was pending in 1935 a lawsuit in behalf of corporation which was lost by corporation in lower court decision in 1936, and appeal was taken and lower court decision affirmed in 1937, stock did not become worthless until year 1937, and was deductible as a loss in that year and not in year 1935 or 1936. Green, MBTA(26, 40), Nov. 28, 1940.

2394-22. Taxable net income.
Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27g.

2394-23. Gross income to be allocated.
(a).
A nonresident employed in this state for a period in excess of 150 days, must include in his gross income salary paid while on a vacation outside this state. Hughes v. S., 292NW194. See Dun. Dig. 9571a.
Renewal insurance commissions received by a resident are taxable income though they grow out of activities and services rendered in another state in a prior year. McMahon, MBTA, No. 38, Sept. 10, 1940.
(b).
A Delaware corporation with principal place of business in Minnesota and its intangibles in hands of custodian corporation in New York, sole business being purchase and sale of securities, was not "domiciled" in Minnesota and income from intangibles could not be assigned to Minnesota in measuring privilege tax. The Canisteo Corp., MBTA(17), Mar. 7, 1941.

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, deduction 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 if of the taxpayers 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 per cent of the percentage determined under subdivision (A) (1) (a) above, 15 per cent of the percentage determined under subdivision (A) (1) (b) above, and 15 per cent of the percentage determined under subdivision (A) (1) (c) above.

(2) (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 (2) (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.

(3) 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 during the taxable year in respect of which the tax is being computed.

(4) For the purposes of this section, in determining the amount of sales made within Minnesota, there shall be excluded therefrom sales negotiated or effected 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 commissioner to be attributable to the business conducted on such premises. If the commissioner 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 wherever and insofar as, the business carried on within this state is an integral part of a business carried on both within and without this state.

(C) Nothing in this section shall prevent the application of Section 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. (As amended, Act Apr. 28, 1941, c. 550, §20.)

Exception in Indiana Income Tax Statute of gross income derived from business conducted in commerce between the states "but only to the extent to which the state of Indiana is prohibited from taxing such gross income by the Constitution of the United States," held not an exemption provision but merely a limitation in conformity with the commerce clause upon power of state to tax, which neither adds to, nor detracts from, the rights of either the taxpayer or the state. Ingram-Richardson Mfg. Co. v. D., (CCA7), 114F(2d)889. Cert. gr. 61SCR613, 614.

2394-27. Credits against tax.—(a) * * *

(e) To each mutual investment company, as defined by the United States internal revenue code, Section 361, an amount equal to the interest and dividends paid during the taxable year, and to each building and loan and savings and loan association, an amount equal to the dividends paid during the taxable year to its members as members. (As amended, Act Apr. 28, 1941, c. 550, §21.)

(b) (2).

Expenditures for churches in unincorporated town in another state, population of which consists almost wholly of taxpayer's employees and families and land and buildings of which are owned in fee by taxpayer are not contributions or gifts, but ordinary and necessary business expense deductible under §2394-13(a). McClond River Lbr. Co., M. B. T. A., (1), Dec. 15, 1939.

The legislature in using the words "contributions or gifts" referred to payments made from philanthropic motives where there would be no direct benefit to donor. Id.

(c).

Vandever, MBTA, No. 32, Oct. 29, 1940; note under §2394-28.

"Entire net income" means net income of corporation as disclosed by the return of the corporation for tax purposes. Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941.

ARTICLE IV.—PROVISIONS RELATING TO SPECIAL CASES

2394-28. Application of act.

Where taxpayer received entire income of trust which received dividends derived from Minnesota business but lost money on other activities, dividend credit cannot exceed amount of trust income distributed to taxpayer. Vandever, MBTA, No. 32, Oct. 29, 1940.

2394-28a Estate or trusts—Computations—Credits or deductions.—(a) * * *

(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, to the extent that such amount is properly includible in computing the taxable net income of such legatee, heir or beneficiary under the provisions of this act. (As amended, Act Apr. 28, 1941, c. 550, §12.)

There is no inconsistency in deducting administration expenses as to both estate and income taxes. Adams, (CCA8), 110F(2d)578, rev'g 39BTA1239.

2394-28b. Same—Personal credit.—An estate shall be allowed the same personal credit against the tax as is allowed to a single person under Section 6 (c) (1). (As amended, Act Apr. 28, 1941, c. 550, §23.)

2394-30. Partnerships not to be taxed.

(d).

Where partnership used fiscal year accounting period ending June 30, 1937, partner making individual 1937 return on calendar year basis was properly taxed for entire partnership income at rates in effect under 1937 act, though there was a monthly distribution of profits from July 1, 1936 to June 30, 1937. Byard, MBTA (3) Feb. 20, 1940. Aff'd 296NW10.

2394-32. Special taxes for corporations.—(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 commodity 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 of 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 agree-

ment, 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 corporation, or has its income regulated through contract or other arrangement, the commissioner of taxation may permit or require such consolidated statement as in his opinion are necessary in order to determine the taxable net income received by any one of the affiliated or related corporations. (As amended Act Apr. 26, 1941, c. 458, §1.)

See also, §§2394-32g, 2394-32h.

Subdivision (A) of Mason's 1940, Supp. was repealed by Act Apr. 28, 1941, c. 550, §13. Such subdivision (a) was amended to read as above by Act Apr. 26, 1941, c. 458, §1.)

(a). Repealed.

Subdivision (a) of this section as set forth in Mason's 1940 Supp. was repealed. Laws 1941, c. 550.

(c).

Nonrailroad income is subject to this section, and should be included in the combined taxable net income of the affiliated corporations, and we refrain from determining whether certain items are railroad income since their aggregate amount is less than net deficit in income shown by combined return of affiliated corporations. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW 401. See Dun. Dig. 9570d. See also 207M637, 292NW411. Cert. den. 61SCR439, 440.

Section requires imposition of tax on combined net taxable income of affiliated or related corporations where 90% or more of their voting stock is owned or controlled by same interests, and word "may" as it appears in last sentence of subsection is mandatory and tax commission has no discretion. State v. Oliver Iron Min. Co., 292NW407. See Dun. Dig. 9570d.

It does not offend our tax law that affiliated or related corporations which have no tax status in this state are not joined in consolidated return. If all affiliated corporations which are taxable in this state are joined in consolidated return it is a sufficient compliance with our law, although there may be other affiliated corporations having no tax status here. Id.

2394-32a. Taxable year extending into calendar years affected by different laws.

Where partnership used fiscal year accounting period ending June 30, 1937, partner making individual 1937 return on calendar year basis was properly taxed for entire partnership income at rates in effect under 1937 act, though there was a monthly distribution of profits from July 1, 1936 to June 30, 1937. Byard, MBTA (3) Feb. 20, 1940. Aff'd 296NW10.

2394-32d. National and state banks—computation of net income—Rate of tax—payment and distribution.—(a). An excise tax measured by net income is hereby imposed on national and state banks by this act and shall be governed by the provisions of section 2 and the term "corporation" as used in this act, shall include a banking corporation organized under the laws of the United States or of this state, and the taxable net income shall be computed in the manner provided by this act except that in the case of national and state banks the rate shall be eight per cent instead of six per cent and the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940 instead of January 1, 1933.

(b) The state is hereby adopting the method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of the Revised Statutes of the United States.

(c) The revenues derived from the excise tax on banks shall be paid into the state treasury and credited to a special fund, from which shall be paid all refunds of taxes erroneously collected from banks as certified by the commissioner. The balance of said fund shall be transmitted, on the last day of May and November of each year, to the respective counties in which are located the banks paying the tax. The county auditor shall apportion and distribute the respective amounts paid by each bank in his county, less refunds paid to that bank, in the same manner and on the same basis as he distributes taxes on personal property in the taxing district in which such bank is located.

(d) The tax hereby imposed upon national and state banks shall be in lieu of all taxes upon the capital, surplus, property, assets and shares of such banks, except taxes imposed upon real property. (Apr. 21, 1933, c. 405, §§32-4, added Feb. 21, 1941, c. 18, §1.)

Editor's Note: A tax on banks according to or measured by net income is imposed by Alabama, California, Colorado, Connecticut, Idaho, Massachusetts, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah and Wisconsin.

2394-32e. Same—Gross income—Inclusion of dividends from banks.—By reason of the adoption of method numbered (4) authorized by the Act of March 25, 1926, amending Section 5219 of Revised Statutes of the United States whereby a state may impose an excise tax upon national banks, and the state having elected in Section 32-4 of this act to impose such tax, every taxpayer taxable under this act must include in gross income dividends received from national banks (to the extent permitted by said section 5219) and dividends from state banks in the same manner and to the same extent as other dividend income is includable in gross income for the purpose of computing his taxable net income. (Apr. 21, 1933, c. 405, §32-5, added Feb. 21, 1941, c. 18, §2.)

2394-32f. Effective date of act—Time of filing returns—Suspension of other taxes.—This act shall take effect as of January 1, 1940. The first return hereunder shall be for the calendar year 1940 and shall be filed on March 15, 1941, or within 30 days after the enactment hereof, whichever is later. The collection and enforcement of all taxes assessed or levied upon the shares of national and state banks for the year 1940 is hereby suspended during the period that this act shall be in force and if any tax so levied shall have been paid it shall be refunded. (Act Feb. 21, 1941, c. 18, §3.)

2394-32g. Affiliated groups of corporations.—An affiliated group of corporations, all the members of which are required to file income tax returns under the provisions of this act, shall have the privilege of filing a consolidated return in lieu of separate returns, if the entire income of each of the members of the affiliated group including the common parent, if any, is assignable to this state under the provisions of this act. In the case of a corporation which is a member of the affiliated group for a fractional part of the taxable year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group. Only one credit provided by Section 27(a) of this act shall be allowed in computing the tax on such consolidated return. The consolidated net income of the affiliated group shall be determined in accordance with such regulations as the commissioner may prescribe. As used in this subdivision an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if (1) at least 90 per cent of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and (2) the common parent corporation owns directly 90 per cent of the stock of at least one of the other corporations; and (3) each of the corporations is either (a) a corporation whose principal business is that of a common carrier by railroad or (b) a corporation, the assets of which consist principally of stock in such corporation, and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this subdivision, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of trans-

portation operated as part of a street or suburban electric railway or trackless trolley system. As used in this section, the term "stock" does not include non-voting stock which is limited and preferred as to dividends. (Added Act Apr. 26, 1941, c. 458, §2.)

2394-32h. Application of act.—This act [2394-32, 2394-32g] shall apply to the determination and assessment of taxes for all taxable years beginning after December 31, 1940. (Added Act Apr. 26, 1941, c. 458, §3.)

ARTICLE V.—RETURNS

2394-36. Filing of return.

State v. Duluth, M. & N. Ry. Co., 292NW411; note under §2394-45(a).

2394-38. Partnership returns.—(a) * * * * *

(b) Every person or corporation making payments during the taxable year to any person or corporation in excess of $500.00 on account of rents, or in excess of $100.00 on account of interest or dividends, or in excess of $1,000 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, or 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 commissioner 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 $1,000 together with the last known address of such employee or official.

The commissioner 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 due on profits or gains or such customers has been paid.

The commissioner 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. (As amended Act Apr. 28, 1941, c. 550, §14.)

ARTICLE VI.—COLLECTION OF TAX

2394-42. Tax to be paid when return is filed—Installments—Extension of time.—(a) 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. Provided, however, that with respect to all such taxes payable after January 1, 1942, when the amount due from any taxpayer is $30.00 or more, any such taxpayer may elect to pay the tax in four equal installments in which case the first installment shall be paid on the date prescriped for the payment of the tax by the taxpayer, the second installment shall be paid on the 15th day of the third month, the third installment on the 15th day of the sixth month, and the fourth installment on the 15th day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.

(b) At the request of the taxpayer, and for good cause shown the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension. (As amended Act Apr. 21, 1941, c. 335, §1; Act Apr. 28, 1941, c. 550, §15.)

2394-43. Tax commission to examine return.

Penalty is imposed upon failure to pay tax within 30 days after demand regardless of pending appeal for board of tax appeals. Op. Atty. Gen. (531), June 26, 1940.

(a).

State v. Minnesota Tax Commission, 293NW243; note under §2394-47.

(b).

Commissioner is required to give same kind of notice under §2394-43 and §2394-44, which is merely a notice containing a computation of the tax, and notice need not provide for an opportunity for a hearing before the commissioner to submit evidence as to correctness of return which it had made. Commander Larabee Corp. MBTA (9) February 24, 1940.

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 commissioner file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within said time to file such return, or corrected return, the commissioner 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 commissioner 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 commissioner 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. (As amended Act Apr. 28, 1941, c. 550, §16.)

Commissioner is required to give same kind of notice under §2394-43 and §2394-44, which is merely a notice containing a computation of the tax, and notice need not provide for an opportunity for a hearing before the commissioner to submit evidence as to correctness of return which it had made. Commander Larabee Corp. MBTA (9) February 24, 1940.

2394-45. Actions for collection of tax.

(a).

Before state may challenge correctness of taxpayer's return by action, it must make its own computation after examination and investigation and serve notice upon the taxpayer thereof, and this applies to combined return required of affiliated corporations. State v. Duluth, M. & N. Ry. Co., 292NW411. See Dun. Dig. 9570d.

State's offers of proof of corrections in tax returns of affiliate corporations, even if received and accepted as proved, were insufficient in amount to change result. Id.

2394-46. Time for assessment and collection.—(a) * * * * *

(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 commissioner and the taxpayer, pursuant to the provisions of subsection (h) hereof. (As amended Act Apr. 28, 1941, c. 550, §17.)

(h) * * * * *

Commander Larabee Corp. MBTA (9) Feb. 24, 1940; note under §2394-44.

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 commissioner 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, or within three and one-half years from the filing of the return, whichever period is the longer. Upon the filing of a claim the commissioner 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 commissioner shall issue his 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. (As amended Act Apr. 28, 1941, c. 550, §22.)

(b) If the claim is denied in whole or in part, the taxpayer may commence an action against the commissioner to recover any overpayments of taxes claimed to be refundable but for which the commissioner 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 commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. If the commissioner has not acted within two years after the claim is filed it shall be considered denied. (As amended Act Apr. 28, 1941, c. 550, §18.)

(c) * * * * *

(a).
Where claim was filed within two years after tax was paid, and more than two years after claim was filed commission found that taxpayer had overpaid, it then became duty of commission to issue its certificate for refundment, and this could be enforced by mandamus. State v. Minnesota Tax Commission, 293NW243. See Dun. Dig. 9570d.

(b).
Where more than two years after tax was paid and claim for refundment filed, commission determined that there was an overpayment of tax, but rejected claim on ground of limitations, taxpayer was not an "aggrieved party," and could proceed by mandamus to compel issuance of certificate for refundment. State v. Minnesota Tax Commission, 293NW243. See Dun. Dig. 9570d.

(c).
This subsection does not deprive taxpayer of right to refundment, and where commission proceeds to determine merits of claim, it has no application whatsoever. State v. Minnesota Tax Commission, 293NW243. See Dun. Dig. 9570d.

ARTICLE VII.—INTEREST AND PENALTIES

2394-49. Penalties for non-payment; non-payment; 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 four per centum of the amount so remaining unpaid if the failure to pay is not for more than thirty days with an additional two per cent for each thirty days or fraction thereof during which such failure continues, not exceeding ten per cent in the aggregate. Such penalty shall be collected as 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. Where an extension of time for payment has been granted under Section 42 (b) interest shall be paid at the rate of six per cent per annum from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

(b) If any person, with intent to evade the tax imposed by this act, shall fail to file any return required by this act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to fifty per centum of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax.

(c) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return 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 subsection includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

(d) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

(e) The commissioner shall have power to abate penalties when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general. (As amended, Act Apr. 28, 1941, c. 550, §19.)

Penalty is imposed upon failure to pay tax within 30 days after demand regardless of pending appeal for board of tax appeals. Op. Atty. Gen. (531), June 26, 1940.

2394-49a. Application of the law.—(a) This law shall take effect from and after its passage, but shall apply in computing taxes as follows:

(1) To the taxable year 1941 and all subsequent years of taxpayers reporting on a calendar year basis. (2) To the taxable year ending during the calendar year 1941 of taxpayers reporting on a fiscal year basis, in which case the tax shall be computed as provided in Section 2394-32 (a) of Mason's Supplement 1940 and to all subsequent taxable years of such taxpayers.

(3) To every taxable year commencing on or after January 1, 1941 of every other taxpayer.

(b) All provisions of Laws 1933, Chapter 405, and Extra Session Laws of 1935, Chapter 87, and Extra Session Laws of 1937, Chapter 49 and Laws of 1939, Chapter 446 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 Apr. 28, 1941, c. 550, §24.)

ARTICLE VIII.—ADMINISTRATIVE PROVISIONS

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 con-

nection with a proceeding involving taxes due under this act from the taxpayer making such return, and except as provided in Section 32-4 [2394-32d]. 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 subsantially 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 Feb. 21, 1941, c. 18, §5.)

ARTICLE IX.—DISTRIBUTION OF PROCEEDS OF TAXES

2394-57. Distribution of taxes—Fund.—The revenues derived from the taxes, interest and penalties under Mason's Supplement 1940, Sections 2394-1 to 2394-61, inclusive, shall be paid into the state treasury; and be credited to a special fund to be known as "Income Tax School Fund," and be dsitributed as follows:

(a) There shall be paid from said Income Tax School Fund all refunds of taxes erroneously collected from taxpayers under Mason's Supplement 1940, Sections 2394-1 to 2394-61, inclusive, 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 Mason's Supplement 1940, Sections 2394-1 to 2394-61, inclusive.

(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 money 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 money 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 money collected on and after Jan. 1, 1938, irrespective of the year for which such taxes were assessed shall be distributed as provided in subsection (c) hereof; provided, that in common school districts which have no debt and where no school is conducted but where educational facilities are provided by contract with another public school, the income tax accruing to said common school district may, by a majority vote of the governing board of such common school district, be assigned to the public school providing the educational facilities for the pupils of such common school district, for the purpose of aiding in the liquidation of bonded indebtedness incurred in construction of school buildings in the district affording such educational facilities under contract with such common school district. The assignment of such income tax shall not be construed as a compensation for providing educational facilities for the students of such common school district but in addition thereto, and only for the purpose herein designated. (As amended Act Apr. 25, 1941, c. 445, §1.)

Subsec. (c)(5) appearing in Laws 1937, c. 397, which amended this section, was omitted by subsequent amendments through ovesight, and is still in effect. Op. Atty. Gen. (531i), Oct. 15, 1940; Oct. 22, 1940.

Subsec. (c)(5) referred to by the attorney general read as follows: "Any income tax payable to an unorganized territory having children living within the boundaries of any disorganized school district which has been consolidated with the unorganized territory, may be used by the County Board of Education, upon an unanimous vote of its members, to pay any bonded or floating indebtedness existing at the time of consolidation with the unorganized territory. The county auditor, upon request of the County Board of Education, shall apply such income tax to such indebtedness of the dissolved district each and every year thereafter, according to the number of pupils reported by the County Superintendent of Schools until such debts have been fully paid. Floating indebtedness shall be paid by the County Board of Education as the situation may seem warranted and when funds are available.

For the purpose of this section the bonded or other indebtedness to the payment of, or provision for, which the sums distributed must or may be applied shall, in the case of municipalities operating their own school system, be limited to such indebtedness incurred for school purposes."

Section prohibits directly or indirectly paying any current operating expenses out of income tax money until all other bonded or other indebtedness has been fully paid or payments provided for, and if bonds issued after Jan. 1, 1933, were refunding bonds, they would represent same indebtedness that was outstanding on Jan. 1, 1933. Op. Atty. Gen., (531*l*), Feb. 19, 1941.

(e).

Where it appears that overpayments were made to certain districts, state treasurer has right to off-set overpayments from any future distribution. Op. Atty. Gen., (531i), April 25, 1940.

Where a number of school districts consolidate, first income tax money must be used to retire bonded indebtedness of old districts, then bonded indebtedness of new districts, before any part can be used for school maintenance. Op. Atty. Gen., (531i), April 30, 1940.

Boys in state training school at Red Wing may not be counted for purposes of income tax distribution. Op. Atty. Gen. (56B), June 5, 1940.

(c)(3).

After all bonded indebtedness is retired it is contemplated that tax on real and personal property will be replaced by income tax money, or at least reduced by amount received from income tax fund. Op. Atty. Gen., (519m), Feb. 19, 1940.

2394-57a. Use of money received by cities of the first class.—

Section 1. All money received by any city of the first class maintaining its own schools, or by any school district or districts covering the territory of any such city, on distribution by the state of Minnesota of money derived from payment of income taxes, may be used for current maintenance and operating expenses to the extent required by the governing body charged by law with the control and maintenance of such schools. (Act Feb. 25, 1941, c. 21, §1.)

Sec. 2 of Act Feb. 25, 1941, c. 21, cited, provides that the Act shall take effect and be in force from and after its passage.

ARTICLE X

2394-59. Effective date.

(a).

Byard v. C., 296NW10; note under §2394-32a.

CHAPTER 12

Military Code

Editorial note:—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13, and the new Soldiers' and Sailors' Civil Relief Act of 1940. See Mason's U. S. Code, October, 1940 Pamphlet.

MILITIA

2395. Military code.

Acquisition of land for military or naval training purposes. Laws 1941, c. 496.

2399. Militia—Constitution—Officers and personnel—Exemptions.

Purchase of materials. State v. Gravlin, 295NW654. See Dun. Dig. 6118.

2404. Governor may call out militia.

Purchase of materials. State v. Gravlin, 295NW654. See Dun. Dig. 6119.

2407. Governor to be commander-in-chief of military forces; etc.

Purchase of materials. State v. Gravlin, 295NW654. See Dun. Dig. 6118.

2425. State and municipal officers; etc. [Repealed.]

Repealed. Laws 1941, c. 120, §6.

Said chapter 120 prescribes conditions for leaves of absences to public officers and employees serving in the military or naval forces of the government.

A teacher under contract called into active service in national guard or officers' reserve corps is entitled to a military leave of absence without pay, and to be reinstated within a reasonable time after termination of active military service, and another teacher may be hired as a substitute in the interim. Op. Atty. Gen. (172c-2), Sept. 6, 1940.

Absence for military service is a leave of absence without pay and upon employee's restoration to status, he may continue his membership in the retirement fund, as provided by law and rules thereunder. Op. Atty. Gen. (331a-9), Sept. 20, 1940.

2502. State to assist in building armories.

City may furnish a site for an addition to armory without vote of electors, and pay for it out of any funds available. Op. Atty. Gen. (59B-1), Aug. 13, 1940.

2517-5. City shall provide site.

Act Apr. 4, 1941, c. 121, §1, authorizes conveyance to City of St. Cloud of site of present armory in said city.

2517-13. Construction in municipalities having national guard units; etc.

Laws 1941, c. 73, authorizes conveyance of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site,

2517-14. Corporation created—Commission.—Subdivision 1. For the purpose of constructing armories as provided by Section 12 of this act, there shall be created a corporation to be known as the "Minnesota State Armory Building Commission." The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: The adjutant general and the general officers of the line of the National Guard of the state. The adjutant general shall be chairman of such commission. Such commission shall elect a secretary and treasurer from the members thereof other than the adjutant general. The officers of such commission shall have like powers and duties as are vested in or imposed upon the corresponding officers of the commission referred to in Section 2 of this act.

Subdivision 2. Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such municipality of the conditions specified in Section 12 of this act, naming the persons authorized to compose such commission and corporation as provided in this section, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than two, shall have power to act and to elect such temporary acting officers as may be necessary during the existence of the vacancy. In case at any time there shall not be at least two qualified officers of the National Guard in addition to the adjutant general eligible to serve ex officio as members of such commission as provided by Subdivision 1 of this section, the adjutant general may appoint a member or members of such commission from the colonels of the line of the National Guard of the state so as to provide not more than two members of such commission in addition to himself. The membership of the member last so appointed shall automatically terminate upon the appointment and qualification of an officer of the National Guard eligible to serve ex officio as a member of such commission as provided by Subdivision 1 of this section, providing the total membership of such commission be not thereby reduced to less than three. All officers of the National Guard eligible to be members of such commission as provided by Subdivision 1 of this section shall automatically become such members forthwith upon their appointment and qualification as such officers. In case of a vacancy in the office of adjutant general, or in case of the incapacity of the adjutant general to act as a member and chairman of such commission, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being shall, during the existence of such vacancy or incapacity, acts as a member and chairman of such commission and have all the powers and duties herein vested in or imposed upon the adjutant general as a member and chairman of such commission. The adjutant general shall certify to the secretary of state all changes in the membership of the commission, but failure on his part so to do shall not affect the authority of any new member