

CHAPTER 277

DELINQUENT PERSONAL PROPERTY TAXES; DEFENSES

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**277.01 WHEN PERSONAL PROPERTY TAXES DELINQUENT; PENALTY.**

All unpaid personal property taxes shall be deemed delinquent on March first next after they become due, and thereupon a penalty of eight per cent shall attach and be charged upon all such taxes; except when the amount of such tax exceeds the sum of \$10.00 the same shall not become delinquent if half thereof is paid prior to March first and the remaining half is paid prior to July first next following the year assessed; if the first half is paid prior to March first next after the tax becomes due and the last half is not paid prior to July first following, the unpaid portion of the tax shall thereupon become delinquent on said July first and the penalty herein provided for shall attach and become a charge thereupon from and after said July first.

[R. L. s. 888; 1933 c. 379 s. 1] (2088)

**277.02 TREASURER TO FILE DELINQUENT LIST IN COURT; ANSWER; TRIAL.** On the fifth secular day of April, of each year, the county treasurer shall make a list of all personal property taxes remaining delinquent April first, and shall immediately certify to and file the same with the clerk of the district court of his county, and upon such filing the list shall be prima facie evidence that all of the provisions of law in relation to the assessment and levy of such taxes have been complied with. On or before the tenth secular day thereafter, any person whose name is embraced in such list may file with the clerk an answer, verified as pleadings in civil actions, setting forth his defense or objection to the tax or penalty against him. The answer need not be in any particular form, but shall clearly refer to the tax or penalty intended, and set forth in concise language the facts constituting his defense or objection to such tax or penalty. The issues raised by such answer shall stand for trial at any term of court in such county in session when the time to file answers shall expire, or at the next general or special term appointed to be held in such county; and, if no such term be appointed to be held within 30 days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county within which such taxes are levied, or, if there be none, of the county within which such proceedings are instituted, shall prosecute the same. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall, without delay and summarily, hear and determine the objections or defenses made by the answers, and at the same term direct judgment accordingly, and in the trial shall disregard all technicalities and matters of form not affecting the substantial merits. If the taxes and penalties shall be sustained, the judgment shall include costs. Whenever one-half of such tax has been paid prior to March first and the remaining half is not paid prior to July first next following, as provided for in section 277.01, the county treasurer shall immediately make a list of the remaining unpaid portion of such tax and certify the same to the clerk of the district court of his county. Upon the filing of such list the clerk shall immediately enter a judgment for the amount of such tax, together with penalties and costs. Thereupon the clerk shall issue an execution in the manner now provided for by section 277.10. The payment of the first half of such tax shall be deemed an admission of the validity of such tax, a waiver of

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notice and consent to the entry of judgment for the amount thereof, together with interest and penalty.

[R. L. s. 889; 1933 c. 379] (2089)

**277.03 DISTRESS AND SALE.** Upon the fifteenth secular day of April next after the filing of such list the clerk of the district court shall issue his warrants to the sheriff of the county as to all the taxes and penalties embraced in the list, except those to which answer has been filed, directing him to proceed to collect the same. If such taxes are not paid upon demand, the sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same, with the said penalty of ten per cent and all accruing costs, together with 25 cents from each delinquent, as compensation to the clerk of the district court. Immediately after making distress, the sheriff shall give at least ten days' posted notice in the town or district where the property is taken, stating that the property, or so much thereof as will be sufficient to pay the taxes for which it is distrained, with penalty and costs of distress and sale, will be sold at public vendue at a place and time therein designated, which time shall not be less than ten days after such taking. If such taxes and penalties and accrued costs are not paid before the day designated, the sheriff or his deputy shall proceed to sell the property pursuant to the notice.

[R. L. s. 890] (2090)

**277.04 PAYMENT UNDER PROTEST.** Sections 277.01 to 277.03 shall not deprive any taxpayer of the right to pay under protest any tax claimed to be unjust or illegal, and to bring an action for the recovery of the same in any case where such remedy is now allowed by law.

[R. L. s. 891] (2091)

**277.05 SHERIFF TO FILE LIST OF UNCOLLECTED TAXES.** If the sheriff is unable, for want of goods and chattels whereon to levy, to collect by a distress, or otherwise, the taxes, or any part thereof, assessed upon the personal property of any persons, he shall file with the clerk of the district court, on June first following, a list of such taxes, with an affidavit of himself, or of the deputy sheriff entrusted with the collection thereof, stating that he has made diligent search and inquiry for goods and chattels from which to collect such taxes, and is unable to collect the same. He shall note on the margin of such list the place to which any delinquent taxpayer may have removed, with the date of his removal, if he is able to ascertain the fact. At the time of filing the list he shall also return all the warrants with endorsements thereon showing his doings in the premises, and the clerk shall file and preserve the same. On or before June tenth thereafter, the clerk shall deliver such list and affidavit to the county treasurer, who shall, by comparison of such list with the tax duplicates in his office, ascertain whether or not all personal property taxes reported by him to the clerk as delinquent, except those included in such list, have been paid into the treasurer's office, and shall attach to the list his certificate stating whether or not all taxes reported by him to the clerk as delinquent and not included in the list have been received by him, and stating the items of such taxes, if any, as have been received. The treasurer shall deliver such list and affidavit, with his certificate attached, to the county board at its first session thereafter, which shall cancel such taxes as it is satisfied cannot be collected. A copy of the tax list so revised, and also a separate list of the taxes so canceled, shall be included in the records of the proceedings of the board, and published in full, as a part of the proceedings.

[R. L. s. 892]. (2092)

**277.06 CITATION TO DELINQUENTS; DEFAULT JUDGMENT.** Within ten days after the adjournment of the county board, the county auditor shall file a copy of such revised list with the clerk of the district court, and within ten days thereafter the clerk shall issue a citation to each delinquent named in the list, stating the amount of tax and penalty, and requiring such delinquent to appear on the first day of the next general term of the district court in the county, appointed to be held at a time not less than 30 days after the issuance of such citation, and show cause, if any there be, why he should not pay the tax and penalty. The citation shall be delivered for service to the sheriff of the county where such person may at the time reside or be. If such person, after service of the citation, fails to pay such tax, penalty, and costs to the sheriff before the first day of the term, or on such day to show cause as aforesaid, the court shall direct judgment against him for the amount

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of such tax, penalty, and costs. When the sheriff is unable to serve the citation, he shall return the same to the clerk, with his return thereto to that effect, and thereupon, or if the court decides that the service of such citation made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation, requiring such delinquent to appear on the first day of the next general term to be held in the county, and show cause as aforesaid, and if he fails to pay or to show cause, the court shall direct judgment as aforesaid. Whenever the sheriff has been unable to serve any such citation theretofore issued in any year or years, or whenever the court decides that the service of any such citation theretofore made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation requiring such delinquent to appear, as in the case last provided, and with like effect; provided, that all citations other than the first shall be issued only on the request of the county attorney.

[R. L. s. 893] (2093)

**277.07 CITATION TO DISTRIBUTEES.** When the person against whom such tax is assessed has died, and his estate has been administered and assigned, or where an executor or administrator, or an assignee for the benefit of creditors, or any other person acting in the capacity of trustee, against whom such tax is assessed, has been discharged from his trust by a court of competent jurisdiction before the total amount of such tax has been ascertained and levied, a citation shall issue to the persons to whom the trust estate or the residue of the estate has been assigned, except that no citation shall issue to creditors in assignments for benefit of creditors.

[R. L. s. 894] (2094)

**277.08 CITATION TO NON-RESIDENT.** When the person to whom a citation issues is not a resident of the state, so that personal service thereof cannot be made, the citation may be served by publication thereof and by attachment, as provided by law in a civil action against non-resident defendants, upon affidavit of the county attorney, but no bond on such attachment or on entry of judgment shall be required.

[R. L. s. 895] (2095)

**277.09 CITATION PRIMA FACIE EVIDENCE.** The citation shall be prima facie evidence that all the provisions of law in relation to the assessment and levy of taxes have been complied with. No omission of any of the things by law provided in relation to such assessment and levy, or of anything required by any officer to be done prior to the issuance of such citation, shall be a defense or objection to such taxes, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that such taxes have been unfairly or unequally assessed; and in such case, but no other, the court may reduce the amount of such taxes, and give judgment accordingly. It shall always be a defense to such taxes that the same have been paid, or that the property upon which the same were assessed was not subject to taxation.

[R. L. s. 896] (2096)

**277.10 CLERK'S FEES; EXECUTION.** The clerk of the district court shall receive as fees for issuing such citation and perfecting the judgment \$1.50 in cases not contested, and in contested cases such fees as are allowed by law in civil actions; and, for each citation issued in cases where the sheriff shall fail, after diligent inquiry, to fine the defendant, 25 cents. All such fees and costs shall be entered, taxed, and made part of the judgment. Execution shall be issued upon the judgment at the request of the county attorney, and shall state that the judgment was obtained for delinquent personal property taxes, and no property shall be exempt from seizure thereon, and such execution may be renewed and reissued in the same manner as provided by law in case of executions upon judgments in civil actions.

[R. L. s. 897] (2097)

**277.11 SHERIFF'S FEES.** The sheriff, or his deputy, shall be allowed the same fees for collecting such taxes, and for making distress and sale of goods and chattels for the payment of taxes, as are allowed by law to constables for making levy and sale of property on execution; traveling fees to be computed from the county-seat to the place of making distress, unless such distress is made by his deputy, in which case the same shall be computed from the residence of such deputy. Such fees shall be added to the tax, and collected by the sheriff.

[R. L. s. 898] (2098)

**277.12 NEGLECT OF SHERIFF.** If the sheriff shall refuse or neglect to collect any tax assessed upon personal property where the same is collectible, or to file

the delinquent tax list and affidavit, as herein provided, he shall be held liable for the whole amount of such taxes uncollected, and the same shall be deducted from any bills presented by him to and allowed by the county board, and applied to the several funds for which they were levied.

[R. L. s. 899] (2099)

**277.13 REMOVAL OF DELINQUENT; DUTY OF COUNTY AUDITOR.** Within 30 days after June first, in each year, the county auditor shall make out and forward to the clerk of the district court of any county to which any delinquent personal property taxpayer may have removed a statement of such delinquent taxes, specifying the value of the property on which such taxes were levied and the amount of the taxes, to which he shall add an amount equal to 25 per cent on the taxes levied if such delinquent taxpayer left the county in which the taxes were levied after the day upon which they became due, but not otherwise. On receipt of such statement or account, the clerk shall issue his warrant to the sheriff of his county, who shall immediately proceed to collect the same of the person so charged with the taxes and per cent, together with a clerk's fee of 25 cents for each warrant so issued. The sheriff shall deliver such warrant, with his doings thereunder, to the clerk, together with the amount of his collections thereon. The clerk shall remit all taxes thus collected to the treasurer of the county to which they belong, and at the same time shall return the original statement to the auditor of such county, certifying the amount of such collections, and, if any taxes remain unpaid, the reason why they could not be collected. The auditor shall charge the treasurer to whom such remittance is made with the amount thereof, and cancel such taxes from the list. Receipts shall be issued to the sheriff for delinquent taxes collected by him and the payment shall be made in the manner provided in section 276.05.

[R. L. s. 900] (2100)

**277.14 DOCKETING JUDGMENT.** Every judgment for personal property taxes shall be docketed and thereafter become a lien upon the real property of the debtor in the county within which the judgment was rendered to the same extent as other judgments for the recovery of money and may be docketed in other counties in like manner and with like effect.

[R. L. s. 901] (2101)

**277.15 INTEREST.** When a judgment has heretofore been entered and docketed, or shall hereafter be entered and docketed, for the recovery of taxes, except in the case of real estate tax judgments provided for in section 279.19, the same shall bear interest until paid at the rate of six per cent per annum.

[1909 c. 448 s. 1] (2102)

**277.16 SATISFACTION OF JUDGMENT.** Upon payment to the county treasurer of any personal property tax for which judgment has been obtained, the treasurer shall deliver a certificate of such fact to the clerk, who shall file the same, and satisfy the judgment upon the margin of the record thereof, stating the date of payment and number of receipt given therefor, and shall note the satisfaction upon the docket.

[R. L. s. 902] (2103)