

## General Property Taxes

## CHAPTER 272

## GENERAL PROVISIONS RELATING TO TAXATION

## 272.01 PROPERTY SUBJECT TO TAXATION.

**HISTORY.** 1849 c. 10; R.S. 1851 c. 12 s. 1; P.S. 1858 c. 1 s. 1; 1860 c. 1 s. 1; G.S. 1866 c. 11 s. 1; 1874 c. 1 s. 1; 1878 c. 1 s. 1; G.S. 1878 c. 11 s. 1; G.S. 1894 s. 1508; R.L. 1905 s. 794; G.S. 1913 s. 1969; G.S. 1923 s. 1974; M.S. 1927 s. 1974.

1. What taxable
2. Property of non-residents
3. Federal property
4. Interstate commerce

## 1. What taxable

All property within the jurisdiction of the state, except it be specially exempted, is subject to taxation and must bear its share of the public burden in the ratio of its taxable value. The law requires equality and uniformity and must avoid double taxation unless a contrary interpretation is compelled by statute. The banking office and lot occupied by a national bank is not liable to assessment and taxation as real estate. *Board v Citizens National Bank*, 23 M 280.

Jones conveyed lands to Gale at the agreed price of \$60,000 of which \$10,000 was paid in cash and 340 notes for the balance, each note representing the unpaid amount due on a lot. The parties claimed that the notes and mortgages were a device to permit Gale to sell the lots as the agent of Jones and the notes were security to Jones. The instruments being regular on their faces, Jones must pay a tax on the \$50,000 in notes and mortgages. *State v Jones*, 24 M 251.

The statutes of this state providing for a commuted system of taxation of the property of railroad companies by permitting them to pay an annual gross earnings tax in lieu of the taxation of their property on a valuation basis were unconstitutional until validated by the constitutional amendment of 1871, Article 4, Section 32a. Such validation was a qualified one, the right to repeal or amend the statutes being reserved; hence Laws 1895, Chapter 168, does not impair the obligation of any contract, and is constitutional. *State v Stearns*, 72 M 200, 75 NW 210.

Agricultural machinery manufactured in another state but brought into and stored in this state in a warehouse for the convenient distribution thereof in supplying customers is subject to taxation as other personal property. *McCormick v Fitch*, 14 M 252 (185); *State v Deering*, 56 M 24, 57 NW 313.

The legislative power in respect to taxation was properly exercised when the rate of assessment annually at ten cents per lineal foot of frontage was arbitrarily fixed in this section. A tract of 65 acres abutting on streets on three sides and alleged to be vacant, unoccupied pasture land, is assessable when water pipes have been laid in the street opposite the land; and the fact that a water pipe is a conduit placed in the street for the purpose of conducting water into the city is no defense. *State v Louis*, 72 M 87, 75 NW 108.

The state cannot tax property unless it has jurisdiction over the owner or the property. A demand for money loaned may have an actual situs other than the domicile of the creditor. The owner of the money demand may give it a business situs where he has money at a place for investment as a permanent business under management of an agent resident at such place. The money being invested at that place may be taxed there. *In re Jefferson*, 35 M 215, 28 NW 256.

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While a non-resident owner of credits may give them a situs in this state for the purpose of taxation here, the facts in this case indicated that the foreign corporation owning the credits had resident agents for certain purposes which did not include control of the notes sufficient to give the notes and mortgages a situs in this state or make them subject to taxation. *State v Scottish-American*, 76 M 155, 78 NW 962, 1117.

Where non-resident corporation had no agent or office within the state and its railroad tank cars were merely instruments of interstate commerce, in transit, and only temporarily within the state, they had no taxable situs in Minnesota. *State v Union Tank Line*, 94 M 320, 102 NW 721.

Where property is in one state and its owner domiciled in another, it is subject to taxation in both. *State v Deering*, 56 M 24, 57 NW 313.

Where a citizen of New York invested in bonds and mortgages in Minnesota they may be subject to taxation in Minnesota and the amount of the tax is a claim against the property of the person taxed; and, in case of his death the claim may be proved against his estate in the state where the mortgages and loans are contracted. *Bristol v Washington County*, 177 US 133, 20 SC 585.

Revised Laws 1905, Sections 794, 797, providing for the taxation of shares of stock in foreign corporations owned by residents of this state, do not violate the Constitution, Article 9, Sections 1, 3. *State v Nelson*, 107 M 319, 119 NW 1058.

A membership in the Duluth board of trade is property and taxable. *State v McPhail*, 124 M 398, 145 NW 108.

A credit arising from the sale of land is taxable. *State v Rand*, 39 M 502, 40 NW 835.

Even when the real estate is taxed, a deed secured by a real estate mortgage thereon is taxable. *State v Jones*, 24 M 251; *State v Rand*, 39 M 502, 40 NW 835.

Mortgages held by mutual building associations incorporated under our general statutes are subject to taxation, the stock of the association not having been taxed. *State v Redwood Falls*, 45 M 154, 45 NW 540.

A non-resident owning credits in this state which are retained here in the hands of an agent to close up a loaning business may be required to list the same for taxation, and the situs of such property for taxation is the taxing locality where such agent has his office. *State v London & N. A. Mtge. Co.* 80 M 277, 83 NW 339.

The right to use of water power is taxable as real, and not as personal, property. *State v Minneapolis Mill Co.*, 26 M 229, 2 NW 839.

A corporation engaged in buying wheat for the benefit of its members with money provided by them for that purpose in accordance with the by-laws of the company is the owner of the wheat purchased and any unspent money on hand, and may be taxed thereon. *State v Mpls. Millers' Ass'n*, 30 M 429, 16 NW 151.

Where persons had separate interests as tenants in common of personal property the interest of each was separately assessable. *State v Rand*, 39 M 502, 40 NW 835.

Lands conveyed by the state to the Cannon River Improvement Co. became the absolute property of the company and the proceeds of the sales are subject to taxation. *Cannon River v County of Rice*, 32 M 516, 21 NW 738.

Contracts for sale of land in this state and in another state, made in favor of a Wisconsin corporation doing business in this state, had such situs as to render them liable to taxation in Minnesota. *State v N. P. Ry. Co.*, 95 M 43, 103 NW 731.

A set of abstract books is personal property for the purpose of taxation although the information therein contained is largely in the form of abbreviations with a secret code or deciphering system. *State v St. Paul Abstract Co.* 158 M 95, 196 NW 932.

Pulpwood cut in Minnesota and afloat on its way to the booms in Pigeon Bay on May 1, there to await the opening of navigation and the arrival of boats in the summer, had not begun its final journey so as to become an article of interstate commerce and was taxable in Minnesota. *State v Hughes Bros.* 163 M 4, 203 NW 436.

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The rule is that tangibles are taxable where they are and intangibles at the domicile of the owner; but intangibles may be so used as to become an integral part of a local business and thus acquire a situs for taxation other than the domicile of the owner. Neither the Great Northern shares nor the Great Northern Iron Ore Properties trust certificates were used so as to acquire a taxable situs in Minnesota. In re Estate of Kennedy, 186 M 160, 242 NW 697.

The power of taxation is inherent in sovereignty and reposes in the legislature except as limited by the state or the federal constitution. Except as so limited the power of taxation embraces every conceivable subject of taxation. The graduated feature of the income tax law is a legitimate exercise of legislative power, and the classification being justified under the constitution, the courts cannot interfere unless it brings a result clearly fanciful or arbitrary. Reed v Bjornson, 191 M 254, 253 NW 102; Beemus v Wallace, 197 M 216, 266 NW 690; State v Atkin Farm-land Co. 204 M 495, 384 NW 63.

Cattle temporarily owned by licensed dealers at the South St. Paul stockyards, as such cattle arrived and are purchased by such dealers for immediate re-sale to purchasers outside the state, are not subject to state taxation when such trans- actions are constantly recurrent. State v Blasius, 187 M 420, 245 NW 612. Re- versed by Minnesota v Blasius, 290 US 5, 54 SC 35.

Shares of corporate stock held by a resident in a domestic corporation, the property of which is assessed and taxed in the state, are not taxable as credits even though a portion of the property of the corporation is located outside the state. Holmes v Borgen, 200 M 97, 273 NW 623.

The validity of a property tax on airplanes is governed by the same principle as those relating to personal property generally. The state is not prohibited, by the requirements of due processes, from taxing the entire fleet of airplanes of an owner domiciled in this state, although some proportion of the fleet was constantly and continuously in other states and subject to tax there. State v Northwest Airlines, 213 M 395, 7 NW(2d) 691, 322 U. S. 292.

Personal property tax imposed by statute is nondiscriminatory. State v Continental Oil, 218 M 123, 15 NW(2d) 542.

A life tenant must pay taxes during lifetime under a deed of a farm to a town. OAG June 16, 1936, 349a-22.

Although dogs are assessed as personal property, this does not invalidate an ordinance licensing dogs. OAG July 19, 1939, 146d-4.

Bees owned by a Minnesota resident on May 1st may be taxed in Minnesota, even though at that date the bees are temporarily outside the state. 1942 OAG 343, April 7, 1941 (421A-17).

All personal property in the state is taxable except such as is exempted by statute. OAG April 5, 1944 (421c).

Metropolitan airports commission property is exempt from school district bonded indebtedness. OAG March 2, 1945 (166c-5).

Comparative tax burden. 23 MLR 510.

### 2. Property of non-residents

Property of non-residents as goods, wares, and merchandise kept for sale, stock employed in mechanic arts, and capital and machinery employed in business, are taxable in this state. St. Paul v Merritt, 7 M 258 (198); McCormick v Fitch, 14 M 252 (185).

If a non-resident owner of credits places them with an agent for collection or removal with the idea of keeping the money invested here indefinitely, they are taxable in Minnesota. In re Jefferson, 35 M 215, 28 NW 256; State v London & Northwest, 80 M 277, 83 NW 339; Bristol v Washington County, 177 US 133, 20 SC 585; State v N. P. Ry. Co. 95 M 43, 103 NW 731.

Laws 1889, Chapter 236, Section 35, as amended by Laws 1891, Chapter 131, Sections 34, 35, is unconstitutional because it exempts from taxation a substantial portion of the personal property of building and loan associations contrary to the provisions of the Constitution, Article 9, Section 3. State v Pioneer Savings, 63 M 80, 65 NW 138.

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A credit held in trust by a resident of this state must be listed for taxation by him as trustee, in the taxing district in which he resides. *State v Willard*, 77 M 190, 79 NW 829.

An attorney employed by a county, collecting money upon a judgment for delinquent personal property taxes, has an equitable lien against the fund so collected to the extent of the reasonable value of his services. *Board v Clapp*, 83 M 512, 86 NW 775.

Where a non-resident does not give his local agent power of reinvestment or general control but the agent merely receives the money, loans it, and returns the papers to his principal, Minnesota has no power of taxation. *State v Scottish-American*, 76 M 155, 78 NW 962, 1117.

A non-resident manufactures machinery in another state and stores it in a Minnesota warehouse for convenience in securing orders and supplying customers, and the property is subject to taxation in Minnesota as personal property. *McCormick v Fitch*, 14 M 252 (185); *State v Deering*, 56 M 24, 57 NW 313.

Merchandise shipped into this state, held in railroad cars for distribution to parties who had previously purchased same, although consigned to the shipper for convenience, is not subject to taxation. *State v Franklin Sugar Ref'ng*, 79 M 127, 81 NW 752.

Moneys and credits of an established branch of a foreign mercantile corporation have a situs and are taxable where the branch is located. *State v Pittsburgh Plate Glass*, 147 M 339, 180 NW 108.

Personal property managed by a resident trustee is subject to local tax even though the non-resident trustee has right of revocation. OAG April 29, 1935, 421c-15.

The seller of surplus electrical energy outside the corporation limits of a city is not taxable even though the distribution is in another county. OAG Aug. 15, 1937 (624c-13).

### 3. Federal property

The state has no authority to levy taxes upon property within Indian reservations. *Foster v Board*, 7 M 140 (84); *United States v Shanks*, 15 M 369 (302).

Under the state constitution the legislature has power to pass laws for taxing shares in national banks in the manner prescribed by act of congress; but shares in national banks must be taxed *eo nomine* and there being no provision in the state statutes for taxing in that manner, nor for taxing them in the place where the bank is situated, as prescribed by act of congress, they cannot be taxed until a statute is passed in conformance to act of congress. *Smith v Webb*, 11 M 500 (378); *Board v Citizens National*, 23 M 280.

Where a government land grant has been made to the defendant railway, and they in turn had conveyed part of the lands to contractor Barney, it was held that the entire consideration for the lands had been received and the entire equitable and beneficial ownership of the lands was vested in Barney and the lands are subject to taxation. *State v Winona & St. Peter*, 21 M 472; *Cass v Morrison*, 28 M 257, 9<sup>th</sup> NW 761.

Land was purchased from the United States and paid for by the location of the land-warrant, which warrant turned out to be forged and the warrant was cancelled and the issue of a patent suspended. The grantee of the locator substituted cash in lieu of the forged warrant and a patent was thereupon issued. As against patentee or his grantee the land was subject to state taxation from the date of the original entry. *Wheeler v Merriman*, 30 M 372, 15 NW 665.

A preemption claimant made final proof, paid for his land and received a final receipt. Subsequently the commissioner of the general land office suspended further proceedings because of irregularity of method in making final proof, and directed that further proof be submitted. As against the preemptor, the land was subject to taxation from the date of the receipt. *County v Hunter*, 42 M 312, 44 NW 201.

Where the legal title to land remains in the United States it is subject to taxation by the state only after the full consideration has been paid and an equitable title vested in the purchaser. *State v Itasca*, 100 M 355, 111 NW 276.

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An allotment to a mixed-blood Chippewa Indian, the fee patent for which had not been delivered and the issue of the patent not having been applied for, is not subject to the taxing power of the state or any of its municipal divisions. *Warren v Mahnomen*, 192 M 464, 257 NW 77.

Salary of governor of federal reserve bank is not immune from state income tax. *Gerry v Minnesota*, 204 M 622, 285 NW 614.

A savings and loan association incorporated under federal law is an "instrumentality of the United States" and free from taxation except to the extent permitted by congress. *State v Minnesota Federal Savings and Loan*, 218 M 229, 15 NW(2d) 568.

A trust patent providing that the land was held in trust for a period of 25 years by the United States for the use of the Indian allottee and that at the expiration of such period the United States would convey the land by patent to the Indian discharged of the trust and free of encumbrances, created and vested right in the Indian allottee to receive the land at the end of 25 years free from state and local taxation. *United States v Spaeth*, 24 F. Supp. 465.

Personal property belonging to an individual or corporation located on United States government land is not exempt from taxation even though used under contract with the government. OAG Jan. 20, 1937, 414a-2.

Office furnishings and equipment of national farm loan associations are exempt from state taxation. OAG June 16, 1939, 421a-11.

Grain mortgaged to and sealed by the federal government is subject to tax. 1942 OAG 342, June 21, 1941 (215c-10).

### 4. Interstate commerce

Laws 1897, Chapter 160, authorizes a tax upon the property of corporations engaged in interstate commerce and coming within its operation, for which it was competent for the legislature to provide. The rate of taxation of two per cent upon the value of such property, not being uniform with the rate imposed upon other property similarly situated, the statute is unconstitutional. *State v Cando*, 85 M 457, 89 NW 66.

Gasoline in the tanks of a pipe-line company is subject to personal property tax where it was transported by the pipe-line from points outside the state to tanks within the state for processing and storage awaiting orders for sale and distribution to points within or without the state. *State v Continental Oil Co.* 218 M 123, 215 NW(2d) 542.

A state may tax property within the state used in interstate commerce; and Minnesota may tax express companies on their property employed within the state six per cent of the gross receipts in lieu of all other taxes. It is an exercise in good faith of legitimate taxing power and not an unconstitutional burden upon interstate commerce. *United States Express v Minnesota*, 223 US 335, 32 SC 211.

The power of the state to tax intangibles. 15 MLR 741.

Continuity of interstate shipment as determining state's power to tax articles moving in interstate commerce. 29 MLR 40.

## 272.02 PROPERTY EXEMPT FROM TAXATION.

HISTORY. R.S. 1851 c. 9 s. 4; P.S. 1858 c. 12 s. 4; 1860 c. 1 s. 3; 1861 c. 1 s. 2; G.S. 1866 c. 11 s. 3; 1874 c. 1 s. 5; 1878 c. 1 s. 5; G.S. 1878 c. 11 s. 5; 1881 c. 138; 1887 c. 80; 1887 c. 126; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 5a; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 183g; G.S. 1894 ss. 1512, 1513, 2946; 1897 c. 118 ss. 98, 99; 1899 c. 216; 1903 cc. 276, 296; R.L. 1905 s. 795; 1911 c. 242 s. 1; 1913 c. 259 s. 1; G.S. 1913 ss. 1970, 1971; G.S. 1923 ss. 1975, 1976; 1925 c. 171 s. 1; M.S. 1927 ss. 1975, 1976; 1935 c. 385; Ex. 1936 c. 66; 1943 c. 41 s. 1; 1945 c. 44 s. 1.

1. Constitutional authorization
2. Held exempt
3. Held not exempt
4. Special assessments
5. Interpretation

### 1. Constitutional authorization

The provision that the legislature has no authority to exempt persons or property from taxation, except as authorized by the constitution, also rests upon municipalities. The charter of the city of Faribault authorizing the levy of poll tax on all qualified voters, but exempting members of fire companies from liability, is constitutional. *Faribault v Misener*, 20 M 396 (347).

Laws 1866, Chapter 3, as amended by Laws 1867, Chapter 49, (soldier's bounty tax) is unconstitutional as being an attempt by evasion to exempt from taxation property of said classes of persons which does not fall with any of the exemptions allowed by the Minnesota constitution. *Le Duc v Hastings*, 39 M 110, 38 NW 803.

The statute requiring as a condition precedent to probate proceedings in the settlement of estate the payment through the county treasurer of specified sums arbitrarily prescribed with reference to the value of the estate, is unconstitutional being contrary to those clauses requiring equality of taxation and the dispensation of justice freely and without purchase. *State ex rel v Gorman*, 40 M 232, 41 NW 948.

Laws 1854, Chapter 43, incorporating "Hamline University of Minnesota" provided that "all corporate property belonging to the institution both real and personal is and shall be free from taxation". The territorial legislature had the power to grant this exemption and bind the future state thereby; and the exemption applies to all property of the corporation which it lawfully might acquire and hold under the terms of the territorial statute and is not limited to property actually used and occupied by it as a site for the university. *County of Nobles v Hamline University*, 46 M 316, 48 NW 1119.

Laws 1889, Chapter 236, Section 35, as amended by Laws 1891, Chapter 131, Sections 34, 35, is unconstitutional as it exempts from taxation a substantial portion of the personal property of building and loan associations contrary to the provisions of Minnesota Constitution, Article 9, Section 3. *State v Pioneer Savings*, 63 M 80, 65 NW 138.

Conceding that a municipal corporation cannot legally contract with private parties to refund the amount of taxes which their property is assessed and taxed as all property is assessed its just proportion, such contract does not render the taxation invalid since the agreement to refund is void. *State v Thayer*, 69 M 170, 71 NW 931.

The city of Little Falls made a contract with plaintiff by which in consideration of plaintiff's furnishing certain water supply it agreed to pay all taxes on plaintiff's water-works assessed for city purposes. This was a violation of Minnesota Constitution, Article 9, Sections 1, 3. *Little Falls Electric v City of Little Falls*, 74 M 197, 77 NW 40.

Laws 1897, Chapter 293, which attempts to lay an inheritance tax, is unconstitutional for the reasons: (1) it excludes from its operation real property and lays the tax upon inheritance of personal property alone; (2) it exempts from its operation persons and corporations whose property is exempt by law from taxation; (3) it allows a larger exemption to lineal heirs than to collaterals and does not lay the tax on the excess of the value of the property received above uniform exempted sum. The constitution expressly authorizes graduation of the tax and consequently the statute is not unconstitutional because it taxes collaterals and distributes at a higher rate than lineals. *Drew v Tift* 79 M 175, 81 NW 839.

Laws 1902, Chapter 3, relating to the taxation of inheritances, is unconstitutional for the reason that it purports to make the rate of taxation 10 per cent or double the constitutional limitation in the case of collateral heirs and distributees. *State v Harvey*, 90 M 180, 95 NW 764.

The real estate owned by defendant has since 1928 been continuously occupied and used by it as a seminary of learning and is exempt from taxation. *State v Northwestern College of Speech Arts*, 193 M 123, 258 NW 1.

Mortgages running to St. Paul Bank for Cooperatives, a branch of the Farm Credit Administration, are exempt from the Minnesota registration mortgage act. 1934 OAG 819, Nov. 15, 1934, 418a-14.

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Stock in any corporation is taxable even though such corporation pays a general property tax on the portion of its property in Minnesota, the balance of its property being located outside the state. 1934 OAG 846, Nov. 15, 1933, 92a-26.

The former owner of certain real estate is dead and probate proceedings pending. There are several heirs. One of the heirs lives on the premises and has maintained his home there for a number of years. The fractional portion of the property owned by the heir who makes the building his home may be classified as his homestead and would be entitled to come under the 25 per cent classification, and the balance of the property must carry the 40 per cent classification. 1936 OAG 371, Nov. 6, 1935, 232d.

Intangible personal property in the hands of a resident trustee under a trust agreement whereby such trustee has the management of the trust estate, is taxable as moneys and credits notwithstanding the fact that the non-resident person who established the trust may amend, revoke, or change the provisions of the trust agreement at any time. 1936 OAG 375, April 29, 1935, 421c-15.

Municipally-owned electric lines used for the purpose of furnishing electricity to persons living outside the municipal limits are exempt from taxation. 1938 OAG 402, Feb. 2, 1938, 414a-13.

Articles of incorporation are not the sole basis upon which the question of whether or not an institution is charitable is to be decided. OAG Feb. 23, 1939, 414e-1.

If the taxing authorities find that the federal government has exclusive use of leased land, the board may allow the application for exemption from taxation, but if the federal government does not have substantially all or the greater part of use of the land and there is a substantial use reserved by the lessor, the application for exemption from taxation should be denied. 1940 OAG 299, Oct. 18, 1940, 414a-2.

Brief regarding exemption from taxation claimed by beauty and hairdressing schools. 1940 OAG 326, May 7, 1940, 414b-3.

It is a fact determination as to whether a leased county poor farm is exempt. It may be tested by a commission to abate. OAG April 5, 1944 (414a-11).

The temporary absence of one in military service, and intending to return does not deprive him of his exemptions. OAG May 27, 1944 (414a-9).

If the provisions do not offend against the uniformity clause of the federal constitution other exemptions beside those enumerated may be granted. OAG Feb. 27, 1945 (414a-11).

Constitutional obligations in connection with financing; public purpose. 26 MLR 95.

## 2. Held exempt

A public square duly dedicated is exempt from taxation and trespassers may be removed from the square. *Village of Mankato v Meagher*, 17 M 265 (243).

A public cottage hospital with adjoining lots is an institution of purely public charity and exempt from taxation. *County v Brotherhood*, 27 M 460, 8 NW 595.

A parochial school and playground lots adjacent are exempt from taxation. *County v Grace*, 27 M 503, 8 NW 761.

The rights of the state in land are not subject to the provisions of a statute for the assessment and collection of taxes and the courts cannot acquire jurisdiction in proceedings to enforce the collection of taxes and a public alley cannot be affected by a tax judgment against the land. *Sanborn v City of Mpls.* 35 M 314, 29 NW 126.

The lands and property of cemetery associations are exempt from "all public taxes and assessments"; and this extends to "assessments" for a sidewalk built in front of the property. *State v Oakland Cem. Ass'n*, 36 M 529, 32 NW 781.

Macalester college owns 40 acres of land on which the college buildings are situated and on part of the tract near the buildings the college has erected several houses as places of residence for the faculty. Such premises are within the statutory exemption from taxation; but the 20 acres in a state of nature, never having been improved, is property not now exempt from taxation. *Ramsey v Macalester*, 51 M 437, 53 NW 704.

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The statute exempting institutions of learning from taxation includes seminaries for young ladies erected by private persons and supported by their patrons, and includes the necessary furniture and school apparatus. *Ramsey County v Stryker*, 52 M 144, 33 NW 1133.

An assessment of exempt property is a nullity and the owner is not required to take any action to prevent or correct it. *Sanborn v City of Mpls.* 35 M 314, 29 NW 126; *Laird v County of Pine*, 72 M 409, 75 NW 723.

Riparian rights are mere incidents to and part of the abutting shore property and, until separated by some act of the owner, are not subject to taxation independent from the shore property to which they belong. *State v St. P. & Dul. Ry.* 81 M 422, 84 NW 302.

Prior to Laws 1913, Chapter 259, funds of seminaries invested in farm mortgages were held exempt from taxation. *State v Bishop Seabury Mission*, 90 M 92, 95 NW 882.

A tract of land purchased by a cemetery association is exempt from taxation when its acquisition is necessary for use in the near future as a burial place for the dead and the association intends to plat the same as part of its cemetery and place it upon the market for sale as soon as the entire tract can be acquired under condemnation proceedings. *State v Lakewood Cemetery*, 93 M 191, 101 NW 161; *Brown v Maplewood Cemetery*, 85 M 498, 89 NW 872.

The testatrix gave the bulk of her estate for the endowment of the Amherst Wilder Charity subject to a charge on the property to secure a conditional annuity of \$10,000 per year to her husband. The corporation was duly organized and the estate assigned and the final decree of distribution was dated November 8, 1905. The husband appealed from the decree and it was affirmed prior to May 1, 1907, but the remittitur was not sent down until June. The property was exempt from taxation for the year 1907. *State v Watkins*, 108 M 114, 121 NW 390.

A judgment sustaining an assessment of memberships in the Minneapolis Chamber of Commerce as moneys and credits under Laws 1911, Chapter 285, Section 1, is not a bar to assessments of such memberships for later years as general personal property. *State ex rel v Minnesota Tax Commission*, 136 M 260, 161 NW 516.

Certain real property owned by Hamline University of Minnesota was leased to W. L. Harris for a term of years. The title and interest of the university was held exempt from taxation, but the lease-held estate was taxable. *State v Harris Realty*, 148 M 20, 180 NW 776.

The county of Polk seeks to have 30 tracts of farm land acquired through foreclosure of mortgages taken by the rural credits bureau adjudged liable for unpaid taxes. In the absence of express law so declaring, the property of the state is not subject to taxation and the courts cannot acquire jurisdiction in proceedings to enforce taxes of state property. *In re Delinquent Real Estate Taxes*, 182 M 437, 234 NW 691.

Where a church corporation has present need for a site for new church buildings, purchases property for that purpose, continues to raise funds, employs an architect to prepare plans, and thereafter commences to build, the property is exempt from general taxes from the time the architect is employed. *State v Second Church*, 185 M 242, 240 NW 532.

The city of St. Paul for many years has owned 1,600 acres of land in Anoka county on which it maintains a municipal water-works. The plant has not been actively used since 1924, but is maintained as a reserve plant. The suit of the county of Anoka to collect taxes for the year 1926 is well founded as to that part of the land rented to private parties who farm the same, but the remaining portion owned by the city and held as a reserve water-works is exempt from taxation. *County of Anoka v City of St. Paul*, 194 M 554, 261 NW 588.

A hospital operated on a non-profit basis was tax exempt although it charged for its services and accepted no charity patients without a charge. *State v Longstreet Foundation*, 198 M 263, 269 NW 469.

There is no personal liability on the part of the landowner under an invalid assessment for a local improvement upon the ground that the landowner received the benefits of the improvement. The statute authorizing the assessment provides an exclusive remedy in rem against the land only without personal liability on the



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part of the owner. *Independent School Dist. v City of White Bear*, 208 M 29, 292 NW 777.

The board of tax appeals was justified in finding that a hospital, which is otherwise a public one and as such exempt from taxation, was entitled to exemption from taxation notwithstanding the fact that the owner charged \$50.00 per month for each of two Benedictine sisters who served the hospital without compensation, the money being put into a fund to train sisters in order to maintain the system. *Village of Hibbing v Commissioner*, 217 M 528, 14 NW(2d) 923.

Renting a part of a school building to a newspaper does not interfere with or take away the school's tax exemption. OAG April 13, 1933.

An assembly hall maintained by a church on land distant from the church is exempt from taxation though it is occasionally rented to other organizations. OAG Dec. 27, 1933.

Funds of fraternal beneficiary associations are exempt from taxation. OAG April 3, 1934, 414d-8.

Where a county, under the old age pension act, acquires real estate the property is exempt from taxation. OAG June 20, 1935, 414f.

A church parsonage is exempt although a part thereof was rented and the income applied on the salary of the minister. OAG April 28, 1936, 414d-12.

Where the church owned two parsonages, one just acquired of which it was about to take possession, and one used as a parsonage on May 1, and later sold, both were exempt from taxation for the year. OAG Sept. 15, 1936, 414d-6.

Where the rural credit department owned land on May 1, 1938, and sold it on July 7, 1938, the purchaser was entitled to cancelation of 1938 taxes but would be liable for taxes thereafter. OAG April 25, 1939, 770G.

A municipal liquor store is not subject to taxation. OAG May 14, 1938, 218k.

College buildings are exempt even if temporarily leased to the federal government at a nominal rental. OAG Dec. 5, 1944.

Taxation of property held by college fraternities. 17 MLR 678.

### 3. Held not exempt

Prior to Laws 1913, Chapter 259, a parsonage or rectory owned by a church was not exempt from taxation. *St. Peters v Board*, 12 M 395 (280); *County v Grace*, 27 M 503, 8 NW 761; *County v Church of Good Shepherd*, 45 M 229, 47 NW 783.

Where public land is preempted and final receipts are issued, the land is subject to taxation from the date of the original entry. *Wheeler v Merriman*, 30 M 372, 15 NW 665; *County v Hunter*, 42 M 312, 44 NW 201.

Logs cut by the Northern Pacific railway upon its exempted land, but for the purpose of sale, are subject to taxation. *State v N. P. Ry. Co.* 39 M 25, 38 NW 635.

The mere use and occupancy of premises for educational purposes by a school or seminary under a lease from the owner thereof, does not entitle the owner to the benefit of the statutory exemption from taxation. *County v Bell*, 43 M 344, 45 NW 615.

Acre property in a state of nature never having been improved or used is not exempt from taxation though it adjoins a college campus. *Ramsey County v Macalester*, 51 M 437, 53 NW 704.

The fact that the authorities of the municipality in which property is situated having ordained that such property be a public market house and exempt from taxation does not exempt the property where it is owned and leased by a private party who receives and retains all profits for his own use. *State ex rel v Cooley*, 62 M 183, 64 NW 379.

St. Barnabas Hospital owns a farm from which it derives an annual income applied to the use of the hospital, but such farm not being a part of the curtilage or essential to its operation is not exempt from taxation. See *State v Bishop Seabury Mission*, 90 M 92, 95 NW 882, distinguished. *State v St. Barnabas*, 95 M 489, 104 NW 551.

A hospital owned by an individual and operated with an intent to make a private profit is not exempt from taxation. *State v Browning*, 192 M 25, 255 NW 254.

# MINNESOTA STATUTES 1945 ANNOTATIONS

1601

GENERAL PROVISIONS RELATING TO TAXATION 272.02

A portion of land which the city owns for a water-works plant but leased to private parties who farm the land is not exempt from taxation, notwithstanding the fact that the rentals go into a general fund used to operate the water-works. *Anoka County v City of St. Paul*, 194 M 554, 261 NW 588.

A community hall owned by a club, part of the time being used for town purposes, is not exempt from taxation. OAG March 22, 1934.

A home for aged supported in part by contributions by those in it, is not exempt from taxation. OAG April 20, 1934, 414e-11.

Privately owned land leased by the state is not exempt from taxation. OAG Sept. 27, 1935, 414c-2.

House owned by a school district and used as a home for superintendent of schools, the rental being deducted from his annual salary, is not exempt from taxation. OAG Feb. 10, 1938, 622a-11.

After land is sold, though under contract for a deed, the land is subject to taxation in the name of the purchaser. OAG Dec. 7, 1938, 770g.

A farm willed to a city management by a hospital board but operated by a tenant under the provision that the income be employed for the benefit of the hospital, is not exempt from taxation. OAG July 7, 1939, 414a-11.

An auxiliary landing field owned by a city was not exempt from taxation where small grain and alfalfa were grown thereon by a tenant on a share crop basis. OAG July 24, 1939, 414a-11.

Where a telephone company rented its abandoned building to the state free of rent on condition that the taxes and maintenance cost be paid, the property was still subject to taxes. OAG Aug. 17, 1939 (216g).

Where a party leases land from a city and uses it as an oil station, he must pay all taxes. OAG Jan. 31, 1944 (59a-40).

One in military service must maintain a household, otherwise he waives his \$100.00 personal property exemption. OAG Feb. 15, 1944 (414a-9).

If the home is unoccupied because of absence at war defense employment elsewhere, the \$100.00 personal property exemption cannot be maintained. OAG March 6, 1944 (414a-9).

Where a church used one apartment as a parsonage and rented out the other three apartments, the property was not exempt. OAG Aug. 3, 1944 (414d-12).

A summer camp for girls is not an educational institution, and the property is not tax exempt. Bd. of Tax Appeals, No. 213.

Buildings on a railway right of way should be treated as personal property and taxed as such against the respective owners as their interest may appear. OAG Oct. 27, 1944 (408).

## 4. Special assessments.

Unless so expressly stated, statutes exempting property from taxation do not exempt from special assessments. The charter of the relator fixes a gross earnings tax "in lieu of all taxes and assessments whatever". The city of St. Paul had no legal right to levy an assessment against the property of the railroad company for the grading of Rosabel street. *First Division v City of St. Paul*, 21 M 526.

A territorial charter under which the defendant operated, accepted a gross earnings tax "in lieu of all taxation and assessment whatever". The city of St. Paul had no legal right to levy a special assessment against the defendant company for the grading of Wabasha street. *City of St. Paul v St. Paul & Sioux City*, 23 M 469.

By statute the lands and property of cemetery associations are exempt from "all public taxes and assessments". This exemption extends to assessments for local improvements. *State ex rel v City of St. Paul*, 36 M 529, 32 NW 781.

Generally statutes exempting property from taxation do not exempt from special assessment. *State v District Court*, 68 M 342, 71 NW 27.

Institutions organized for purposes of public charity are not exempt from paying special assessments for local improvements on their property used for

such charitable purposes, although such property is exempt from general taxation. *Washburn Mem'l v State*, 73 M 343, 76 NW 204.

Macalester college is not entitled to the benefits of exemptions as an educational institution from burdens imposed to pay for water mains laid on three sides of the college grounds. *State v Trustees*, 87 M 165, 91 NW 484.

While public school property may by legislative authority be subjected to assessment for local city improvements under the Duluth charter, the only remedy provided for the enforcement of payment of the assessment is one not applicable to public school property and no other remedy can be used. This fact indicates that it was not the intention of the legislature to subject public school property to local assessments. *State v Board*, 133 M 386, 158 NW 635.

Public burying grounds are exempt from general taxes, but exemption from special assessments for local improvements is not granted in the constitution, and must be found, if at all, in statutory enactments. The respondent was organized under Laws 1901, Chapter 224, expressly repealed by Revised Laws 1905, which did not perpetuate to respondent the exemption found in the repealed statute, and the respondent must pay the assessment. *State v Crystal Lake*, 155 M 187, 193 NW 170.

A special assessment against state land on which there is a teachers' college cannot be paid except by special appropriation by the legislature. OAG Jan. 30, 1934.

An assessment upon land to which the state acquires title by forfeited tax sale will be canceled. OAG Oct. 22, 1937, 387b-1; OAG Sept. 21, 1939, 412a-26.

### 5. Interpretation.

No property is exempt from taxation in the absence of clear and expressed legislation authorizing the same, and the courts will indulge in no presumption that will extend the exemption beyond the plain meaning of the law. *St. Peters v Board*, 12 M 395 (280); *County v Bell*, 43 M 344, 45 NW 615; *State v Redwood Falls*, 45 M 154, 47 NW 540; *County v Church of Good Shepherd*, 45 M 229, 47 NW 783; *State v Cooley*, 62 M 183, 64 NW 379; *Washburn Mem'l v State*, 73 M 343, 76 NW 204; *State v Bishop Seabury Mission*, 90 M 92, 95 NW 882.

Strict construction does not apply, for statutes provided for a commuted system of taxation and exempted property, not from taxation altogether but from the general mode of taxation. It was competent for the legislature in regranteeing, in 1864, the franchises pertaining to defendant's line of railroad, to alter the contract contained in the original charter of 1857, in respect to taxation, in the manner it did by declaring a gross earnings tax in lieu of "all taxation and assessments whatever". *City v St. P. & Sioux City*, 23 M 469; *County v St. P. Mpls. & Manitoba*, 73 M 417, 76 NW 217.

The exemption from taxation and assessment contained in Special Laws 1865, Chapter 6, was not simply a personal privilege conferred upon the company, but was in the nature of a conditional grant appurtenant to plaintiff's several lines of railroad and charged with the perpetual burden of an equal payment dating from the time when any portion of such lines, equal in extent to 30 miles, should be completed and in operation. *C. M. & St. P. Ry. Co. v Pfaender*, 23 M 217.

If a title insurance company organized under Laws 1887, Chapter 135, avails itself of the provisions of Laws 1889, Chapter 227, and engages in the annuity, safe-deposit, and trust business authorized by Laws 1883, Chapter 107, all its property is subject to assessment and taxation under the general tax law. *Nelson v St. Paul Title Insurance*, 64 M 101, 66 NW 206.

The immunity from taxation and assessment with its reciprocal burdens passed to the defendant when it purchased the railroad property on foreclosure of a mortgage executed by the original corporation. *County v St. P. Mpls. & Man.* 73 M 417, 76 NW 217.

As to property and buildings operated by the telephone company exclusively for company purposes, the gross earnings system of taxation is a substitute for the ordinary method, but the exemption does not extend to a city lot unimproved and unoccupied although the company plans at some future time to build thereon and use in its ordinary business. *State v N. W. Tel. Co.* 84 M 459, 87 NW 1131.

# MINNESOTA STATUTES 1945 ANNOTATIONS

1603

GENERAL PROVISIONS RELATING TO TAXATION 272.03

## 272.03 DEFINITIONS.

**HISTORY.** R.S. 1851 c. 12 ss. 2, 3; 1860 c. 1 s. 2; 1866 c. 11 ss. 2, 3; 1874 c. 1 s. 2; 1878 c. 1 ss. 2, 3, 4, 10, 11, 20, 21; G.S. 1878 c. 11 ss. 2, 3, 4, 10, 11, 20, 21; G.S. 1894 ss. 1509 to 1511, 1518, 1519, 1528, 1529; Ex. 1902 c. 2 s. 73; R.L. 1905 ss. 796 to 799; G.S. 1913 ss. 1972, 1974 to 1976; G.S. 1923 ss. 1977, 1979 to 1981; M.S. 1927 ss. 1977, 1979 to 1981; 1939 c. 127.

Subd. 2. The right to the use of water power is taxable as real and not as personal property and the assessment of real property as personal property is illegal. *State v Mpls. Milling Co.* 26 M 229, 2 NW 839.

Riparian rights are mere incidents to and part of the abutting shore property and until separated from the realty by act of the owner are not subject to taxation independently of the shore property to which they are appurtenant. *State v St. Paul & Duluth*, 81 M 422, 84 NW 302.

The right to cut timber, based upon a logging contract between the owner of the St. Paul and Duluth land grant and certain loggers, separated the timber from the real estate so that the timber is subject to taxation. *Pine County v Tozer*, 56 M 288, 57 NW 796.

A grain elevator upon the land of a railroad company and owned by it is a part of the company's real estate and not taxable as personal property. *C. M. & St. P. Ry. Co. v County of Houston*, 38 M 531, 38 NW 619.

Grain elevators owned by private parties, though situated on the right of way of a railroad company, are for purposes of taxation personal property. This overrules the holding in *Minneapolis & Northern v Board*, 60 M 522, 63 NW 101. *State v Red River Valley*, 69 M 131, 72 NW 60.

The portion of the track of the St. Paul City Ry. Co. in a public street is not real estate within the meaning of the St. Paul city charter (Special Laws 1874, Chapter 1) and is not assessable for the expense of paving. *State v District Court*, 31 M 354, 17 NW 954.

An easement is an incorporeal hereditament and not taxable, but where the grantor in a sale of a tract of land reserved an easement in the way of an alley, it was the duty of the owner of a servient estate to pay the taxes upon the tract of land excepted and reserved for an alley. *Winston v Johnson*, 42 M 398, 45 NW 958.

Where a lease is silent as to the payment of taxes, improvements which are removable by the tenant at the end of the term, are taxable to him and not to the landlord. *LePaul v Heywood*, 113 M 376, 129 NW 763.

Taxes on real estate are enforceable only against the land and cannot be enforced against the landowner personally. *Nortmann v Federal Crest Stone*, 172 M 567, 216 NW 250.

Under a contract for the sale of land where the vendee is entitled to possession or where he takes such possession, the relationship between the vendee and vendor is similar to that created by mortgage or conditional sale, the beneficial interest being in the vendee and the security interest in the vendor and is taxable accordingly. *S. R. A. v State & County of Ramsey*, 213 M 487, 7 NW(2d) 484.

A federal reserve bank erecting a building for its needs and devoted to its particular purpose cannot escape its just share of the tax burden on the ground that such building has no market value except as reflected in capitalization of income therefrom for non-existent use never intended. *State v Federal Reserve Bank*, 25 F. Supp. 14.

Where the conveyance runs to a tenant for life with remainder to a town, the life tenant must pay the taxes during lifetime. OAG June 16, 1936 (349a-22).

Comparative tax burden. 23 MLR 510.

Taxation of real estate subject to mortgage. 20 MLR 347.

Liability of leased property for ad valorem tax where lessee pays gross earnings tax in lieu of other taxes on its property. 26 MLR 413.

Where a building is located on leased railroad land, it should be listed, assessed, and taxed against respective owners as their interests appear. OAG Oct. 27, 1944 (408).

# MINNESOTA STATUTES 1945 ANNOTATIONS

State gasoline tax is not a part of the selling price of gasoline and should not be included in the valuation of gasoline for ad valorem personal property taxes on May 1. OAG April 5, 1944 (421c).

Subd. 3. The statute providing for the taxation of shares of stock in foreign corporations owned by residents of this state does not violate Minnesota Constitution, Article 9, Sections 1, 3. *State v Nelson*, 107 M 319, 119 NW 1058.

The tax upon the surplus of savings banks is a property tax and not a tax upon its franchise; and the surplus is found by deducting the total of the deposits and the accounts payable from the sum total of the assets. *State v Farmers & Mechanics*, 114 M 95, 130 NW 445.

When cattle consigned from one state to a stock market in another, reached that destination and were sold and held in the pens at the expense of the buyer, they had acquired a situs for local state taxation as the buyer's property though in the course of his business he was offering them for re-sale in the same market when the tax was imposed; reversing the decision of the Minnesota supreme court, 187 M 420, 245 NW 612. *Minnesota v Blaseus*, 290 US 5, 54 SC 35.

Property engaged in the transportation of interstate commerce may be subjected to the usual nondiscriminatory property taxes of this state if jurisdiction to tax otherwise is present; and this state imposes a tax upon all the personal property of a resident whether within or without the state. *State v Northwest Airlines*, 213 M 395, 7 NW(2d) 691.

Unaccrued rents are not personal property; they are incorporeal hereditaments. They are an incident to the reversion and follow the land. Though separable from the land, they are, until such separation, part of the land. *State v Royal Mineral Ass'n*, 132 M 232, 156 NW 128.

The shares of national banks can be taxed by the states only in the manner and to the extent authorized by United States Revised Statutes, Section 5219, and any construction given to that statute by the federal courts is binding on the state courts. Large amounts of moneyed capital employed in competition with the bank are held by individuals and are taxed under the moneys and credits act at the rate of three mills on the dollar, while the shares of defendant bank are taxed at several times that rate. This is a discrimination forbidden by the statute, although the purpose in taxing such capital at such low rate was to increase the revenue therefrom. *State v First National*, 164 M 235, 204 NW 874, 205 NW 375.

Crops or plants grown in greenhouse including annuals are taxed as other property and are not exempt. OAG July 10, 1933.

Subd. 6. A claim secured by a mortgage on real estate may be classed as a credit and be subject to taxation. *State v Jones*, 24 M 251.

A demand for money loaned is a credit and may have an actual situs other than the domicile of the owner. The owner may give it a business situs at another place where it will be taxable. *State v Jefferson*, 35 M 215, 28 NW 256.

Four persons entered into a written agreement with a corporation to sell to the corporation certain real estate for a certain sum of which a portion was paid down. The corporation agreed in writing to pay the balance upon certain specified days and the corporation was given possession of the property. The corporation agreed to pay the taxes against the property. The debt thus arising from the corporation to the sellers of the land was an assessable credit. *State v Rand*, 39 M 502, 40 NW 835.

Book accounts and receivables are subject to taxation as credits. *Thompson v Tinkum*, 15 M 295 (226).

Notes, bills receivable, and choses in action generally are credits subject to taxation. *State v London & N. W.*, 80 M 277, 83 NW 339.

Laws 1911, Chapter 285, providing for the taxation of money and credits is constitutional and is a complete reversal of prior statutes on the subject which provided among other things for the deduction of debts from credits listed for taxation. *State ex rel v Minn. Tax Comm.* 117 M 159, 134 NW 643.

Rents due in July for the period from April 1 to July 1, are not taxable as credits on May 1. *State v Royal Mineral Ass'n*, 132 M 232, 156 NW 128.

# MINNESOTA STATUTES 1945 ANNOTATIONS

1605

## GENERAL PROVISIONS RELATING TO TAXATION 272.03

Shares of corporate stock held by a resident in a domestic corporation, the property of which is assessed and taxable in this state is not taxable as credits even though a portion of the property of the corporation is located outside the state. *Holmes v Borgen*, 200 M 97, 273 NW 623.

Shares of stock in a corporation paying gross earnings tax whose real and tangible personal property taxable in the state is equal to 25 per cent or less of its total real and tangible property, are taxable as credits. OAG May 12, 1939 (614n).

Subd. 7. Where several government subdivisions or village lots owned by the same person constitute one parcel of land, they may be treated as one tract of land for purposes of assessment and sale; but where the tracts are many miles from each other this rule does not apply. *Farnham v Jones*, 32 M 7, 19 NW 83; *Sanborn v Mueller*, 38 M 27, 35 NW 666; *Brown v Setzer*, 39 M 317, 40 NW 70.

In opening Wyoming street the board assessed the damages and benefits to lot six as one lot or parcel. Prior to the proceedings the owners of lot six had conveyed a part of the lot to another, of which the board had notice after its assessment but before its confirmation. The board should have assessed the damages and benefits to the separate parts, but not having done so the proceedings were, concerning that tract of land, void. *Brennan v City of St. Paul*, 44 M 464, 47 NW 55.

The granting of a railroad right of way through a tract does not divide it into separate tracts. *Scott County v Hinds*, 50 M 204, 52 NW 523; *National Bond v Board*, 91 M 63, 97 NW 413.

The assessment was erroneous upon the ground that if any part of the 65 acres was to be considered and treated as platted for the purpose of assessing frontage on both streets the whole should have been so considered and treated; and if the tract is to be considered and treated as platted, the owner is entitled to such deductions as would have been allowed for streets if tract was actually platted. *State v Lewis*, 72 M 87, 75 NW 108.

Subd. 9. Neither "assessed value" nor "assessed valuation," as used in the statute defining net bonded indebtedness, means "true and full value." They are phrases of contrast and not identity. In determining the net bonded indebtedness of Minneapolis the ten per cent rate is to be figured on the assessed valuation of its property as finally equalized. *Phelps v City of Minneapolis*, 174 M 509, 219 NW 872.

In determining the value of real property for assessment purposes the usual selling price of like property in the same locality is the standard of value; and to ascertain the sale value it is proper to consider its location, the revenue derived, the cost of reproduction of improvements, and other elements. *In re Potlatch Timber Co.* 160 M 209, 199 NW 968.

All real property must bear taxation equitably in comparison with other property assessed in the community; and the assessor must determine the true value from all factors present, notwithstanding the fact that the property could not be sold for a valuation placed thereon for taxation purposes. *State v Federal Reserve Bank*, 25 F Supp. 14.

Subd. 13. Ditto marks under the word "unknown" in the column in the assessment roll headed "In whose name assessed" is a sufficient statement that the owner's name is unknown; and in such case, a notice of the expiration of the time of redemption addressed to "unknown" is sufficient. *Hoyt v Clark*, 64 M 139, 66 NW 262.

The insertion of commas in the description column was a mere clerical mistake and does not affect or alter the description, and the description is a valid one. *Banning v McManus*, 51 M 289, 53 NW 635.

The dots or periods used were not essential parts of the description in the public tax list, not used in compliance with the statute referred to, for the reason that the entire description including the cross-heading immediately preceding characters forbid their significance as descriptive of the property, and the description is valid. *Doherty v Real Estate Title*, 85 M 518, 89 NW 853.

Abbreviations must be according to common usage. *Keith v Hayden*, 26 M 212, 2 NW 495.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 272.04 GENERAL PROVISIONS RELATING TO TAXATION

1606

A fraction of a government subdivision cannot be described by an integer. *Keith v Hayden*, 26 M 212, 2 NW 495; *Knight v Alexander*, 38 M 384, 37 NW 799; *Murphy v Burke*, 47 M 99, 49 NW 387; *Kern v Clarke*, 59 M 70, 60 NW 809.

In a description a fractional number cannot be used unless it is clear of what larger subdivision it is a fraction. *Knight v Alexander*, 38 M 384, 37 NW 799; *Fagen v Huntress*, 80 M 441, 83 NW 382.

### 272.04 MINERAL, GAS, COAL, AND OIL OWNED APART FROM LAND.

**HISTORY.** 1905 c. 161; G.S. 1913 s. 1973; G.S. 1923 s. 1978; M.S. 1927 s. 1978.

Where mineral interests in real estate are owned separately from interests in the surface, they are land, taxable as such, and should be taxed separately from the surface interests. *Washburn v Gregory*, 125 M 491, 147 NW 706.

Interests or estates in mining properties may be segregated and taxed separately. *Marble v Oliver Iron M'ng Co.* 172 M 263, 215 NW 71; *State ex rel v Armson*, 181 M 221, 232 NW 35.

A judgment sustaining an assessment of memberships in the Minneapolis chamber of commerce as moneys and credits under Laws 1911, Chapter 285, is not a bar to an assessment of such memberships for a year later as general personal property under Revised Laws 1905, Sections 794 to 798. *Goetzman v Minn. Tax Commission*, 136 M 260, 161 NW 516.

Taxes must be paid on the land before an instrument conveying mineral rights may be recorded. OAG Dec. 7, 1938 (408a).

Generally the register of deeds should refuse to record a conveyance of mineral rights unless the taxes on the land have been paid, but if the mineral rights have heretofore been assessed separately from the fee title, the conveyance would require only a certificate that the taxes on the mineral rights had been paid. 1940 OAG 200, May 18, 1940 (373b-9b).

Tax sale of a servient estate as affecting the easement. 22 MLR 579.

### 272.05 RESERVED TIMBER OR MINERAL RIGHTS OR INTERESTS IN LANDS SUBJECT TO TAXATION; MAY BE SOLD FOR TAXES.

**HISTORY.** 1925 c. 170; M.S. 1927 s. 1978-1.

A person who purchases from the state the timber standing upon state lands acquires an interest in real property which is taxable as real estate. 1942 OAG 348, July 15, 1942 (429G).

### 272.06 LEGALITY PRESUMED.

**HISTORY.** Ex. 1902 c. 2 s. 74; R.L. 1905 s. 800; G.S. 1913 s. 1977; G.S. 1923 s. 1982; M.S. 1927 s. 1982.

No sale is presumed there being no proper entry in the original form book. *State v Minn. & Ontario*, 121 M 421, 141 NW 839.

Tax sale proceedings are presumed to be legal until the contrary is shown. *Foster v Golden Valley*, 123 M 273, 143 NW 786.

The delinquent tax list filed with the clerk of the district court was prima facie evidence that there had been a compliance with the laws shown by the list, and the burden of proving the alleged invalidity of the list rests on the taxpayer. *State v Minn. & Ontario*, 147 M 369, 180 NW 548.

### 272.07 TAXES MAY BE CANCELED FOR SCHOOL DISTRICTS IN CERTAIN CASES.

**HISTORY.** 1935 c. 60 s. 1; M. Supp. s. 2191-1.

Personal property taxes may be canceled as provided by section 272.07; and may be abated as provided in section 277.05; and not otherwise. 1942 OAG 344, March 17, 1941 (407L).

If a city purchases land after May 1, 1944, and prior to January 1, 1945, it may apply for abatement of the 1944 tax. OAG Feb. 8, 1945 (414a-11).

# MINNESOTA STATUTES 1945 ANNOTATIONS

1607

GENERAL PROVISIONS RELATING TO TAXATION 272.10

## 272.08 INTEREST ON UNPAID TAXES.

HISTORY. 1907 c. 82 ss. 1, 3; G.S. 1913 ss. 2181, 2183; G.S. 1923 ss. 2200, 2202; M.S. 1927 ss. 2200, 2202.

In the absence of statute, delinquent personal property taxes do not bear interest either from the date of delinquency or from the date of an order for judgment made in proceedings to enforce payment. *State v New England*, 107 M 52, 119 NW 427.

The state may enact that taxes bear interest from the time they become due and provide that taxes which have already become delinquent shall bear interest from the time the delinquency commences. *State v Western Union*, 111 M 21, 124 NW 380, 126 NW 403.

The taxpayer is required to pay interest and lawful costs subject to the statute of limitations, with respect to money and credits taxes. 1940 OAG 319, Oct. 18, 1940 (421a-8).

Tax as a debt which bears interest. 8 MLR 172.

## 272.09 DAY FOR PAYMENT OF TAXES OR ASSESSMENTS FALLING ON SUNDAY OR LEGAL HOLIDAY.

HISTORY. 1925 c. 386; M.S. 1927 s. 2202-1.

Where in 1936, May 31st falls on Sunday and the preceding day is a legal holiday, the first half of the taxes for 1935 may be paid without penalty on June 1, 1936. 1936 OAG 417, May 19, 1936 (412a-9).

## 272.10 RIGHT TO ASSESS AND COLLECT; LIMITATION.

HISTORY. Ex. 1902 c. 2 s. 82; R.L. 1905 s. 980; G.S. 1913 s. 2187; G.S. 1923 s. 2206; M.S. 1927 s. 2206; 1939 c. 423 s. 1; 1943 c. 41 s. 1.

A provision authorizing the collection of penalty or back interest on omitted taxes is invalid as being unequal taxation for the reason that until the amount of the tax is ascertained the owner has no opportunity of paying it and is not in default. *County v Winona & St. P. Ry. Co.* 40 M 512, 41 NW 465, 42 NW 473.

Proceedings under the tax law to obtain judgment against the land are "an action upon a liability created by statute"; and, prior to the passage of Laws 1902, Chapter 2, Section 82, the six-year limitation applied. The 1902 statute abrogated the statute of limitations as to the right to assess and collect omitted taxes. *County v Winona & St. Peter*, 40 M 512, 41 NW 465; *Mower Co. v Crane*, 51 M 201, 53 NW 629; *Pine Co. v Lambert*, 57 M 203, 58 NW 990.

Laws 1902, Chapter 2, Section 82, abrogated the statute of limitations as to the right of the state to enforce assessment and collection of taxes; but the statute applies to taxes delinquent at the time of the passage of the act as to which the limitation had not then run. *State v Foster*, 104 M 408, 116 NW 826.

Where there is a condition precedent to the accruing of a cause of action and it is in the power of the plaintiff to perform that condition, the statute of limitations applies and will commence to run as soon as the proper time to perform the condition arrives, and when performance is thereby barred it will prevent the cause of action from ever accruing. The limitation does not begin to run until the expiration of the time allowed for the filing of the delinquent list with the clerk. *State ex rel v Norton*, 59 M 424, 61 NW 457; *State v Russell-Sage*, 75 M 448, 78 NW 14.

If having been judicially determined that prior proceedings for the enforcement of taxes were ineffectual, the right to institute new proceedings cannot be barred by the lapse of time between the institution of the first proceedings and the judicial determination of their invalidity. *State v Kipp*, 70 M 286, 73 NW 164; *State v Bellin*, 79 M 131, 81 NW 763.

Revised Laws 1905, Section 980, abrogated the statute of limitations as to the right of the state to enforce the assessment and collection of taxes upon all property within the state subject to taxation including the property of express companies. *State v United States*, 114 M 346, 131 NW 49.



# MINNESOTA STATUTES 1945 ANNOTATIONS

## 272.11 GENERAL PROVISIONS RELATING TO TAXATION

1608

The district court has jurisdiction to enforce the lien of the inheritance tax upon property omitted from the appraisal and inventory in the probate court, and an action for the enforcement of the lien under section 291.27 is not barred by the statute of limitations. *State v Brooks*, 183 M 251, 236 NW 316.

In the levy and imposition of taxes the state acts in its sovereign capacity and in an action for the collection thereof cannot be subjected to an equitable estoppel. *State v Illinois*, 200 M 583, 574 NW 828, 272 NW 854.

The duties of the county auditor under sections 285.05 and 273.02 are not altered by the passage of Laws 1939, Chapter 423. OAG May 2, 1939 (614).

Assuming that all assessments have been properly made there is a six-year period of limitation with respect to actions to enforce collection of moneys and credits taxes and no limitation with respect to personal property taxes. 1940 OAG 319, Oct. 18, 1940 (421a-8).

### 272.11 EXPENSES OF REASSESSMENT.

HISTORY. Ex. 1902 c. 2 s. 85; R.L. 1905 s. 982; G.S. 1913 s. 2189; G.S. 1923 s. 2208; M.S. 1927 s. 2208.

### 272.12 PAYMENT OF TAXES BEFORE RECORDING OF TRANSFER; CERTAIN VIOLATIONS, GROSS MISDEMEANORS.

HISTORY. 1860 c. 9 s. 17; 1862 c. 9 s. 1; G.S. 1866 c. 11 s. 41; 1878 c. 1 s. 106; G.S. 1878 c. 11 s. 106; 1887 c. 263; G.S. 1894 s. 1624; Ex. 1902 c. 2 s. 70; R.L. 1905 s. 985; 1913 c. 371 s. 1; G.S. 1913 s. 2192; G.S. 1923 s. 2211; 1927 c. 92; M.S. 1927 s. 2211; 1939 c. 215; 1939 c. 236; M. Supp. s. 2211-1; 1943 c. 475 s. 1.

It is unlawful for the register of deeds of Ramsey county to receive for record, or to record, deeds of real estate situated in the city of St. Paul which have not upon them the auditor's statement as to taxes and the city treasurer's statement as to assessments. *State ex rel v Register of Deeds*, 26 M 521, 6 NW 337.

Where a deed is executed purporting to convey the title in several parcels of real property and the taxes are paid upon one parcel but are delinquent and unpaid upon the others, mandamus will not lie to compel the county auditor to endorse upon the deed his certificate of the payment of taxes. *State ex rel v Weld*, 66 M 219, 68 NW 1068; *State ex rel v Dressel*, 38 M 90, 35 NW 580.

The endorsement by the county auditor on a conveyance of real estate of "taxes paid" does not estop the state to claim that there are taxes unpaid. *County v Barber*, 31 M 256, 17 NW 473.

The payment under protest of taxes so as to record a deed of conveyance is an involuntary payment and if the tax be illegal an action will lie to recover them. This modifies *Smith v Schroeder*, 15 M 35 (18). *State ex rel v Nelson*, 41 M 25, 42 NW 548; *Oakland v County of Ramsey*, 98 M 404, 108 NW 857, 109 NW 237.

The auditor must rely upon the records of his office and a registration under the Torrens system does not affect that rule when the auditor makes that certificate. *State ex rel v Krahmer*, 92 M 297, 100 NW 105.

A deed executed by a man advanced in years to his only child and heir was delivered by him to the attorney who drew the deed with instructions to have it recorded. The attorney took the deed to the proper office for record but the taxes were unpaid and it could not be recorded, and the grantor died before the taxes were paid. It is held that in accepting delivery of deed the attorney was the agent of the grantee and the deed had been delivered and was effective. *Ingersoll v Oden*, 136 M 428, 162 NW 525.

The statute requiring a holder of a tax certificate to give notice of expiration of redemption and to record his certificate within seven years does not impair the obligation of the certificate holders' contract with the state; and it is within the power of the legislature to shorten the time within which an outstanding certificate should be recorded if a reasonable time was allowed for compliance before the statute became operative. *Northern Counties v Excelsior Land*, 146 M 207, 178 NW 497.

Taxes, within the meaning of this section, include the annual instalment assessment for benefits in drainage proceedings; and where a deed presented to the

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county auditor for certification contains a description which might include lands which have been sold to the state for delinquent drainage assessments, the auditor cannot be compelled to certify that the taxes have been paid. State ex rel v Holz, 170 M 141, 212 NW 170.

Plaintiff paid the current taxes upon land owned by defendants. He had no interest in the title, was not in possession, and had no agreement with defendants, which he could invoke, obligating them to pay the taxes. Taxes upon real estate are a charge upon the land in favor of the state and not a personal obligation of the landowner. Plaintiff paid the taxes voluntarily and cannot recover. Weberling v Bursell, 180 M 283, 230 NW 654.

Laws 1933, Chapter 414, in classifying taxpayers into two classes, those who pay promptly and those who do not, and allowing a remission or discount to the former, violated Minnesota Constitution, Article 9, Section 1. State ex rel v Luecke, 194 M 246, 260 NW 206.

Section 280.38, providing for the attachment by the county auditor of rents received from real estate upon which taxes have become delinquent, does not violate the uniformity provisions of our state or federal constitutions. Johnson v Richardson, 197 M 266, 266 NW 867.

Assuming that the instrument conveying and assigning pipeline easements also conveys certain tracts of land to which such pipeline easements are appurtenant, and assuming that both back and current taxes are paid on said tracts of land and certificate showing such payment has been made, the instruments of assignment may be recorded in the office of register of deeds without the certificates required by sections 272.12 and 272.13. 1936 OAG 125, Sept. 16, 1935 (373b-17d).

Where property is deeded to the city of Benson for the purpose of erecting a sewage disposal plant thereon, it is the duty of the register of deeds to record the deeds to the property without the endorsement thereon relative to the payment of taxes required by sections 272.12 and 272.13. 1936 OAG 128, July 7, 1936 (373b-92); 1936 OAG 130, Oct. 21, 1935 (373b-92).

A deed covering a railway right of way is not recordable without certificates as to payment of taxes. 1936 OAG 388, Dec. 30, 1935 (409a-11).

Deed to the state taken by rural credit department is entitled to record without payment of taxes. OAG Nov. 10, 1936; OAG April 7, 1937 (131c).

The referee's report in partition proceedings may be recorded without payment of taxes. OAG April 10, 1937 (373B-22).

After a tax payer has confessed judgment current taxes must be paid before a deed can be recorded. OAG Aug. 4, 1937 (412a-10).

Where property is repurchased from the state and payment of 20 per cent cash made, it may be transferred and deed recorded without the payment of remaining instalments. OAG Feb. 8, 1938 (412a-23).

Taxes must be paid on land before an instrument conveying mineral rights can be recorded. OAG Dec. 7, 1938 (408a).

Deed to the state conveying land on which taxes are delinquent is entitled to record by register of deeds without payment of taxes. OAG March 30, 1939 (373b-17c).

An assignment of an executory contract for sale of land may not be recorded without certificate showing payment of taxes. OAG June 2, 1939 (373b-9).

A deed to the county reserving a life estate in the grantor cannot be recorded without payment of taxes. OAG July 5, 1939 (373b-9e).

Certified copy of assignment for benefit of creditors does not require the auditor's certificate that taxes have been paid. OAG Sept. 15, 1939 (363b-7).

The auditor's notation must be as to all these parcels described in the conveyance, and not as to a part of them in order to entitle the instrument to record. 1942 OAG 208, Dec. 9, 1941 (373B-9e).

After the title has passed to the state on forfeiture for nonpayment of taxes, and a deed is presented for record the treasurer and auditor may stamp the deed as follows: "taxes paid and transfer entered (taxes canceled pursuant to Laws

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1935, Chapter 386, Section 7, upon forfeiture to the state for non-payment of taxes)". OAG May 10, 1944 (373b-9-6).

"Other instruments conveying land" does not include a lease. OAG Aug. 15, 1944 (373b-17e).

### 272.13 TREASURER'S CERTIFICATE.

HISTORY. 1895 c. 285; 1897 c. 163; R.L. 1905 s. 986; G.S. 1913 s. 2193; G.S. 1923 s. 2212; M.S. 1927 s. 2212.

Current taxes and all due instalments under the repurchase agreement must be paid in order to record a deed. OAG Dec. 27, 1944 (373-9-e).

### 272.14 TRANSFER OF UNDIVIDED INTEREST.

HISTORY. 1897 c. 163; R.L. 1905 s. 987; G.S. 1913 s. 2194; G.S. 1923 s. 2213; M.S. 1927 s. 2213.

### 272.15 DEED TO CORRECT TITLE.

HISTORY. 1897 c. 344; R.L. 1905 s. 988; G.S. 1913 s. 2195; G.S. 1923 s. 2214; M.S. 1927 s. 2214.

It is necessary for the county attorney to include in his report and turn over to the county treasurer any fees collected under this section. 1938 OAG 133, Jan. 22, 1937 (779n).

### 272.16 TRANSFER OF SPECIFIC PART.

HISTORY. Ex. 1902 c. 2 s. 71; R.L. 1905 s. 989; G.S. 1913 s. 2196; G.S. 1923 s. 2215; M.S. 1927 s. 2215.

An owner may not pay delinquent taxes upon part of lands assessed; but see Laws 1941, Chapters 26, 108. 1942 OAG 297, May 8, 1941 (412A-10).

### 272.17 LIST OF CERTIFICATES OF SALE, JUDGMENTS OR DECREES OF COURTS FILED WITH AUDITOR.

HISTORY. Ex. 1902 c. 2 s. 70; R.L. 1905 s. 990; G.S. 1913 s. 2197; G.S. 1923 s. 2216; M.S. 1927 s. 2216.

Where money is paid at a tax sale of exempt property, it must be refunded to the purchaser. OAG March 3, 1944 (424).

### 272.18 MORTGAGES, LISTING.

HISTORY. 1905 c. 61 ss. 1, 2; G.S. 1913 ss. 2198, 2199; G.S. 1923 ss. 2217, 2218; M.S. 1927 ss. 2217, 2218.

The duties of the register of deeds, as prescribed in this section, are in no way affected by the mortgage moratorium. 1934 OAG 255, April 3, 1933.

### 272.19 PLATTING OF IRREGULAR TRACTS.

HISTORY. Ex. 1902 c. 2 s. 72; R.L. 1905 s. 991; 1911 c. 32 s. 1; G.S. 1913 s. 2200; G.S. 1923 s. 2219; M.S. 1927 s. 2219.

Plaintiffs' claim title to a strip of land lying between auditor's lot 30, in Detroit Lakes, Minnesota, and the north shore of Detroit lake. The plat of this lot showed its south line to be approximately 50 feet north of the shore with a public road along the southerly boundary. Plaintiffs' title is based upon tax proceedings, all of which and subsequent deeds described their property as auditor's lot 30 by reference to the plat. Plaintiffs wholly failed to show that lot 30 included the property in dispute or to sustain a reformation of the plat to so include such property. *Rahm v Weiss*, 190 M 508, 252 NW 432.

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The auditor cannot hire a surveyor to make a plat but may request the county surveyor to do so, and if there is no county surveyor the vacancy must be filled by county board. OAG Feb. 3, 1934.

If a plat carries a defective description the auditor may insist that the owner or surveyor file a correct and proper one. OAG Feb. 10, 1934.

If a meandered lake bed is to be partitioned it must be by action in district court to partition lands and quiet title. Platting cannot be done under section 272.19. OAG June 15, 1934 (273c).

If a county auditor orders platting under this section the owner must proceed in accordance with the provisions of sections 505.01 to 505.16, and if the owner fails the county auditor may require the county surveyor to make a plat. OAG Sept. 11, 1939 (373b-15).

Platting does not necessarily change status of land from section 273.13, class 3(b) to class 3(c). 1942 OAG 296, March 26, 1942 (18-D).

The county auditor may require platting of irregular tracts for assessment and tax purposes. The description in the delinquent tax list should be identical with that in the assessment book. OAG Jan. 15, 1944 (412a-13).

The statutes do not require that plats be designated by numbers. OAG Aug. 23, 1944 (18d).

Land embraced in an auditor's plat need not necessarily be conveyed by reference to the plat. OAG Jan. 26, 1945 (18d).

Growth of scientific boundary descriptions. 27 MLR 213.

## 272.20 GOVERNMENT AND RAILROAD LANDS BECOMING TAXABLE; LISTS; LISTS OF LAND REVERTING TO RAILROADS.

HISTORY. 1860 c. 1 s. 16; G.S. 1866 c. 11 s. 16; 1878 c. 1 s. 118; G.S. 1878 c. 11 s. 118; 1881 c. 10 s. 20; G.S. 1894 s. 1643; R.L. 1905 s. 992; G.S. 1913 s. 2201; G.S. 1923 s. 2220; 1927 c. 404; M.S. 1927 s. 2220; 1943 c. 564 s. 1.

The state revenue laws have fixed May 1st as the date for determining the taxability of property and its ownership and value for purposes of taxation for the year; hence lands of a railway company which are exempt from taxation "until sold and conveyed" if conveyed before May 1st are subject to taxation for the then current year. If not conveyed until after that date they are not. County v Drake, 40 M 137, 41 NW 942; State ex rel v Luecke, 194 M 256, 260 NW 206.

## 272.21 RAILROAD LANDS; SALE.

HISTORY. 1887 c. 12 ss. 1, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 ss. 118a, 118d; G.S. 1894 ss. 1644, 1647; R.L. 1905 s. 993; G.S. 1913 s. 2202; G.S. 1923 s. 2221; M.S. 1927 s. 2221.

The Winona & St. Peter Railway having succeeded to "the rights, benefits, privileges, property, franchises and interests" of the Transit Railway Company is entitled to hold the lands granted by territorial act to the latter company exempt from taxation. State v Winona & St. Peter, 21 M 315, 472; County v Winona & St. Peter, 38 M 397, 35 NW 949; County v Winona & St. Peter, 39 M 380, 40 NW 166.

The Northern Pacific Railway was incorporated and endowed with a grant of lands by an act of congress approved July 2, 1864. The act of congress passed in 1870 requiring the company as a condition precedent to its right to patent for such land to pay cost of surveying and conveying same, attached a new condition not found in original grant and the condition is invalid. County of Cass v Morrison, 28 M 257, 9 NW 761.

The instruments attempting to convey property rights held not valid as a complete conveyance of the property. Minnesota Central v. Melvin, 21 M 339; State v Trustees, 21 M 344.

An agreement was made between a railroad corporation and its individual stockholders whereby certain rights were conferred upon the stockholders in respect to the land grant of the corporation. This contract does not on its face indicate an absolute conveyance to the stockholders of the legal or equitable title to the land but rather purports to be security in the nature of a mortgage. That

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being the case the property is exempt from taxation; but if the intention is to invest the stockholders with the entire beneficial interest, the corporation retaining only the bare legal title, in an attempt to continue the exemption, the finding must be that the beneficial interest of the stockholders is taxable. *St. Paul & Sioux City v McDonald*, 34 M 182, 25 NW 57; *St. Paul & Sioux City v Robinson*, 40 M 360, 42 NW 79; *Sioux City & St. Paul v Robinson*, 41 M 452, 43 NW 326.

Lands embraced in a railroad land grant, and exempt from ordinary taxation, subject to taxation when the entire beneficial interest of the corporation was conveyed by a trust deed to secure a specified charge upon the lands exceeding their full value and the cestuis que trustent being empowered, at their mere election, to appropriate the entire property in satisfaction of their claims, leaving nothing to the grantor. *County of Chippewa v St. P. Stillwater & Taylors Falls*, 42 M 295, 44 NW 70.

Under the instant contract between the railway company and others, the grantees acquired an interest or estate in the lands which subjected the lands to assessment and taxation. *Pine County v Tozer*, 56 M 288, 57 NW 796.

Under a contract for the sale of land where the vendee is entitled to possession, the relationship between vendee and vendor is similar to that created by a mortgage or condition sale, the beneficial interest being in the vendee and the security interest in the vendor. *S. R. A. v State & County of Ramsey*, 213 M 487, 7 NW(2d) 484; *Merrimac v Gross*, 216 M 252, 12 NW(2d) 506.

### 272.22 WHEN STOCK REPRESENTS LANDS.

HISTORY. 1887 c. 12 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 118b; G.S. 1894 s. 1645; R.L. 1905 s. 994; G.S. 1913 s. 2203; G.S. 1923 s. 2222; M.S. 1927 s. 2222.

### 272.23 TAXABILITY IN LITIGATION.

HISTORY. 1887 c. 128 s. 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 118e; G.S. 1894 s. 1648; R.L. 1905 s. 995; G.S. 1913 s. 2204; G.S. 1923 s. 2223; M.S. 1927 s. 2223.

### 272.24 COMPANY TO REPORT TRANSFERS.

HISTORY. 1887 c. 128 s. 6; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 118f; G.S. 1894 s. 1649; R.L. 1905 s. 996; G.S. 1913 s. 2205; G.S. 1923 s. 2224; M.S. 1927 s. 2224.

### 272.25 REGISTRY OF MUNICIPAL BONDS.

HISTORY. 1871 c. 17 s. 1; G.S. 1878 c. 11 s. 143; G.S. 1894 s. 1692; R.L. 1905 s. 997; G.S. 1913 s. 2206; G.S. 1923 s. 2225; M.S. 1927 s. 2225.

The county board may provide for paying the interest on county bonds issued to railroad companies, although such bonds have not been registered with the state auditor as provided in the act of March 6, 1871. *Board v Nettleton*, 22 M 356.

### 272.26 TAX TO PAY INTEREST.

HISTORY. 1871 c. 17 ss. 3, 4; 1881 c. 16 s. 1; Ex. 1881 c. 15 s. 1; G.S. 1878 c. 11 ss. 145, 146; G.S. 1894 ss. 1694, 1695; R.L. 1905 s. 998; G.S. 1913 s. 2207; G.S. 1923 s. 2226; M.S. 1927 s. 2226.

### 272.27 COUPONS; PAYMENTS.

HISTORY. 1871 c. 17 s. 5; 1875 c. 115 s. 1; G.S. 1878 c. 11 s. 147; 1881 c. 16 s. 2; Ex. 1881 c. 15 s. 2; 1885 c. 59; G.S. 1894 s. 1696; R.L. 1905 s. 999; G.S. 1913 s. 2208; G.S. 1923 s. 2227; M.S. 1927 s. 2227.

### 272.28 COUNTIES HAVING BONDED DEBT; SINKING FUND; TAX.

HISTORY. 1903 c. 381; 1905 c. 202; R.L. s. 1000; G.S. 1913 s. 2209; G.S. 1923 s. 2228; M.S. 1927 s. 2228.

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## 272.29 GOVERNOR MAY SUSPEND OR REMOVE.

HISTORY. Ex. 1902 c. 2 s. 86; R.L. 1905 s. 1001; G.S. 1913 s. 2210; G.S. 1923 s. 2229; M.S. 1927 s. 2229.

## 272.30 ACTIONS AGAINST OFFICERS; EXPENSE OF COUNTY.

HISTORY. 1878 c. 1 s. 117; G.S. 1878 c. 11 s. 117; G.S. 1894 s. 1642; R.L. 1905 s. 1002; G.S. 1913 s. 2211; G.S. 1923 s. 2230; M.S. 1927 s. 2230.

## 272.31 LIEN ON REAL ESTATE TAXES.

HISTORY. Ex. 1902 c. 2 s. 69; 1903 c. 396; R.L. 1905 s. 975; G.S. 1913 s. 2171; G.S. 1923 s. 2191; M.S. 1927 s. 2191.

1. **Generally.**
2. **When attaches.**
3. **Duration.**
4. **Merger.**
5. **Priority.**
6. **Conflict.**
7. **Purchaser.**

### 1. Generally

The lien owes its validity and duration to the statute providing for the lien and does not arise by implication from the power of the state to tax. *State v Bellin*, 79 M 131, 81 NW 763.

Personal property in the hands of the heirs, executor, or administrator of an estate is not subject to taxation for the amount it should have been taxed during the life of the owner. *State ex rel v Eberhard*, 90 M 120, 95 NW 1115.

Tax liens held by the state are within the provisions of the statute providing that the state be joined as a party defendant in proceedings under the Torrens law when the state has an "interest in or lien upon" the land in suit. The provision is constitutional being merely an incidental feature of the general law regarding the Torrens plan and designed to assist in effective execution of the Torrens law. *National Bond v Hopkins*, 96 M 119, 104 NW 678.

Where no provision is made for the payment of taxes in a lease of real estate and the lease provides that the improvements put upon the lot by the lessee are removable and the landlord is compelled to pay the entire amount of the taxes to save the property from being sold at tax sale, an action may be maintained by him against the tenant and he may recover that portion of the tax levied upon the improvements. *La Paul v Heywood*, 113 M 376, 129 NW 763.

Lands bid in by the state on a delinquent tax judgment sale and not assigned by it or redeemed are not to be placed on the delinquent tax list for judgment and sale for subsequent delinquent taxes; and their inclusion therein invalidates the proceedings pursuant to the latter sale. *Welcome v Marshall*, 174 M 431, 219 NW 545.

Taxes upon real estate are a charge and lien upon the land in favor of the state, but are not a personal obligation of the landowner, and the state cannot recover a personal money judgment against the owner. *Weberling v Bursell*, 180 M 283, 230 NW 654.

The lien for real estate taxes effective in favor of the state as of May 1st does not take effect as between grantor and grantee until the first Monday in January of the succeeding year, so where taxes for 1936 are paid during 1937 by an owner who acquired title in 1936 the payment cannot be considered a capital expenditure, and is deductible in computing the 1937 income tax. *Spaeth v Minnesota*, 211 M 156, 300 NW 600.

Minnesota real estate taxes operate exclusively in rem, and the statutes impose no personal obligation upon anyone to pay them. Where on August 1, 1939, a Minnesota corporation acquired Minnesota real estate and the corporation was on

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an accrual basis and its fiscal year ended on January 31, the 1939 real estate taxes paid by the corporation in 1940 were not deductible as "taxes paid or accrued within the taxable year" in determining the federal income tax. *United States v Consolidated*, 141 F(2d) 791.

Allowance from state for property subject to gross earnings taxes; valuation of property and computation of allowance to be made as of May 1 in taxable year, when population change takes effect. 1942 OAG 332, Oct. 21, 1941 (454E).

Receiver in supplementary proceedings; collection of taxes from. 23 MLR 857.

### 2. When attaches

The legislature may fix a date when the tax lien attaches and, under the present statute as to real estate, May 1st determines the liability of property for taxation for that year, and if it is taxable at that time the lien then attaches, and such lien is not divested by a sale after that day to a corporation which has commuted to the state by a payment of a percentage on its gross earnings in lieu of all other taxes. *State v Northwestern Tel. Co.* 80 M 17, 82 NW 1090.

Except as between grantor and grantee the tax lien attaches May 1st in the year the taxes are levied, but this rule has no application to lands conveyed to the St. P. Mpls. & Man. Ry. Co. in July before the taxes for the year were assessed on such land; but to land thus acquired at such time the three per cent commutation fund in defendant's charter applies and supersedes the right to assess the land in specie. *County v St. P. M. & M. Ry. Co.* 33 M 534, 24 NW 196.

The statute providing that the lien for taxes on real property continues until paid does not affect the provisions of the statute of limitations applicable to taxes and tax judgments. See Laws 1902, Chapter 2, Section 69. *State v Bellin*, 79 M 131, 81 NW 863; *Nat'l Bond v Hopkins*, 96 M 119, 104 NW 678.

The holder of a "state assignment certificate" who perfects title thereunder, acquires thereby a title in fee simple to the lands covered thereby, free and clear of all prior liens or claims in favor of the state or individuals. *State v Camp*, 79 M 343, 82 NW 645.

The liens provided for in General Statutes 1894, Sections 1623, 7811, are distinct, created for different purposes, attach at different times, and impose different conditions upon the landowner under a covenant against encumbrances upon a sale of the land by him; and General Statutes 1894, Section 1623, for the attachment of liens for ordinary taxes as between the state and the landowner as well as between the grantor and grantee do not affect or control the assessments provided in the state drainage law. *Clapp v Minnesota Grass Twine Co.* 81 M 511, 84 NW 344.

A contract for the transfer of real and personal property construed to obligate the sellers to pay the taxes on both the personal property and real estate for the year 1925 and the purchaser to pay the personal as well as the real estate taxes for the year 1926 even though the transfer was not made until July 1, 1926, after the sellers had been obliged to list the personal property for taxation. *Arvig v Continental Pub. Utilities*, 179 M 298, 229 NW 127.

Taxes on realty are assessed for calendar year as of May 1st upon which date they attach as a lien, and various steps in assessment and levy when finished date back to and take effect as of May 1st. *Merle-Smith v Minn. Iron Co.*, 195 M 313, 262 NW 865; *Mchts. Bank Bldg. v Helvering*, 84 F(2d) 478; *Lifson v Commissioner*, 98 F.(2d) 508.

Date of accrual of Minnesota real estate taxes for the purposes of income tax deductions. 26 MLR 567.

### 3. Duration

Under the present law the lien continues indefinitely until the taxes are paid. The lien is never lost except by payment of the taxes or by some express provision of the law. Prior to the passage of Laws 1902, Chapter 2, Sections 69, 82, the lien expired in six years. *County of Redwood v Winona & St. Peter*, 40 M 512, 41 NW 465; *Mower Co. v Crane*, 51 M 201, 53 NW 629; *Pine Co. v Lambert*, 57 M 203, 58 NW 990; *State ex rel v Norton*, 59 M 424, 61 NW 458; *State v Russell Sage*, 75 M 448, 78 NW 14.

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Under Laws 1881, Chapter 135, the state acquired no title to land by virtue of the tax judgment unless it was offered for sale and bid in for the state in default of other bidders; and the proceedings to enforce the collection of taxes against real estate are "an action upon a liability created by statute" and the laws relating to limitations of actions apply so that unless it has passed into judgment the lien for taxes expires within the six-year limitation but if reduced to judgment it expires in ten years. *Pine Co. v Lambert*, 57 M 203, 58 NW 990.

Laws 1893, Chapter 150, undertook to confer jurisdiction upon the district court to proceed as against lands for which the state had lost its lien for taxes, and was unconstitutional. *Kipp v Elwell*, 65 M 525, 68 NW 105; *State v Bellin*, 79 M 131, 81 NW 763.

The statute gives the state the right to institute new proceedings to enforce the payment of taxes after it has been judicially determined that the prior proceedings for that purpose were ineffectual, and the right to institute such new proceedings cannot be barred by the lapse of time between the old proceedings and the determination of their invalidity. *State v Kipp*, 70 M 286, 73 NW 164.

A tax sale certificate which recites a sale of land pursuant to a tax judgment in proceedings to enforce the payment of taxes upon real estate delinquent in the year 1879 and prior years, and in the year 1889 and prior years, without otherwise indicating for what taxes the judgment was rendered, is void on its face. *Cool v Kelly*, 78 M 102, 80 NW 861.

Under Laws 1899, Chapter 322, all judgments prior to 1898 on which the statute of limitations has not run are to be included in the delinquent list provided for in that law, and the statute of limitations applicable to judgments rather than enforceable tax burdens for the original taxes applies in cases where as in this case prior tax judgments are included in the new judgment. *State v Ward*, 79 M 362, 82 NW 686.

A later or junior assessment of taxes and the tax sale had upon it are paramount to and take precedence over the senior assessment and the sale had upon it. *Wass v Smith*, 34 M 304, 25 NW 605.

The state having, at a tax sale, bid in the land for taxes, its lien for subsequent taxes does not lapse by reason of the failure to sell the land each subsequent year, and several years after such subsequent taxes became delinquent the state may, by a state assignment, transfer to a private person its lien for the same, together with its claim under the tax sale at which it bid in the land. *Berglund v Graves*, 72 M 148, 75 NW 118.

The perpetual tax lien created by Revised Laws 1905, Section 975, where for any cause the title held by a purchaser at the tax sale proves invalid, is by force of Revised Laws 1905, Section 942, transferred to the title holder and he may enforce same. *Downing v Luch*, 121 M 301, 141 NW 183.

### 4. Merger

The original lien attaching May 1st continues until the last publication of the notice and list of delinquent taxes, and then separates through the judicial proceedings, and is finally merged in the judgment; but the lien is essentially the same throughout all these proceedings. *State v Bellin*, 79 M 131, 81 NW 763; *State v Ward*, 79 M 362, 82 NW 686.

Grouping of contiguous parcels of land in tax delinquency proceedings. 23 MLR 991.

### 5. Priority

The last lien cuts off all prior liens. The state is not exempt from this rule. Tax liens take precedence in the reverse order of their attachment. *Wass v Smith*, 34 M 304, 25 NW 605; *State v Camp*, 79 M 343, 82 NW 645; *State v Kipp*, 80 M 119, 82 NW 1114.

The court is authorized to adjudge a lien to the holder of the tax certificate issued upon a sale subsequent to the taking effect of the tax laws of 1902, even though the sale and certificate be valid and there is time and opportunity to serve a notice of the expiration of the time of redemption; and the lien may include taxes paid subsequent to the giving of a defective notice of redemption, whether



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such taxes be paid before or after they became delinquent. *Culligan v Cosmopolitan*, 126 M 218, 148 NW 273.

Tax liens as well as those arising from local improvement proceedings are purely of a statutory creation. Their duration, force, and effect are controlled entirely by the statutes creating them. In all respects not covered by statute, the rules and principles of the common law prevail. General state tax or local assessment liens levied in a particular year are paramount and superior to similar liens of prior years. *Gould v City of St. Paul*, 120 M 177, 139 NW 293.

Priority as between federal and state taxes in insolvency and bankruptcy. 26 MLR 761.

### 6. Conflict

The lien of special assessments is subordinate to the lien of the state for all taxes which have been or may be levied upon the same property under the general laws of the state without reference to the time when the state lien accrued. *White v Knowlton*, 84 M 141, 86 NW 755; *White v Thomas*, 91 M 395, 98 NW 101.

### 7. Purchaser

A purchaser at a delinquent tax sale acquires, until the time to redeem expires, only a lien but no interest or estate in the land. The same form of lien passes to one who takes an assignment of the state's lien. *Brackett v Gilmore*, 15 M 245 (190).

The holder of the state's lien on real estate for taxes cannot independent of the "occupying claimant's law" defend his portion of the real estate upon the lien even though he enter with the acquiescence of the owner. His rights are not like those of a mortgagee in possession. *Taylor v Slingerland*, 39 M 470, 40 NW 575.

A person obtaining a state assignment of lands bid in by the state at a tax sale must pay interest on subsequent delinquent taxes from the time they became delinquent; and the owner who redeems thereafter must pay interest from the date of the assignment on this interest as well as on all other sums which the assignee was legally required to pay. *Berglund v Graves*, 72 M 148, 75 NW 118.

A purchaser at a tax sale as well as a person who procures an assignment from the state takes a certificate of purchase on an assignment, subject to the statutory right of the state to enforce the collection of a prior tax when refundment has been made on account of a void sale. *State v Kipp*, 80 M 119, 82 NW 1114.

Where under a tax certificate regular on its face issued upon a void tax judgment the assignee avails himself of his right to pay subsequent delinquent taxes on the land, such action secures him the lien of the state thereon. *Lewis v Knowlton*, 84 M 53, 86 NW 875.

A purchaser who pays subsequent taxes acquires the lien of the state thereunder. *Berglund v Graves*, 72 M 148, 75 NW 118; *McLachlin v Carpenter*, 75 M 17, 77 NW 436; *Lewis v Knowlton*, 84 M 53, 86 NW 875.

Although plaintiff's tax title has failed, he is entitled to have the lien given for the taxes paid by him or his assignors enforced in this action. *Glaese v Stryker*, 135 M 186, 160 NW 490.

Upon adjudging that the tax certificate was invalid the court properly held that the purchaser was entitled to a lien for the amount paid at the tax sale and for subsequent taxes and that such lien was enforceable by sale of the land. *Blakely v Mann*, 153 M 415, 190 NW 797.

The amount required to redeem from a tax sale is the sum paid in the sale by the purchaser with interest and not necessarily the full amount of the taxes with interest and costs. *Kipp v Johnson*, 83 M 496, 86 NW 610.

A purchaser at a void tax sale does not acquire the state's lien except as expressly provided by statute. *Burdick v Bingham*, 38 M 482, 38 NW 489.

The lien of the city of St. Paul for local assessments is subordinate to the lien of the state for all taxes which have been or may be levied against the same property without reference to the time when the state lien accrued; and the pur-

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chaser of the lien of the state takes with the purchase the state's right of priority. *White v Thomas*, 91 M 395, 98 NW 101.

The notice of expiration of time for redemption from a tax sale must be served upon the one in possession though he is the tax title holder, if the person to whom it is addressed, that is, the one in whose name the land is assessed, cannot be found in the county; and failure to give the notice of expiration of the time for redemption and failure to file the tax certificate, within the times provided, operate to extinguish the lien for taxes included in the certificate and for subsequent taxes paid by the holder of the tax title. *Hutchinson v Child*, 164 M 195, 204 NW 648.

A tax title is a new and original grant from the state as sovereign of title in fee which is paramount as against the world and which supersedes and bars all other titles, claims, and equities; and a claimant of title to land by adverse possession in a boundary line dispute cannot acquire title by adverse possession against a tax lien or tax title. *Hacklander v Parker*, 204 M 260, 283 NW 406.

Under a clause in a mining lease, "said taxes at all times to be paid before the lands are sold for their non-payment", the liability of the lessee was fixed at the time of the assessment of the tax. *Merrimac v Gross*, 216 M 244, 12 NW(2d) 506.

### 272.32 ASSESSMENTS FOR LOCAL IMPROVEMENTS IN CITIES.

**HISTORY.** 1905 c. 200; 1911 c. 120 ss. 1, 2; G.S. 1913 ss. 2172, 2173; G.S. 1923 ss. 2192, 2193; M.S. 1927 ss. 2192, 2193.

Laws 1905, Chapter 200, providing that all assessments levied by any city of the first class should be a paramount lien of equal rank with the lien of the state for taxes and that a sale or perfecting title under either should not pay or extinguish the other, does not contain contradictory propositions. The legislature intended to make the lien under city assessments and city taxes equal, and to abolish any priority between them, and the act is constitutional, and the legislature sufficiently expressed its intention in the act. *Gould v City of St. Paul*, 110 M 324, 125 NW 273.

Laws 1905, Chapter 200, is retrospective as well as prospective in its application to the assessments for local improvements, and places all assessment liens not held by purchasers at the day of its passage, whether prior or subsequent in point of time to state tax liens, upon a parity with the latter. *Smith v City of St. Paul*, 116 M 44, 133 NW 74.

Laws 1905, Chapter 200, declaring local assessment liens of certain municipalities where proceedings for the investment of the same are conducted independently of the delinquent tax proceedings of the state of equal rank with the state tax lien, applies to assessments and general tax liens accruing the same year. General state taxes or local assessment liens levied in a particular year are paramount and superior to similar liens of prior years. *Gould v City of St. Paul*, 120 M 172, 139 NW 393.

An owner of property cannot cut out a city assessment on his property by buying up a subsequent tax title. A tax title based on a single forfeiture sale for taxes for years 1891-92 and 1902-1909, inclusive, is equal in right of propriety with a lien based upon a St. Paul city assessment accruing in 1909. *Midway v City of St. Paul*, 124 M 296, 145 NW 44; *Midway v City of St. Paul*, 124 M 300, 145 NW 21; *White v City of St. Paul*, 124 M 305, 145 NW 25.

A municipality may not exact more from one charged with an assessment for the extension of its gas and water mains than is permissible in the terms of the ordinance under which the extension was made. Where excess payments have been exacted, the municipality may be held to liability as for money had and received. *Sloan v City of Duluth*, 194 M 48, 259 NW 393.

Ordinance attempting to recoup losses of city on sewer and water mains assessed against a parcel of land forfeited to the state for non-payment of taxes by imposing upon the purchaser from the state a connection fee equal to the unrealized portion of the assessment as a condition of using water and sewer facilities, violates a validly enacted law of the legislature. *Fortman v City of Mpls.* 212 M 340, 4 NW(2d) 349.

The fire marshal ordered condemnation of a building standing on land forfeited to the state for taxes, and on which the owner was making payments under

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the confession of judgment plan. This order is a valid exercise of the police power, but when the property is sold for removal, the money received must be applied on the tax judgment. 1942 OAG 294, Oct. 29, 1941 (197c).

### 272.33 ASSESSMENTS FOR LOCAL IMPROVEMENTS IN CITIES OF FIRST CLASS.

HISTORY. 1913 c. 202 s. 1; G.S. 1913 s. 2175; G.S. 1923 s. 2194; M.S. 1927 s. 2194.

### 272.34 LIENS FOR TAXES OR IMPROVEMENTS; PURCHASE.

HISTORY. 1913 c. 202 s. 2; G.S. 1913 s. 2176; G.S. 1923 s. 2195; M.S. 1927 s. 2195.

### 272.35 PRIOR RIGHTS.

HISTORY. 1913 c. 202 s. 3; G.S. 1913 s. 2177; G.S. 1923 s. 2196; M.S. 1927 s. 2196.

### 272.36 WHEN LIENS ASSIGNED.

HISTORY. 1913 c. 202 s. 4; G.S. 1913 s. 2178; G.S. 1923 s. 2197; M.S. 1927 s. 2197.

### 272.37 APPLICATION.

HISTORY. 1913 c. 202 s. 5; G.S. 1913 s. 2179; G.S. 1923 s. 2198; M.S. 1927 s. 2198.

### 272.38 STRUCTURES, STANDING TIMBER, OR MINERALS NOT TO BE REMOVED.

HISTORY. Ex. 1902 c. 2 s. 78; R.L. 1905 s. 977; G.S. 1913 s. 2184; G.S. 1923 s. 2203; M.S. 1927 s. 2203; 1931 c. 333 s. 1; 1941 c. 397 s. 1.

Plaintiff was the record owner. The fact that he had not paid the taxes on the property, or that he had not redeemed from tax sales thereon of which the state was the purchaser, did not prevent his maintaining an action against a stranger for cutting and removing timber upon the land. *Helmer v Shevlin*, 129 M 25, 151 NW 421.

Section 280.38, providing for the attachment by the county auditor of rents received from real estate upon which taxes have become delinquent, does not violate the uniformity provision of our state constitution, nor the provisions of the 14th Amendment to the Federal Constitution. *Johnson v Torinus*, 197 M 266, 266 NW 867.

Gravel is mineral which cannot be removed while taxes remain unpaid. OAG Jan. 3, 1934.

The fact that there are delinquent taxes on property does not estop the fire marshal from condemning dangerous buildings. OAG Aug. 1, 1935 (197c).

Counties have no authority to permit cutting of timber upon tax-delinquent lands within boundaries of state forests or game refuges. OAG Dec. 10, 1936 (27g).

### 272.39 STRUCTURES, TIMBER, OR MINERALS MAY BE SEIZED.

HISTORY. Ex. 1902 c. 2 s. 79; R.L. 1905 s. 978; G.S. 1913 s. 2185; G.S. 1923 s. 2204; M.S. 1927 s. 2204.

The county board has no authority to steal hay on tax-delinquent lands. OAG June 15, 1934 (412a-24).

### 272.40 REMOVAL.

HISTORY. Ex. 1902 c. 2 s. 80; R.L. 1905 s. 979; G.S. 1913 s. 2186; G.S. 1923 s. 2205; M.S. 1927 s. 2205; 1941 c. 397 s. 3.

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Entry of judgment under Ex. 1935-36, Chapter 72, Section 1, and payment of first instalment thereunder, does not give the owner the right to remove buildings, timber, or minerals. OAG Feb. 21, 1936 (412a-17).

## **272.41 STANDING TIMBER; TAXES OR ASSESSMENTS UNPAID; PERSONS CUTTING FOR COMMERCIAL PURPOSES TO GIVE NOTICE TO COUNTY AUDITOR.**

HISTORY. 1925 c. 207 ss. 1, 2; M.S. 1927 ss. 2205-1, 2205-2.

"Standing timber" includes trees, saplings, bushes, sprouts, and standing dead trees. OAG March 16, 1934 (165).

## **272.42 VIOLATIONS; LIABILITY.**

HISTORY. 1925 c. 207 s. 3; M.S. 1927 s. 2205-3.

## **272.43 REAL ESTATE TAX JUDGMENT; NO LIMITATION.**

HISTORY. Ex. 1902 c. 2 s. 83; R.L. 1905 s. 981; G.S. 1913 s. 2188; G.S. 1923 s. 2207; M.S. 1927 s. 2207.

Prior to the passage of Laws 1902, Chapter 2, Section 83, proceedings to enforce the collection of taxes against real estate were "actions upon a liability created by statute", and a judgment entered therein outlawed in ten years. Since 1902 the lien abides perpetually. *Pine County v Lambert*, 57 M 203, 58 NW 990; *Kipp v Elwell*, 65 M 525, 68 NW 105; *State v Kipp*, 70 M 286, 73 NW 164; *Cool v Kelly*, 78 M 102, 80 NW 861; *State v Bellin*, 79 M 131, 81 NW 763; *State v Ward*, 79 M 362, 82 NW 686.

Since the passage of Laws 1902, Chapter 2, Section 83, where a tax title fails because of invalidity, the lien nevertheless continues to exist and includes taxes paid before or after the delinquency. *Culligan v Cosmopolitan*, 126 M 218, 148 NW 273; *Downing v Lucy*, 121 M 301, 141 NW 183.

Where the tax title fails, the lien for the taxes continues and is enforceable in an action to determine adverse possession or adverse claims. *Glaze v Stryker*, 135 M 186, 160 NW 490.

Laws 1933, Chapter 414, in classifying taxpayers into two classes, those who pay promptly and those who do not, and in allowing a remission or discount on delinquent taxes, violates Minnesota Constitution, Article 9, Section 1, which requires taxes to be uniform on the same class of subjects. The classification here attempted is unreasonable and arbitrary, there being no essential difference in nature or circumstances between the two classes. *State ex rel v Luecke*, 194 M 246, 260 NW 206.

A tax title is a new and original grant from the state as sovereign of title in fee which is paramount against the world, and supersedes and bars all other titles, claims, and equities; and does not permit a claim of title to land by adverse possession in a boundary line dispute case to acquire title to the land by adverse possession as against tax lien. *Hacklander v Parker*, 204 M 260, 283 NW 406.

In so far as there is a conflict between them, the later law must prevail. The validity of a tax certificate and the rights of a holder thereunder are determined by the law in force at the time the certificate issues. In tax title proceedings to divest the owner of his title to real estate, there must be strict compliance with statutory requirements. *Absetz v McClellan*, 207 M 202, 290 NW 298.

## **272.44 TAXES PAID BY LIEN HOLDERS ARE AN ADDITIONAL LIEN.**

HISTORY. Ex. 1902 c. 2 s. 67; R.L. 1905 s. 983; G.S. 1913 s. 2190; G.S. 1923 s. 2209; M.S. 1927 s. 2209.

A mortgagee or other lien holder may pay taxes due on the land covered by his lien and recover the amount paid out in the proceedings for the foreclosure of his lien. He does not acquire a personal claim against the mortgagor. *Jones v Cooper*, 8 M 334 (294); *Spencer v Levering*, 8 M 461 (410); *Kirkpatrick v Lewis*, 46 M 164, 47 NW 970, 48 NW 783; *Bitzer v Campbell*, 47 M 221, 49 NW 691; *Gorham v Nat'l Life*, 62 M 327, 64 NW 906; *Hamel v Corbin*, 69 M 223, 72 NW 106.

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On the trial of an action to recover a surplus in the hands of a mortgagee after a foreclosure sale, it appears from the foreclosure proceedings under the power of sale, that he claimed in the notice of sale and in the affidavit of costs and disbursements that certain sums were due for taxes, but that he did not anywhere state that he had paid such taxes. The burden is on defendant to show that he had paid the taxes. *Simmer v Blabon*, 74 M 341, 77 NW 233.

The purchaser at the mortgage sale, whether the mortgagee or a third person, is not entitled to have the rents and profits remaining in the hands of the receiver apply to the payment of taxes which were delinquent, and a lien on the premises at the time of the sale; the rents and profits are no part of the security; and the purchase was subject to all existing paramount encumbrances. *Bank v Cady*, 76 M 112, 78 NW 978.

The defendant, as assignee of a mortgagee on land owned by the plaintiff, foreclosed by advertisement, and there was a sale of the premises at which defendant was purchaser. After the sale she paid taxes which were due at the date of sale. In an action by the plaintiff to recover an alleged surplus of the alleged proceeds of such sale, the defendant was not entitled to retain from such proceeds the amount of the taxes so paid. *Wyatt v Quimby*, 65 M 537, 68 NW 109.

A mortgage of real estate contained a clause that upon the fault of the mortgagors to pay the taxes, the mortgagee might pay them and that the amount so paid should become a part of the mortgage debt. After a trial in an action to foreclose the mortgage, the mortgagee paid taxes on the property and, without notice to the mortgagors, upon production of the tax receipt the amount so paid was included in the judgment. This was an error. The mortgagors have a right of a trial of facts upon which the propriety of adding the taxes to the debt depended. *Northwestern v Allis*, 23 M 337.

Where a deed of assignment was executed by one of the members of a partnership wherein he conveyed to the assignee all of his assets, the deed conveyed his interest in the copartnership real estate; and a subsequent judgment creditor, purchasing premises at execution sale and relying upon the validity of his title, redeemed the premises from certain prior tax sales, which were liens upon the property as against the assignee, is entitled to be reimbursed for the amount so paid. *Ryan v Ruff*, 90 M 169, 95 NW 1114.

Parcher leased premises from Heywood and agreed among other things to pay the taxes. Heywood mortgaged the premises to Stewart. Parcher failing to pay the taxes for two years, Stewart paid them, foreclosed his mortgage under power, and purchased at the sale for the full sum due including the taxes. There was no redemption from the sale, but during the redemption period Stewart paid taxes that fell due after the sale. No action can be maintained by Stewart against Parcher to recover the sum so paid. *Stewart v Parcher*, 91 M 517, 98 NW 650.

Defendants foreclosed by advertisement two mortgages on two lots of plaintiff, and were purchasers at the sale and included in their bid attorney's fees which they were not entitled to include. Plaintiff in this action seeks to recover the amount of the attorney's fees as a part of the surplus. The lots depreciated in value. Defendants are not entitled to have the foreclosure sale set aside and a re-sale ordered, nor may they defeat this action by tendering a deed of the lots upon paying the amount due on the mortgage. *Truesdale v Sidle*, 65 M 315, 67 NW 1004.

If the debt secured by the original lien is barred by the statute of limitations, a claim of the mortgagee for taxes paid on the mortgaged premises cannot thereafter be enforced against the premises. *Hill v Townley*, 45 M 167, 47 NW 653.

Laws 1885, Chapter 261, which provides for the reimbursement of taxes paid by mortgagees in certain classes of cases where such taxes had been or hereafter shall be adjudged void is, by its terms, retroactive in its operation and unconstitutional as applied to cases arising before the passage of the act. *Coles v County*, 35 M 124, 27 NW 497.

A mortgage assumption clause in a deed imposed an absolute liability and is not a contract of indemnity. An agreement continuing a personal covenant to pay taxes is considered as an agreement to pay such taxes, and the grantee, as between him and the grantor, becomes the principal debtor and the grantor becomes the surety; and where a mortgagee in a second mortgage forecloses the same and buys the mortgaged premises at foreclosure sale, he is presumed to have fixed

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his bid with reference to all paramount liens for which the land stands as a primary fund; and he thereby waives his absolute rights against the grantee, acquired under the assumption of a first mortgage. *Peterson v Harrington*, 169 M 65, 210 NW 617.

A covenant in a real estate mortgage to pay taxes levied during the life of the mortgage does not survive the foreclosure of the mortgage where the mortgaged premises are bid in for the full amount of the debt and the expenses, and there is no redemption. *Business Women's Holding Co. v Farmers & Mechanics*, 194 M 171, 259 NW 812; *State ex rel v Luecke*, 194 M 256, 260 NW 206; *Absetz v McClellan*, 207 M 202, 290 NW 298.

### **272.45 TAXES PAID BY TENANT OR OTHER PERSON BECOME LIEN, UPON NOTICE FILED WITH REGISTER OF DEEDS.**

**HISTORY.** Ex. 1902 c. 2 s. 68; R.L. 1905 s. 984; G.S. 1913 s. 2191; G.S. 1923 s. 2210; M.S. 1927 s. 2210.

Laws 1862, Chapter 6, re-enacting Revised Statutes 1851, Chapter 9, Section 101, provided that any one who has a lien upon any land upon which the taxes have not been paid, may pay such taxes and interest and charges thereon, and the receipt of the person authorized to receive such taxes shall constitute an additional lien upon the land to the amount therein specified, plus interest. *Martin v Lennon*, 19 M 67 (45).

Where a party in possession of land, claiming title in hostility to the true owner, pays taxes thereon as owner, he cannot, after judgment of ouster against him, recover the amount so paid or the consideration of the deed under which he claims, of the prevailing party, in a personal action against the latter. *Scharffbillig v Scharffbillig*, 51 M 349, 53 NW 713.

Where no provision is made for the payment of taxes in a lease of real estate, and the lease provides that the structures or improvements put upon the lot by the lessee are removable, and the landlord is compelled to pay the entire amount of the taxes to save the property, he may maintain an action against the tenant and recover that portion of the tax levied upon the improvements. *La Paul v Heywood*, 113 M 377, 129 NW 763.

-Plaintiff paid the current taxes upon land owned by the defendants. He had no interest in the title, was not in possession or interested in the possession of the land, and had no contract or agreement with the defendants, which he could invoke, obliging him to pay the taxes. He paid the taxes voluntarily and cannot recover from the tenants. *Weberling v Bursell*, 180 M 283, 230 NW 654; *State ex rel v Luecke*, 194 M 256, 260 NW 206; *Absetz v McClellan*, 207 M 202, 290 NW 298.

Subrogation; recovery for taxes paid upon land of another. 21 MLR 218.

Power of congress to immunize federal instrumentalities from state taxation. 26 MLR 414.

### **272.46 AUDITOR TO FURNISH STATEMENT OF TAX LIENS AND TAX SALES; FEES; APPLICATION.**

**HISTORY.** 1907 c. 431 ss. 1, 2; G.S. 1913 ss. 2212, 2213; 1921 c. 409; G.S. 1923 ss. 2231, 2232; M.S. 1927 ss. 2231, 2232.

The county treasurer is not entitled to a fee for preparing tax lists for banks desiring to pay the taxes for their customers. OAG May 19, 1933 (450-10), 1894, 264.

The fees of the county auditor under sections 272.46, 280.28, are controlled by Laws 1937, Chapter 491, Section 14, in counties covered thereby, and the auditor must turn in 22 per cent thereof as well as any fees collected from such source over and above the limit of \$3,600 per year which the statutes place as an absolute limit of the auditor's compensation, except for mileage and expenses. OAG July 20, 1939 (23d).

The county auditor certifies as to delinquent taxes; the county treasurer as to current taxes; and their fees respectively are defined in sections 272.46 and 272.47. 1942 OAG 193, March 27, 1942 (21A).

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### **272.47 COUNTY TREASURER TO SEARCH TAX DUPLICATES AND RECORDS; CERTIFY TAXES DUE; FEES; EXCEPTIONS.**

HISTORY. 1927 c. 266 s. 1; M.S. 1927 s. 2232-1; 1945 c. 35 s. 1.

### **272.48 LIENS FOR TAXES DUE THE UNITED STATES.**

HISTORY. 1923 c. 314 s. 1; G.S. 1923 s. 2393; M.S. 1927 s. 2393.

### **272.49 LIEN OF PERSONAL PROPERTY TAXES.**

HISTORY. 1878 c. 1 s. 105; G.S. 1878 c. 11 s. 105; 1885 c. 2 s. 22; 1889 c. 184 s. 1; G.S. 1894 s. 1623; R.L. 1905 s. 976; G.S. 1913 s. 2180; G.S. 1923 s. 2199; M.S. 1927 s. 2199.

Elevators owned by private parties and situated on the right of way of a railway company are, for purposes of taxation, personal property; and where a receiver of the assets of a corporation has been appointed, the personal property of a corporation continues assessable at the place at which it was assessable before the receiver was appointed, without reference to the residence of the receiver. *State v Red River Valley Elev. Co.* 69 M 131, 72 NW 60.

Personal property is not subject to taxation while in the hands of the heirs, executor, or administrator for the amount it should have been taxed during the life of the owner. *State ex rel v Eberhard*, 90 M 120, 95 NW 1115.

As the tax books embracing the tax in controversy were not delivered to the county treasurer until long after defendant had disposed of all its property, the tax never attached as a lien upon such property. *State v Second National*, 139 M 173, 165 NW 1067.

The personal property of a citizen of and resident in one state, invested in bonds and mortgages in another state, is subject to the taxation in the latter state; and the amount of the tax is a claim against the property of the person taxed which is a debt that may, in case of the death of the person taxed, be proved against his estate in the state where the mortgages and loans are contracted, subject to the statutes of limitations of the state. See Laws 1937, Chapter 51. *Bristol v Washington County*, 177 US 133, 27 SC 585.

### **272.50 LIEN OF TAXES ON PERSONAL PROPERTY; NATURE, EXTENT, PRIORITY; DISTRAINT; NOTICE; PAYMENT BY OTHER LIEN HOLDER; FORECLOSURE.**

HISTORY. 1927 c. 318 s. 1; M.S. 1927 s. 2199-1; Ex. 1937 c. 51.

While the question is somewhat doubtful, it is the opinion of the attorney general that a judgment for personal property taxes is subject to the ten-year limitation. OAG Feb. 5, 1929; 1938 OAG 438, Dec. 31, 1937 (421a-8).

Assuming that all assessments have been timely and properly made, there is a six-year period of limitation with respect to actions to enforce the collection of moneys and credits taxes and no limitation with respect to personal property taxes. 1940 OAG 319, Oct. 18, 1940 (421a-8).

Allowance from state for property subject to gross earnings tax, valuation of property and computation of allowance to be made May 1 in a taxable year. When population change takes effect. 1942 OAG 332, Oct. 21, 1941 (454-E).

Receiver in supplementary proceedings; collection of taxes from. 23 MLR 857.

### **272.51 DISTRESS FOR TAXES DUE ON PROPERTY ABOUT TO BE SOLD OR REMOVED; PAYMENT OF TAXES AND RELEASE FROM LIEN.**

HISTORY. 1927 c. 318 s. 2; M.S. 1927 s. 2199-2; 1945 c. 292 s. 1.

In addition to proceedings under section 272.51, the sheriff may resort to proceedings under section 277.03 to distrain personal property on account of nonpayment of delinquent taxes. 1934 OAG 828, July 14, 1933 (421a-5).

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Section 272.51 authorizes use of distress for the purpose of preventing sale or removal of personal property, and this remedy is distinct from that provided in section 277.03. OAG May 11, 1939 (421a-5).

## **272.52 REFUNDMENT OF EXCESS PAID; COLLECTION OF DEFICIENCY.**

HISTORY. 1927 c. 318 s. 3; M.S. 1927 s. 2199-3.

## **272.53 BOND FOR RELEASE OF PROPERTY.**

HISTORY. 1927 c. 318 s. 4; M.S. 1927 s. 2199-4.