

## CHAPTER 273

## TAXES; LISTING AND ASSESSMENT

## 273.01 LISTING AND ASSESSMENT, TIME.

**HISTORY.** R.S. 1851 c. 8 art. 9 s. 3; 1858 c. 75 art. 8 s. 2; P.S. 1858 c. 8 s. 17; P.S. 1858 c. 9 s. 15; 1860 c. 1 s. 17; G.S. 1866 c. 11 ss. 26; 1878 c. 1 s. 6; G.S. 1878 c. 11 s. 6; G.S. 1894 s. 1514; 1903 c. 138; R.L. 1905 s. 802; G.S. 1913 s. 1979; G.S. 1923 s. 1984; M.S. 1927 s. 1984; 1945 c. 485 s. 1.

The Revised Laws have fixed May 1st as the date for determining the taxability of property; and lands of a railroad company which are exempt from taxation "until sold and conveyed", if sold before May 1st are subject to taxation for the then current year. If not conveyed until after that date, they are not subject to taxation. *County v Drake*, 40 M 137, 41 NW 942; *State v Bellin*, 79 M 133, 81 NW 763; *State v N. W. Tel. Co.* 80 M 17, 82 NW 1090.

In May, 1902, the land in question was listed and assessed for taxation. Prior to May 1, 1903, the timber was cut and removed from the property. There was no new assessment, and in May, 1903, the land was entered upon the tax list on the same valuation. If the owner of the land made a proper application to the board of equalization; that board had power, and it would be its duty, to hear and act upon the application. But no request having been made for a hearing, the tax, as laid, must be sustained. *State v Atwood*, 96 M 392, 105 NW 276.

The state cannot tax a national bank upon its capital, but may tax its shareholders upon their stock in the bank, and may require the bank to apply any earnings distributable to the shareholders in payment of such tax; and where the bank sold and transferred all of its property and assets before May 1st, but retained the proceeds thereof until May 15th and distributed them on that date, the stock of the shareholders is taxable. *State v Security National*, 139 M 162, 165 NW 1067.

The hospital was owned by the Willmar Hospital, Inc., and corporation was organized for private profit until April 29, 1939, when the stockholders of the Willmar Hospital formed a new corporation known as "Branton Foundation, Inc." and the new corporation was designated as a purely charitable institution. The new corporation claims exemption under section 273.01. The facts do not sustain the claim of exemption. The new corporation owned the property only two days on May 1st, the tax date. There was no showing that it had received one indigent or free patient. There was no change in the employees or the management. The new corporation, as was the old, was apparently operated by the Willmar Clinic, a corporation owned by the Brantons. The hospital is not exempt from taxation. *State v Willmar Hospital*, 212 M 38, 2 NW(2d) 564.

Taxability of persons and property is determined as of May 1 for each year and it makes no difference what property the taxpayer owned at any other time during the year. Under joint adventure contract for winding up a clothing business and providing for payment, from the proceeds of sale of merchandise of plaintiff adventurer's liabilities as of May 31, amount of taxes for which the owner became liable as of May 1 were payable by plaintiff. *Standard v Wolf*, 219 M 128, 17 NW(2d) 329.

Under a statute providing that in computing net income there should be allowed as deduction taxes paid or accrued within the taxable year, the taxpayer who filed his return on cash disbursement basis in 1934 was not entitled to a deduction for the 1933 taxes paid in 1934 on a building located in Minnesota, and purchased by the taxpayer in August, 1933, the 1933 taxes having "accrued" on May 1st when, under state law, they became a lien although they had not then been ascertained or levied and were not payable until January, 1934. *Lifson v Commissioner*, 98 F(2d) 508, 59 SC 364, 586.

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A general Minnesota personal property tax applied to all personal property within the state and without discrimination applied on the defendant's entire fleet of airplanes, did not violate the commerce clause, nor the due process clause of the fourteenth amendment. *Northwest Airlines v Minnesota*, 322 U. S. 293.

Whether a purchaser of real estate who pays taxes thereon for the current year may deduct them on his income tax return as "taxes paid or accrued within the taxable year" depends upon whether a lien attached to the real estate before or after the date of purchase. *United States v Consolidated*, 141 F(2d) 791.

Certain lands in Lansing township were annexed to the city of Austin and known as Cedar View Addition. The annexation was completed on July 31, 1939. The property in question should be taxed in the taxing district of which it was a part on May 1st when the lien attached, and the annexed lands should be listed in the town of Lansing. The special assessments, however, should be listed in the political subdivision of which the land was a part at the time of the levy, which in this instance was the city of Austin. 1940 OAG 293, Sept. 27, 1939 (59a-1).

Cash rents due on May 1st are assessable as money and credits for the year but share of crops realized from pastures are assessable as ordinary personal property in the assessment district in which they were located on May 1st. OAG Aug. 14, 1934 (614m).

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

All grain mortgaged to the federal government and sealed is subject to tax in the name of the owner. 1942 OAG 342, June 21, 1941 (215C-10).

Federal floor stock tax is included in the true and full value when liquor is not in the hands of the person who paid the tax; but not so when in the hands of one who paid the tax. OAG Aug. 10, 1944 (421a).

## 273.02 OMITTED PROPERTY.

HISTORY. 1878 c. 1 s. 113; G.S. 1878 c. 11 s. 113; 1881 c. 5 s. 1; 1885 c. 2 s. 23; 1893 c. 151; G.S. 1894 s. 1631; R.L. 1905 s. 803; G.S. 1913 s. 1980; G.S. 1923 s. 1985; M.S. 1927 s. 1985; 1943 c. 632 s. 1; 1945 c. 415 s. 1.

1. Generally
2. Omission does not affect tax liability
3. Taxes assessed but not placed on delinquent list
4. Lands omitted from tax books altogether
5. Assessment as of what time
6. Interest and penalties
7. Statute of limitations

### 1. Generally

Where property is omitted from the tax roll, the statute permitting the county auditor to enter such property on the assessment and tax books for the year or years omitted, is constitutional except that there must be no charge for interest and penalties. *County v Winona & St. Peter Ry. Co.* 40 M 512, 41 NW 465, 42 NW 473, 159 US 526, 16 SC 83.

Laws 1893, Chapter 151, providing for the taxation of property previously unlawfully omitted or grossly undervalued, is not in conflict with the state or federal constitution. *State v Weyerhaeuser*, 72 M 519, 75 NW 718, 176 US 550, 20 SC 485; *State v Weyerhaeuser*, 68 M 353, 71 NW 265.

Pursuant to Laws 1893, Chapter 150, there was filed a list of taxes delinquent for 1889 and prior years, and the retroactive effect of the statute was liberally construed. *State v Baldwin*, 62 M 518, 65 NW 80.

The statute authorizes the collection of the balance due on undervalued property. *State v Weyerhaeuser*, 68 M 353, 71 NW 265.

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

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This section does not authorize a reassessment where the real estate is assessed and has paid taxes for the years in question, but does apply where the property is undervalued in those years because the assessing officers did not know of an improvement thereon. *Davidson v Franklin*, 129 M 87, 151 NW 537.

Failure on the part of the county treasurer to comply with the provisions of section 275.30 is not a defense in an action against the taxpayer to collect taxes. 1934 OAG 827, Jan. 22, 1934 (421a-5).

The tax commissioner has authority to inquire into the moneys and credits owned by a deceased taxpayer during any year or years of his lifetime for the purpose of determining whether any such moneys and credits were omitted in the assessment for any such year or years so that any such omitted moneys or credits may be assessed and taxed. 1936 OAG 380, Jan. 7, 1935 (614f).

Claim for moneys and credits taxes is not one which is required to be filed in the probate court. 1936 OAG 381, April 16, 1936 (614f).

Without directly so holding, it is a reasonable construction to hold that when property is improperly, through error or fraud, been given a homestead classification, the amount of the tax improperly deducted and which should have been paid may be added to the tax in a subsequent year. OAG Aug. 31, 1937 (232d).

A description of land in a tax judgment must be so definite that by reading it the court can determine what land the judgment is against, and if the description is not thus definite, it is fatally defective, and cannot be helped out by extrinsic evidence. The omitted taxes should be placed on the tax books in accordance with section 273.02. 1942 OAG 306, May 10, 1941 (412A-13).

Taxes omitted from delinquent property tax list may be placed on the list for subsequent year. 1942 OAG 338, May 29, 1941 (614L).

It would be preferable if taxes for several omitted years be separately stated, though probably legal if all stated in one sum. OAG Aug. 8, 1944 (21d).

No matter how many years property has escaped listing for taxation, it may only be taxed for the six years last past. OAG Aug. 8, 1944 (21d).

In taxing omitted property it should be assessed as of its value at the time for which it is taxed. OAG Aug. 8, 1944 (21d).

## 2. Omission does not affect tax liability

Every piece of property not exempted owes to the state its proportionate share of the amount necessary to be raised by taxation for the expense of the government. If not ascertained for any year, it may be subsequently ascertained or enforced. *County v Barber*, 31 M 256, 17 NW 473.

The taxing power is one which knows no stopping place until it has accomplished its purpose, namely, the actual enforcement and collection from every lawful object of taxation of its proportionate share of the public burdens. In case of error in reaching its object, it may return again and again until the tax is collected. *County v Winona and St. Peter Ry. Co.* 40 M 512, 41 NW 465, 42 NW 473.

The failure of the board of public works to establish a street grade or a sewer system before constructing a sewer, and the failure to give required notice of the meeting to make an assessment and of application for confirmation by the district court, does not affect the jurisdiction of the court to render final judgment against the property for the amount of the assessment. *City v Diblee*, 62 M 18, 63 NW 1117.

The owner of personal property omitted from the tax rolls becomes liable for taxes thereon at the time the property ought to have been placed upon the rolls. This liability continues until the tax is discharged by payment; and where personal property has been omitted from the tax rolls, taxes thereon which accrue on the owner in his lifetime may be enforced against his estate after his death. This overrules *Vossen v Eberhard*, 90 M 120, 95 NW 1115; *State v O'Connell*, 170 M 76, 211 NW 945.

Defendant was the owner of stocks in foreign corporations which had never been listed or assessed in any manner. The trial court correctly excluded the omitted stock as a factor in determining the amount of the judgment for taxes on personal property. *State v Nelson*, 107 M 319, 119 NW 1058.

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The failure of the county auditor to extend the amount certified in previous years for village corporation taxes cannot be accrued by making a levy in excess of the maximum amount. OAG Oct. 23, 1935 (481a-2).

### 3. Taxes assessed but not placed on delinquent list

Taxes for several years regularly assessed and levied and delinquent but omitted from the delinquent list for the proper years, filed with the clerk of the court, may be included in such delinquent list for any subsequent year. *Brown v Winona & St. Peter Ry. Co.* 38 M 397, 37 NW 949.

### 4. Lands omitted from tax books altogether

Lands not taxed in any year or years because it was supposed that they were not taxable may subsequently be taxed for those years. *Ramsey v C. M. & St. P. Ry. Co.* 33 M 537, 24 NW 313.

Where the 1937 tax, through error, was not spread by the county auditor, it may be spread as a current tax. OAG March 30, 1938 (425b-4).

### 5. Assessment as of what time

In assessing property it must be assessed as of the time when it should have been originally placed on the tax list. *County v Winona & St. P. Ry. Co.* 40 M 512, 41 NW 465, 42 NW 473.

### 6. Interest and penalties

Interest and penalties cannot be collected for the non-payment of taxes not placed on the tax lists and where the owner had no opportunity to pay. *Brown v Winona & St. P. Ry. Co.* 39 M 380, 40 NW 166; *County v Winona & St. P. Ry. Co.* 40 M 512, 41 NW 465, 42 NW 473.

Taxable real estate was omitted from the assessment roll for the years 1890-91, but the county auditor entered the same upon the tax books for 1896 and entered against said property the taxes which would have accrued in the years 1890-91. The tax not having been paid, the county auditor in 1898 filed with the clerk of the district court a list of delinquent taxes including the real property omitted, with penalties accruing from June 1, 1897, and January 1, 1898. It was held that unpaid taxes were subject to said penalties. *State v Russell Sage*, 75 M 448, 78 NW 14.

### 7. Statute of limitations

Prior to the passage of Ex. 1902, Chapter 2, Section 82, taxes outlawed in six years and a tax judgment in ten years, but under our present law there is no limitation upon the time on which the state may enforce the taxes on omitted property. Note: Prior to 1902 the state could not collect omitted taxes against which the statute of limitations had run. *County v Winona & St. Peter Ry.*, 40 M 512, 41 NW 465, 42 NW 473; *Mower County v Crane*, 51 M 201, 53 NW 629; *Pine County v Lambert*, 57 M 203, 58 NW 990; *State ex rel v Norton*, 59 M 424, 61 NW 458.

The statute begins to run from the expiration of the time allowed for the filing of the delinquent tax list with the clerk. *State v Russell Sage*, 75 M 448, 78 NW 14.

Prior proceedings being ineffectual, the right to institute new proceedings is not barred by the lapse of time between the institution of the original proceedings and the judicial determination of their invalidity. *State v Kipp*, 70 M 286, 73 NW 164.

Effective before the passage of Laws 1902, Chapter 2, Section 82, the provision which intended that the lien for taxes on real property should continue until lien was paid did not affect the statute of limitations applicable, under previous decisions, to taxes and tax judgments. *State v Bellin*, 79 M 131, 81 NW 763.

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Prior to the passage of Laws 1902, Chapter 2, Section 82, the statute of limitations did not apply to proceedings to enforce payment of taxes. *Brown v Winona & St. Peter*, 38 M 397, 37 NW 949.

### 273.03 ASSESSMENT; MODE.

**HISTORY.** 1860 c. 1 s. 29; 1861 c. 1 s. 8; 1861 c. 2 s. 2; G.S. 1866 c. 11 ss. 43 to 45; 1872 c. 192; 1878 c. 1 s. 29; G.S. 1878 c. 11 s. 29; G.S. 1894 s. 1537; 1903 c. 246; 1905 c. 86; R.L. 1905 s. 804; 1913 c. 503; G.S. 1913 s. 1981; 1917 c. 297; 1921 c. 86; G.S. 1923 s. 1986; M.S. 1927 s. 1986.

Note: This section is to some extent superseded by Section 273.04.

If the description in the assessment book, claimed to be the description of the land described in the notice, is so indefinite and uncertain as to not describe the land, the notice served on those in possession does not eliminate the right of redemption. *Foster v McClure*, 121 M 409, 141 NW 797.

Taxes on realty are assessed as of May 1st, and the various steps in the assessment and levy of taxes relate back to and take effect as of May 1st. *Merle-Smith v Minnesota Iron Co.* 195 M 313, 262 NW 865.

The county auditor may order platting of an irregular tract for tax purposes. 1942 OAG 296, March 26, 1942 (18-D).

### 273.04 COMPENSATION OF ASSESSORS IN HENNEPIN COUNTY.

**HISTORY.** 1935 c. 118 ss. 1, 2; M. Supp. ss. 1986-1, 1986-2; 1941 c. 248.

Under the section, the assessor has until the last Monday in July to perform his duties, and where the board of review meets on the fourth Monday in June, it must adjourn until he gets his books completed; and if Laws 1935, Chapter 118, delays the work of the village boards, the remedy must rest with the legislature. 1940 OAG 298, July 5, 1940 (12-b).

An assessor cannot be compensated for work done on Sunday. 1942 OAG 185, Feb. 13, 1942 (12B-1).

Section 273.04 only applies to certain municipalities in Hennepin county. OAG Feb. 27, 1944 (12e); OAG May 8, 1944 (12a-3).

### 273.05 BOND AND OATH OF ASSESSORS.

**HISTORY.** 1860 c. 1 s. 24; G.S. 1866 c. 11 s. 25; 1878 c. 1 s. 30; G.S. 1878 c. 11 s. 30; G.S. 1894 s. 1538; R.L. 1905 s. 805; G.S. 1913 s. 1982; G.S. 1923 s. 1987; M.S. 1927 s. 1987.

One section of the Duluth charter makes certain requirements regarding the bond of the assessor, while another provision says the city assessor shall qualify in the manner described in the general law. The assessor in this case, having complied with the provision of the general law, that is sufficient, although there was no compliance with the special provision in the charter. *State ex rel v Wadhams*, 64 M 318, 67 NW 64.

Section 273.05 is controlling over section 367.23, and the township assessor's bond must be filed with the county auditor and not with the town clerk. 1938 OAG 464, April 16, 1938 (439a).

### 273.06 DEPUTY ASSESSORS.

**HISTORY.** 1860 c. 1 s. 44; G.S. 1866 c. 11 s. 37; 1878 c. 1 s. 31; G.S. 1878 c. 11 s. 31; G.S. 1894 s. 1539; R.L. 1905 s. 806; G.S. 1913 s. 1983; G.S. 1923 s. 1988; M.S. 1927 s. 1988.

A deputy assessor may be appointed for a village and receive the same compensation as does the assessor. OAG Feb. 11, 1938 (12e).

### 273.07 COUNTY SUPERVISOR OF ASSESSMENTS.

**HISTORY.** 1895 c. 294; R.L. 1905 s. 807; G.S. 1913 s. 1984; G.S. 1923 s. 1989; M.S. 1927 s. 1989.

**273.08 ASSESSOR'S DUTIES.**

**HISTORY.** R.S. 1851 c. 12 s. 15; P.S. 1858 c. 9 ss. 15, 16; 1860 c. 1 s. 25; G.S. 1866 c. 11 s. 25; 1878 c. 1 ss. 33, 34; G.S. 1878 c. 11 ss. 33, 34; 1881 c. 10 s. 6; G.S. 1894 ss. 1541, 1542; R.L. 1905 s. 808; G.S. 1913 s. 1985; G.S. 1923 s. 1990; M.S. 1927 s. 1990; 1945 c. 481 s. 1.

1. Assessments, when and how made
2. Listing by owner
3. Compensation

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

Where estate must be described in the assessment books with reasonable certainty. *St. Peters v Board*, 12 M 395 (280).

Where the assessment gave an imperfect description but the taxes were nevertheless paid, the entire matter was sustained against a sale under a corrected description made by the county auditor. *Meller v Hodsdon*, 33 M 366, 23 NW 543.

While the assessor has until the first Monday in July to complete his work, he is presumed to complete it before the fourth Monday in June when the town board meets. *State ex rel v Archibald*, 43 M 328, 45 NW 606.

After the assessor has turned his assessment books over to the auditor, he has no power to make any alteration except at the request of the auditor. *State ex rel v Archibald*, 43 M 328, 45 NW 606.

It is the duty of the assessor to actually view each tract of land to determine its full and true value. *Eide v Clarke*, 57 M 397, 59 NW 484.

Classification of homesteads for the purposes of taxation. 1934 OAG 796, Feb. 10, 1934 (232a).

In the instant case the property in question should be taxed in the township of which it was a part on May 1st, but so far as special assessments are concerned, it should be taxed in the city of Austin. 1940 OAG 293, Sept. 27, 1939 (359a-1).

The assessor has until the first Monday in July to complete his work, and if this delays the work of the town board, the remedy lies with the legislature. 1940 OAG 298, July 5, 1940 (12b).

A cooperative association could not properly receive a homestead exemption as it can in no way fulfill the requisites of residence and occupancy. 1940 OAG 307, Sept. 7, 1939 (232d).

The homestead exemption applies only to that portion of the premises on which the owner resides and which is not leased to a tenant. 1940 OAG 308, Sept. 9, 1940 (232d).

Where a two-story brick building is owned by two different persons, one owning the second story while the other owns the basement and first story of the building, is located on land owned by a railway company but leased to the owners of the building, the village assessor must assess the property as a whole, and any attempt to divide the assessment would be legally ineffective. 1940 OAG 331, Sept. 1, 1939 (408).

Where a lease is silent as to the payment of taxes, improvements which under the contract are removable by the tenant at the end of his term, are taxable to the tenant and not to the owner. *La Paul v Heywood*, 113 M 376, 129 NW 763.

Neither the words "assessed value" or "assessed valuation" as used in defining bonded indebtedness mean "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 the property as finally equalized. *Phelps v City of Minneapolis*, 174 M 509, 219 NW 872.

Buildings on leased land should be assessed as part of the real estate against the owner, though the lessee has the right to remove the buildings at any time. OAG July 22, 1944 (421c-7).

Buildings on railroad property are taxed against the several owners as personal property and as their interest appears. OAG Oct. 27, 1944 (408).

**2. Listing by owner**

The assessor may disregard the list and make an assessment on the best information he can obtain, and he may do this at any time before he returns the books to the county auditor. *State ex rel v Archibald*, 43 M 328, 45 NW 606.

Where the owner furnishes and verifies a list of the property, he is estopped from impeaching the assessment, and he cannot object that the board of equalization follows his classification in raising the assessment. *Faribault v County*, 44 M 12, 46 NW 143.

Upon return of the citation, the party cited may, on proper cause shown, have errors in his assessment corrected; but in such proceedings the burden rests upon him to show the error. *State v Deering*, 56 M 24, 57 NW 313.

Where the proper officer of a corporation delivered to an assessor a complete statement but failed to include therein a statement of the corporation debts, the legal effect of the return constituted a representation that there was no indebtedness. *State v Northern Trust*, 73 M 70, 75 NW 754.

The owner cannot object that he was not notified of an assessment or required to make a list. It is enough that he may show at the hearing on the citation that his property was not properly assessed. *State v Northern Pacific Ry. Co.* 95 M 43, 103 NW 731.

It is the duty of the lister to return the list to the assessor who in turn delivers it to the county auditor, in whose office it is filed as a public record. *State v Northern Trust Co.* 73 M 70, 75 NW 754.

Unaccrued rents are listed as realty. *Trask v Skoog*, 138 M 232, 164 NW 914.

**3. Compensation**

The maximum compensation to township assessors is \$240.00. OAG July 14, 1933.

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

**273.09 CITY COUNCIL TO FIX SALARY OF CITY ASSESSOR IN SOUTH ST. PAUL.**

HISTORY. 1933 c. 234 s. 1; M. Supp. s. 1990-1.

**273.10 SCHOOL DISTRICTS.**

HISTORY. 1878 c. 1 s. 37; G.S. 1878 c. 11 s. 37; G.S. 1894 s. 1545; R.L. 1905 s. 809; G.S. 1913 s. 1986; G.S. 1923 s. 1991; M.S. 1927 s. 1991.

**273.11 VALUATION OF PROPERTY.**

HISTORY. 1860 c. 1 s. 9; G.S. 1866 c. 11 s. 9; 1878 c. 1 s. 28; G.S. 1878 c. 11 s. 28; 1881 c. 10 s. 5; G.S. 1894 s. 1536; R.L. 1905 s. 810; G.S. 1913 s. 1987; G.S. 1923 s. 1992; M. S. 1927 s. 1992.

Note: This section has been more or less superseded by section 273.13.

Defendants were charged with only their just proportion of the taxes compared with values generally on the same assessment roll, and had no cause for complaint. The term "true and full value" is construed to mean the usual selling price at the time of the assessment such as could be obtained at private sale, and not such as would be arranged at forced sale. *State v Thayer*, 69 M 170, 71 NW 931.

Credit, such as choses in action, if worthless, should not be listed, and if worth less than face value should be listed at its real true value. Otherwise, at face value. *State v London & Northwest*, 80 M 277, 83 NW 339.

Assessors are presumed to be honest and capable and to have exercised their honest judgment, and their valuation of property is conclusive on the courts so long as they keep within reasonable bounds. *County v Batchelder*, 47 M 512, 50 NW 536; *State v London & Northwest*, 80 M 277, 83 NW 339.

There is a presumption that property has been assessed at its full cash value. *Hoyt v Chapin*, 85 M 524, 89 NW 850.

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The rule exempting judicial officers from civil actions for their decisions and acts in that capacity, however erroneous and by whatever motive prompted, extends to assessors in assessing property for taxation. *Stewart v Case*, 53 M 62, 54 NW 938.

That the tangible property of defendant was assessed at approximately its full value, although other property in accordance with the direction of the state auditor was assessed for less, is no valid objection to the resulting tax. In order to arrive at an assessment at its full value in money, the tax system contemplates an original assessment by the assessor, correction by the auditor, and equalization by various boards. *State v Cudahy*, 103 M 419, 115 NW 645, 1039.

Where no provision is made for the payment of taxes in a list of real estate, and the list provides for removal of structures placed thereon by the lessee, and where the landlord is compelled to pay the entire amount of the taxes, he may maintain an action against the tenant for that portion of the tax that should have been paid by the tenant. *La Paul v Heywood*, 113 M 376, 129 NW 763.

Laws 1913, Chapter 483, classifying for purposes of taxation "all real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax," applies to the property of telegraph companies operating within the state. *State ex rel v Minnesota Tax Commission*, 132 M 93, 155 NW 1061.

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 from it, and the cost of reproduction. *Re Potlatch Timber Co.* 160 M 209, 199 NW 968; *State v Trask*, 167 M 304, 209 NW 18; *State v Savage*, 155 M 501, 193 NW 114; *State v Russell-Miller*, 182 M 543, 235 NW 22.

The defendants claim that the assessor in determining the value of lands systematically over-valued all unimproved, and under-valued the improved lands, was not sustained by the evidence. *State v Fritch*, 175 M 478, 221 NW 725.

The purpose of tax assessment is to distribute the tax burden fairly and equitably and the tax base which will prevent undue discrimination or inequalities must be adhered to so long as real estate bears the major part of such burden. *State v Fed. Reserve*, 25 F Supp. 14.

Over capacity of a packing plant and consequent increased expense of operation are proper elements for consideration in arriving at the full and true value of such plant for taxation. *State ex rel v McNiven*, 183 M 539, 237 NW 410.

The assessable value of a membership in an unincorporated association is to be ascertained by apportioning the value of the memberships in excess of the tangible property of the association already assessed. If there is no excess, no tax should be assessed on the membership. *State v Molyneau*, 185 M 199, 240 NW 468.

The decision of the district court sustaining the assessed valuation of real estate, being reasonably supported by the evidence, will not be disturbed. *State v Walso*, 196 M 525, 265 NW 345.

Where there are no sales of real estate to establish a market price, the court may hear evidence and take into consideration the opinion of men acquainted with the properties as to the value, and may take evidence as to the adaptability of the land for use, and any other facts or circumstances that have to do with value. *State v Oliver Iron M'ng Co.* 198 M 385, 270 NW 609.

Laws 1933, Chapter 359, reducing the rates at which homesteads shall be valued for the purpose of figuring "tax limitations" does not amend a provision of the city charter limiting a school tax to 22 mills on the dollar. 510 Groveland v Erickson, 201 M 381, 276 NW 287.

Although taxation is basically a legislative and executive function, the value of property for taxation purposes may be delegated to the courts by way of appeal, but the burden of proof is on the person challenging the valuation. Where there is no active sales market, the opinion of experts as to sales value is admissible. *Kalscheur v State*, 214 M 441, 8 NW(2d) 624.

The basis and authority for taxation of mining properties are sections 273.11 and 273.12. In the absence of sufficient sales on which to base a determination of value, the judgment and opinion of experts may be resorted to. Whether the

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"Hoskold" tables are of value is a fact question for the board of tax appeals. *Village of Aurora v Commissioner*, 217 M 64, 14 NW(2d) 292.

Lands taken and used in constructing and maintaining county and judicial ditches should be of benefit to the land and enhance the value. Land taken and used for a ditch is distinguishable from that used for a road in that the land used for the ditch serves a useful and beneficial purpose to the entire tract, and therefore should not be removed from the tax list or disregarded by the assessor. 1934 OAG 491, July 16, 1934 (408).

The appraisalment as a basis for receiver's sale of land is in no way binding upon the assessor or the commissioner of taxation. OAG July 17, 1936 (421a-1).

In the hands of the producer of gasoline, such as refiner, blender, and similar the federal tax is not a part of its real and true value, but is a part when in the hands of other persons on May 1. OAG April 5, 1944 (421c).

Where tenants in common reside on the property in separate houses a total of \$4,000 only may, for tax purposes be deemed homestead value. OAG June 28, 1944 (232d).

A summer resort property consisting of several service and commercial buildings and several rental cabins, may be assessed at 40 per cent or 33½ per cent of its value according to other facts. If adopted to urban uses the 40 per cent would apply although not plated. OAG July 5, 1944 (474J-2).

Whether property may be classified as a homestead by a person in armed forces, or temporarily absent working in defense factories is a question of fact, liberally construed. OAG Feb. 14, 1944 (232d); OAG March 6, 1944 (232d).

### 273.12 ASSESSMENT OF REAL PROPERTY.

HISTORY. 1927 c. 123; M.S. 1927 s. 1992-1; 1931 c. 224 s. 1; 1935 c. 237 s. 1.

Note: See *State v Oliver Iron Mining Company*, 198 M 385, 270 NW 609, and *State v Federal Reserve Bank*, 25 F. Supp. 14, annotated under section 273.11.

Property must be assessed at its market or sales value rather than its cost price or intrinsic value. *State v Penn Mut.* 198 M 115, 269 NW 37; *State v Penn Mut.* 198 M 620, 272 NW 547, 58 SC 45.

In making an assessment, the acreage taken for highway purposes should not be taken in the real estate tax. OAG Nov. 30, 1931.

See notes under section 273.11.

### 273.13 CLASSIFICATION OF PROPERTY.

HISTORY. 1913 c. 483 s. 1; G.S. 1913 s. 1988; 1923 c. 140; G.S. 1923 s. 1993; M.S. 1927 s. 1993; 1933 c. 132; 1933 c. 359; 1937 c. 365 s. 1; Ex. 1937 c. 86 s. 1; 1939 c. 48; 1941 cc. 436 to 438; 1943 c. 172 s. 1; 1943 c. 648 s. 1; 1945 c. 274 s. 1; 1945 c. 527 s. 1.

1. Generally
2. Class 1
3. Class 2
4. Class 3
5. Class 3a
6. Class 3b
7. Class 3c
8. Class 4

#### 1. Generally

Under the constitution, the classification for taxation purposes must be reasonable and such as is based on essential differences. *State ex rel v Minnesota Tax Commission*, 128 M 384, 150 NW 1087.

Laws 1911, Chapter 285, providing for the taxation of moneys and credits is a complete revision of prior statutes upon the subject, and was designed by the legislature as the exclusive guide upon that subject, and repeals by implication

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Revised Laws 1905, Section 836. Commercial debts may not be deducted from credits listed for taxation. *State ex rel v Minnesota Tax Commission*, 117 M 159, 134 NW 643.

Matters of classification of property for taxation are matters of state policy. The state may resort to unequal taxation so long as the inequality is not based upon arbitrary distinctions. *State v Wells-Fargo*, 146 M 444, 179 NW 221.

Neither the words "assessed value" nor "assessed valuation" as used in the statutes defining net bonded indebtedness mean "true and full value." They are phrases of contrast and not of identity. *Phelps v City of Minneapolis*, 174 M 509, 219 NW 872.

One who is not discriminated against by a legislative classification does not have an interest entitling him to raise the question of unconstitutionality of a statute on the ground that it denies equal rights and privileges by discriminating between persons and classes generally, or between classes of which he is not a member; and the classification for the purpose of taxation which taxes mail order establishments separately from chain stores, is not unconstitutional. *Thomas Stores v Spaeth*, 209 M 504, 297 NW 9.

Where fact that minor operations were carried on by mineral producing company under government stimulation during 1917-18 was admitted, expansion of operations was not required as a test of "good faith expenditure" in order to entitle receiver of company under war minerals relief act to recover taxes paid under Minnesota law during the period that the company was operated under government stimulation, as loss suffered by reason of good faith expenditure of money in producing minerals. *Crowley v Ickes*, 107 M(2d) 256.

Where a tract of land is described on the assessment book as the NE quarter of the NE quarter of any section, the county auditor has no authority to further divide said 40-acre tract without the presentation to him of a conveyance of some kind covering a part of said description. 1936 OAG 353, Jan. 1, 1936 (408).

Method of determining assessed valuation of property to determine salary of judge of probate in Blue Earth county. 1942 OAG 199, July 18, 1941 (347-I).

Method of determining assessed valuation of property to determine salary of certain officers. 1942 OAG 216, July 18, 1941 (469A-1).

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

Laws 1941, Chapter 438, continues exemption of a member of the armed forces upon compliance with its provisions. 1942 OAG 307, March 23, 1942 (414D-6).

Laws 1941, Chapters 436, 437, 438, effect the assessment and taxation of agricultural products. Effect of each act construed. 1942 OAG 339, July 24, 1941 (421-C).

Limit of municipal bonded indebtedness 20 MLR 586.

See notes under section 273.12.

## 2. Class 1

The royalty tax, Laws 1923, Chapter 226, is imposed upon the right, title and interest of the lessor in ore lands let for the purpose of mining the ore for a royalty; and where the lessee in such lease has covenanted to pay all taxes and assessments, ordinary and extraordinary, general and specific, upon the demised land, he must pay the royalty tax. *Marble v Oliver Iron Mining Co.* 172 M 263, 215 NW 71.

## 3. Class 2

The old age assistance law does not abrogate the common-law rule "that the settlement of a married woman is where her husband resides and has his settlement." 1938 OAG 327, Aug. 14, 1937 (521t-2).

## 4. Class 3

Coal bridges used in handling coal on docks are machinery and taxable under the provisions of Class 3. The fact that the owner for several years listed the bridges under Class 4 did not estop him from having the property properly classified in subsequent years. *State v Clarkson*, 188 M 106, 246 NW 536.

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A school district within the city limits contains residential property, not platted. Some of this property containing more than an acre of ground, is used for residential purposes only. If the land in question is agricultural, it should be taxed as such; but if it is not used as agricultural land, it should be taxed as is other urban property. 1938 OAG 198, March 4, 1937 (426a).

## 5. Class 3a

"All unplatted real estate" as set forth in Laws 1913, Chapter 483, refers to and includes land which is adopted to a use for rural or agricultural purposes, and not to land within the limits of a city or village, though not a part of the platted portion thereof which is used exclusively for urban purposes. The character of the property in proximity is one of the determining facts on which to base a classification. *State ex rel v Minnesota Tax Commission*, 135 M 205, 160 NW 498; In the matter of Real Estate Taxes, 149 M 335, 183 NW 671.

A sheriff owns a residence in Long Prairie, but resides in the living quarters provided for the sheriff in the Todd County jail building, but has reserved one room in his residence where he stores furniture and the rest of the house is rented. The sheriff does not have the right to have his residence valued and assessed as a homestead. 1938 OAG 424, June 29, 1937 (232d).

## 6. Class 3b

Where a man owns 40 acres of land in Norman county and also owns a quarter section of land in Mahnomen county contiguous to his Norman county forty, on which forty he has farm buildings and improvements and on which he lives, and the true and full value of the Norman county forty is \$2,000 and of the Mahnomen county quarter is also \$2,000, he may join the two properties in one application for a total of the homestead exemption. 1940 OAG 311, April 27, 1939 (232d).

A homestead includes all of the contiguous platted land with no limitation as to area, used by the owner thereof as his place of abode. 1934 OAG 795, Nov. 7, 1933 (232).

It does not follow that because power dams and the submerged lands adjacent are commercial in their use that they are not rural land, that is, unplatted land within the meaning of the statute. 1936 OAG 353, Jan. 1, 1936 (408).

Where a man owns a lot with one big house on it and with a shack on the rear of the lot, and he rents the big house and lives in the shack, that part of the lot on which is located the shack in which he lives should be placed in Class 2b. The remainder of the lot should be placed in Class 4. 1938 OAG 223, Aug. 2, 1938 (232d).

For purposes of determining salaries of deputies of various county officers, the salary must be determined on the basis of an assessed valuation computed on percentages of 33½ and 40 per cent, respectively, of Class 3b and 3c property. As to clerk hire, that classification must be determined on the basis of 20 per cent and 25 per cent for Class 3b and 3c property. 1936 OAG 119, Jan. 29, 1925 (104a-3).

The area of a homestead is determined by use as a place of abode, and the homestead includes all of the contiguous platted land without limitation as to area used by the owner thereof as a place of abode. 1934 OAG 795, Sept. 7, 1933 (232).

Requirements for constitutionality in case of a classified ad valorem property tax. 18 MLR 751.

## 7. Class 3c

Section 272.13, providing for a lower assessed valuation on the first \$4,000 of actual value of real estate used for homestead purposes than on other real estate, is held constitutional. *Apartment Operators v City of Minneapolis*, 191 M 365, 254 NW 443; *Logan v Young*, 191 M 371, 254 NW 446.

Where before May 1st of an odd-numbered year a dwelling formerly not a homestead becomes one, the owner, not having made timely demand upon the assessor or local board of review or board of equalization for a re-classification of the property as a homestead, is not entitled to mandamus to compel the county

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auditor to reclassify the property as a homestead. State ex rel v Strom, 198 M 273, 269 NW 371.

It is the duty of the assessor to determine from all the facts of the case whether the property claimed as a homestead was used for that purpose on May 1st, the date of the assessment. 1934 OAG 798, Aug. 7, 1934 (414a-9).

A holder of an unrecorded deed, dated in 1930, to platted real estate occupied by the holder of the deed since 1930 as a dwelling for himself and family, is entitled to classify the property under Class 3c for taxation purposes, and the fact that the deed was not recorded is immaterial. 1936 OAG 370, March 12, 1935 (408d).

In determining the salary of the judge of probate for Pipestone county, the assessed valuation should be determined by figuring Class 3b and Class 3c property at 33½ per cent and 40 per cent of the full and true value thereof. 1938 OAG 181, June 12, 1937 (104a-9).

A person owning three lots, all contiguous, located in Stillwater, the total acreage being less than one-half acre, lives in a house on one of those lots and has a house on another lot which he rents out. He would be entitled to have the property on which he resides classified as a homestead, but the third lot on which there is a house that he rents would not be so classified. 1938 OAG 425, May 20, 1937 (408d).

Ownership by association does not entitle each member occupant to a homestead reduction. 1940 OAG 307, Sept. 7, 1939 (232d).

The owner of lots 1 and 2 constructed two dwelling houses upon the two lots, lives in one and rents the other. The tenant and the owner jointly use the center space as a garden. The owner is entitled to a homestead classification only upon the premises occupied by him and is not entitled to such classification as to the premises rented. Any question which may arise as to the dividing line between the properties is a practical matter for determination by the assessor. 1940 OAG 309, July 7, 1939 (232d).

## 8. Class 4

Under Laws 1913, Chapter 483, classifying property for purposes of taxation, the relator's street railway tracks, overhead feed and trolley wires, trolley poles and underground conduits and cables, are assessable under Class 4.

Laws 1913, Chapter 483, classifies the property of telegraph companies under Class 4. State ex rel v Minnesota Tax Commission, 132 M 93, 155 NW 1061.

The mains, pipes and conduits used and employed by the Minneapolis Gas Light Company for the distribution of gas to its patrons, are properly assessable under Class 4. State ex rel v Minnesota Tax Commission, 132 M 419, 157 NW 638; State ex rel v Minnesota Tax Commission, 132 M 477, 157 NW 639.

That part of Laws 1933, Chapter 359, reducing the rates at which homesteads shall be valued for taxation but preserving former and higher rates for the purpose of figuring "tax limitations", does not violate the constitutional demand for uniformity of taxation. It is no objection on that ground that, for the purpose of applying "tax limitations," the former basis of valuation is preserved as to homesteads only but as to all of them, while at the same time taxes are levied against them on the basis of a new and lower valuation; and this statute does not amend a provision of the city charter of the city of Minneapolis limiting a school tax to 22 mills on the dollar. 510 Groveland v Ericksen, 201 M 381, 276 NW 287.

Two tracts of farm land, each corner may constitute one homestead, provided they are occupied and cultivated as one piece of land; and two tracts of farm land separated merely by a road or railroad right of way, may constitute one homestead. 1934 OAG 796, Feb. 10, 1934 (232a).

### 273.14 DEFINITIONS RELATING TO IRON ORE.

HISTORY. 1937 c. 364 s. 1; M. Supp. s. 1993-2.

### 273.15 CLASSIFICATIONS OF LOW-GRADE IRON ORE.

HISTORY. 1937 c. 364 s. 2; M. Supp. s. 1993-3.

**273.16 DETERMINATION OF CLASSIFICATION.**

HISTORY. 1937 c. 364 s. 3; M. Supp. s. 1993-4.

**273.17 ASSESSMENT OF REAL PROPERTY IN ODD-NUMBERED YEARS.**

HISTORY. 1852 c. 4 s. 4; P.S. 1858 c. 9 s. 48; 1860 c. 1 s. 27; 1861 c. 1 s. 7; G.S. 1866 c. 11 s. 35; 1878 c. 1 s. 32; G.S. 1878 c. 11 s. 32; G.S. 1894 s. 1540; R.L. 1905 s. 811; G.S. 1913 s. 1989; 1917 c. 254; G.S. 1923 s. 1994; M.S. 1927 s. 1994; 1937 s. 206 s. 1.

The owner of property not classified as a homestead when the assessment was made on the even-numbered year before May 1st of the odd-numbered year, built a dwelling and occupied it as a homestead. As he did not make timely demand upon the assessor, local board of review, or county board of equalization, for reclassification, he is not now entitled to mandamus to compel the county auditor to reclassify him. *State v Strom*, 198 M 173, 269 NW 371.

The assessor makes the first classification. His action is subject to review by the board of review of his municipal subdivision, and the assessment lists as corrected by the assessors under the direction of these boards of review are then presented to the county auditors, corrected by them, equalized by the county boards of equalization, and corrected and equalized by the tax commissioner, each of which in proper cases may change the classification of real property therein classified. 1934 OAG 796, Feb. 10, 1934 (232a).

**273.18 LISTING, VALUATION, AND ASSESSMENT OF EXEMPT PROPERTY BY COUNTY AUDITORS.**

HISTORY. 1878 c. 1 s. 115; G.S. 1878 c. 11 s. 115; G.S. 1894 s. 1640; R.L. 1905 s. 812; G.S. 1913 s. 1990; G.S. 1923 s. 1995; 1925 c. 211 s. 1; M.S. 1927 s. 1995.

Land is assessed on the day the assessor certifies and returns to the county auditor the assessment books wherein the assessor has valued the land for purposes of taxation; and from and after that date a notice to terminate a right of redemption from a tax sale issued before another assessment is made and returned by the assessor must be directed to the person in whose name the land is assessed upon the books so certified and returned. *Trask v Skoog*, 138 M 229, 164 NW 914.

Real property located within the Fort Snelling reservation should not be placed on the tax list. OAG May 3, 1932.

**273.19 LESSEES AND EQUITABLE OWNERS.**

HISTORY. 1860 c. 1 s. 5; G.S. 1866 c. 11 s. 5; 1878 c. 1 s. 27; G.S. 1878 c. 11 s. 27; G.S. 1894 s. 1535; R.L. 1905 s. 813; G.S. 1913 s. 1991; G.S. 1923 s. 1996; M.S. 1927 s. 1996.

**273.20 ASSESSOR MAY ENTER DWELLINGS, BUILDINGS, OR STRUCTURES.**

HISTORY. 1860 c. 1 s. 26; G.S. 1866 c. 11 s. 34; 1902 c. 2 s. 84; R.L. 1905 s. 814; G.S. 1913 s. 1992; G.S. 1923 s. 1997; M.S. 1927 s. 1997.

**273.21 NEGLECT BY AUDITOR OF ASSESSOR; PENALTY.**

HISTORY. 1878 c. 1 s. 116; G.S. 1878 c. 11 s. 116; G.S. 1894 s. 1641; R.L. 1905 s. 815; G.S. 1913 s. 1993; G.S. 1923 s. 1998; M.S. 1927 s. 1998.

**273.22 PERSONAL PROPERTY, BY WHOM LISTED.**

HISTORY. R.S. 1851 c. 12 s. 9; P.S. 1858 c. 9 s. 9; 1860 c. 1 s. 4; 1861 c. 1 s. 3; G.S. 1866 c. 11 s. 4; 1878 c. 1 s. 7; G.S. 1878 c. 11 s. 7; G.S. 1894 s. 1515; R.L. 1905 s. 816; G.S. 1913 s. 1994; G.S. 1923 s. 1999; M.S. 1927 s. 1999.

A demand for money loaned may have an actual situs other than the domicile of the owner. The owner may give it a business situs at another place; and under subdivision 2 of this section, a local agent of a non-resident must list credits due

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his principal for taxation. *Estate of Cyrus Jefferson*, 35 M 215, 28 NW 256; *State v Scottish-American*, 76 M 155, 78 NW 962.

The situs for taxation of property in the hands of a trustee is the residence of the trustee; and under subdivision 4 of this section, a trustee must list the property of his *cestui que trust*. *State v Willard*, 77 M 190, 79 NW 829.

The executor or administrator of the property of the estate of a decedent must list personal property for taxation. *Nelson v Becker*, 63 M 61, 65 NW 119.

Under subdivision 5, receivers must list corporation assets. *State v Red River Valley*, 69 M 131, 72 NW 60.

Where there are plural owners of personal property, not partners, each must list his own interest in the common property. *State v Rand*, 39 M 502, 40 NW 835.

The property of the relators was erroneously listed in Carlton county by the agent of the owners, but as it was used and employed exclusively in connection with the former's manufacturing business in St. Louis county, the property was properly taxable in St. Louis county. The listing by the agent in Carlton county was without authority and not binding on the principal. *State ex rel v Dunn*, 86 M 301, 90 NW 772.

The facts were that the owner of a grain elevator in which there were 30,000 bushels of wheat on May 1st belonging to certain bailors, failed to list the grain for taxation. This does not permit assessment of the grain in the name of the elevator company. *State v N. W. Elev. Co.* 101 M 192, 112 NW 68.

The amount stipulated to be paid by the lessees in mining leases are rents. Unaccrued rents are not personal property. They are incident to the reversion and follow the land and, until such separation, are a part of the land. Rents due in July for the period from April 1st to July 1st are not taxable on May 1st as personal property or credits. *State v Mineral Royal Assn.* 132 M 232, 156 NW 128.

Under subdivision 1, franchises are subject to taxation. *State v N. S. Power Co.* 189 M 26, 248 NW 288.

Intangible personal property, such as bonds, mortgages, notes, and similar, while in the hands of a resident trustee under a trust agreement, whereby such trustee has the management of the estate, are taxable as money and credits even though the non-resident person who established the trust has power to revoke it at any time. 1936 OAG 375, April 29, 1935 (421c-15).

The tax commissioner has authority to inquire into the moneys and credits owned by a deceased taxpayer during any year of his lifetime for the purpose of determining whether or not such moneys and credits were omitted in the assessment for such year or years so that such omitted moneys and credits may be assessed and taxed for the year or years omitted. This is based on section 270.06. 1936 OAG 380, Jan. 7, 1935 (614f).

Comparative tax burden. 23 MLR 510.

## 273.23 MERCHANTS; CONSIGNEES.

HISTORY. R.S. 1851 c. 12 s. 10; P.S. 1858 c. 9 s. 10; 1860 c. 1 s. 11; G.S. 1866 c. 11 s. 11; 1878 c. 1 s. 20; G.S. 1878 c. 11 s. 20; G.S. 1894 s. 1528; R.L. 1905 s. 817; G.S. 1913 s. 1995; G.S. 1923 s. 2000; M.S. 1927 s. 2000.

Land is assessed on the day the assessor certifies and returns to the auditor the assessment books wherein the assessor has valued the land for purposes of taxation, and record ownership determines in whose name the real estate is listed. *Trask v Skoog*, 138 M 229, 164 NW 914; *State v Case*, 189 M 180, 248 NW 726.

## 273.24 MANUFACTURERS.

HISTORY. R.S. 1851 c. 12 s. 10; P.S. 1858 c. 9 s. 10; 1860 c. 1 s. 12; G.S. 1866 c. 11 s. 12; 1878 c. 1 s. 21; G.S. 1878 c. 11 s. 21; G.S. 1894 s. 1529; R.L. 1905 s. 818; G.S. 1913 s. 1996; G.S. 1923 s. 2001; M.S. 1927 s. 2001.

## 273.25 LISTS TO BE VERIFIED.

HISTORY. R.S. 1851 c. 12 s. 16; P.S. 1858 c. 9 s. 16; 1860 c. 1 s. 7; G.S. 1866 c. 11 s. 7; 1878 c. 1 s. 15; G.S. 1878 c. 11 s. 15; G.S. 1894 s. 1523; R.L. 1905 s. 819; G.S. 1913 s. 1997; G.S. 1923 s. 2002; M.S. 1927 s. 2002.

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Intangible personal property in the hands of and managed by a resident trustee are subject to taxation at the domicile of the trustee, even though the non-resident has the power of instant revocation. 1936 OAG 375, April 29, 1935 (421c-15).

The status of all property, real or personal, as to whether it is subject to local direct taxes or to gross earnings taxes, must be determined as of May 1, in the year for which taxes are levied, that being the date when tax liens attach. 1942 OAG 332, Oct. 21, 1941 (454-E).

### 273.26 PERSONALTY; WHERE LISTED.

**HISTORY.** R.S. 1851 c. 9 s. 9; P.S. 1858 c. 9 s. 9; 1860 c. 1 s. 4; G.S. 1866 c. 11 s. 4; 1878 c. 1 s. 8; G.S. 1878 c. 11 s. 8; G.S. 1894 s. 1516; 1902 c. 4; R.L. 1905 s. 820; G.S. 1913 s. 1998; G.S. 1923 s. 2003; M.S. 1927 s. 2003.

For many purposes, the domicile of the owner is deemed the situs of his personal property. This, however, is only a fiction for motives of convenience and is not of universal application, but yields to the actual situs of the property when justice requires that it should. Thus corporeal personal property is conceded to be taxable at the place where it is actually situated. A credit usually has its situs where it is owned and at the domicile of the creditor. The creditor, however, may give it a possible situs elsewhere. In re Jefferson, 35 M 215, 28 NW 256; Bristol v Washington Co. 177 US 133, 27 SC 585.

Unless otherwise provided by statute, the situs of personal property for purposes of taxation, is the domicile of the owner; but it may have a definite and fixed situs elsewhere where situated for business purposes. State v Rand, 39 M 502, 40 NW 835; Clarke v County of Stearns, 47 M 552, 50 NW 615; State ex rel v Hynes, 82 M 34, 84 NW 636.

The place where business is carried on within the meaning of this statute, is the place where the property is kept for sale. The mere buying of property in some district other than that of the owner's residence would not render it assessable at the place of purchase. Minneapolis & Northern v Board, 60 M 522, 63 NW 101; State ex rel v Dunn, 86 M 301, 90 NW 772.

The appointment of a receiver does not change the situs of property for purposes of taxation. State v Red River Valley, 69 M 131, 72 NW 60.

A credit which is held in trust by a resident of this state is to be listed for taxation by such resident as trustee in the taxing district in which he resides. State v Willard, 77 M 190, 79 NW 829; In re Jefferson, 35 M 215, 28 NW 256.

While a non-resident owner of credits may give them a situs in this state for purposes of taxation here, a foreign corporation may have a resident agent for certain purposes only and where the agent, having taken notes secured by mortgage on real estate, returned the notes and mortgages to the non-resident, the credits were not taxable in this state. State v Scottish-American, 76 M 155, 78 NW 962, 1117.

Gasoline in possession of pipe-line company transported from a point outside the state for processing and reshipment to points within and without the state, is subject to state tax. State v Continental Oil, 218 M 123, 15 NW(2d) 542.

Intangibles have a situs at the taxpayer's place of business or domicile. State v Minn. Federal, 218 M 460, 17 NW(2d) 37.

Colonies of bees placed by the owner on many farms throughout the county must be assessed in the taxing district in which the owner resides. 1936 OAG 348, April 6, 1936 (421a-4).

Where a house stands upon the line between two townships, the owner must be taxed in the town or taxing district in which the most necessary and essential portion of the building is situated. 1938 OAG 423, Aug. 2, 1938 (232b).

A farm is located partly in a village and partly in a township. The house is in the village, but the barn and live stock are on that part of the farm which is in the township. Such personal property should be listed and assessed in the village where the owner resides. 1938 OAG 436, June 26, 1937 (421a-17).

Where a district judge resides in the township of Emmett while he maintains his court chambers in the city of Renville, under the provisions in this section his law books and office equipment in Renville must be taxed in Emmett township. 1938 OAG 437, July 28, 1938 (421a-17).

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A resident of Carver county engaged in the business of producing and marketing honey in Carver county placed approximately 1000 hives of bees in Red Lake County. The property in Red Lake county should be listed and assessed in the taxing district in which the owner resides, namely, Carver county. 1940 OAG 325, Nov. 14, 1940 (421a-17).

Pipe lines constructed by natural gas companies where they are transporting the gas for their own private business cannot be considered transportation companies under section 273.33, and consequently must be taxed at their principal place of business under section 273.28. 1940 OAG 329, July 31, 1940 (421c-28).

An incompetent ward lives with her three children in three separate municipalities in the county and no longer has a fixed place of residence. She may be taxed at the place she resided on the date when the assessment was made. 1942 OAG 340, Sept. 26, 1941 (421A-17).

## 273.27 CERTAIN PERSONAL PROPERTY; WHERE LISTED.

HISTORY. 1925 c. 212 s. 1; M.S. 1927 s. 2003-1.

## 273.28 CAPITAL STOCK AND FRANCHISES.

HISTORY. R.S. 1851 c. 9 s. 9; P.S. 1858 c. 9 s. 9; 1860 c. 1 s. 4; G.S. 1866 c. 11 s. 4; 1878 c. 1 s. 8; G.S. 1878 c. 11 s. 8; G.S. 1894 s. 1516; 1897 c. 220; 1902 c. 4; R.L. 1905 s. 821; G.S. 1913 s. 1999; G.S. 1923 s. 2004; M.S. 1927 s. 2004.

The principal office or place of business of a corporation is the place where the governing power of the corporation is exercised; where the plans for the conduct of its business are formed, and the one in which such plans are to be executed are directed; where the meetings of its stockholders are held, its officers elected, and its corporate seal kept. *State v St. Croix Boom Corp.* 49 M 450, 52 NW 44; *Mpls. & Northern v Board*, 60 M 522, 53 NW 101.

Prior to the passage of Laws 1897, Chapter 220, where an elevator company with its principal place of business in Hennepin county had wheat in an elevator in Clay county, the property was taxed in Hennepin. But since 1927, grain in elevators is assessed and taxed in the assessment district where the elevator is situated. *Mpls. & Northern v Board*, 60 M 522, 63 NW 101.

The personal property of logging railroad companies, not subject to gross earnings system of taxation, is taxable in the county in which the corporation maintains its principal place of business, although the actual logging road is located in some other county. Logging railroads are not transportation companies within the meaning of the statutes. *State ex rel v Iverson*, 286 M 97, 106 NW 309.

The tax upon surplus is a property tax and not a tax upon the franchise to exist as a corporation; and non-taxable municipal bonds must be listed and taken into account as part of the assets for the purpose of determining whether there is a surplus. *State v Farmers and Mechanics*, 114 M 95, 130 NW 445, 851.

As to the taxation of franchises. *State v N. S. Power*, 189 M 26, 248 NW 288.

## 273.29 MERCHANTS AND MANUFACTURERS.

HISTORY. R.S. 1851 c. 9 s. 9; P.S. 1858 c. 9 s. 9; 1860 c. 1 s. 4; G.S. 1866 c. 11 s. 4; 1878 c. 1 s. 8; G.S. 1878 c. 11 s. 8; G.S. 1894 s. 1516; 1902 c. 4; R.L. 1905 s. 822; G.S. 1913 s. 2000; G.S. 1923 s. 2005; M.S. 1927 s. 2005.

The personal property pertaining to the business of a manufacturer or merchant should be listed and assessed in the town or district where the business is carried on. *Clarke v County*, 47 M 552, 50 NW 615; *Laird, Norton v County*, 72 M 409, 75 NW 723; *State ex rel v Dunn*, 86 M 301, 90 NW 772.

Merchant defined. *Mpls. & Northern v Board*, 60 M 522, 63 NW 101.

Manufacturer defined. *State v Clarke*, 64 M 556, 67 NW 1144.

Where a manufacturer or merchant has separate and distinct places of business in different counties, the property in each branch is taxable in the county in which the business is conducted. *Clarke v County*, 47 M 552, 50 NW 615; *State v Clarke*, 64 M 556, 67 NW 1144; *State ex rel v Hynes*, 82 M 34, 84 NW 636.

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Logs cut, banked and boomed upon the ice of a lake with the intention of exporting them from the state, do not become articles in transit until delivered to a common carrier, and are taxable at their instant location. *State v Taber*, 101 M 186, 112 NW 214.

Certain property belonging to the Cloquet Tie & Post Company doing business in Cloquet, in Carlton county, was assessable for taxation in Carlton county although manufactured in St. Louis county and stored therein to be shipped direct to purchasers; the company not having any established place of business in St. Louis county. *State ex rel v Iverson*, 108 M 316, 122 NW 165.

Certain logs assessed for taxes after being brailed by a boom company and while waiting for delivery to be towed to another state, have not commenced their interstate transit until after such assessment on May first and hence are subject to taxation at the location of the boom company. *State v Burlington*, 118 M 329, 136 NW 1033.

Moneys and credits arising from or pertaining to the business of selling stations of the Standard Oil Co. have a taxable situs at the location of such stations where a business is localized and not at the master station or office having jurisdiction over the local stations. *In re Standard Oil Co.* 147 M 14, 179 NW 482.

Pulpwood cut during the winter afloat in the Pidgeon River on May 1st and on its way to the booms in Pidgeon Bay on Lake Superior to await navigation, is taxable in Minnesota. *State v Hughes*, 163 M 4, 203 NW 436.

### 273.30 FARM PROPERTY OF NON-RESIDENT.

**HISTORY.** 1878 c. 1 s. 12; G.S. 1878 c. 11 s. 12; G.S. 1894 s. 1520; R.L. 1905 s. 823; G.S. 1913 s. 2001; G.S. 1923 s. 2006; M.S. 1927 s. 2006.

Lessor's share of crops held over from former years are assessable as personal property in the district wherein they are sold on May 1st. OAG Aug. 14, 1934 (614m).

Where a farm on which the owner resides is located partly in the township and partly in a village, the personal property on the farm is listed and assessed in the district where the house is located. 1938 OAG 436, June 26, 1937 (421a-17).

Real property owned by a railroad not "operated for railway purposes", is subject to an ad valorem tax and to an assessment for local improvements. *State v C. St. P. M. & O. Ry.* 140 M 440, 168 NW 180.

### 273.31 GRAIN IN ELEVATORS.

**HISTORY.** 1897 c. 220; R.L. 1905 s. 824; G.S. 1913 s. 2002; G.S. 1923 s. 2007; M.S. 1927 s. 2007.

### 273.32 ELEVATORS AND WAREHOUSES ON RAILROAD.

**HISTORY.** 1876 c. 4; R.L. 1905 s. 825; G.S. 1913 s. 2003; G.S. 1923 s. 2008; M.S. 1927 s. 2008.

### 273.33 EXPRESS, STAGE, AND TRANSPORTATION COMPANIES.

**HISTORY.** 1878 c. 1 s. 9; G.S. 1878 c. 11 s. 9; G.S. 1894 s. 1517; R.L. 1905 s. 826; G.S. 1913 s. 2004; G.S. 1923 s. 2009; M.S. 1927 s. 2009; 1943 c. 604 s. 1.

See annotations under section 273.28.

Logging railroads operated by lumber companies are not transportation companies, nor are they common carriers, and consequently their property is taxable in the county where the corporation maintains its principal business. *State ex rel v Iverson*, 97 M 286, 106 NW 309.

An air lines company which is not a Minnesota corporation and which is engaged as a common carrier in carrying passengers and freight for hire, is a "transportation company" and its airplanes and other personal property should be assessed in the taxing district where it is usually kept, regardless of the principal place of business of the corporation. 1940 OAG 324, Dec. 14, 1940 (421a-17).

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Pipe lines, if used by its owner in transporting gas for the owner's own use, are not transportation companies and therefore not within this section and should be taxed as provided in section 273.28. 1940 OAG 329, July 31, 1940 (421c-28).

## **273.34 WATER-CRAFT NOT NAVIGATING INTERNATIONAL WATERS.**

HISTORY. 1878 c. 1 s. 9; G.S. 1878 c. 11 s. 9; G.S. 1894 s. 1517; R.L. 1905 s. 827; G.S. 1913 s. 2005; G.S. 1923 s. 2010; M.S. 1927 s. 2010.

## **273.35 GAS AND WATER COMPANIES.**

HISTORY. 1878 c. 1 s. 10; G.S. 1878 c. 11 s. 10; G.S. 1894 s. 1518; R.L. 1905 s. 828; G.S. 1913 s. 2006; G.S. 1923 s. 2011; M.S. 1927 s. 2011.

## **273.36 ELECTRIC LIGHT AND POWER COMPANIES TO BE ASSESSED WHERE PROPERTY IS LOCATED.**

HISTORY. 1921 c. 482; G.S. 1923 s. 2012; M.S. 1927 s. 2012.

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

## **273.37 ELECTRIC LIGHT AND POWER COMPANIES AND OTHERS SUPPLYING ELECTRIC POWER; PLACE OF LISTING AND ASSESSMENT OF PERSONAL PROPERTY WITH SITUS OUTSIDE CORPORATE LIMITS OF VILLAGES, CITIES, AND BOROUGHES.**

HISTORY. 1925 c. 306 s. 1; M.S. 1927 s. 2012-1; 1939 c. 321 s. 1.

## **273.38 PERCENTAGE OF ASSESSMENTS; EXCEPTIONS.**

HISTORY. 1925 c. 306 s. 2; M.S. 1927 s. 2012-2; 1939 c. 321 s. 2.

## **273.39 RURAL AREA.**

HISTORY. 1939 c. 303 s. 2; M. Supp. s. 2012-5.

## **273.40 ANNUAL TAX ON COOPERATIVE ASSOCIATIONS.**

HISTORY. 1939 c. 303 s. 1; M. Supp. s. 2012-4; 1943 c. 643 s. 2.

## **273.41 AMOUNT OF TAX.**

HISTORY. 1939 c. 303 s. 3; M. Supp. s. 2012-6.

Corporations located in rural areas and operating electrical heat, light or power business must pay personal property taxes on all personal property except on its distribution lines and appurtenances. OAG Sept. 13, 1944 (421c-30).

## **273.42 RATE OF TAXATION; ENTRY AND CERTIFICATION; CREDIT ON PAYMENT.**

HISTORY. 1925 c. 306 s. 3; M.S. 1927 s. 2012-3.

## **273.43 PERSONAL PROPERTY OF CERTAIN COMPANIES, WHERE LISTED.**

HISTORY. 1878 c. 1 s. 11; G.S. 1878 c. 11 s. 11; G.S. 1894 s. 1519; R.L. 1905 s. 829; G.S. 1913 s. 2007; G.S. 1923 s. 2013; M.S. 1927 s. 2013.

A portion of the track of the St. Paul City Railway Company in a public street is not real estate, and therefore not assessable for the expense of paving. State ex rel v District Court, 31 M 354, 17 NW 954.

General Statutes 1894, Section 1669, providing for the taxation of railroad companies by requiring them to pay a percentage on their gross earnings does not apply

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to street railways because the street railways are not classified as a "railroad company" within the meaning of the statute. *State v Duluth Street Ry.* 76 M 96, 78 NW 1032.

### 273.44 ESTATES OF DECEDENTS.

HISTORY. R.L. 1905 s. 830; G.S. 1913 s. 2008; G.S. 1923 s. 2014; M.S. 1927 s. 2014.

### 273.45 PERSONS UNDER GUARDIANSHIP.

HISTORY. R.L. 1905 s. 831; G.S. 1913 s. 2009; G.S. 1923 s. 2015; M.S. 1927 s. 2015.

### 273.46 ASSIGNEES AND RECEIVERS.

HISTORY. R.L. 1905 s. 832; G.S. 1913 s. 2010; G.S. 1923 s. 2016; M.S. 1927 s. 2016.

Elevator owned by other members, situated on the right of way of a railroad company are, for purposes of taxation, personal property. Where a receiver is appointed for the elevator company, the personal property becomes assessable at the same place at which it was assessable before the receiver was appointed, irrespective of the residence of such receiver. *State v Red River Valley*, 69 M 131, 72 NW 60.

### 273.47 PROPERTY MOVED BETWEEN MAY AND JULY.

HISTORY. 1878 c. 1 s. 13; G.S. 1878 c. 11 s. 13; G.S. 1894 s. 1521; R.L. 1905 s. 833; G.S. 1913 s. 2011; G.S. 1923 s. 2017; M.S. 1927 s. 2017.

Certain lands in Lansing township were annexed to the city of Austin and platted as "Cedar View Addition". The resolution of annexation was adopted by the city council on July 21, 1939, and filed for record with the register of deeds and the county auditor on Sept. 9, 1939. The assessment for general taxes should be listed in the town of Lansing and the special assessments in the city of Austin. 1940 OAG 293, Sept. 27, 1939 (59a-1).

### 273.48 WHERE LISTED IN CASE OF DOUBT.

HISTORY. 1878 c. 1 s. 14; G.S. 1878 c. 11 s. 14; G.S. 1894 s. 1522; R.L. 1905 s. 834; 1911 c. 223 s. 1; G.S. 1913 s. 2012; G.S. 1923 s. 2018; M.S. 1927 s. 2018.

1. Appeal to county board
2. Appeal to state auditor

#### 1. Appeal to county board

Matters pertaining to the duties of and proper to come before the county board of equalization may be brought on for hearing without notice to interested parties, the parties being bound to take notice of the time and place of meetings and of the duties of the board. Such matter having been determined and adjudicated, the assessment based thereon cannot be set aside. *State ex rel v Hynes*, 82 M 34, 84 NW 636.

The assessor of Minneapolis made an arbitrary assessment against Bell for "credits". Bell had previously made a return of personal property to the assessor in Excelsior. In the absence of evidence that Bell owned no such property, or, owning it, had previously listed it for taxation at Excelsior, or of an application to the board of equalization, judgment was properly directed in favor of the state. *State v Bell*, 111 M 295, 126 NW 901.

#### 2. Appeal to state auditor

Where a controversy arose as the proper place of listing and assessing personal property as between different counties or places in different counties, the appeal

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originally lay to the state auditor. Laws 1911, Chapter 223, substituted the Minnesota tax commission for the state auditor, and Laws 1939, Chapter 431, transferred the duties of the tax commission to the state tax commissioner. This remedy by appeal is exclusive, and if the taxpayer fails to resort to it, he cannot maintain an action for taxes paid. *Clarke v County*, 47 M 552, 50 NW 615; *Mpls. & Northern v Board*, 60 M 522, 63 NW 101; *Clarke v Board*, 66 M 304, 69 NW 25; *State v Dunn*, 86 M 301, 90 NW 772.

Unless the suggested remedy is followed, the taxpayer cannot set up the defense of an application by the state for judgment. *State v Willard*, 77 M 190, 79 NW 829.

The taxpayer cannot obtain an injunction. *Laird & Norton v County of Pine*, 72 M 409, 75 NW 723; *State ex rel v Dunn*, 86 M 301, 90 NW 772.

The decision of the auditor (now the commissioner) is not subject to collateral attack. *State ex rel v Hynes*, 82 M 34, 84 NW 636; *State ex rel v Dunn*, 86 M 30, 90 NW 772.

The decision of the auditor (now board of tax appeals) is reviewable by the supreme court on a writ of certiorari. *State ex rel v Dunn*, 86 M 301, 90 NW 772; *State v Iverson*, 97 M 286, 106 NW 309.

The interested county officers must receive notice. *Clarke v Board*, 66 M 304, 69 NW 25.

The taxpayer must not be guilty of laches. *State v Willard*, 77 M 190, 79 NW 829.

Relief accorded taxpayer as to taxes illegally assessed or collected. 15 MLR 692.

## 273.49 FORMS FOR LISTING; ASSESSOR TO VALUE.

HISTORY. 1878 c. 1 s. 16; G.S. 1878 c. 11 s. 16; 1881 c. 10 s. 1; 1885 c. 2 s. 1; 1885 c. 126 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 16; G.S. 1894 s. 1524; 1895 c. 76; R.L. 1905 s. 835; 1909 c. 266 s. 1; G.S. 1913 s. 2013; G.S. 1923 s. 2019; M.S. 1927 s. 2019.

1. Before the amendment, Laws 1909, Chapter 266
2. After the 1909 amendment

### 1. Before the amendment, Laws 1909, Chapter 266

Under Laws 1860, Chapter 1, Sections 18 to 21, it was held improper to lease wheat under "household goods". *Thompson v Davidson*, 15 M 412 (333).

Later, "court held that a mistake of the assessor in placing the property under the wrong subdivision is immaterial in the absence of a showing of prejudice". The owner listing his property cannot object that the board of equalization follows his classification in raising an assessment; and an error of the auditor in applying a raise ordered by the board is immaterial, in the absence of a showing of prejudice. *Faribault v County*, 44 M 12, 46 NW 143; *State v Duluth Gas & Water Co.* 76 M 96, 78 NW 1032.

All materials and manufactured articles in the hands of the manufacturer should be listed under subdivision 17; and the same products in the hands of dealers other than the manufacturer, should be listed under Subdivision 16; the stock of all incorporated banks under subdivision 24; the bonds and stocks of private banks and brokers under subdivision 23; and other money under subdivision 19. Credits of non-residents held by resident agents for permanent investment are listed under subdivision 22. *Estate of Cyrus Jefferson*, 35 M 215, 28 NW 256; *State v London & N. W.* 80 M 277, 83 NW 339.

Private elevators owned on the right of way of a railroad company are listed under subdivision 27. This modifies *Chicago, Milwaukee v County*, 38 M 531, 38 NW 619, and overrules *Mpls. & Northern v Board*, 60 M 522, 63 NW 101. *Estate v Red River Valley*, 69 M 131, 72 NW 60.

A debt due on a contract for the sale of land is a credit and listed under subdivision 22. *State v Rand*, 39 M 502, 40 NW 835.

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When a corporation is required to list its stock, the individual holder need not list it under subdivision 23. Stock in national banks out of this state need not be listed under subdivision 24 (see 273.47). When in doubt as to the proper item under which to list property, it is customary for the assessor to list it under subdivision 30. Presumably subdivision 30 is adequate for the taxation of foreign corporations. *Fariha v County*, 44 M 12, 46 NW 143; *State v Duluth Gas & Water Co.* 76 M 96, 78 NW 1032; *State v Western Union*, 96 M 13, 104 NW 567.

## 2. After the 1909 amendment

A tax on surplus is a property tax, and not a tax upon the franchise to exist as a corporation. *State v Farmers & Mechanics*, 114 M 95, 130 NW 445.

Laws 1911, Chapter 285, providing for the taxation of moneys and credits is a complete revision of prior statutes upon the subject, and repeals by implication Revised Laws 1905, Section 836, which allowed a deduction of debts for credits listed for taxation. *State ex rel v Minnesota Tax Commission*, 117 M 159, 134 NW 643.

The membership in the Duluth Board of Trade was properly taxed as personal property. Revised Laws 1905, Section 797, providing that "personal property shall be construed to include" and naming 11 classes of property, does not exempt from taxation personal property not included within any of the classes named. *State v McPhail*, 124 M 398, 145 NW 108.

Coal bridges used in handling coal on docks are taxable under the provisions of section 273.13, Class 3. But by listing its bridges under Class 4 for a series of years, the owner did not estop itself from subsequently properly classifying the property. *State v Clarkson*, 188 M 106, 246 NW 538.

This action was brought under the declaratory judgments act to determine the validity and construction of section 273.51. It was held that where a statute has been judicially construed, and the administrative officers charged with its enforcement for equalization therein over a long period of time, such construction becomes a part of its import and meaning as measured thereby. If a statute is manifestly inconsistent with a prior statute covering the same subject, it repeals it in whole or pro tanto without any repealing clause. *Bemis v Wallace*, 197 M 216, 266 NW 690.

## 273.50 LISTS MAY BE DESTROYED.

HISTORY. 1901 c. 149; R.L. 1905 s. 837; G.S. 1913 s. 2014; G.S. 1923 s. 2020; M.S. 1927 s. 2020.

## 273.51 LISTINGS AND STATEMENTS BY CORPORATIONS, COMPANIES, AND ASSOCIATIONS; EXCEPTIONS.

HISTORY. R.S. 1851 c. 12 s. 12; P.S. 1858 c. 9 s. 12; 1860 c. 1 s. 16; G.S. 1866 c. 11 s. 16; 1878 c. 1 s. 22; G.S. 1878 c. 11 s. 22; 1881 c. 10 s. 2; 1885 c. 78; G.S. 1894 s. 1530; R.L. 1905 s. 838; G.S. 1913 s. 2015; G.S. 1923 s. 2021; M.S. 1927 s. 2021.

The assessor may add in his assessment, and embrace in his return, personal property omitted by the taxpayer from the list or statement required by General Statutes 1878, Chapter 11. *Thompson v Tinkcom*, 15 M 295 (226).

Sections 273.49 and 273.51 are to be construed together, and the varied list required by section 273.51 is in addition to that required in section 273.49. The method of taxing those corporations other than those under the gross earnings law, is to assess all their tangible property, real and personal, the same as the like property of other persons, and list and assess their capital stock at its actual value less the value of the tangible property specifically listed and assessed. *State v Duluth Street Ry.* 76 M 96, 78 NW 1032.

Laws 1891, Chapter 8, as amended by Laws 1901, Chapter 180, provides for the taxation of the tangible and intangible property of telegraph companies situated within this state as a system, and not merely for the taxation of items of tangible property only. The law is constitutional. *State v Western Union*, 96 M 13, 104 NW 567.

The capital stock of corporations listed under this section, is not taxable as such where the value of its real property or of its personal property, or the aggre-

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gate value of both, exceeds the market value of the capital stock. *State v St. Paul Trust*, 76 M 23, 79 NW 543.

The fact that the officers of the corporation delivered the list and statement to the assessor without its being verified, does not invalidate the statement. The corporation cannot question the validity of the statement, or introduce new evidence to show that there was a large indebtedness that might offset the amount of the tax. These statements made to the assessor are filed with the county auditor and made a part of the public records. *State v Northern Trust*, 73 M 70, 75 NW 754.

The statement return by corporations is not conclusive on the assessor. *Modifying Thompson v Tinkcom*, 15 M 295 (226). *City v St. Paul Trust*, 76 M 423, 79 NW 543.

Mortgages held by mutual building associations are subject to taxation, the stock of the association not having been taxed. *State v Redwood Falls*, 45 M 154, 47 NW 540; *State v Pioneer Savings*, 63 M 80, 65 NW 138; *State v St. Paul Trust*, 76 M 423, 79 NW 543.

A foreign railway company paying a tax on its gross earnings, is not taxable under this section. *State v N. P. Ry. Co.* 95 M 43, 103 NW 731.

In order that a tax on property should conform to the statute requiring its assessment at its full value in money, the revenue system of the state contemplates an original assessment by the assessor, its correction by the auditor, and its equalization by various boards; and while the law must aim at equality in taxation, proximation in the actual result of its practical operation is all that can be had. *State v Cudahy*, 103 N 419, 115 NW 645, 1039.

Franchises are subject to taxation. *State v N. S. Power*, 189 M 26, 248 NW 288.

If a statute is manifestly inconsistent with a prior statute covering the same subject, it repeals it in whom or pro tanto without any repealing clause, in the absence of an expressed intention to the contrary. This section has been modified by, or impliedly repealed by, the mortgage registration tax, moneys and credits tax, and income tax. *Bemis v Wallace*, 197 M 216, 266 NW 690.

The decisions regarding the taxation of memberships in unincorporated boards of trade, or chambers of commerce, prior to the enactment of sections 285.01 to 285.14, do not omit the taxation of corporate shares held by a resident in a domestic corporation, the major part of whose property is assessed and taxed in this state. *Holmes v Borgen*, 200 M 97, 273 NW 623.

Laws 1933, Chapter 405, Section 32(c), requires the imposition of the tax prescribed by that chapter on the combined net taxable income of affiliated or related corporations where 90 per cent or more of their voting stock is controlled by the same interests. The word "may" is mandatory. If the imposition of a penalty is left to the uncontrolled discretion of the commission and their act resulted in discrimination, it would be a violation of our constitutional uniformity clauses. The commission cannot, at its discretion, impose a penalty without a legislative distinction of the conditions which must exist before such penalty is assessed. *State v Oliver Iron Mfg. Co.* 207 M 630, 292 NW 407.

The \$2,000 exemption in the moneys and credits tax does not violate the equal protection clause of the 14th Amendment of the national constitution. 1938 OAG 104, July 6, 1937 (421b).

Comparative tax burden. 23 MLR 513.

## 273.52 PRIVATE BANKERS, BROKERS, AND BANKS WITHOUT STOCK.

HISTORY. 1878 c. 1 s. 23; G.S. 1878 c. 11 s. 23; 1881 c. 10 s. 3; G.S. 1894 s. 1531; R.L. 1905 s. 839; G.S. 1913 s. 2016; G.S. 1923 s. 2022; M.S. 1927 s. 2022.

Construction of our tax laws must be such as will avoid duplicate taxation, unless a contrary interpretation is compelled by some expressed provision or necessary implication of the statute. *Board v Citizens National*, 23 M 280.

The tax upon the surplus of a savings bank is a property tax and not a tax upon the franchise. *State v Farmers & Mechanics*, 114 M 95, 130 NW 445, 851.

The difference between federal savings and loan associations and state credit unions constitute reasonable ground for making a distinction between them in

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classification for tax purposes. Credit unions are taxed in a manner similar to savings banks. *State v Federal Savings & Loan*, 218 M 229, 15 NW(2d) 568.

### **273.53 ASSESSMENT OF BANK AND MORTGAGE LOAN COMPANY STOCKS; PLACE OF; LISTS AND STATEMENTS; BASIS OF VALUATION; PERCENTAGE OF VALUATION.**

**HISTORY.** 1925 c. 304 s. 1; M.S. 1927 s. 2026-1.

Laws 1923, Chapter 315, Laws 1935, Chapter 131, and Special Laws 1937, Chapter 65, relate to compromises authorized for certain years. Defendant owns all or a majority of the stock in numerous state banks in other states and has control and management of them, together with numerous national banks. Its business as a unit is located in and managed from Minnesota. The defendant's bank stocks have a business situs here and may be taxed locally. *State v First Bank Stock Corp.* 197 M 544, 267 NW 519, 269 NW 37.

The First Bank Stock Corporation is a holding Company, operating a system of "chain banks", some of which are national banks. The qualified immunity of national banks over state banks does not follow dividends on their shares through the First Bank Stock Corporation. The corporation is a "non-conductor" of immunity. Dividends paid by it to residents of this state are not immune from the state income tax. *Irvine v Spaeth*, 210 M 489, 299 NW 204.

The appointment of a conservator under provisions of the federal bank conservation act does not destroy a bank's corporate entity, especially where as in the instant case, reorganization resulted and the bank continued under its original charter. *County v First National*, 199 M 29, 270 NW 908.

A state statute, levying a tax upon all bank stock, is not unlawfully discriminatory against a state bank because the operation of the law is invalid as applied to national banks. Whether this section violates the federal law is a question of fact to be determined each year in accordance with varying rates of taxation. *Cherokee v Wallace*, 202 M 582, 279 NW 410.

State tax on dividends of holding company where the corporate income is immune from taxes. 26 MLR 407.

Deductions for leasehold interests under certain circumstances is allowable under this section. 1934 OAG 829, Sept. 7, 1933 (412a-25).

The stock and assets in local agricultural credit corporations is subject to taxation and should be listed by the assessor. 1938 OAG 400, July 15, 1937 (92b-1).

The formula is used for the purpose of arriving at a true and full value of the stock, and the statute should not be too strictly construed or too rigidly applied. OAG June 16, 1938 (421c-3).

### **273.54 RECORDS OF STOCKHOLDERS.**

**HISTORY.** 1925 c. 304 s. 2; M.S. 1927 s. 2026-2.

### **273.55 DEDUCTION OF TAXES BEFORE DECLARING DIVIDEND.**

**HISTORY.** 1925 c. 304 s. 3; M.S. 1927 s. 2026-3.

### **273.56 ASSESSMENT OF INVESTMENT COMPANY SHARES.**

**HISTORY.** Ex. 1937 c. 5 s. 1; M. Supp. s. 2026-5.

A reserve for retirement of outstanding certificates of investment companies should not be added to capital in determining the value of shares of stock, unless the reserve is in fact either surplus or undivided profits. OAG Nov. 4, 1937 (92b-8).

The moneys and credits of a federal savings and loan association are taxable under sections 285.01 and 285.02, and not under section 273.56. OAG March 7, 1939 (614i).

### **273.57 TAXATION BANK STOCK.**

**HISTORY.** 1878 c. 1 s. 24; G.S. 1878 c. 11 s. 24; G.S. 1894 s. 1532; 1905 c. 60 s. 1; R.L. 1905 s. 840; G.S. 1913 s. 2018; G.S. 1923 s. 2027; M.S. 1927 s. 2027.

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NOTE: This section appears to be superseded by section 273.53.

The state cannot tax a national bank upon its capital, but may tax shareholders upon their stock in the bank, and may require the bank to apply any earnings distributable to its shareholders in payment of such taxes. *State v Security National*, 139 M 162, 165 NW 1067; *State v Security National*, 143 M 408, 173 NW 885.

The amount of capital funds of a state bank legally invested in real estate may be deducted from the amount of the capital funds, and the remainder shall be taken as a basis for determining the taxability value of the capital funds of the bank. *Re State Bank of Windom*, 160 M 320, 200 NW 89.

## 273.58 SECURING OF TAX.

HISTORY. 1878 c. 1 s. 26; G.S. 1878 c. 11 s. 26; G.S. 1894 s. 1534; 1905 c. 60 s. 1; R.L. 1905 s. 842; G.S. 1913 s. 2021; G.S. 1923 s. 2028; M.S. 1927 s. 2028.

NOTE: This section appears to be superseded by section 273.55.

## 273.59 BANKS; LIST OF STOCKHOLDERS.

HISTORY. 1878 c. 1 s. 25; G.S. 1878 c. 11 s. 25; G.S. 1894 s. 1533; R.L. 1905 s. 841; G.S. 1913 s. 2019; G.S. 1923 s. 2029; M.S. 1927 s. 2029.

NOTE: This section appears to be superseded by section 273.54.

NOTE: See annotations under section 273.57.

## 273.60 ASSESSMENT OF SHARES OF JOINT STOCK LAND BANKS; AMOUNT.

HISTORY. 1925 c. 358 s. 1; M.S. 1927 s. 2029-1.

## 273.61 PLACE OF ASSESSMENT; LISTS AND STATEMENTS; BASIS OF VALUATION.

HISTORY. 1925 c. 358 s. 2; M.S. 1927 s. 2029-2.

## 273.62 LISTS OF STOCKHOLDERS.

HISTORY. 1925 c. 358 s. 3; M.S. 1927 s. 2029-3.

## 273.63 DEDUCTION OF TAX BEFORE DECLARING DIVIDEND.

HISTORY. 1925 c. 358 s. 4; M.S. 1927 s. 2029-4.

## 273.64 APPORTIONMENT OF TAXES.

HISTORY. 1925 c. 358 s. 5; M.S. 1927 s. 2029-5.

The First Bank Stock Corporation and the N. W. Bancorporation, are not banks or mortgage loan companies within the statutes providing method for taxation of banks. OAG Aug. 29, 1930.

## 273.65 FAILURE TO LIST; EXAMINATION UNDER OATH; DUTIES OF ASSESSOR.

HISTORY. 1860 c. 1 s. 18; G.S. 1866 c. 11 s. 27; 1878 c. 1 s. 17; G.S. 1878 c. 11 s. 17; G.S. 1894 s. 1525; R.L. 1905 s. 843; G.S. 1913 s. 2022; G.S. 1923 s. 2030; M.S. 1927 s. 2030.

## 273.66 OWNER ABSENT OR SICK.

HISTORY. 1860 c. 1 s. 19; G.S. 1866 c. 11 s. 28; 1878 c. 1 s. 35; G.S. 1878 c. 11 s. 35; G.S. 1894 s. 1543; R.L. 1905 s. 844; G.S. 1913 s. 2023; G.S. 1923 s. 2031; M.S. 1927 s. 2031.

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### 273.67 PROCEDURE WHEN OWNER DOES NOT LIST OR IS NOT SWORN.

HISTORY. G.S. 1866 c. 11 s. 29; 1878 c. 1 s. 36; G.S. 1878 c. 11 s. 36; G.S. 1894 s. 1544; R.L. 1905 s. 845; G.S. 1913 s. 2024; G.S. 1923 s. 2032; M.S. 1927 s. 2032.

### 273.68 FAILURE TO OBTAIN LIST.

HISTORY. 1878 c. 1 s. 38; G.S. 1878 c. 11 s. 38; G.S. 1894 s. 1546; R.L. 1905 s. 846; G.S. 1913 s. 2025; G.S. 1923 s. 2033; M.S. 1927 s. 2033.

In listing property, the assessor must describe it with reasonable certainty; and sections 273.65 to 273.68 embrace all cases of refusal, neglect or omission, fraudulent or otherwise. *Thompson v Tinkcom*, 15 M 295 (226).

Interest or dividends in common are for purposes of taxation presumed to be equal. *State v Rand*, 39 M 502, 40 NW 835.

It is not necessary that the assessor call on the owner and request that he furnish a list as a condition precedent to the preparation and filing by the assessor. *State v Deering*, 56 M 24, 57 NW 313.