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271.07 BOARD OF TAX APPEALS

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The appeal by the village of Tonka Bay from an order made by the commissioner of taxation, acting as the board of equalization, increasing by 50 percent the real estate valuations reported by the village for 1952 must be set aside and dismissed because the board of tax appeals is without jurisdiction in such proceedings. June 22, 1953. MBTA 515.

271.07 STENOGRAPHIC REPORT; TRANSCRIPT

Upon appeal to the board of tax appeals the decision of the commissioner of taxation is prima facie valid and his decision must be affirmed if the taxpayer does not appear. If the taxpayer does appear the case is to be tried de novo. *Stronge & Lightner Co. v Commissioner of Taxation*, 228 M 182, 36 NW(2d) 800.

271.10 REVIEW BY SUPREME COURT

That the taxpayer, formerly domiciled in Minnesota, had made business, social, political, and religious associations and affiliations in Florida, and severed similar relations in Minnesota, was consistent with the intent to make Florida his permanent home so as to relieve himself of liability for Minnesota income tax, and the retention of certain business connections in Minnesota, though entitled to consideration, did not conclusively establish an absence of intent to change domicile. *Miller's Estate v Commissioner of Taxation*, M, 59 NW(2d) 925.

The function of the supreme court in reviewing a decision of the board of tax appeals involving questions of fact, is to determine whether there is sufficient evidence to support the decision. "Domicile" means bodily presence in a place, coupled with an attempt to make such place one's home. If the necessary intention to change one's domicile is present, the motive purpose in making the change is unimportant. Intention to abandon a former dwelling place as a home is important criterion in determining the change of domicile. *Miller's Estate v Commissioner of Taxation*, M, 59 NW(2d) 925.

GENERAL PROPERTY TAXES

CHAPTER 272

TAXATION, GENERAL PROVISIONS

272.01 PROPERTY SUBJECT TO TAXATION

HISTORY. 1849 c 10; RS 1851 c 12 s 1; PS 1858 c 9 s 1; 1860 c 1 s 1; GS 1866 c 11 s 1; 1874 c 1 s 1; 1878 c 1 s 1; GS 1878 c 11 s 1; GS 1894 s 1508; RL 1905 s 794; MS 1927 s 1974.

State inheritance tax, homestead exemption, applicability of equitable conversion by contract. 33 MLR 209.

Taxation, apportionment between exempt and non-exempt uses of indivisible tract owned by a charitable institution. 34 MLR 70.

State tax on exports, continuity of transit. 34 MLR 137.

Statutes imposing taxes and providing means for the collection of same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be given a reasonable constriction, without bias or prejudice against either the taxpayer or the state, in order to carry out the intention of the legislature and further the important public interests which such statutes observe. *Governmental Bureau v Borgen*, 224 M 313, 28 NW(2d) 760.

The obligation to pay taxes is purely a statutory requirement and taxes may be levied, assessed and collected only in the method pointed out by expressed statute. *Teichert v County of Chippewa*, 225 M 406, 31 NW(2d) 11.

Since property cannot escape its just share of taxation by merely changing ownership, the change of ownership is immaterial where repairs on a drainage ditch were made before the property changed ownership, but the land was not assessed for such repairs until after the new landowner had acquired title. *Wilking v Chippewa County*, 225 M 425, 31 NW(2d) 437.

The demur to the complaint was properly sustained where allegations state that the dairy company, in possession of the personal property assessed, was a private corporation which had agreed to pay the taxes thereon and was not in a position to claim relief because of the ownership interest of the U. S. Government in the property in question. *Land O'Lakes v Sebek*, 225 M 540, 31 NW(2d) 660.

Except such as the law exempts from, all properties are presumed to be taxable and freedom from taxation for a charitable purpose is founded upon a charitable use and not on a basis of whether a property right or interest is interwoven with other rights or interests which enjoy exemption so that liability to taxation does not depend upon ease or difficulty of segregating taxable interest from those that are not taxable. *Christian Business Committee v State*, 228 M 549, 38 NW(2d) 803.

A state may constitutionally impose a nondiscriminatory tax upon the interest of a mortgagor in land, the legal title to which is held by the federal government as mortgagee; so long as the rights of the federal government remain unaffected and the fact that the property is owned by a private person and used by him in performing services for the federal government does not render it immune from nondiscriminatory state ad valorem taxes. A dairy, which as mortgagor used personally upon which the federal government held a mortgage, to serve the federal government, was not immune upon federal grounds for a personal property tax levied upon the dairy by the state in personam. *Land O'Lakes Dairy v Wadena County*, 229 M 263, 39 NW(2d) 164.

The fee of land vested in the United States of America is not subject to taxation by the state unless the United States has consented to such taxation; but the leasehold estate of the lessee in the proposed lease is subject to taxation by the state as real property. OAG Jan. 19, 1953 (414-A-2).

Where the Grant county historical society came into possession under a will of certain real estate used for agricultural purposes, the real estate or the proceeds therefrom served no governmental purpose and is not exempt from taxation. OAG Dec. 21, 1948 (414-A-11).

Soil conservation districts are a governmental subdivision of the state and a public body corporate and politic and lands owned by districts are exempt from taxation. OAG Jan. 20, 1950 (414-C-3).

Farm machinery temporarily outside the state is taxable in Minnesota. OAG Feb. 13, 1947 (421-A-17).

272.02 PROPERTY EXEMPT FROM TAXATION

HISTORY. RS 1851 c 12 s 4; PS 1858 c 9 s 4; 1860 c 1 s 3; 1861 c 1 s 3; GS 1866 c 11 s 3; 1874 c 1 s 5; 1878 c 1 s 5; GS 1878 c 11 s 5; 1881 c 138; 1887 c 80; 1887 c 126; GS 1878 Vol 2 (1888 Supp) c 11 s 5a; GS 1878 Vol 2 (1888 Supp) c 34 s 183g; GS 1894 s 1512, 1513, 2946; 1897 c 118 s 98, 99; 1899 c 216; 1903 c 276, 296; RL 1905 s 795; 1911 c 242 s 1; 1913 c 259 s 1; 1925 c 171 s 1; MS 1927 s 1975, 1976; 1935 c 385; Ex1936 c 66; 1943 c 41 s 1; 1945 c 44 s 1; 1951 c 639 s 1.

Exemption of property used and owned by religious organizations. 31 MLR 753.

Taxation of a charitable institution; apportionment between exempt and non-exempt uses of indivisible tract. 34 MLR 70.

Where a private corporation in possession of personal property under a lease from the federal government had agreed in the contract to pay taxes on such prop-

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erty, the corporation is estopped from claiming relief from personal property taxes on the ground that the personal property was exempt from taxation as property of the federal government. *Land O'Lakes v Village of Sebekia*, 225 M 540, 31 NW(2d) 660.

An exemption from taxation is a privilege of such high order and so rarely granted that it can be established or extended only by, and according to the reasonable and natural import of, clear and explicit language and not by implication or presumption. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

He who seeks tax exemption has the burden of proof. In order for an institution to qualify for tax exemption there must be concurrence of ownership of the property by an institution of the type prescribed by the Constitution and a use of the property for the purpose for which such institution was organized. A Christian laymen's organization whose general purpose was to promote moral and educational welfare of youth by bringing them under religious influence, and which was the equitable owner of real estate under an executory contract for deed, was an institution of purely public charity and had the requisite ownership of the realty for tax exemption. *Christian Businessmen's Committee v State*, 228 M 549, 38 NW(2d) 803.

A private educational institution does not automatically fall within the provisions of Minnesota Constitution, Article IX, Section 1, merely by designating itself a vocational institute, a college, a seminary of learning, or other like term. To justify a finding that it is exempt, the evidence must establish that it offers courses which may be readily assimilated into those of a publicly supported elementary school, high school, college, seminary of learning, or university. *State v NW Vocational Institute*, 232 M 377, 45 NW(2d) 653.

To qualify as a "seminary of learning" an institution must offer some kind of a general educational program which, though it need not be as broad as that offered by the public educational system, and may feature particular subjects to be directed toward preparation for particular vocations, offers enough of a variety of academic subjects to qualify as a reasonable substitute for the usual program or course pursued by a student at the comparative level of the public system. Merely showing that limited courses offered by a private institution are also offered at public institutions is not sufficient. *Graphic Arts Educational Foundation v State*, M, 59 NW(2d) 841.

In actions to have improved realty declared exempt from real estate taxes on the ground that a seminary of learning was operated thereon, the finding that such school did not offer any substantial part of the branches of learning and educational training which are furnished by the various publicly supported schools, was sustained by the evidence. *Graphic Arts Educational Foundation v State*, M, 59 NW(2d) 841.

Cities may not exempt new residential construction from taxation. *Opinion of Justices, Mass.*, 85 NE(2d) 222.

Where property was forfeited for the nonpayment of taxes and an action was brought to quiet title if the plat referred to was not a valid plat, the forfeiture proceedings are invalid. If the plat was a valid one then the forfeiture is valid if the requirements of the statutes relating to forfeiture are fully complied with. If the forfeiture proceedings are invalid the property may again be placed upon the tax rolls as omitted property provided that more than six years has elapsed. *OAG May 8, 1953 (18-D)*.

Land allotted to mixed-blood Indian and conveyed to a third party and by him conveyed to Indian wards of the United States subject to certain conditions is taxable and forfeitable. *OAG May 12, 1948 (240-Q)*.

When the auditor makes out the real property assessment book, if he finds land not heretofore on the tax rolls, he must add the description of such land to his list in such manner as is usual when state trust fund lands are conveyed for the first time. *OAG Sept. 5, 1947 (357)*.

A physician employed by the Minnesota division of public institutions at the Fergus Falls state hospital for the insane, receiving his living quarters and sub-

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sistence from the state as a portion of his compensation, is a householder and to the extent to which he owns personal property he is entitled to all statutory personal property exemptions. OAG Feb. 19, 1948 (414-A-9).

Where in July 1945 the city entered into a contract to purchase certain realty on which to build a municipal hospital and took a warranty deed, any tax assessed against the property in January 1946 is void. OAG March 12, 1947 (414-A-11).

Where a city acquires real estate by gift conditioned upon applying the revenue derived from the property to the support of recreational facilities for children, and leases the property to private parties for a consideration, it is not exempt from ad valorem assessment, even though all the revenue therefrom goes directly for public purposes. OAG Sept. 3, 1947 (414-A-11).

Where a citizen conveyed to the city of Redwood Falls certain real estate within the city as a gift to the city "for the purpose of a public park and community building" and further gave the city certain cash with which to maintain the building, and further deeded to the city an 80-acre farm outside of the city, the income from which was to be used for care and upkeep of the park, the 80-acre farm is exempt for ad valorem assessment. OAG May 28, 1948 (414-A-11).

A municipally owned and operated airport is authorized to lease to private parties, for agricultural purposes, portions of the tract constituting the airport, without depriving the airport of exemption for general property taxation. OAG March 2, 1948 (414-A-11).

Where five lots were purchased by city for the purpose of building thereon a city hall, during the delay in building thereon the three lots that are vacant would be entitled to be exempt from taxation. The two lots on which there are houses which are rented and bring in a revenue may be placed upon the assessment rolls. OAG Oct. 5, 1949 (414-A-11).

Privately owned real estate upon which government owned quonset housing units are located is subject to ad valorem assessment. Being privately owned, it is not public property even though used exclusively for a public purpose. Generally, buildings become part of the realty on which they are located; but where an emergency exists and to meet that emergency the government erects, operates and rents to servicemen, without profit, the quonset housing unit, and buildings may be considered government owned personal property and exempt from ad valorem assessment. OAG April 11, 1950 (414-A-11).

Where a municipality buys property for the purpose of erecting a building thereon at some future date, the land is not tax exempt until the commencement of construction. OAG March 15, 1948 (469-A-12).

The soil conservation district constitutes a governmental subdivision of the state. It is a public body corporate and politic. Any lands acquired by it are exempt from taxation. OAG Jan. 20, 1950 (414-C-3).

In order for an institution to qualify for tax exemption under the Minnesota Constitution, Article IX, Section 1 and Section 272.02, there must be a concurrence of ownership of the property by an institution of the type prescribed by the constitution and the use of the property for the purpose for which such institution was organized. The organization must proceed with the unreasonable delay to adopt the property to the authorized use, otherwise there is no exemption. OAG April 25, 1950 (414-D-6).

The Oblate Fathers own realty on Magnuson Island, in Lake of the Woods county, being the site where Fort St. Charles was situated. A chapel had been set up within the fort. In 1736, 21 Frenchmen were massacred and the remains were buried on the site now owned by the Oblate Fathers. The land is subject to ad valorem taxation because although the property is owned by the church, it is not at present used for church purposes. It is not exempt as a cemetery because it has not been laid out as such in the manner prescribed by statute. OAG May 26, 1950 (414-D-6).

A light and power plant and the light and power lines in a village are not subject to the ad valorem assessment where the principal purpose of the plant in to

serve the village and its inhabitants, even though the surplus power is sold to individuals. OAG Oct. 8, 1947 (414-D-7).

Where a building is owned by a charitable or other tax exempt institution, and when a substantial part thereof is directly, actually and exclusively occupied by the institution for the purpose for which it was organized, and another substantial portion thereof is primarily used for revenue by rental, the building with the grounds thereof is pro rata exempt from taxation and pro rata taxable according to its separate uses. It should be assessed and taxed on that portion of its proper assessable value allocated to the taxable use. OAG Oct. 4, 1949 (414-D-10).

A 15-acre tract owned by an American Legion Post which permits the public to use it as a playground is not entitled to exemption from taxation as the tract is not owned by the public. OAG April 4, 1951 (414-D-11).

A parsonage owned by a church and used as a dwelling place by the pastor is exempt from taxation and it retains its exemption status where the pastor is a single man and where the dwelling is rented to a couple with whom the pastor resides. The rent due from the couple is credited to the pastor as part of his living expense. OAG Sept. 19, 1947 (414-D-12).

A church parsonage rented out by the pastor to third persons is not entitled to a tax exemption. OAG March 14, 1952 (414-D-12).

A county auditor is directed to deduct the \$100 exemption from the total valuation of the property as equalized by the commissioner of taxation and extend the levy of taxes upon the remainder only. The fact that class 3a, class 3d and class 2 property are assessed at different percentages is not material. The personal property exemption provided for in section 272.08 is applicable to any personal property which the taxpayer may own and is not limited to household goods described in section 273.13, subdivision 3. OAG Feb. 17, 1948 (421-B-5).

A lake cottage occupied by members of a family or even the entire family for from 1 to 6 months each year is not a "household" as that word is defined in the Minnesota Statutes. The owner of such lake cottage maintains his permanent place of abode elsewhere. Section 272.02 relates to an exemption limited to property in one taxing district and consequently the personal property of an occupant of a lake cottage, in a taxing district other than his usual place of abode, is not exempt as household goods. OAG May 7, 1948 (421-B-5).

Sealed grain constitutes personal property, subject to ad valorem assessment on May 1 of each year. It is the personal property of the farmer until it is delivered to an authorized warehouse at the direction of a federal agency. OAG Aug. 2, 1949 (421-C).

Where the chassis of a school bus is privately owned and the body is furnished by the school district, the entire bus is subject to taxation. OAG Oct. 4, 1949 (632-E-12).

272.03 DEFINITIONS

HISTORY. RS 1851 c 12 s 2, 3; PS 1858 c 9 s 2, 3; 1861 c 1 s 2; 1866 c 11 s 2, 3; 1874 c 1 s 2; 1878 c 1 s 2, 3, 4, 10, 11, 20, 21; GS 1878 c 11 s 2, 3, 4, 10, 11, 20, 21; GS 1894 s 1509-1511, 1518, 1519, 1528, 1529; Ex1902 c 2 s 73; RL 1905 s 796-799; 1917 c 130 s 1; 1917 c 298 s 2; MS 1927 s 1977, 1979-1981; 1939 c 127; 1947 c 325 s 1.

Tax valuation of iron ore. 34 MLR 389.

State inheritance tax, homestead exemption, applicability of equitable conversion by contract. 33 MLR 209.

Nothing in section 272.03 justifies the inference that a property right or interest, whether it be divided or undivided, is not taxable because such realty is otherwise exempt. Christian Businessmen's Committee, 228 M 549, 38 NW(2d) 803.

A state may constitutionally impose a nondiscriminatory tax upon the interest of a mortgagor in land, the legal title to which is held by the federal government

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as mortgagee, so long as the rights of the federal government remain unaffected and the fact that the property is owned by a private person and used by him in performing services for the federal government does not render it immune from non-discriminatory state ad valorem taxes. A dairy, which as mortgagor used personalty upon which the federal government held a mortgage, to serve the federal government, was not immune upon federal grounds for a personal property tax levied upon the dairy by the state in personam. *Land O'Lakes Dairy v Wadena County*, 229 M 263, 39 NW(2d) 164.

Where the witness testified as to fair market value of property as of the date of the assessment; correctly defined market value as contemplated by section 272.03, subdivision 9; gave consideration to all factors which might affect such valuation; and took into consideration the price which the taxpayer paid for property 2 years prior to the assessment, such evidence was sufficient to sustain the trial courts finding of valuation. Examination of the record fails to disclose that the taxpayer's property was unfairly or unequally assessed in comparison with other assessments in the locality. *Schleiff v County of Freeborn*, 231 M 389, 43 NW(2d) 265.

The state inheritance tax unlike the federal estate tax is imposed upon the privilege of receiving the property rather than the privilege of transferring. Where no standardized market for the particular kind and quantity of property being valued is shown to exist, its "full and true value" for inheritance tax purposes is not to be determined on the basis of market value, but is the fair value determined by reference to all relevant facts in evidence. The price at which 100 shares of corporate stock were sold on the New York Curb on the date of decedent's death, though not controlling, should be given some weight in determining the full and true value of a large block of corporate stock for inheritance tax purposes. The appellate court will not overthrow the finding of the trial court as to the value of property for inheritance tax purposes unless such finding is manifestly against the weight of evidence. *State v Wagner*, 233 M 241, 46 NW(2d) 676.

In the assessment for taxation of a retail stock of liquors, in determining the full and true value, there can be no deduction for state and federal excise taxes paid thereon. OAG Sept. 7, 1948 (218-K).

A dwelling house located in a railroad right-of-way located in a village is not entitled to be classified as a homestead, the building being personal property. OAG April 23, 1947 (232-D).

Hangars erected by the Northwest Airlines, Inc., on property leased from the Metropolitan Airports Commission constitute real property. OAG Sept. 5, 1952 (234).

In placing land for the first time on the tax roll the auditor in making out the real property assessment book should add the description in the same manner as if the lands had been state trust fund lands converted for the first time. OAG Sept. 5, 1947 (357).

Since grain bins are owned by the Commodity Credit Corporation, a declared instrumentality of the federal government, in view of the United States Supreme Court decision in the Mesta Machine Company case, the value of such bins cannot be included in the assessment of real estate on which they are located. OAG Nov. 2, 1951 (414-A-2).

Where a dwelling house formerly used as a parsonage was sold to a private individual to be removed from the lot before May 1st, the lot retained to be used as a part of the church grounds is exempt from taxation and the dwelling house is assessable as personal property. OAG July 22, 1948 (414-D-6).

Where a church maintains a bowling alley in its parochial school, the question as to what taxes, if any, are to be paid is a question of fact to be determined along the lines of *Christian Businessmen's Committee v State*, 228 M 549. If the bowling alleys constitute personal property rather than real property, and the personal property is not being devoted exclusively to church use, it necessarily follows that there must be an ad valorem personal property assessment. OAG Feb. 9, 1951 (414-D-6).

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A light and power plant and the light and power lines in a village are not subject to ad valorem assessment where the principal purpose of the plant is to serve the village and its inhabitants, even though the surplus power is sold to individuals. OAG Oct. 8, 1947 (414-D-7).

If the sale of light and power by the city of Redwood Falls to the village of North Redwood and its inhabitants is a sale of surplus electricity only, and is incidental to the maintenance of the plant for the use of the city of Redwood Falls for the purpose of furnishing itself and its inhabitants with electricity, the light and power lines located in North Redwood are not subject to an ad valorem assessment. OAG Oct. 8, 1947 (414-D-7).

Where a copartnership operated a lime and rock crushing business at a quarry located at a town outside of a village but had its office in the village, the personal property pertaining to the business should be assessed in the town rather than the village. OAG Oct. 2, 1948 (421-A-17).

Section 272.03 lays down the general rule of situs of personal property for ad valorem assessment purposes but to this general rule there are several exceptions. Section 273.29 provides that the personal property pertaining to the business of a merchant or a manufacturer shall be listed in the taxing district where the manufacturer's business is carried on. The business of washing sand and separating sand, gravel, and rock is a manufacturing business within the purpose of section 273.29 and 272.03. A mill where the tow is taken from flax and straw probably comes under the head of a manufacturing plant. OAG Apr. 27, 1953 (421-A-17).

One in the military service of the United States who has not acquired a residence or domicile in this state apart from his military service and who may still claim a residence in another state may claim exemption of his personal property from taxation. OAG Oct. 27, 1950 (421-B-1).

If a housing emergency exists in a city and a veterans housing project is located on land owned by the municipality, the land and the buildings located thereon being municipally-owned and rented with little or no profit, the land and buildings serve a public purpose and are exempt from ad valorem assessment and taxation. OAG July 5, 1951 (430).

Where 20 acres of farm land within the city of Austin previously existing as farm land was in the spring of 1948 platted and the 66 lots of the plat were accepted by the city council on April 16, 1948, but the plat was not filed for record in the office of the register of deeds until after May 1, 1948, the county auditor in making the real property assessment book was limited to using the same metes and bounds description of the 20-acre tract as had been in use in prior years. Under section 273.11 this does not mean that the assessor must value the tract as farm land. Under section 272.03 the full and true value is the usual selling price at the place where the property is at the time of the assessment; but the price which could be obtained is therefor at private sale and not at forced or auction sale. OAG June 2, 1948 (474-J-2).

272.031 ABBREVIATIONS

In a copy of a notice of expiration of time for redemption the section and range numbers are placed under the appropriate headings only in the case of the first section, and ditto marks are placed under the section and range headings in case of all other descriptions without repetition of the section and range numbers. Ditto marks are understood to mean "the same as above." The use of ditto marks did not render the forfeiture in question void unless it is void for failure to comply with the provisions of section 272.031. The failure to comply with section 272.031 did not render the forfeiture void unless that failure to comply is a jurisdictional defect. If the certificate of forfeiture was filed in 1945 in the office of the register of deeds pursuant to section 281.23, subdivision 8, there was no jurisdictional defect. OAG May 8, 1950 (423-C).

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

This section recognizes the feasibility of assessing for taxation fractional and undivided interests in realty, without providing special statutory machinery therefor. *Christian Businessmen v State*, 228 M 549, 38 NW(2d) 803.

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Fractional and undivided interests in real property may be assessed even though no statute prescribes a method. *Christian Committee v State*, 228 M 549, 38 NW(2d) 803.

Mineral interests when severed from the land must be separately taxed and forfeited. OAG Sept. 13, 1951 (311-L).

272.07 TAXES MAY BE CANCELED FOR SCHOOL DISTRICTS

A deed conveying real estate to a county may be recorded without the payment of taxes. OAG Sept. 30, 1952 (373-B-17-D).

Where a county has a judgment for delinquent personal property taxes against the property of the brewing company against which property and other real estate taxes are delinquent, the county must satisfy its delinquent personal property judgment out of personal property if possible, and if after sequestering and selling the personal property there is still a balance due on the personal property judgment a levy may be made upon the land; but there can be no merger of the personal property judgment with the real property judgment. The purchaser at the execution sale on the personal property judgment buys subject to the real estate tax judgment lien. OAG June 9, 1953 (474).

272.08 INTEREST ON UNPAID TAXES

A county auditor is directed to deduct the \$100 exemption from the total valuation of the property as equalized by the commissioner of taxation and extend the levy of taxes upon the remainder only. The fact that class 3a, class 3d and class 2 property are assessed at different percentages is not material. The personal property exemption provided for in section 272.08 is applicable to any personal property which the taxpayer may own and is not limited to household goods described in section 273.13, subdivision 3. OAG Feb. 17, 1948 (421-B-5).

272.10 RIGHT TO ASSESS AND COLLECT; LIMITATION

Although many of the repairs to the ditch were made more than six years prior to the levy of assessments for the same, section 272.10 applies and the general statute of limitation is no bar to the right to levy and collect such assessments. *Oleson v County of Chippewa*, 225 M 412, 31 NW(2d) 432.

Although many of the repairs to a drainage ditch were made in the six years prior to the levy assessments for the cost, section 272.10 applies and the general statute of limitations is no bar to the right to levy and collect such assessments. *Willing v Chippewa*, 225 M 425, 31 NW(2d) 437.

The statute of limitations, section 541.01, does not bar the collection of drainage assessments through the tax machinery set up for that purpose. OAG March 10, 1948 (901-F).

Section 272.10 applies to the collection of drainage assessments, section 541.01 not being a bar. OAG March 10, 1948 (605-A-13).

272.12 CONVEYANCE; TAXES PAID BEFORE RECORDING

HISTORY. 1860 c 2 s 17; 1862 c 9 s 1; 1865 c 63 s 1; GS 1866 c 11 s 41; 1878 c 1 s 106; GS 1878 c 11 s 106; 1887 c 263; GS 1894 s 1624; Ex1902 c 2 s 70; RL 1905 s 985; 1913 c 371 s 1; 1927 c 92; MS 1927 s 2211; 1939 c 215; 1939 c 236; M Supp s 2211-1; 1943 c 475 s 1; 1951 c 204 s 1.

When a deed of an unsurveyed island is presented to the county auditor it is his duty to collect the taxes thereon and certify as to the payment of the taxes and list the property for assessment even though title to the island may be in the government or possibly the island be appurtenant to an adjacent lake shore lot. OAG Sept. 5, 1947 (357-D).

Depending in certain cases on the nature of the assignment and the language employed, it is a general rule that real estate taxes must be paid before an assignment by vendor to vendee may be recorded. OAG March 16, 1948 (373-B-9-E).

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The original contract for deed is not entitled to record as a part of cancellation proceedings without the payment of taxes. OAG March 30, 1950 (373-B-9-E).

The replatting of that part of a village included in the original plat need not be certified by the auditor with respect to taxes. OAG March 21, 1952 (373-B-15).

A registration tax must be paid on a mortgage prior to the recording of the mortgage but the payment of taxes on the real estate described therein is not necessary prior to the recording thereof. OAG June 6, 1950 (373-B-16).

A deed conveying an easement in gross to a pipeline company may not be recorded until the current and delinquent taxes are paid on the property on which the easement is vested. OAG Dec. 29, 1949 (373-B-17-C).

A quitclaim deed and assignment of a sheriff's certificate of foreclosure is in legal effect an equitable mortgage and may be recorded without the payment of the real estate tax on the property; but, being an equitable mortgage, the instrument is subject to the payment of a mortgage registry tax, as prescribed under section 287.05. OAG June 25, 1953 (373-B-17-D).

An unacknowledged lease for not more than three years may be recorded in the office of the register of deeds without the prepayment of taxes. OAG Sept. 9, 1952 (373-B-17-E).

The bank paid the taxes as agent for the former owner. The bank's principal, the former owner, had complete knowledge of the fact that he had conveyed the land. This knowledge of the principal is imputed to his agent. If the former owner failed to inform his agent that it should no longer pay these taxes, such failure cannot create a responsibility of the county treasurer or the county auditor which requires the repayment of these taxes voluntarily paid by the bank for the former owner. OAG Aug. 29, 1951 (424-A-9).

272.13 TREASURER'S CERTIFICATE

Land having been sold for taxes, the county treasurer properly certified on the deed that the property was not listed for current taxes; and the property later having been assessed as omitted property, the county treasurer properly refused to certify on the deed from the grantee on the tax deed to a third person that current taxes had been paid. OAG April 23, 1948 (505-H).

272.14 TRANSFER OF UNDIVIDED INTEREST

Section 272.14 indicates that an undivided fractional share of a parcel may be taxed separately. *Christian Businessmen's Committee v State*, 228 M 549, 38 NW(2d) 803.

272.161 DETERMINATION OF VALUE OF SPECIFIC PART OF LAND

HISTORY. 1949 c 619 s 1.

272.18 MORTGAGES, LISTING

HISTORY. 1905 c 61 s 1, 2; 1913 c 220 s 1; MS 1927 s 2217, 2218.

A contract for deed, as defined by section 507.01 is a conveyance of an interest in real estate and it can not be recorded without the payment of the taxes. OAG Feb. 20, 1950 (373-B-9-E).

272.19 PLATTING OF IRREGULAR TRACTS

HISTORY. 1878 c 1 s 108; GS 1878 c 11 s 108; GS 1894 s 1626; Ex1902 c 2 s 72; RL 1905 s 991; 1911 c 32 s 1; MS 1927 s 2219; 1935 c 31; 1947 c 494 s 1.

An auditor's plat when made according to law is properly used by reference in making a legal description of land. OAG May 26, 1948 (18-D).

Laws 1947, Chapter 494, authorizing the county auditor to plat irregular tracts of real estate does not authorize the auditor to designate streets, alleys, or to show a street dedicated by common law usage; but the existence of the auditor's plats does not foreclose the making of a plat by the county board or by other persons under the provisions of MSA, Chapter 505, in which may be shown dedication of streets, alleys, and public grounds. OAG May 2, 1949 (18-D).

In view of the fact that the symbolic references by which the real estate is described in the descriptions submitted are familiar to surveyors only and other persons dealing with the preparation of road maps, it follows that the land is not described with sufficient certainty to enable a man of ordinary intelligence but not skilled as a surveyor to identify the land described with reasonable certainty. The land is not described with sufficient definiteness to enable the auditor to use the description for the purpose of listing the property for assessments, taxation, delinquent real estate tax proceedings, and forfeiture. OAG Dec. 27, 1951 (474).

A village may not amend a zoning ordinance so as to require a platting of unplatted lands within the village as a prerequisite to the sale or lease thereof. OAG March 24, 1952 (477-B-34).

The county is without authority to make an original survey and plat of a village unless the property within the village can be surveyed and platted as an auditor's plat pursuant to section 272.19. OAG Nov. 13, 1950 (484-E-6).

272.191 IRREGULAR TRACTS OF LAND; CODE SYSTEM OF DESCRIBING HISTORY. 1951 c 638 s 1.

272.192 RECORDS HISTORY. 1951 c 638 s 2.

272.193 NUMBERING TRACTS HISTORY. 1951 c 638 s 3.

272.194 NOTICES HISTORY. 1951 c 638 s 4.

272.195 LEGAL DESCRIPTION HISTORY. 1951 c 638 s 5.

272.196 CERTIFIED COPIES, FILING HISTORY. 1951 c 638 s 6.

When any parcel of land is coded under the county code system, the county auditor must make a certified copy thereof and cause the same to be recorded in the office of the register of deeds. The fee of the register of deeds for such filing should be paid by the county. OAG Aug. 18, 1953 (373-B-15).

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

The state may assess taxes on the entire tract of land even though the federal government holds a mortgage thereon for security purposes only. Land O'Lakes v Wadena County, 229 M 263, 39 NW(2d) 164.

272.21 RAILROAD LANDS; SALE

HISTORY. 1887 c 128 s 1, 4; GS 1878 Vol 2 (1888 Supp) c 11 s 118a, 118d; GS 1894 s 1644, 1647; RL 1905 s 993; MS 1927 s 2221.

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272.22 TAXATION, GENERAL PROVISIONS

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272.22 WHEN STOCK REPRESENTS LANDS

HISTORY. 1887 c 128 s 2; GS 1878 Vol 2 (1888 Supp) c 11 s 118b; GS 1894 s 1645; RL 1905 s 994; MS 1927 s 2222.

272.23 TAXABILITY IN LITIGATION

Litigants in appearing before an administrative agency must take notice that the rules adopted by such agency have the force and effect of law. *Senske v Fairmont Canning Co.*, 232 M 350, 45 NW(2d) 640.

272.31 LIEN OF REAL ESTATE TAXES

Taxes on real estate do not constitute a personal obligation of the land owner, and one voluntarily paying taxes on the land owned by another cannot recover from the owner the amount so paid, and where the state sought to deduct from verdict in favor of the property owner certain tax payments made by the University of Minnesota, the trial court was not in error in finding against the state. *State v Barrett & Zimmerman*, 228 M 96, 36 NW(2d) 590.

Taxes assessed upon real property are a perpetual lien thereon until paid. The taxes assessed upon personal property are a lien upon the personal property of the person assessed from and after the time the taxes are received by the county treasurer. This applies to the lien of the bond issue placed by a school district before it became a part of the consolidated district. OAG Nov. 23, 1949 (166-C-5).

Where lands are condemned for county purposes the lien for real estate taxes accrues from and including May 1 in the year in which they are levied. When an award was made for damages sustained as a result of widening a highway, the county was properly made a party to the condemnation proceedings and the county treasurer should not endorse the check to the fee owner of the property until delinquent taxes constituting a lien on the property are paid. OAG April 28, 1949 (229-A-11).

Where a county has a judgment for delinquent personal property taxes against the property of the brewing company against which property and other real estate taxes are delinquent, the county must satisfy its delinquent personal property judgment out of personal property if possible, and if after sequestering and selling the personal property there is still a balance due on the personal property judgment a levy may be made upon the land; but there can be no merger of the personal property judgment with the real property judgment. The purchaser at the execution sale on the personal property judgment buys subject to the real estate tax judgment lien. OAG June 9, 1953 (474).

The owner of real estate whose property was assessed on May 1 sold the property in September to a telephone company, which pays a gross earnings tax in lieu of the property tax. As the property was assessed and the tax laid before the transfer, said tax must be paid. OAG Oct. 28, 1952 (474-D-1).

A lien for real estate taxes attaches on May 1 in the year in which they are assessed. OAG Jan. 14, 1953 (817-F).

272.32 ASSESSMENTS FOR LOCAL IMPROVEMENTS IN CITIES

The property of an Authority, under the Housing and Redevelopment Act, is exempt from all special assessments levied by the city. OAG Jan. 23, 1951 (408-C).

272.33 ASSESSMENTS FOR LOCAL IMPROVEMENTS IN CITIES OF FIRST CLASS

HISTORY. 1905 c 200 s 1; 1913 c 202 s 1; MS 1927 s 2194.

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

No structure may be removed from any tract of land until all the taxes assessed against such tract and due and payable shall have been fully paid and discharged.

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TAXATION, GENERAL PROVISIONS 272.50

Whether or not a frame barn and frame chicken coop are "structures" within the meaning of this statute, is a question of fact. An old age assistance lien is extinguished upon forfeiture of the property for delinquent taxes. OAG Sept. 21, 1951 (412-A-24).

A dwelling house situated on a tract of land assessed as of May 1, 1948, was properly included in an assessment of the tract although the tract was thereafter sold and the dwelling was removed from the tract by the vendor in June or July, 1948. OAG Jan. 11, 1951 (412-A-24).

272.39 STRUCTURES, TIMBER, OR MINERALS MAY BE SEIZED

HISTORY. Ex1902 c 2 s 79; RL 1905 s 978; MS 1927 s 2204; 1931 c 333 s 2; 1941 c 397 s 2.

272.43 REAL ESTATE TAX JUDGMENT, NO LIMITATION

Where a county has a judgment for delinquent personal property taxes against the property of the brewing company against which property and other real estate taxes are delinquent, the county must satisfy its delinquent personal property judgment out of personal property if possible. If, after sequestering and selling the personal property, there is still a balance due on the personal property judgment a levy may be made upon the land, but there can be no merger of the personal property judgment with the real property judgment. The purchaser at the execution sale on the personal property judgment buys subject to the real estate tax judgment lien. OAG June 9, 1953 (474).

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

The bank paid the taxes as agent for the former owner. The bank's principal, the former owner, had complete knowledge of the fact that he had conveyed the land. This knowledge of the principal is imputed to his agent. If the former owner failed to inform his agent that it should no longer pay these taxes, such failure cannot create a responsibility of the county treasurer or the county auditor which requires the repayment of these taxes voluntarily paid by the bank for the former owner. OAG Aug. 29, 1951 (424-A-9).

272.48 TAXES DUE UNITED STATES, LIENS

HISTORY. 1923 c 314 s 1; Mason's 1927 s 2393; 1953 c 488 s 1.

Federal tax lien, when superior to prior attachment lien. 35 MLR 580.

A register of deeds must accept for record a certificate of the collector of internal revenue of the existence of a federal tax lien, without an acknowledgement of its execution, unless the acknowledgment is required by federal law. OAG Aug. 15, 1951 (373-B-11).

272.49 Repealed, 1951 c 127 s 1.

272.50 LIEN OF TAXES ON PERSONAL PROPERTY; NATURE, EXTENT, PRIORITY; DISTRAINT; NOTICE; PAYMENT BY OTHER LIENHOLDERS; FORECLOSURE

A real estate tax is a tax in rem against realty without personal liability therefor on the part of the owner, and a judgment recovered in proceedings for the enforcement of a real estate tax is one in rem against the realty without personal liability against the owner. A personal property tax is not a tax upon personalty but is a tax in personam against the owner because of his ownership of the personalty and is measured by the value of the personalty. When personal property taxes are not a tax upon property, and the tax is imposed on the owner of the personalty in personam, personal property taxes are, under the statute, a lien upon the personalty because of which the owner is taxed. *Land of Lakes Dairy v Wadena County*, 229 M 263, 39 NW(2d) 164.

Execution may issue upon personal property tax judgment and the sheriff may seize the personal property assessed even though in the hands of a person other than the owner at the time of assessment and sell the same upon execution sale to satisfy the tax judgment. OAG July 29, 1948 (421-A-8).

Personal property taxes upon property transferred by the taxpayer after assessment may be enforced. If there is no tax judgment, one should be obtained. A tax judgment is a perpetual lien on property owned by the taxpayer on May 1 of the assessment year. The taxing officer may proceed in the district court to impress the lien on such property. OAG May 11, 1949 (421-A-8).

The words "prior to its assessment or taxation as personal property" as used in Laws 1953; Chapter 315, requires a dealer or distributor of motor vehicles to register the same prior to May 1 if he is not to be subject to assessment or taxation of such vehicle as personal property. OAG May 11, 1953 (421-C-25).

272.51 DISTRESS FOR TAXES DUE ON PROPERTY ABOUT TO BE SOLD OR MOVED; PAYMENT OF TAXES AND RELEASE FROM LIEN; NOTICE

When personal property has been assessed and is subject to the payment of the tax is sold or about to be removed from the county, distress proceedings may be initiated to compel the payment of the tax as determined by the county auditor. A lien attaches on May 1 of the year in which assessed. OAG July 29, 1952 (421-A-9).

272.54 Renumbered 281.321.

272.55 Renumbered 281.322.

272.56 Renumbered 281.323.

272.57 Renumbered 281.324.

272.58 ENFORCEMENT OF TAXES RECIPROCALLY IN COURTS OF THIS AND OTHER STATES

HISTORY. 1949 c 145 s 1-3.

272.59 TAX REDUCTION; SWAMP OR MARSH LANDS RESERVED AS WILD LIFE PRESERVES

HISTORY. 1953 c 688 s 1.

CHAPTER 273**TAXES; LISTING, ASSESSMENT****273.01 LISTING AND ASSESSMENT, TIME**

Taxes are levied, assessed, and collected entirely by statutory process. In default of an enforceable statute, taxes are not recoverable. *Teichert v Chippewa County*, 225 M 406, 31 NW(2d) 11.

No statutory authority exists under which a county may expend funds to place a spastic child in an out-of-state school. OAG Nov. 15, 1951 (169-D).

Personal property acquired at an auction sale on May 1 is taxable against the purchaser. OAG April 29, 1952 (421-A-14).

Personal property presently owned by a resident of North Dakota and shipped from North Dakota to Minnesota, in transit on May 1, but delivered in Minnesota on