

MINNESOTA STATUTES 1953 ANNOTATIONS

276.13 COLLECTION, ACCOUNTING, DISTRIBUTION

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and on March 7, 1949, Lauderdale became a separate election and assessment district. On March 29, 1949, an election was held to determine whether the remaining territory in the township of Rose should be incorporated as the village of Falcon Heights. No election has been held on the question of separation of election and assessing districts. All town taxes previously levied upon property within the present village of Lauderdale and not yet collected must, when collected, be credited and paid to the village of Lauderdale. All town taxes previously levied upon property within the present village of Falcon Heights and not yet collected must, when collected, be credited and paid to the village of Falcon Heights. The duty of distribution begins when the money from the taxes is collected. When and as collected, the collecting officer must credit the town taxes previously levied to the village, and, when remittance is made, it must be made to the treasurer of the village. As to Falcon Heights, the incorporation of the village embraced all the remaining area of the town of Rose and the village of Falcon Heights succeeds to the town funds. The effect of the incorporation of the village of Falcon Heights was to terminate the function of the town government and the former officers of the town are without authority except to perform the necessary duties incident to the closing of the affairs of their respective offices. The town treasurer is not entitled to receive the county auditor's warrant prescribed by section 276.10, nor is he now a treasurer of a municipal corporation within section 276.11. OAG May 13, 1949 (484-E-4).

276.13 DISTRIBUTION OF INTEREST, PENALTIES, AND COSTS

The commodity credit corporation is subject to the payment of penalties for delinquent taxes. OAG Oct. 13, 1951 (505-I).

276.15 ADDITIONAL APPROPRIATION BY STATE TO CERTAIN CITIES AND VILLAGES

HISTORY. Amended, 1949 c 647 s 1.

276.18 LIMITATION

HISTORY. Amended, 1949 c 647 s 2.

Whether or not a town can be bonded for the purpose of improving the roads is controlled by the limitation set forth in section 475.53, subdivision 2, wherein the indebtedness undertaken cannot exceed 40 percent of the assessed valuation. OAG June 20, 1952 (43-B-4).

CHAPTER 277

DELINQUENT PERSONAL PROPERTY TAXES, DEFENSES

277.02 DELINQUENT LIST FILED IN COURT; ANSWER; TRIAL

As to real estate taxes, where relief is available under Laws 1935, Chapter 300, establishing a method whereby taxpayers can have their rights determined with reference to such taxes without incurring a penalty and without running the risk of having the payment considered voluntary, proceedings under the Declaratory Judgments Act (M.S.A., Chapter 555) are not permitted. As to personal property taxes illegally levied, where the remedy provided by section 277.02 is unsatisfactory because payment before delinquency may be considered voluntary, while payment after delinquency may involve penalties, and where no method of obtaining relief comparable to that in the case of real estate taxes has been provided by the legislature, it is held, under the circumstances, that at the present time relief from illegally levied personal property taxes may be had under the Declaratory Judgments Act.

Demurrer to complaint is sustained where allegations showed that dairy company, which was in possession of the personal property assessed, was a private

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corporation which had agreed to pay the taxes thereon and therefore was not in a position to claim relief because of the interest of the United States government (which was not a party) in the property in question. *Land O'Lakes Dairy v Village of Sebeka*, 225 M 540, 31 NW(2d) 660; *Land O'Lakes Co. v Hintzen*, 225 M 535, 31 NW(2d) 474.

It was not a denial of due process for the trial court to refuse to open a default judgment against the partners for the delinquent personal property tax and it was not a denial of justice in refusing to permit them to set up ownership of the property by a corporation which succeeded to the property of the partnership where the judgment was obtained on the last half of the tax payment and the first half having been paid by the corporation claimed to have been the agent of the partners. *State v Castner*, 226 M 422, 33 NW(2d) 35.

Defendants' motion to open a personal property tax judgment and for leave to answer, setting up that the property involved belonged not to the defendants as partners, but to a corporation which succeeded to the title of the partnership, was addressed to the discretion of the trial court; and in view of a hearing provided for in section 274.01 for the benefit of an aggrieved taxpayer, there was no lack of due process as to the defendants and no abuse of discretion. *State v Castner*, 226 M 422, 33 NW(2d) 35.

Where personal property is omitted from the assessment roll the procedure for taxing such omitted property is outlined in section 273.02; but when the county auditor had delivered the faulty tax list for 1948 to the county treasurer he relinquished all control, and neither the auditor nor the treasurer could then correct the assessment roll as to the omitted property. He must wait until the following year to make the correction. Section 277.02 is not applicable. OAG Nov. 21, 1948 (554-I).

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).

277.03 DISTRESS AND SALE

Section 277.03 authorizes the sheriff upon receipt of a warrant showing taxes and penalties embraced in the delinquent personal property tax list to distrain sufficient goods and chattels belonging to the person charged with such taxes. The property on which the tax is laid and which has been sold by the tax debtor cannot be collected from the purchaser. OAG May 10, 1948 (421-A-5).

277.10 CLERK'S FEES; EXECUTION

An exemption from taxation is a privilege of such high order and is 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.

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).

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).