

**CHAPTER 278****REAL ESTATE TAXES; OBJECTIONS, DEFENSES****278.01 DEFENSE OR OBJECTION TO TAX ON LAND; SERVICE AND FILING**

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 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 question. *Land O'Lakes Dairy v Village of Sebeka*, 225 M 540, 31 NW(2d) 660; *Land O'Lakes v Hintzen*, 225 M 535, 31 NW(2d) 474.

While income tax returns of taxpayer might properly have been admitted in evidence, nevertheless where witness offering them did not prepare them and testified that all information thereon came from original books and records of taxpayer kept by witness, which records were not submitted or offered in evidence; and where accountant preparing such income tax returns was not present to testify or be examined with reference to deductions for various expenses therein, held that trial court did not abuse its discretion in refusing to receive such return in evidence. *Schleiff v County of Freeborn*, 231 M 389, 43 NW(2d) 265.

The county auditor is without power to spread an assessment for ditch repairs against property when no ditch assessment had been levied by the county board. *Handevitd v Martin County*, 227 M 404, 36 NW(2d) 585.

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).

The owner, who voluntarily pays one year's taxes on a tract of real estate is not estopped from proceeding under the provisions of section 278.01 with reference to the next succeeding year's taxes. OAG Dec. 22, 1947 (474-G).

**278.03 PAYMENT OF PORTION OF TAX**

In a tax proceeding under section 278.03 the appearance of the parties in a motion for amended findings for a new trial did not operate as consent to the jurisdiction of the court. *Edelstein v Duluth Railway Co.*, 225 M 508, 31 NW(2d) 465.

In proceedings commenced under M.S.A., Chapter 278, the trial court lost jurisdiction of a matter where it appeared that although the petitioner paid 50 percent

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of the tax levied for the year involved prior to the filing of the petition, other conditions of the statute were not complied with before Nov. 1 next following the filing of the petition, and where it further appeared that the proceedings thereunder were not completed within the time limit provided by statute. *Land O'Lakes v Hintzen*, 225 M 535, 31 NW(2d) 474.

### 278.10 TO BE ENTERED IN JUDGMENT BOOK

HISTORY. Amended, 1947 c 163 s 1.

Sale of land after tax judgment. 33 MLR 53.

### 278.13 JUDGMENT TO BE FINAL

The county auditor is without power to spread an assessment for ditch repairs against property when no ditch assessment had been levied by the county board. *Handevitd v Martin County*, 227 M 404, 36 NW(2d) 585.

## CHAPTER 279

### DELINQUENT REAL ESTATE TAXES

NOTE: Excepted from rules of civil procedure insofar as inconsistent or in conflict therewith.

### 279.01 PENALTY AND INTEREST ON REAL ESTATE TAXES

HISTORY. GS 1866 c 11 s 117, 118; 1878 c 1 s 69; GS 1878 c 11 s 69; 1885 c 2 s 15; GS 1894 s 1578; Ex1902 c 2 s 1; RL 1905 s 903; 1923 c 324; 1925 c 155 s 1; MS 1927 s 2104; 1931 c 316 s 1; 1933 c 121 s 1.

If an owner pays no part of his real estate tax before June 1, he may pay the first one-half thereof at any time before Nov. 1, together with penalties which have accrued on that one-half of the tax, and the remaining one-half of the tax may be paid without penalty at any time prior to Nov. 1. OAG July 5, 1950 (505-I).

### 279.05 DELINQUENT LIST; FILING; EFFECT

HISTORY. 1878 c 1 s 70; GS 1878 c 11 s 70; 1885 c 2 s 16; GS 1894 s 1570; Ex-1902 c 2 s 3; RL 1905 s 905; MS 1927 s 2106.

### 279.06 COPY OF LIST AND NOTICE

HISTORY. 1878 c 1 s 71; GS 1878 c 11 s 71; 1881 c 10 s 11; 1885 c 2 s 17; GS 1894 s 1580; Ex1902 c 2 s 4; RL 1905 s 906; MS 1927 s 2107.

Where taxes were listed as being delinquent, but through error there had been no certification from the county auditor to the clerk of court and therefore delinquent taxes never received proper publication, the clerk in entering his judgment against the realty in 1952, should include interest computed to the date of the entry of the judgment on taxes for all years prior to 1950 that were delinquent. OAG March 6, 1952 (412-A-10).

The delinquent tax list as published must correctly state the year in which the taxes became delinquent. OAG March 3, 1949 (412-A-13).

### 279.07 PUBLICATION, BIDS

HISTORY. Amended, 1951 c 505 s 1.

The county is required to pay for publication of the delinquent tax list in accordance with sections 279.07 and 279.08, as amended by Laws 1951, Chapter 505, and