

MINNESOTA STATUTES 1953 ANNOTATIONS

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REGISTRY TAX, REAL ESTATE MORTGAGES 287.04

285.15 LIMITATIONS IN PROCEEDINGS FOR ASSESSMENT OF TAXES ON MONEY AND CREDITS

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. *Wilkling v Chippewa*, 225 M 425, 31 NW(2d) 437.

CHAPTER 287

REGISTRY TAX, REAL ESTATE MORTGAGES

287.01 DEFINITIONS

An assignment of rents from real estate wherein the amount involved is more than \$50,000, in the absence of a court decision, warrants the payment of the mortgage registration tax. Because of the seriousness to the mortgagee of a failure to pay the proper amount of the registration tax, it is safe to pay the tax then, if there is any doubt as to the necessity of payment, to bring an action to obtain a rebate. OAG May 5, 1953 (418-A-1).

Supplemental mortgage indentures, one which provided for reduction of interest and both of which provided for substitution of other securities for canceled bonds and increase of securities, did not subject the indentures to the imposition of a mortgage registration tax. OAG Sept. 29, 1950 (418-A-11).

A contract for deed in which a city is the vendor is exempt from the mortgage registry tax. OAG April 30, 1953 (418-B-5).

The mortgage registry tax is computed on the mortgage and on the extension agreement separately even though both are executed on the same date. OAG April 29, 1949 (418-B-13).

287.02 EXECUTORY CONTRACT FOR SALE OF LAND, WHEN A MORTGAGE

In a contract for a deed where the total purchase price is \$10,000, \$5,000 of which is payable six months after the date of the contract and the balance payable one year after the deed of the contract and where the contract provides that the vendee is entitled to possession only after making the first \$5,000 payment, the mortgage registration tax is due and payable on the entire \$10,000. OAG Oct. 18, 1951 (418-B-6).

287.04 MORTGAGES EXEMPTED

Where under a supplemental indenture it was proposed to issue \$5,000,000 as the principal amount of a series of bonds, and where it was proposed to use \$2,400 of the new issue to retire old bonds of an equal amount, the mortgage registry tax must be based upon the entire new issue of \$5,000,000. New bonds were not exchanged for old bonds. Funds from the new issue were used to retire part of the old bonds. There is a difference between exchanging old bonds for new and issuing the funds derived from the new in retiring certain old bonds. OAG Oct. 14, 1948 (418-A-11).

Where a corporation executes a mortgage designated as a second mortgage on its property for the amount of \$47,000 and resides therein, that \$2,500 of the amount received is to be used for refunding an existing \$2,500 mortgage and the balance to be used in improvements. The registration tax must be based upon the amount of \$4,700. OAG Dec. 5, 1949 (418-B-17).

Where on Jan. 1, 1948, an indenture of mortgage and first supplemental indenture maturing Jan. 1, 1978, were issued, and the mortgage registration tax de-

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terminated and paid; and this was followed on Jan. 1, 1948, by a second supplemental indenture maturing on July 1, 1948, whereon the tax was determined and paid; and on Jan. 1, 1950, a third supplemental indenture the bonds of which mature on Jan. 1, 1980, there must be a payment of the mortgage registration tax on the third supplemental indenture as well as on the other two because such third indenture secures an entirely new indebtedness and there is a period of time during which all three issues will be outstanding. OAG May 25, 1950 (418-B-17).

Where the mortgage registration tax was paid on a mortgage which secured two promissory notes at the time the mortgage was recorded, and subsequently a new mortgage was executed securing the same two promissory notes and an additional promissory note, the mortgage registration tax should be computed only on the additional promissory note. OAG Oct. 8, 1951 (415-B-17).

A mortgage to the United States of America is not subject to mortgage registration tax. OAG May 2, 1951 (418-A-12).

Where an old note was canceled and a new note bearing a new date was given and secured by a new mortgage, and the old mortgage was satisfied, the law requires that a mortgage registry tax be computed on the full amount of the new mortgage. OAG Nov. 25, 1946 (418-B-17); OAG Dec. 16, 1952 (418-B-17).

A railroad corporation on Nov. 1, 1949, had outstanding against its property two mortgages, each of which were security for bonds, and the aggregate amount was approximately \$59,000,000. In December it was determined to pay approximately \$4,000,000 on this indebtedness and to issue a new series of bonds in the amount of \$55,000,000, with which to refund the old bonds. Because of a disparity in redemption dates it is impossible to sell the new issue at once and the company decided to avoid the interest situation by negotiating a temporary bank loan pending the time when the new \$55,000,000 issue could be sold. The new issue could not be sold until April 1, 1950. The temporary issue was secured by a supplementary indenture and this also was secured. As to the first mortgage bonds in the amount of \$55,000,000, there must be paid on this the normal mortgage registration tax. If the railroad company does not record the supplemental indenture, the mortgage registration tax is avoided at this time, but it must be paid before the original mortgages can be satisfied of record because under section 287.10 it is provided that no satisfaction of a mortgage which is subject to a tax shall be recorded unless the tax has been paid. And since the first supplemental indenture is a part of the first mortgage and since that part of the mortgage is subject to a tax and a tax will not have been paid, it follows that the first mortgage dated as of Jan. 1, 1948, cannot be satisfied of record until the tax is paid. OAG Jan. 18, 1950 (418-B-20).

287.05 TAX ON RECORDATION OR REGISTRATION

HISTORY. 1907 c 328 s 2; 1913 c 163 s 1; 1917 c 73; 1921 c 445; MS 1927 s 2823; 1945 c 288 s 1; 1951 c 591 s 1.

NOTE: The registration tax on mortgages on real estate is a tax on the security and not on the land. It is a revenue measure. It is not a registration fee. The law was authorized by a constitutional amendment which was ratified Nov. 3, 1896. The constitutional provision was implemented by a legislative enactment in 1907.

An assignment of rents from real estate wherein the amount involved is in excess of \$50,000 in the absence of a court decision warrants the payment of the mortgage registration tax. Because of the seriousness to the mortgagee of the failure to pay the proper amount of the registration tax, it is safe to pay the tax then if there is any doubt as to the necessity of payment to bring an action to obtain a rebate. OAG May 5, 1953 (418-A-1).

A mortgage running to the administrator of veterans' affairs is not subject to mortgage registry tax where the mortgage money is advanced from federal funds. OAG Nov. 30, 1950 (418-A-14).

Where an extension agreement, extending the time within which a mortgage may be paid, is filed separate and subsequent to the time of the original filing, the mortgage registry tax must be paid. OAG July 10, 1953 (418-B-13).

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Where a village acquires real estate under a contract for a deed from a private party to be used for municipal purposes, the mortgage registry tax must be paid as a prerequisite to recording the contract. OAG May 19, 1952 (373-B-17-D).

A quit claim 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 the instrument being an equitable mortgage is subject to the payment of a mortgage registry tax as prescribed under the provisions of section 287.05. OAG June 25, 1953 (373-B-17-D).

A railroad corporation on Nov. 1, 1949, had outstanding against its property two mortgages, each of which were security for bonds, and the aggregate amount was approximately \$59,000,000. In December it was determined to pay approximately \$4,000,000 on this indebtedness and to issue a new series of bonds in the amount of \$55,000,000, with which to refund the old bonds. Because of a disparity in redemption dates it is impossible to sell the new issue at once and the company decided to avoid the interest situation by negotiating a temporary bank loan pending the time when the new \$55,000,000 issue could be sold. The new issue could not be sold until April 1, 1950. The temporary issue was secured by a supplementary indenture and this also was secured. As to the first mortgage bonds in the amount of \$55,000,000, there must be paid on this the normal mortgage registration tax. If the railroad company does not record the supplemental indenture, the mortgage registration tax is avoided at this time, but it must be paid before the original mortgages can be satisfied of record because under section 287.10 it is provided that no satisfaction of a mortgage which is subject to a tax shall be recorded unless the tax has been paid. And since the first supplemental indenture is a part of the first mortgage and since that part of the mortgage is subject to a tax and a tax will not have been paid, it follows that the first mortgage dated as of Jan. 1, 1948, cannot be satisfied of record until the tax is paid. OAG Jan. 18, 1950. (418-B-20).

Where a telephone company paying a gross earnings tax gave a mortgage to an insurance company, the mortgage registration tax must be paid. The tax is imposed upon the security and not upon the debt. If the mortgagor does not pay the tax, it must be paid by the mortgagee. OAG March 12, 1951 (418-B-21).

The registry tax must be paid upon an extension of a mortgage when not executed and recorded simultaneously with the mortgage. OAG June 14, 1951 (418-B-13).

A mortgage in which the reconstruction finance corporation is named mortgagee is not subject to the mortgage registry tax. OAG May 19, 1949 (418-C-1):

287.06 EXEMPTION FROM OTHER TAXES

When a mortgage is exempt from payment of the mortgage registration tax, any assignment or other instrument relating to such mortgage is entitled to record, may be received in evidence, and is of such validity as it would have been had no mortgage registration tax statute existed. OAG April 26, 1951 (418-A-1).

A mortgage taken in good faith by a person or corporation whose personal property is expressly exempted from taxation by law, is exempt from the mortgage registration tax. If the mortgage is one taken by a person or corporation whose personal property is not exempt by law, the mortgage so taken is subject to the mortgage registration tax. OAG Oct. 13, 1953 (418-A-14).

The instrument in question is an extension agreement where a gross earnings taxpayer owns the entire issue of bonds secured by the mortgage. The instrument is in effect an agreement for an extension of the 1903 mortgage or deed of trust. Such an extension agreement is an instrument evidencing a lien and is a mortgage within the meaning of section 287.05 and must therefore pay the mortgage registration tax. OAG April 24, 1950 (418-B-13).

287.08 TAX, HOW PAYABLE; RECEIPTS

Defendants are not entitled to a dismissal because of nonpayment of the registry tax where it appeared from the record that no specific objection was raised to

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the nonpayment of the tax until more than three months after the tax had been paid and after the court had made its findings and conclusions. *Burman v Burman*, 230 M 75, 40 NW(2d) 902.

Where a certificate of title shows an outstanding contract for a deed, the holder of an assignment of the contract when presenting the assignment for registration need not furnish evidence of payment of the mortgage tax on the contract which is on file and bears the endorsement of payment of tax. OAG Feb. 13, 1951 (373-B-9-E).

If a mortgage given by a railroad company to a trustee to secure a bond issue covers personal property of the railroad, it should be recorded with the secretary of state and in the office of register of deeds of each county through which the railroad runs and if the mortgage covers personal property only and does not cover real estate there is no tax to be paid under the provisions of section 287.05 and mortgage is entitled to record in the offices referred to without payment of any tax. OAG Dec. 5, 1949 (418-B-20).

287.09 MORTGAGE ON EXEMPT PROPERTY; PROPERTY NOT DIRECTLY TAXED; RECEIPT; APPORTIONMENT OF TAX

When the Reconstruction Finance Corporation is the mortgagee no registry tax need be paid. OAG May 19, 1949 (418-C-1).

287.10 PREPAYMENT OF TAX; EVIDENCE; NOTICE

A contract for the conveyance of real estate and timber stumpage upon which the mortgage registration tax has not been paid cannot, as to such real estate and stumpage, be canceled for default although the contract is alleged in the complaint and admitted in the answer. *Lof v Billington*, 226 M 283, 32 NW(2d) 311.

Where the certificate of title showed an outstanding contract for deed, the holder of an assignment of the contract, when presenting the assignment for registration, need not furnish evidence of payment of the mortgage tax on the contract which is on file and bears the endorsement showing the tax had been paid. OAG Feb. 13, 1951 (373-B-9-E).

A railroad corporation on Nov. 1, 1949, had outstanding against its property two mortgages, each of which were security for bonds, and the aggregate amount was approximately \$59,000,000. In December it was determined to pay approximately \$4,000,000 on this indebtedness and to issue a new series of bonds in the amount of \$55,000,000, with which to refund the old bonds. Because of a disparity in redemption dates it is impossible to sell the new issue at once and the company decided to avoid the interest situation by negotiating a temporary bank loan pending the time when the new \$55,000,000 issue could be sold. The new issue could not be sold until April 1, 1950. The temporary issue was secured by a supplementary indenture and this also was secured. As to the first mortgage bonds in the amount of \$55,000,000, there must be paid on this the normal mortgage registration tax. If the railroad company does not record the supplemental indenture, the mortgage registration tax is avoided at this time, but it must be paid before the original mortgages can be satisfied of record because under section 287.10 it is provided that no satisfaction of a mortgage which is subject to a tax shall be recorded unless the tax has been paid. And since the first supplemental indenture is a part of the first mortgage and since that part of the mortgage is subject to a tax and a tax will not have been paid, it follows that the first mortgage dated as of Jan. 1, 1948, cannot be satisfied of record until the tax is paid. OAG Jan. 18, 1950 (418-B-20).

287.11 MORTGAGES RECORDED OR REGISTERED PRIOR TO APPLICATION

HISTORY. RS 1851 c 12 s 3; PS 1858 c 9 s 3; 1860 c 1 s 6, 7, 35; 1861 c 1 s 4; 1862 c 6 s 1; GS 1866 s 6, 7, 50; 1878 c 1 s 29; GS 1878 c 11 s 29; GS 1894 c 1537; 1903 c 246; 1905 c 66; RL 1905 s 804; 1907 c 328 s 8; 1913 c 163 s 3; MS 1927 s 2329.