

MINNESOTA STATUTES 1953 ANNOTATIONS

819

EXCISE TAXES; GASOLINE, GASOLINE SUBSTITUTES 296.01

who erect buildings thereon, the building will be assessable as personal property to the lessee and the land ceases to be exempt from taxation and becomes subject to ad valorem tax. OAG May 10, 1949 (216-I).

Tracts of land not used by the railroad for railway purposes, granted to the company by territorial charter, and which have remained in the railroad's ownership and possession ever since the date of acquisition, should not be placed upon the tax rolls; but if tracts originally granted by the territorial charter were sold by the railroad and later reacquired, such land should be placed on the tax roll. OAG March 29, 1948 (414-D-13).

295.28 Unnecessary.

SLEEPING CAR COMPANIES

295.29 ANNUAL STATEMENT OF SLEEPING CAR COMPANIES; SIX PERCENT TAX ON GROSS EARNINGS

Taxing the franchise of a sleeping car company as property under section 295.29 precluded the imposition of a franchise tax on the company's franchise, in view of the provision of the gross earnings receipt tax which is imposed in lieu of all ad valorem taxes. Pullman Co. v Commissioner, 223 M 96, 25 NW(2d) 838.

TELEPHONE COMPANIES

295.32 GROSS EARNINGS TAX

A telegraph company which paid gross earnings taxes for the calendar years 1941, 1942, and 1943 was not liable for the franchise tax imposed by section 290.02, since the franchise tax imposed was an ad valorem property tax. Western Union v Spaeth, 232 M 128, 44 NW(2d) 440.

295.34 TELEPHONE COMPANIES GROSS EARNINGS TAX

HISTORY. 1897 c 314 s 1; RL 1905 s 1035; 1921 c 348 s 1; 1921 c 421 s 1; Mason's 1927 s 2286; Ex1937 c 7 s 1; Ex1937 c 10 s 1; 1945 c 239 s 1; 1949 c 542 s 1; 1951 c 316 s 1.

EXCISE TAXES

CHAPTER 296

GASOLINE, GASOLINE SUBSTITUTES

296.01 DEFINITIONS

HISTORY. 1925 c 297 s 1; Mason's 1927 s 2720-70, 3787-1; 1929 c 425 s 1; 1933 c 365 s 1; 1933 c 417 s 1; Ex1934 c 51 s 1; 1941 c 495 s 1; 1943 c 320 s 1-3; 1945 c 412 s 1, 2; 1947 c 412 s 1-4; 1949 c 143 s 1; 1951 c 87 s 1-4; 1953 c 41 s 1, 2.

Violation of statute as a tort. 32 MLR 107.

Violation of statute as negligence. 32 MLR 110.

Contributory negligence as a defense to violation of statute. 32 MLR 113.

MINNESOTA STATUTES 1953 ANNOTATIONS

296.02 EXCISE TAXES; GASOLINE, GASOLINE SUBSTITUTES

820

The excise tax on gasoline and liquid petroleum products was authorized in 1924 by an amendment to article IX, section 5, of the state constitution. The proceeds of the tax are distributed two-thirds to the trunk highway fund and one-third to the state road and bridge fund. The tax is collected through the distributors and is in lieu of all other taxes imposed on the business of dealing in gasoline, except ad valorem taxes. *Arneson v W. H. Barber Co.*, 210 M 42, 297 NW 335.

The imposition of a franchise tax on sleeping car companies which are subject to the gross receipts tax, is a violation of the rule against double taxation. *Pullman v Commissioner of Taxation*, 223 M 96, 25 NW(2d) 838.

Minnesota Constitution, Article IX, Section 5, does not forbid the imposition of an excise tax on gasoline consumed on municipally owned vehicles operated upon the public streets and highways for the purpose of construction, repair, or maintenance. *State ex rel v Spaeth*, 223 M 218, 25 NW(2d) 115.

An excise tax may be imposed upon gasoline consumed in municipally owned vehicles operated upon the public streets and highways for the purpose of constructing, repairing, or maintaining such streets and highways. The imposition of such tax does not offend against Minnesota Constitution, Article IX, Section 1, nor against the fourteenth amendment of the federal constitution. *State ex rel v Spaeth*, 223 M 218, 26 NW(2d) 115.

A motor tractor to which a shovel or scoop is attached and which is equipped with rubber tires, and is capable of driving at slow speeds over the highways is a "motor vehicle" within the meaning of New Hampshire Financial Responsibility Law and was therefor an "automobile" within a liability policy indorsement relating to the use of automobiles. *American Mutual Liability Insurance Co. v Chaput*, 95 NH 200, 60 A(2d) 118.

When a person buys gasoline for use in a "jeep" during the time the "jeep" is used in farm pursuits and not upon the public highways, he is buying gasoline "for any purpose other than use in motor vehicle," within the purview of section 296.18, subdivision 1. OAG May 9, 1949 (324-K).

296.02 GASOLINE, EXCISE TAX

HISTORY. 1875 c 86; 1876 c 90; 1877 c 71, 72; 1878 c 37; GS 1878 c 6 s 115-123; 1889 c 246; 1893 c 20; GS 1894 s 444-458; RL 1905 s 1724-1733; 1909 c 502; 1915 c 27; 1919 c 520; 1925 c 297 s 2; MS 1927 s 2720-71; 1929 c 310 c 1; 1937 c 376; 1937 c 383 s 1; 1939 c 350; 1941 c 162 s 1; 1945 c 412 s 3; 1949 c 678 s 1, 2; 1951 c 287 s 1.

296.025 GASOLINE SUBSTITUTES, EXCISE TAX

HISTORY. 1941 c 494; 1945 c 412 s 4; 1949 c 143 s 2; 1951 c 87 s 5; 1953 c 41 s 3.

296.03 Repealed, 1943 c 79 s 1.

296.04 INSPECTION OF PETROLEUM PRODUCTS

Minnesota Constitution, Article IX, Section 6, does not forbid the imposition of an excise tax on gasoline consumed in municipally owned vehicles operated upon public streets and highways for purpose of construction, repair or maintenance of such streets or highways; and the imposition of such tax upon gasoline consumed in vehicles so employed does not offend the uniformity clause of Constitution, Article IX, Section 1. *City of St. Paul v Commissioner*, 223 M 218, 26 NW(2d) 115.

296.05 SPECIFICATIONS

HISTORY. Amended, 1949 c 143 s 3.

Violation of statute as a tort. 32 MLR 107.

Violation of statute as negligence. 32 MLR 110.

Contributory negligence as a defense to violation of statute. 32 MLR 113.

MINNESOTA STATUTES 1953 ANNOTATIONS

821

EXCISE TAXES; GASOLINE, GASOLINE SUBSTITUTES 296.17

296.06 DISTRIBUTORS MUST BE LICENSED

HISTORY. 1941 c 495 s 4; 1943 c 320 s 6; 1945 c 154 s 1; 1947 c 412 s 5, 6; 1949 c 143 s 4, 5; 1953 c 41 s 4.

296.07 REGISTRATION CERTIFICATE

HISTORY. 1945 c 495 s 5; 1945 c 412 s 6; 1951 c 87 s 6; 1953 c 41 s 5.

296.08, 296.09 Repealed, 1947 c 412 s 14.

296.10 TRANSPORT PERMITS

HISTORY. Amended, 1951 c 87 s 7.

296.11 LICENSES, REVOCATION

HISTORY. Amended, 1949 c 143 s 6.

296.12 SPECIAL FUELS

HISTORY. Amended, 1949 c 143 s 7; 1951 c 87 s 8; 1953 c 41 s 6, 7.

A truck user of special use fuel has not kept records thereof, made a report thereon, or paid the tax as required by section 296.12, subdivision 4, as amended by Laws 1949, Chapter 143. He purchases and uses the fuel in four or more counties. The crime of using special use fuel without the proper permit may be prosecuted in any county where the fuel was used. Failure to make a report or pay the required tax must be prosecuted in the county where the law requires the act to be done, which in this case would be Ramsey county. The city attorneys of the city of St. Cloud and Litchfield might under the provisions of section 488.12 prosecute for the misdemeanors appearing in those cities; the city attorney in Minneapolis should prosecute, bringing the prosecution into municipal court; likewise, the city attorney of the city of St. Paul shall prosecute. There is no law requiring the county attorney to prosecute. OAG May 31, 1949 (324).

296.14 REPORTS TO COMMISSIONER

HISTORY. 1941 c 495 s 12; 1943 c 320 s 9, 10; 1945 c 412 s 9; 1947 c 412 s 7; 1953 c 41 s 8.

296.15 NONPAYMENT OF TAX

HISTORY. 1941 c 495 s 13; 1943 c 320 s 11; 1949 c 143 s 8; 1951 c 87 s 9; 1953 c 41 s 9.

296.16 USE IN MOTOR VEHICLES

HISTORY. 1941 c 495 s 14; 1945 c 412 s 10; 1949 c 143 s 9; 1951 c 87 s 10; 1953 c 41 s 10.

296.17 REPORTS OF GASOLINE ON HAND

HISTORY. Amended, 1949 c 143 s 10, 11, 12.

A city or village council may enact an ordinance which imposes a reasonable license fee for the operation of a gasoline filling station and usually the amount of such license fee should be limited to the cost of issuing the license and supervising those engaged in the business; but in the instant case where there was no showing that the business was of questionable nature or likely to become a public nuisance so as to necessitate extra expense to the municipality for police supervision, the village ordinance requiring an annual license fee of \$35 for the first pump and \$10 for each additional pump was unreasonable and invalid because at least part of the license fee was a disguised tax. State v Labo's Service, 232 M 175, 44 NW(2d) 823.

MINNESOTA STATUTES 1953 ANNOTATIONS

296.18 EXCISE TAXES; GASOLINE, GASOLINE SUBSTITUTES

822

Prior to July 1, 1949, large users purchasing gasoline paid the four-cent tax and placed it in storage. Under the provisions of section 296.17, subdivision 1, as amended by Laws 1949, Chapter 678, such firms must pay one cent additional tax on the remaining gasoline in storage on July 1, 1949. OAG Dec. 9, 1949 (324-G).

296.18 REIMBURSEMENT

HISTORY. Amended, 1951 c 87 s 11; 1951 c 287 s 2.

When a person buys gasoline for use in a "jeep" during the time the "jeep" is used in farm pursuits and not upon the public highways, he is buying gasoline "for any purpose other than use in motor vehicle," within the purview of section 296.18, subdivision 1. OAG May 9, 1949 (324-K).

The county or a private contractor is entitled to a gas tax refund for gasoline used in quarrying operations. OAG July 28, 1952 (324-K).

A refund is allowable on machinery used in quarrying operations which provide crushed rock for use on highways wherein it appears that none of the machinery so used is operated on the public highway. OAG July 28, 1952 (324-K).

296.19 CONSTRUCTION OF SECTIONS 296.01 TO 296.27

HISTORY. Amended, 1949 c 143 s 14.

296.20 GASOLINE TAXES IN LIEU OF OTHER TAXES

HISTORY. Amended, 1949 c 143 s 15.

A city or village council may enact an ordinance imposing a license fee for the operation of a gasoline filling station. The amount of such fees must be limited to the cost of issuing the license and of supervising those engaged in the business. It must not be extended so as to create attacks. *State v Labo's Direct Service*, 232 M 175, 44 NW(2d) 823.

296.21 RECORDS

HISTORY. Amended, 1949 c 143 s 16; 1951 c 87 s 12.

296.22 SAFETY REQUIREMENTS

HISTORY. Amended, 1947 c 412 s 8; 1949 c 147 s 17; 1951 c 87 s 15; 1953 c 41 s 11, 12.

Violation of statute as a tort. 32 MLR 107.

Violation of statute as negligence. 32 MLR 110.

Contributory negligence as a defense to violation of statute. 32 MLR 113.

In an action based on a statute of conduct, contributory negligence is available as a defense; and contributory negligence was available as a defense to cause of action based on claimed violation of statute with reference to sale and delivery of volatile oils allegedly resulting in an explosion which caused death of plaintiff's decedent. *Dart v Pure Oil Co.*, 223 M 526, 27 NW(2d) 555.

296.25 VIOLATIONS; PENALTIES

HISTORY. Amended, 1947 c 412 s 11; 1949 c 143 s 18; 1951 c 87 s 13.

A truck user of special use fuel has not kept records thereof, made a report thereon, or paid the tax as required by section 296.12, subdivision 4, as amended by Laws 1949, Chapter 143. He purchases and uses the fuel in four or more counties. The crime of using special use fuel without the proper permit may be prosecuted in any county where the fuel was used. Failure to make a report or pay the required tax must be prosecuted in the county where the law requires the act to be done, which in this case would be Ramsey county. The city attorneys of the city of St.

MINNESOTA STATUTES 1953 ANNOTATIONS

823

EXCISE TAXES; GASOLINE, GASOLINE SUBSTITUTES 296.37

Cloud and Litchfield might under the provisions of section 488.12 prosecute for the misdemeanors appearing in those cities; the city attorney in Minneapolis should prosecute, bringing the prosecution into municipal court; likewise, the city attorney of the city of St. Paul shall prosecute. There is no law requiring the county attorney to prosecute. OAG May 31, 1949 (324).

296.27 RULES

HISTORY. Amended, 1949 c 143 s 19; 1951 c 87 s 14.

296.29 Unnecessary.

296.30, 296.31 Repealed, 1953 c 41 s 13, 14.

296.33 FUNDS, ALLOTMENT, APPORTIONMENT

HISTORY. 1929 c 283 s 2; Mason's Supp s 2720-92b; 1941 c 160 s 1; 1945 c 168 s 1; 1947 c 173 s 1; 1949 c 168 s 1; 1949 c 674 s 1; 1953 c 511 s 1.

296.36 COUNTY AID ROADS, DESIGNATION

HISTORY. Amended, 1951 c 589 s 1.

In an action against a county and its county commissioners as individuals to recover for injuries sustained by reason of the claimed negligence of an employee in the maintenance of a county aid road, demurrers to the complaint were properly sustained. Counties are involuntary corporations, organized as political subdivisions of the state for governmental purposes, and not liable for the neglect of their officers or agents unless expressly made so by statute. In the maintenance of public highways, the duty of the county commissioners is a purely public one, owing to the state, and failure to perform such duty will not give rise to a cause of action in favor of an individual unless such duty be ministerial only. A public officer is not responsible for the tort of his subordinates or servants who are employed by him or under him in the discharge of his official duties. The rule of respondeat superior does not apply. *Hitchcock v Sherburne County*, 227 M 132, 34 NW (2d) 342.

Designation of county roads through towns is within the discretion of the county board, and a town road may be designated for gas tax aid without approval of the town board. OAG Jan. 31, 1952 (377-B-4) (126-D).

The county has the duty of improving and maintaining state aid and county aid roads. A village cannot be compelled to contribute to the cost thereof; but under the provisions of sections 429.30 and 429.31, the village may contribute to cost of state aid and county aid roads. OAG June 2, 1950 (377-B-8).

An appropriation by a town meeting for county aid road purposes may not be used for construction of town roads. OAG March 24, 1950 (380-B-4).

296.37 USE AND DISPOSITION OF GAS TAX

In an action against a county and its county commissioners as individuals to recover for injuries sustained by reason of the claimed negligence of an employee in the maintenance of a county aid road, demurrers to the complaint were properly sustained. Counties are involuntary corporations, organized as political subdivisions of the state for governmental purposes, and not liable for the neglect of their officers or agents unless expressly made so by statute. In the maintenance of public highways, the duty of the county commissioners is a purely public one, owing to the state, and failure to perform such duty will not give rise to a cause of action in favor of an individual unless such duty be ministerial only. A public officer is not responsible for the tort of his subordinates or servants who are employed by him or under him in the discharge of his official duties. The rule of respondeat superior does not apply. *Hitchcock v Sherburne County*, 227 M 132, 34 NW (2d) 342.

County warrants to mature in ten years, payable out of gas tax apportionment in certain counties, within the provisions of section 296.37, is not limited by section

MINNESOTA STATUTES 1953 ANNOTATIONS

296.38 EXCISE TAXES; GASOLINE, GASOLINE SUBSTITUTES

824

475.22. There is no statutory limit on the amount of warrants to be issued under the provisions of section 296.37. OAG Aug. 9, 1948 (107-A-13).

After 25 percent of the gas apportionment money has been used by the county as provided for in section 296.37, subdivision 2, and 50 percent expended as provided for in section 296.38, the balance may be used in the construction, improvement and maintenance of county aid roads within the county, including bridges, culverts and other structures appurtenant to such county aid roads. OAG Nov. 15, 1948 (107-B-16).

296.38 COUNTY BOARD MAY APPORTION FUNDS

After 25 percent of the gas apportionment money has been used by the county as provided for in section 296.37, subdivision 2, and 50 percent expended as provided for in section 296.38, the balance may be used in the construction, improvement, and maintenance of county aid roads within the county, including bridges, culverts and other structures appurtenant to such county aid roads. OAG Nov. 15, 1948 (107-B-16).

296.40 DISTRIBUTION OF GASOLINE TAX BY COUNTY BOARDS TO TOWNS

HISTORY. Amended, 1949 c 236 s 1.

A town road may be designated by the county board for gas tax aid without the approval of the town board. OAG Jan. 31, 1952 (377-B-4).

296.421 REVENUE PROVISIONS

HISTORY. Amended, 1949 c 117 s 1.

296.43-296.45 Repealed, 1949 c 143 s 22.

296.46 FARM TRACTOR FUELS EXEMPT FROM TAX

HISTORY. Amended, 1949 c 143 s 20.

296.48 VIOLATIONS; PENALTIES

HISTORY. 1939 c 114 s 6; 1941 c 116 s 6; 1947 c 412 s 12, 13; 1949 c 143 s 21.

CHAPTER 297

SALES TAXES

CIGARETTES AND DISTRIBUTORS

297.01 DEFINITIONS

HISTORY. 1947 c 619 s 1; 1953 c 652 s 1.

Fines imposed for criminal offenses against the cigarette tax law should be remitted to the county treasurer. OAG Aug. 20, 1948 (199-B-4).

In distribution to villages or other municipalities of the proceeds of the liquor tax, under the provisions of Laws 1947, Chapter 601, or the cigarette tax, under Laws 1947, Chapter 619, the auditor must base the distribution upon the last federal census and cannot take into account increases in population of the village arising from the annexation of new territory or otherwise. The 1940 census is the basis of apportionment. OAG March 8, 1948 (218-K) (830-C).