

CHAPTER 278

OBJECTIONS AND DEFENSES TO TAXES ON REAL ESTATE

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**278.01 DEFENSE OR OBJECTION TO TAX ON LAND; SERVICE AND FILING.** Any person having any estate, right, title, or interest in or lien upon any parcel of land, who claims that such property has been partially, unfairly, or unequally assessed, or that such parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied, may have the validity of his claim, defense, or objection determined by the district court of the county in which the tax is levied by serving copies of a petition for such determination upon the county auditor, county treasurer, and the county attorney and filing the same, with proof of such service, in the office of the clerk of the district court on or before the first day of June of the year in which such tax becomes payable.

[1935 c. 300 s. 1] (2126-1)

**278.02 PETITION MAY INCLUDE SEVERAL PARCELS.** Such petition need not be in any particular form, but shall clearly identify the land involved and shall set forth in concise language the claim, defense, or objection asserted. Several parcels of land in or upon which the petitioner has an estate, right, title, interest, or lien may be included in the same petition.

[1935 c. 300 s. 2] (2126-2)

**278.03 PAYMENT OF PORTION OF TAX.** Before filing such petition, and as a condition precedent thereto, the petitioner shall pay to the county treasurer at least 50 per cent of the tax levied for such year against the property involved, unless permission to file the petition without such payment is obtained as herein provided, which payment shall be endorsed by the county treasurer on the original petition before the same may be filed. Permission to file such petition without such payment may be obtained as herein provided. The petitioner, upon ten days' notice to the county attorney and to the county auditor, given at least ten days prior to the first day of June, may apply to the court for permission to file the petition without such payments; and, if it is made to appear—

- (1) That the proposed review is to be taken in good faith;
- (2) That there is probable cause to believe that the property may be held exempt from the tax levied or that the tax may be determined to be less than 50 per cent of the amount levied; and
- (3) That it would work a hardship upon petitioner to pay 50 per cent of such taxes—

The court may permit the petition to be filed without such payment, or may fix a lesser amount to be paid as a condition precedent to the right to file the same. Payment of the amount so fixed shall be endorsed on the order by the county treasurer.

If the court shall allow the filing of the petition without such payment or fix the amount to be paid, then the matter shall stand for trial without further payment. In all other cases, if the proceedings instituted by the filing of such petition have not been completed before November first, next following the filing of such petition, the petitioner shall pay 50 per cent of the remaining unpaid taxes for the current year or 50 per cent of the remaining unpaid taxes based upon the probable value of such property, if the value has been found by the court upon application as aforesaid. Failure to make payment of such additional amount shall operate automatically to dismiss the petition and all proceedings thereunder unless such pay-

ment is waived by an order of the court upon application as hereinafter provided. The petitioner, upon ten days' notice to the county attorney and to the county auditor, given at least ten days prior to November first, may apply to the court for an order waiving the requirement of such additional payment, upon the same grounds as set forth herein, for relief from the requirement to pay the original 50 per cent of such taxes, except that he must show that the tax may be determined to be less than 75 per cent of the amount levied. The county treasurer shall issue duplicate receipts for such additional payment, one of which shall be filed by the petitioner in such proceeding.

[1935 c. 300 s. 3; 1937 c. 483 s. 1] (2126-3)

**278.04 TREASURER MUST STAMP TAX LISTS.** Upon the filing of such petition, the county treasurer shall write or stamp opposite the description of such parcel on the tax list the notation, "Petition for review filed," and such parcel shall not be included in the delinquent tax list for such year.

[1935 c. 300 s. 4] (2126-4)

**278.05 TRIAL OF ISSUES.** Such petition, without any answer, return, or other pleading thereto, shall stand for trial at any general term in session when the same is filed; or, if the court be not then in session, at the next general or special term appointed to be held in the county; and, if no such term be appointed to be held within 30 days thereafter, the same shall be brought to trial at any general term appointed to be held within the judicial district upon ten days' notice. The attorney of the county in which these taxes are levied shall take charge of and prosecute such proceedings, but the county board may employ any other attorney to assist him. At the term at which such petition comes on for trial it shall take precedence of all other business before the court. The court shall without delay summarily hear and determine the claims, objections, or defenses made by the petition and shall direct judgment accordingly, and the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits.

Any time after the filing of the petition and before the trial of the issues raised thereby, when the defense or claim presented is that the property has been partially, unfairly, or unequally assessed, or that such parcel has been assessed at a valuation greater than its real or actual value, the attorney representing the state in the proceedings may serve on the petitioner, or his attorney, and file with the clerk of the district court, an offer to reduce the valuation of any tract or tracts to a valuation set forth in the offer. If, within ten days thereafter, the petitioner, or his attorney, shall give notice in writing to the county attorney that the offer is accepted, he may file same with proof of such notice, and thereupon the clerk shall enter judgment accordingly. Otherwise, the offer shall be deemed withdrawn and evidence thereof shall not be given; and, if a lower valuation than specified in the offer be not found by the court, no costs or disbursements shall be allowed to the petitioner, but the costs and disbursements of the state, including interest at six per cent on the tax based on the amount of such offer from and after the first day of November of the year such taxes are payable, shall be taxed in its favor and included in the judgment and when collected shall be credited to the county revenue fund, unless the taxes were paid in full before the first day of November of the year in which such taxes were payable, in which event interest shall not be taxable.

[1935 c. 300 s. 5; 1937 c. 483 s. 2] (2126-5)

**278.06 OTHER STATUTES TO APPLY.** Sections 279.18, 279.19, 279.21, 279.23, 279.24, and 279.25 shall apply in so far as they are applicable thereto, except as herein otherwise provided. References in those sections to "answers" shall be understood as referring to petitions, and references to the "delinquent list" or "list" as referring to the tax list filed with the county treasurer.

[1935 c. 300 s. 6] (2126-6)

**278.07 JUDGMENT; AMOUNT; COSTS.** Judgment shall be for the amount of the taxes for the year as the court shall determine the same, less the amount paid thereon, if any. If the tax is sustained in the full amount levied, costs and disbursements shall be taxed and allowed as in delinquent tax proceedings and shall be included in the judgment. If the tax so determined shall be less than the amount thereof as levied, the court may, in its discretion, award disbursements to the petitioner, which shall be taxed and allowed and be deducted from the amount of the taxes as determined. If there be no judgment for taxes, a judgment may be

entered determining the right of the parties and for the costs and disbursements as taxed and allowed.

[1935 c. 300 s. 7] (2126-7)

**278.08 PENALTIES AND INTEREST.** If the tax be sustained in full as levied, the judgment shall include any penalties or interest which have then accrued thereon for failure to pay the same, or any part thereof, at the time required by law. If the tax be reduced, no penalties and interest shall be included in the judgment because of the failure to pay such reduced tax prior to the entry thereof. The judgment shall be subject to such interest or penalties as would under the law attach to the tax embraced therein after the entry thereof.

[1935 c. 300 s. 8] (2126-8)

**278.09 CERTIFIED COPIES TO AUDITOR AND TREASURER.** Upon entry of judgment a certified copy thereof shall be delivered to the county auditor and to the county treasurer if the tax list be still in the treasurer's possession, who shall correct the tax list and assessment rolls in accordance with the judgment, writing or stamping opposite such parcel in the tax list a notation "judgment entered" and the date thereof.

[1935 c. 300 s. 9] (2126-9)

**278.10 TO BE ENTERED IN JUDGMENT BOOK.** If such judgment has not then been paid, the county auditor shall enter the same in the certified copy of the real estate tax judgment book received by him pursuant to section 279.23 for the year for which such taxes were levied, with the same effect as if judgment had been entered in the proceedings, adding thereto any interest or penalties that have accrued to the date of such entry, and in the event such judgment shall be entered subsequent to the publication of the notice of sale of the taxes on such delinquent list, the same shall be immediately advertised and sold.

[1935 c. 300 s. 10] (2126-10)

**278.11 MAY PAY FULL TAX.** Where a petition has been filed, as provided in this chapter, the taxes levied, or any balance thereof, may be paid without such payment waiving any of the claims, defenses, or objections set forth in such petition, and such proceeding shall continue as if such payment had not been made.

[1935 c. 300 s. 11] (2126-11)

**278.12 REFUNDS OF OVER-PAYMENT.** If upon final determination the petitioner has paid more than the amount so determined to be due, judgment shall be entered in favor of the petitioner for such excess, and upon filing a copy thereof with the county auditor he shall forthwith draw a warrant upon the county treasurer for the payment thereof; provided that, with the consent of the petitioner, the county auditor may, in lieu of drawing such warrant, issue to the petitioner a certificate stating the amount of such judgment, which amount may be used to apply upon any taxes due or to become due for the taxing district or districts whose taxes or assessments are reduced, or their successors in the event of a reorganization or reincorporation of any such taxing district. In the event the auditor shall issue a warrant for refund or certificates, he shall charge the amount thereof to the state and other taxing districts in proportion to the amount of their respective taxes included in the levy and deduct the same in the subsequent distribution of any tax proceeds to the state or such taxing districts, and upon receiving any such certificate in payment of other taxes, the amount thereof shall be distributed to the state and other taxing districts in proportion to the amount of their respective taxes included in the levy; provided that if in the judgment the levy of one or more of the districts be found to be illegal, to the extent that the tax so levied is reduced on account of the illegal levies, the amount to be charged back shall be charged to the districts and the amount thereof deducted from any distributions thereafter made to them.

[1935 c. 300 s. 12] (2126-12)

**278.13 JUDGMENT TO BE FINAL.** The judgment entered in such proceedings, except for the right of review on appeal, shall be final and conclusive as to the taxes involved therein. No defense or objection which might have been interposed by proceedings hereunder shall be interposed in delinquent tax proceedings except the defense that the taxes levied have been paid or that the property is exempt from the taxes so levied.

[1935 c. 300 s. 13] (2126-13)

NOTE: This section affects 279.15.